

MINUTES

State-Tribal Relations



Representative Shawn Bordeaux, Chair
Senator Red Dawn Foster, Vice Chair

**First Meeting, 2020 Interim
Tuesday, July 21, 2020**

**Room 413 – State Capitol
Pierre, South Dakota**

The first interim meeting of the 2020 State-Tribal Relations Committee was called to order by Representative Shawn Bordeaux at 10:06 a.m. (CST) on Tuesday, July 21, 2020 via electronic conference and in Room 413 of the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members answering roll call: Representatives Shawn Bordeaux, Chair, Steven Haugaard, Tony Randolph, and Tamara St. John; and Senators Red Dawn Foster, Vice Chair, Troy Heinert, Phil Jensen, Lance Russell, and V.J. Smith. Representative Peri Pourier was excused.

Staff members present included Alex Timperley, Legislative Attorney; and Rachael Person, Senior Legislative Secretary.

NOTE: For the 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 on the LRC website at sdlegislature.gov.

Opening Remarks

Representative Bordeaux welcomed everyone to the meeting and asked for a moment of silence in memory of Georgia Congressman John Lewis and civil rights activist C.T. Vivian who recently passed away. He welcomed Senator Smith and Representative Randolph to the committee who filled the vacancies of Senator Jordan Youngberg and Representative Steve Livermont, respectively.

Election of Vice Chair

Senator Jensen moved, seconded by Senator Heinert, to nominate Senator Red Dawn Foster as Vice Chair of the State-Tribal Relations Committee.

Senator Smith moved, seconded by Senator Jensen, to cease nominations for Vice Chair.

By consensus, Senator Red Dawn Foster was elected Vice Chair of the State-Tribal Relations Committee.

Discussion on Tribal Checkpoints

Mr. Jason Ravensborg, South Dakota Attorney General, updated the committee on the work he has done in effort to build bridges with the Native American tribes within the state. On his first day in office, Mr. Ravensborg sent a letter to each tribe, inviting them to Pierre to meet with him or invite him to travel to their locations. So far, Mr. Ravensborg has had many productive meetings and discussions on a wide variety of topics as he has looked to find common ground and ways to improve communication and make positive changes for both the tribes and the state.

Mr. Ravensborg highlighted discussions on meth and the Murdered, Missing, and Indigenous Women Act which passed in 2019. He discussed the improved missing persons database that can be found on his website (<https://atg.sd.gov/LawEnforcement/missingpersons/default.aspx>), and the first installment of Missing Persons Monday South Dakota, in which he is seeking to highlight individuals from the public in an effort to bring awareness to their case, seek information, find them alive, or bring some closure to their case for their families.

On the issue of checkpoints, Mr. Ravensborg said some tribes have constructed checkpoints and some have not. The concept and application of the checkpoints across the state has not been uniform which makes it difficult to address the situation with one answer. The BIA issued a memorandum in April stating that parties needed to have consultation and agreement in order for checkpoints to be set up on state and federal highways. Mr. Ravensborg stated that, to date, no agreements have been made.

Mr. Ravensborg voiced concern over the upcoming Sturgis motorcycle rally, the number of bikers who may be unaware of the checkpoints and how some may react to being turned around at those checkpoints. He has been working extensively with the U.S. Attorney's office in an effort to resolve the situation and keep everyone safe in the process.

Representative St. John asked Mr. Ravensborg if he had spoken with Chairman Frazier or tribal leaders relating to the bike rally and the traffic, as it is also a concern for members of the Cheyenne River Sioux Tribe. Mr. Ravensborg replied that he had not spoken with Chairman Frazier directly, but his office has been documenting concerns from citizens in the area and sharing those with the federal government. He also stated that ongoing communications between his office, the tribe, and the federal government have been taking place in an effort to resolve the Cheyenne River Sioux Tribe vs. Trump lawsuit predominately.

Senator Heinert shared his appreciation for Mr. Ravensborg and his efforts in trying to understand and engage more with the tribal members and the communities by listening to tribal leaders and taking part in tribal events. He inquired after affidavits signed by state employees, and asked Mr. Ravensborg if state employees were being directed to travel through checkpoints as part of an investigation that was done on the Cheyenne River Reservation or if the employees were traveling through them on their own volition. Mr. Ravensborg responded no state employees were directed to go through the checkpoints. Affidavits received from state employees were from employees seeking to conduct business on, or through, the reservation who experienced difficulties with the checkpoints in some fashion.

Senator Heinert then touched on the consultation process that has taken place between the tribes and the federal government over the years and stated it hasn't always been fair consultation. He asked if Mr. Ravensborg would be interested in working with the committee and tribes on developing appropriate consultation protocols for the tribes and the state.

Representative St. John echoed Senator Heinert's concerns about the consultation process, pointing out that the recent checkpoints have developed intense conversations that could be better handled if effective communication was a priority.

Mr. Ravensborg stated he is always supportive of more consultation and communication with the tribes or any outside entity dealing with the state government.

Senator Russell thanked Mr. Ravensborg for his participation in and his willingness to work with the committee. He commented on his interactions going through checkpoints and stated they were very positive. Senator Russell also voiced his disappointment with Governor Noem, her lack of response to committee invitations to take part in meetings, and how the situation with the Cheyenne River Sioux Tribe has been handled. He added that in difficult situations, there needs to be consultation and cooperation between the tribes and the state, and the Governor's

office should make good faith efforts to bridge the communication gap, and understand that the tribes, just like the state, have an obligation for the health and the welfare of their people.

Mr. Peter Lengkeek, Chairman, Crow Creek Sioux Tribe, echoed the comments of the committee members and agreed a consultation protocol needs to be put in place. He stated that at the beginning of the pandemic, Governor Noem said she was not going to lock down the state and left authority with the local governments to take the appropriate steps to mitigate the pandemic. The tribes did what they felt they had to in order to protect both Indian and non-Indian citizens living in their reservation boundaries. Chairman Lengkeek said he reached out to local authorities in the counties around his community regarding checkpoints and received no support or response from those authorities or the Department of Transportation.

Discussion on COVID-19 Related Issues

The committee discussed different issues related to COVID-19 such as ventilators, testing, and equal communication between the tribes and the state.

Representative St. John commented that if the tribes aren't requesting the supplies they need, it's difficult to find fault with state for not providing them.

Senator Heinert voiced concern over children going back to school and what that could look like for the state. He pointed out that while the public schools may be ready to go back, the tribe may not be ready. Senator Heinert stated it would be helpful if some of the standing committees active during the legislative session would meet to have discussions on the distribution of the Coronavirus Aid, Relief, and Economic Security Act (CARES) fund.

Representative Haugaard agreed with Senator Heinert and added there is a lack of information across the nation. He encouraged the idea of the standing committees and the legislative body convening to have a broader discussion and help shape how the CARES funding is distributed throughout the state.

On the topic of tribal sovereignty and COVID, Senator Heinert said it is paramount to recognize that the tribes are doing what they can to keep their members and non-member residents safe, while the government off the reservation is doing the best it can to keep their people safe. He stated that everyone needs to work together to battle the issue, politics need to be removed from the battle, and the tribes' abilities to govern themselves should be supported.

Representative Bordeaux highlighted the importance of dialogue during tough times. He expressed his wishes for the committee to be able to be more active in discussions between the state and tribes in the future to help mitigate the issues that arise and bring the two parties together. In an effort to start bridging some of these gaps, the State-Tribal Relations committee met with tribal leaders in May and drafted a letter ([Document 1](#)) to the Governor and to Secretary Flute of the Department of Tribal Relations asking for the ability to intercede or participate in dialogue between the tribes and the state. As members of the committee have good relations with the tribal community and are imbedded within that tribal community, Representative Bordeaux said the committee would add great value if it were allowed to work alongside the executive branch. He thanked Representative Haugaard, who drafted the letter, and the committee for the dedication they showed in putting the letter together which was sent to the Governor in May before she reached out to President Trump. Unfortunately, the committee did not receive a response from either Governor Noem or Secretary Flute.

Senator Russell commended Representative Bordeaux on the discussion and stated that it is disrespectful and unacceptable for a legislative committee that has jurisdiction over issues pertaining to tribal relations to be ignored. He emphasized the participation from tribal chairmen in a number of meetings held by the committee and said

there is no excuse for the executive branch to ignore the committee and their requests for either the Governor or her chief of staff's presence at their meetings.

Chairman Lengkeek added to Senator Russell's comments, stating he had reached out to the Governor and her staff through a letter requesting charges to be dropped on some tribal members who were arrested during the Fourth of July protests. Chairman Lengkeek said he, too, never received a response from the Governor's office.

Law Enforcement Training, De-escalation, and Registries

Mr. Ravensborg gave the committee a brief overview on law enforcement training in South Dakota. Three basic academies take place every year for all law enforcement agencies at the state, county, city, and tribal level. They are 13-week classes with 520 hours of training. The academy was originally designed for forty members to go through at a time. However, the state has been over capacity for the last few years and have been training forty-eight members at a time. The training focuses on passive and defensive resistance, and active aggression with a minimum of 157 hours dedicated to de-escalation and response to resistance training. Subcategories of training include professional communication, command presence, legal, interpersonal training such as anti-biased and cross-cultural contacts, emotional intelligence, and ethics.

Mr. Ravensborg said 45 state agencies across the country, including South Dakota, contribute to the International Association of Directors of Law Enforcement Standards and Training National Decertification Index database. This database houses all decertified law enforcement officers. Every officer that applies in South Dakota is checked against the database for any form of misconduct.

Mr. Chad Mosteller, Training Administrator for Law Enforcement Training, Department of Criminal Investigation, expanded on Mr. Ravensborg's overview, providing the committee with a more in-depth explanation of the training law enforcement officers go through at the academy.

Mr. Mosteller told the committee that de-escalation is a result of what an officer does and not a technique trained at the academy. Rather, officers are trained in several techniques that bring the result of de-escalation in a situation. He explained that much of the training at the academy is teaching officers how to have professional communications, understand the legal aspect and the laws, what they can and cannot do in any situation, and interpersonal training such as anti-biased and cross-cultural classes so officers are able to understand different situations and the perspectives of others in those situations. As far as responding to protests, Mr. Mosteller said the academy teaches the basic fundamentals but advanced techniques such as crowd control and dispersal are taught by agencies pursuant to their own individual policies.

Representative Haugaard asked how many officers are employed in the state, what database exists for complaints against officers, and how those complaints are assessed. Mr. Ravensborg replied approximately 2,000 officers are employed in the state. He said the state uses the national database he previously mentioned which contains decertified officers and officers who have had a negative impact or have been fired. Complaints are made through the law enforcement agency and if they are brought before the Law Enforcement Standards and Training Commission, the board decides if the officer should be decertified.

Mr. Mosteller added that complaints, or misconduct cases, are reviewed by a designated investigator at the Law Enforcement Training office and a decision will be made as to whether the issue rises to the level of a decertification hearing. Several hearings are conducted throughout the year. Some are criminal in nature and some deal with issues of conduct unbecoming of a law enforcement officer.

Following a discussion on the hearings, the committee discussed available spots for tribal officers in the academy and possible subject additions to the training schedule that would include Native American specific topics.

Department of Tribal Relations Update

Mr. Dave Flute, Department Secretary, Department of Tribal Relations (DTR), provided the committee with an update on the work his office has been doing over the past year, touching specifically on the communication between the Department of Health (DOH) and the tribes on COVID-19 related issues. Mr. Flute stated DOH has been using his office to assist in messaging with the tribes and transmitting forms DOH needs if tribes are requesting any personal equipment. Recently, DTR and DOH established a task force comprised of members from both offices which coordinates individual tribal calls to help with issues such as mass testing.

Mr. Flute also touched base on the tribal checkpoints and called the situation unfortunate. He told the committee of the efforts his office has made through the Governor and senior leadership to meet with tribes to have good discussions on the tribal checkpoints and how they are affecting South Dakota citizens in different ways. However, not all attempts have been successful.

Mr. Flute praised several tribal chairmen and thanked them for their willingness to reach out in courtesy to the Governor and other state agencies to let them know about tribal checkpoints that were going to be set up. Mr. Flute said this kind of tone and partnership is what makes things easier for everyone and he wanted to give credit to those tribes who have communicated with state agencies, and specifically with his agency.

Representative St. John inquired after what citizens were being told when they called the DTR office about issues with the tribal checkpoint. She stated people have been told to call the Department of Interior rather than trying to reach out to the tribes and she wanted to know if efforts were being made to try and resolve the issues before citizens were encouraged to voice their concerns at a higher level.

Mr. Flute replied that inconsistencies in the information provided by certain tribes to the public makes it difficult when citizens call his office. He assured the committee no one was being encouraged to take their concerns to a higher level; however, he did point out that it has been difficult due to situations such as individuals with permits being no longer allowed to drive through the checkpoints even though they had previously been allowed to do so with those permits.

Representative Bordeaux asked Mr. Flute if he had received the letter the State-Tribal Relations Committee sent him in April and asked why the committee was given no response to the letter. Mr. Flute stated he received the letter and he appreciated the level of concern the committee has to the state's current status with the tribes. He commented that he understands and respects the committee for their purpose and concern, and their level of authority, but it was not fair to engage on the topic as some internal struggles with the committee exist. Mr. Flute suggested some issues and discussions needed to be amended between his office and the committee to bring about a healthier relationship between the two.

Senator Russell thanked Mr. Flute for his time and testimony. He commended Mr. Flute for his efforts and told the committee it was important to recognize that Mr. Flute is in a very difficult position and is directly accountable to someone else.

Voter Suppression Concerns and the Census Drive

Senator Heinert gave a brief update on voting and the census on reservations. It is unknown what voting will look like, and Senator Heinert pointed out that it has always been a struggle on reservations even in good times. During

the COVID pandemic, census operations were suspended on all reservations, so the reporting numbers South Dakota turned in by county are in the bottom tier of reservation counties. Even though reporting could be done online, many on the reservations did not receive the numbers that correspond with their addresses. Senator Heinert said that was an issue that needed to be considered and discussed, and the state could offer some assistance to the tribes to make sure people are getting counted. Senator Heinert emphasized the importance of accurate reporting numbers for federal funding and access to resources for each tribe.

Public Testimony

Ms. Sarah Pierce, South Dakota Education Equity Coalition (SDEEC), updated the committee on legislation the Coalition will be bringing forth in the upcoming legislative session following the failing of [SB66](#) in the 2020 Legislative Session. Ms. Pierce pointed out there was no mention of education on the list of topics discussed by Secretary Flute earlier in the day and it is critical to have conversations concerning their most vulnerable population. She informed the committee that a request was made to remove the Office of Indian Education from the Department of Tribal Relations and place it under the direction of the Department of Education. Ms. Pierce said it was important those discussions take place, and that the Office of Indian Education is able to exercise rights and have accountability in the public-school systems for indigenous students.

Mr. Ross Garelick-Bell, lobbyist for the Yankton Sioux Tribe, Crow Creek Sioux Tribe, and SDEEC, also presented the committee with legislation some tribes will be bringing to the upcoming Legislative Session. He mentioned the tribes will be looking at cleaning up past code within South Dakota and are looking for an overarching revision of some outstanding laws.

Mr. Garelick-Bell spoke briefly on a partnership the Yankton Sioux and Crow Creek Sioux Tribes have with NASA to get a demonstration program done on their tribal lands in partnership with the Moon to Mars program. He also extended gratitude from the tribes to the Game, Fish, and Parks commission for voting to approve free access to tribal members to the four state recreation areas that neighbor the tribal lands.

Closing Remarks

Representative Haugaard reiterated the ideas on legislator training which were discussed throughout the meeting, and suggested information be compiled for what could be included in that training to make returning and new legislators aware of the committee, the importance of it, and the opportunities the Legislature has to support tribal relations.

Senator Russell thanked Representative Bordeaux and the members of the committee for the efforts and work they have put into tribal relations. He said it is important to have reinforced vigor even in the face of frustration and disappointment so the issues could be combated from a strategic standpoint and everyone can start working towards a common goal.

Adjourn

Representative Haugaard moved, seconded by Senator Heinert, that the State-Tribal Relations Committee be adjourned. Motion prevailed unanimously on a voice vote.

The committee adjourned at 3:20 p.m.