

MINUTES

State-Tribal Relations



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

**Third Meeting, 2020 Interim
Thursday, September 24, 2020**

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

The third interim meeting of the 2020 State-Tribal Relations Committee was called to order by Representative Shawn Bordeaux at 1:10 p.m. (CST) on Thursday, September 24, 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, Peri Pourier, Tony Randolph, and Tamara St. John; and Senators Red Dawn Foster, Vice Chair, Troy Heinert, Phil Jensen, Lance Russell, and V.J. Smith.

Staff members present included Michael Loesevitz, Senior Legislative Attorney; and Cindy Tryon, 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 webcast live. The archived webcast is available on the LRC website at sdlegislature.gov.

Approval of Minutes

Representative Haugaard moved, seconded by Senator Heinert, to approve the minutes of the August 27, 2020, meeting. Motion prevailed on a voice vote.

Opening Remarks

Representative Bordeaux opened the meeting with a moment of silence for Breonna Taylor.

Representative Bordeaux welcomed Mr. Michael Loesevitz as the new staff person for the committee and thanked the departing staff person, Mr. Alex Timperley, for all he had done for the committee.

Representative Bordeaux talked about his concerns regarding the Department of Tribal Relations (DTR) working with this committee. In the past, when the Secretary of Tribal Relations was asked about checkpoints on tribal land Secretary Dave Flute's response was communication is important; but Secretary Flute does not communicate with this committee. Representative Bordeaux said the Governor has also done some things that are not very supportive. Representative Bordeaux said he appreciates that a Governor's staff person reached out to him regarding the Custer State Park Buffalo Roundup, and perhaps the tribes can be included in future buffalo roundups.

Representative Bordeaux said he was asked to add two additional items to today's agenda. One item is a discussion on COVID-19 in the women's prison and the other is the initiative for suicide prevention. Representative St. John said more time is needed to better prepare the presentation on the initiative for suicide prevention and asked to have that topic part of the agenda for the next meeting.

Senator Heinert moved, seconded by Representative Haugaard, to add the COVID-19 in the Women's Prison topic to today's agenda. Motion prevailed on a voice vote.

State-Tribal Issues Resulting from Lake Andes Flooding

Mr. Jason Cooke, Vice Chair, Yankton Sioux Tribe, shared drone footage of the flooding in the White Swan area near Lake Andes. Mr. Cooke said the tribe is pumping water to the best of their ability to try to get the flooding to recede. The tribe would like to work with the state to remedy the drainage problem in that area. Several people have had to move out of their homes and the landlords in nearby areas have greatly increased the rent on the available properties resulting in several homes with many people having to live together. These flooding issues on top of the pandemic have created a real panic among the people living there.

Representative Bordeaux said the Secretary of the Department of Transportation (DOT) was not available to attend the committee meeting today but did send a letter regarding the Lake Andes flooding ([Document #1](#)). Representative Bordeaux read DOT Secretary Darin Bergquist's letter to the committee. Secretary Bergquist's letter explains the temporary work the DOT did to the road this past winter to make it passable. The DOT has also raised the level of the eastern most road providing access from the tribal community to the highway along with other work to provide additional access to the state highway all at the state's expense. The state has additional plans to improve drainage and assist with better access, but the work cannot proceed until the water recedes.

Mr. Cooke commented raising the roadways will not stop the flooding of the housing area. Mr. Cooke added that the amount spent on raising the roadways could have been used to fix the drainage.

Mr. Ross Garelick Bell, Yankton Sioux Tribe, said this current flooding event started back in the spring of 2019. The water receded slightly during the winter to allow access on the roads. The ground is being flooded upriver too as the water has nowhere to go. The Department of Game, Fish and Parks is responsible for addressing the drainage problems, but they have not yet put forward a plan on how to develop a drainage system to allow the water to drain into the Missouri River.

Representative Haugaard suggested a few committee members volunteer to work together to make some contacts and get something done regarding this flooding before the onset of winter. They will then report to the full committee at the next State-Tribal Relations meeting.

Unemployment Information from Department of Labor

Representative Bordeaux said the Secretary of the Department of Labor (DOL) was not available to attend the meeting today but did send written responses to questions from the committee ([Document #2](#)). Representative Bordeaux said there is a large discrepancy between the unemployment numbers the SD DOL reports and the unemployment data collected by the tribes. Representative Bordeaux said there is too large of a discrepancy regarding the unemployment numbers and he will draft legislation addressing this issue if needed.

Senator Heinert said the fact the state gives out a number for unemployment which is far lower than the tribes unemployment numbers has been an issue for many years. The tribal people we represent cannot work because of COVID-19 and the Governor's refusal of the extra \$300 for unemployment offered by the federal government was a mistake. Senator Heinert said in his area the people receiving those extra dollars the first go-round were finally able to purchase necessary items for their families. It makes no sense why state government would turn down the offer for these extra dollars to help our economy. People in Indian country do not have other avenues available to them for finding another job. This is a conversation this committee should have with the Governor.

Representative St. John said the Sisseton-Wahpeton Sioux Tribe will be submitting a letter regarding the struggles of the Sisseton-Wahpeton people who have been laid off because of the COVID-19 pandemic. The people apply for unemployment insurance and are denied and then they try to go through the appeal process, which takes a very long time. Weeks and months trying to get this assistance means a real hardship on the families.

Representative Bordeaux said he has been contacted by a lot of people who say they have been waiting for months for a response to their application for unemployment insurance. All the tribes are struggling with these issues. Another issue is the need for broadband; our children cannot be expected to remote learn when they do not have the ability to connect to the internet.

Senator Foster said the additional funds distributed through the unemployment program benefits the state as a whole even when the recipient lives on the reservation because the recipients are most likely to spend the money in stores located off the reservation.

Dakota Plains Legal Services Training on Tribal Laws

Representative Bordeaux said Dakota Plains Legal Services offered to help develop a crash course on Indian Law. The University of South Dakota could be asked to assist with this project. Representative Bordeaux suggested this be added to the training for new LRC staff people.

Senator Heinert said there needs to be training in tribal law with a piece of the training including Oceti Sakowin 101. This would include teaching about treaties, where the tribes came from and where they are today. It is also important the training include information on the difference between tribal government and tribal people in South Dakota.

Representative Haugaard suggested flow charts be prepared illustrating how decisions are made by the different tribes. This could include how things are done differently from one reservation to another. Representative Haugaard said it would be helpful to the committee if the tribes prepared informational materials for the committee members.

Representative Bordeaux said the Department of Tribal Relations provided this type of information in the past and should be able to provide it again.

Senator Smith said Representative Reed suggested establishing a resource in the LRC to collect information regarding victims of sexual assault which would assist in the drafting of legislation regarding the issue.

Education Related Issues

Representative Bordeaux said he received a message from Dr. Jones, Secretary of the Department of Education (DOE), explaining DOE's support for the Governor's decision to move the Office of Indian Education from DOE to the Department of Tribal Affairs (DTR). Dr. Jones' message said the Office of Indian Education is now in its rightful place and he will not support moving the office back to DOE. Representative Bordeaux opened the meeting to discussion on this issue.

Dr. Sherry Johnson, Tribal Education Director and member of the SD Indian Education Council, thanked the DOE for keeping the lines of communication open and for providing weekly guidance to the tribal schools regarding COVID-19. Dr. Johnson said one reason she would like to see the Office of Indian Education moved back to DOE is the DTR office has a whole gamut of issues to be addressing and the topic of education seems to get pushed down by the office while education is always the focus with the DOE.

Dr. Johnson said one issue the tribal schools would like assistance with is being able to use Zoom at a lower price. Another issue is finding a way the tribal schools can access the less expensive COVID-19 tests. Dr. Johnson said our students have limited access to technology, especially access to the internet. Sisseton-Wahpeton used some funding to provide internet access in their area. The tribal and Bureau of Indian Education (BIE) schools were not

included in the Governor's \$500 per student funding grant for public and private schools to address needs created by the pandemic. Dr. Johnson said our schools need that funding just like the non-tribal schools. Also, she said she is not sure the mandates for masking and social distancing are taken seriously in the schools. One school recently had a parade and the students were sitting right next to each other without masks.

Mr. Brian Wagner, Lower Brule and Crow Creek Education Consultant, agreed with Dr. Johnson's remarks. He said the expansion of the school lunch program is much appreciated by all the schools. The \$500 per student money the Governor sent to the public and private schools was from the CARES funds and should have included the tribal and BIE schools, but did not. The BIE has no understanding what our schools in South Dakota need.

Mr. Wagner talked about the state's decision to continue the athletic season this year and how those events will put all communities at risk, defeating the intent of virtual instruction, mask mandates, and social distancing. The virtual model of education does not meet the needs of most students but especially the students in the tribal schools. Mr. Wagner asked that the Head Start children not be forgotten in all of this as Head Start is an important tool in the tribal communities. Mr. Wagner suggested in response to Dr. Jones' letter regarding not returning the Office of Indian Education to the DOE that the DOE add another position within that office to advocate for Indian education.

Ms. Sarah Pierce, Yankton Sioux Tribe, said she advocates moving the Office of Indian Education back to the DOE. Moving the office to the DTR is a clear evasion of tribal education. To promote the idea of diversity and inclusion in South Dakota, the state needs to be responsible for the education of all our children. The tribal schools need the expertise provided by the DOE.

Senator Russell said he had understood the BIE schools received additional federal resources non-tribal schools in the state did not receive. Mr. Wagner said the state received the same funds for education from the federal government for COVID-19 relief that the tribal schools received. The discussion today is regarding the additional \$500 per student the Governor appropriated from the additional CARES act dollars to the state's private and public schools but not for the tribal schools.

Representative Haugaard suggested a subcommittee and a few tribal education directors contact Secretary Jones within the next few weeks to discuss issues such as this funding for the tribal schools. Mr. Loesevitz was asked to put together a list of those wishing to participate in the conversation and arrange for a telephone conference call.

Dr. Johnson suggested requesting the tribal schools be given the opportunity to receive the saliva tests available to the public schools. Mr. Loesevitz was asked to write a letter to the Department of Health for Chair Bordeaux making that request.

Representative Bordeaux asked if the committee would like to take a stance on where the Office of Indian Education is located.

Senator Russell asked if there was any consultation with the tribal education people prior to the decision to move the Office of Indian Education from DOE to DTR. Dr. Johnson said this decision was announced in the first Executive Order Governor Noem made after taking office. There was no consultation with any of the tribes regarding the decision and the tribal education people feel like they were being pushed out. Senator Russell said he is concerned there was no communication regarding this decision, and he will support the State-Tribal Relations committee taking a stand on this issue.

Representative Haugaard said the order to transfer the Office of Indian Education from DOE to the DTR can be found in Executive Order 2019-01 sections 18 through 36 ([Document #3](#)). Representative Haugaard said it will be

useful to have a conversation with Secretary Jones as to the reasoning for transferring the Office of Indian Education. The committee needs more of the specifics before taking further action.

Senator Heinert said the tribal leaders have been commenting for two years that the Office of Indian Education being located under DTR is not working. There is no Indian Education director in DTR to work with the tribes on any education issues. Senator Heinert said he supports moving the Office of Indian Education back to the DOE.

Representative Bordeaux said he also supports moving the Office of Indian Education back to the DOE. A subcommittee will try to have one more discussion with the executive branch, report back to the full committee, and the committee can then decide if further action should be taken.

Discussions with Tribal Leaders on COVID-19

Mr. Clyde Estes, incoming Chair of the Lower Brule Sioux Tribe, said there is a world of unknowns right now. Educators have to keep in mind the children and how this pandemic is affecting them. The children are trying to decipher what is happening, and we have to consider their mental health. Some type of survey should be done to try to determine how COVID-19 is affecting them. The tribes are losing elders to the virus. Mr. Estes said this all pulls on his heartstrings.

Mr. Cody Russell, Vice Chair, Lower Brule Sioux Tribe, said the Lower Brule Sioux Tribe will be more active in future meetings of the State Tribal Relations committee, adding the tribe supports Mr. Wagner's earlier testimony regarding tribal education.

The Women's Prison and COVID-19

Senator Foster said there is an issue at the women's prison in Pierre regarding a COVID-19 outbreak. There are several people wishing to testify regarding concerns for the prisoners.

Ms. Jean Roche, member of the Cheyenne River Sioux Tribe, Rapid City, said her daughter is in prison and read a letter from her daughter regarding the fears of inmates incarcerated in the women's prison. Ms. Roche said people are concerned about our daughters, mothers, and sisters in the prison as they are not getting the proper care for COVID-19. They have the right to be protected from cruel and unusual punishment and are to have safe and humane conditions within the prison. There were over 100 cases of COVID-19 reported in the prison in September and Ms. Roche said this explosive outbreak confirms the incompetence of those responsible for the care of the prisoners.

Vice Chair Cooke said the tribes take the CDC recommendations regarding COVID-19 seriously by mandating masks, requiring the people to self-quarantine when exposed to the virus, downsizing use of all facilities, and other forms of precaution. However, the tribes are not able to protect those incarcerated in the state's prison system and the Department of Corrections (DOC) does not follow the CDC guidelines. The tribes are asking the DOC for immediate safe action by allowing the use of spiritual medicines, requiring masks for all inmates and staff, and allowing for early release of nonviolent offenders. The tribes also ask the DOC to keep relatives of inmates informed on the health of the inmates.

Mr. Estes said a grandmother of two of the inmates in the women's prison said the prisoners are terrified for their well-being because of the spread of COVID-19. The state must remember these women are human beings. The virus is being brought into the prison through the guards and perhaps using the rapid test with the guards before being allowed to work would help reduce the spread.

Representative St. John said constituents have contacted her regarding concerns for their incarcerated family members. The families do not know if the inmates' underlying health issues are being taken into consideration regarding the virus. Separating the prison population is impossible. There is a real lack of communication between DOC and the inmates' families. Representative St. John added many of the women inmates are incarcerated for ingestion and perhaps it is time to take a look at the penalties regarding those types of crimes.

Ms. Candy Brings Plenty, Indigenous Justice, ACLU, said she currently is suffering with COVID-19. Ms. Brings Plenty talked about how sick she has been, commenting she cannot imagine suffering with this illness while incarcerated. Ms. Brings Plenty implored the committee to do what they can to help those in prison.

Senator Heinert said he serves as chair of the Corrections Commission which is going to be meeting with DOC this coming week to find some answers to these questions. Senator Heinert said he will report back to this committee regarding the Corrections Commission meeting.

Ms. Cheryl Angel, Rosebud Sioux Tribe, said the passion Ms. Brings Plenty demonstrated in her testimony is the passion the members of the committee need to show. Ms. Angel continued saying the Legislature keeps waiting and waiting while people are getting sick and some are dying. Ms. Angel said she cannot imagine how these women in prison are able to handle this suffering on the inside; they need support and it cannot wait until next week. Someone needs to drive to the prison and ask questions; demand answers. Ms. Angel said we know it is happening, please have the compassion, courage, and commitment to do better than what is happening in the prisons right now.

Senator Heinert said he understands Ms. Angel's frustration, the committee members are frustrated too, but the answers are slow in coming. This committee and the Corrections Commission will continue to search for answers. There are issues in the prisons in Springfield and Sioux Falls as well as the women's prison in Pierre.

Senator Jensen said there is an extremely low risk of dying from COVID-19. Senator Jensen asked if the tribes are keeping track of the co-morbidity when recording deaths on the reservations due to COVID-19.

Representative Bordeaux said it can be difficult to track these things when addressing the pandemic. Some of the COVID-19 testing happens on the reservations and some is done off the reservations. It is not easy for the tribes to decipher all of this information.

Public Testimony

Ms. Julie Santella, Dakota Rural Action, Rapid City, said she would like to raise concerns regarding the State Historic Preservation Office (SHPO) and compliance with the National Historic Preservation Act. Regarding the Keystone XL Pipeline project, SHPO signed an agreement and the tribes did not sign the agreement. This committee needs to include this issue on the next meeting agenda and also needs to set up a strategy session with the Tribal Historic Preservation Offices (THPO) on how to deal with Keystone's disregard for the THPOs.

Representative Bordeaux said when he contacted SHPO he was told they believe the burial sites near the land where the Keystone XL pipeline will be located belonged to the Arikara tribes who are no longer located in South Dakota. In many instances the SHPO just ignores the local tribes. Representative Bordeaux agreed this is a topic needing more discussion and will put it on the next meeting agenda.

Representative St. John said the THPOs are well versed in the consultation process. Representative St. John said she worries about this committee getting into areas where the tribes should be speaking for themselves and when the issues should be addressed government to government.

Ms. Santella said the THPOs know this issue well, but the challenge is getting them all together to find a way forward with a united front. Many projects on tribal lands are posted on the DENR website and the tribes are not notified.

Senator Foster said there needs to be a starting point to the discussion on these issues, and from those discussions the committee can determine if legislation needs to be drafted.

Ms. Tanya Stands, Oglala Sioux Tribe, said the tribes' sacred sites and ceremonial grounds are being desecrated. The tribes hold ceremonies at sites that have radioactive materials. The tribes would appreciate seeing this committee get something started regarding these issues.

Ms. Regina Brave, Oglala Sioux Tribe, Pine Ridge, said the people who work for the SHPO need to work with the THPO and need to better understand the tribes' side of the story. Ms. Brave said the tribes are adamant about protecting sacred sites and consider the earth as their mother. The tribal ancestors were thinking of their descendants when the treaties were written. The Indian people had to learn the white man's language, laws, and be educated in the white man's way. Ms. Brave continued saying, we are the Great Sioux Nation; we need to stand together, we are fighting for survival, and we have an obligation to protect all people.

Representative Bordeaux thanked Ms. Brave for taking the time to come to Pierre to testify in front of the State-Tribal Relations committee.

Committee Discussion

Representative Haugaard proposed a conference call be arranged between the SHPO and the THPOs. Representative Haugaard requested a letter be sent to the nine tribes asking them to provide a list of their current issues or specific needs to assist in drafting legislation for the 2021 Legislative Session. Representative Haugaard suggested the letter to the tribes include a request for their COVID-19 data.

Representative St. John suggested the letter also be sent to the legislators in each of the districts where tribal land is located.

Senator Heinert moved, seconded by Senator Foster, the State-Tribal Relations committee adopt a resolution supporting the inclusion of tribal and Bureau of Indian Education schools located in South Dakota in the extra \$500 per student granted by the Governor through the general CARES act funding. Motion prevailed on a roll call vote with 9 AYES; 1 EXCUSED. Voting AYE: Haugaard, Pourier, Randolph, St. John, Heinert, Jensen, Russell, Foster, and Bordeaux. EXCUSED: Smith.

The next meeting of State-Tribal Relations will be held October 22, 2020, starting at 1:00 p.m. (CST).

Adjournment

Senator Russell moved, seconded by Senator Heinert, the State-Tribal Relations meeting be adjourned. Motion prevailed on a voice vote.

The committee adjourned at 4:55 p.m.