



**Third & Final Meeting**  
**2004 Interim**  
**December 6, 2004**

**Room 464**  
**State Capitol**  
**Pierre, South Dakota**

The third and final meeting of the 2004 interim of the Legislature's State-Tribal Relations Committee was called to order by Chair Representative Stanford Adelstein at 9:22 a.m. (CT), December 6, 2004, in Room 464 of the State Capitol, Pierre, South Dakota.

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

Responding to a request from **Chair Stanford Adelstein, Ms. Twyla Turney**, Oglala Sioux Tribe, provided a prayer before the beginning of the committee's deliberations. Chair Adelstein then introduced **Tribal Chairman Michael Jandreau**, Lower Brule Sioux Tribe, to speak on the economic development activities of the Lower Brule Sioux Tribe.

Chairman Jandreau said that unless the relationship between the state and the tribes becomes more cooperative, economic development for all citizens of the State of South Dakota will not happen. Concerning some of the economic development projects occurring on the Lower Brule Sioux Tribe, Chairman Jandreau listed the following:

- Large corporate farm and ranch—now working on ways to process the products from the farm and ranch;
- Wind energy—need help from the state to access WAPA lines; and
- Wildlife process—hunting lodge and fishing licenses.

Some of the concerns expressed by Chairman Jandreau are as follows:

- New State-Tribal Committee members—a trust has been developed between the current committee and tribal members;

- State creates leased tracts of land in reservation areas without consulting with the tribes;
- Problem with the Missouri River and the siltation on Lake Sharpe—this is experienced by all the lakes created by the dams on the river;
- Placing of fee land into trust—many do not understand the tribes' perspective on this issue. It is for the posterity of the tribes and their people to ensure that those assets will remain protected and sacred. Land needs to be put back into trust. A discussion of this situation needs to be had with the Tribes, the Legislature, and the Governor;
- Gaming will always remain an area of contention if the state and the tribes do not talk about the issues surrounding gaming; and
- The infrastructure development bill before congress. Governor supports the bill. The bill needs legislative and congressional support, but probably has a limited chance of success due to the current political climate.

In discussing the DM&E Railroad bypass, Chairman Jandreau said that the Lower Brule Sioux Tribe owns the land on the route of the proposed bypass. He said that the city of Pierre started to plan for the bypass before seeking approval from the tribe. Chairman Jandreau said that the tribe is reaching out its hand to cooperate with Pierre officials. He also said that perhaps the State-Tribal Relations Committee or Legislature and the counties need to be involved.

Chairman Jandreau concluded his remarks by stating his willingness and desire to continue working with the state but did express some reservations about success.

### **Development of Wind Energy on Reservation Lands**

**Mr. Eric Greenberg**, Innovative Investments LLC, San Francisco, California, discussed wind energy development and other possibilities of energy on the Lower Brule Sioux Tribe. Mr. Greenberg said that there are 54,000 acres of land on the Lower Brule Reservation that meet the requirements for wind energy development. That area has a 27,000 tower potential. South Dakota has poor grid access while North Dakota is first in the nation for grid access. Mr. Greenberg said that South Dakota has the potential to become one of the largest exporters of wind energy. Mr. Greenfield said that he has signed a letter of intent with Lower Brule and wants to give Lower Brule five percent of the gross revenue because he believes it is the right thing to do. Mr. Greenfield said that there is an area on the Cheyenne River Sioux Reservation that also has high potential for wind energy development.

**Representative Thomas Van Norman** expressed concern with the high mercury levels in the waters on tribal lands. He said that there have been warnings not to eat the fish due to mercury levels.

Mr. Greenberg said that wind energy is much cleaner and much less harmful to the environment than other forms of energy. He said that high levels of mercury in groundwater can be caused by coal firing plants and other industrial waste.

**Representative J.E. "Jim" Putnam** said that the tribes and the state and others compete for the ability to get on the grid, and that inability to access the grid is an impediment to investment in South Dakota.

Mr. Greenberg discussed the political situation regarding energy development and said that it is much easier to work with the tribes than the state because of the sovereign status of the tribes.

For the record, Chair Adelstein stated that he has no personal investments with Mr. Greenberg's company; however, he is a director of another company, KFX, in which he has a significant investment. The company is dealing with some of the same people in developing coal processing.

Regarding wind energy development, Chair Adelstein asked Mr. Greenberg whether there would be a possibility of the state also receiving five percent of the gross revenue such as Lower Brule would receive.

Mr. Greenberg said that the proposed development on Lower Brule needs to be successful and then other areas can be developed.

**Tribal Chairman James Crawford**, Sisseton-Wahpeton Sioux Tribe, suggested working on something similar to the Indian Gaming Regulatory Act for wind energy. He said that it is important for the two governments to work together.

Representative Van Norman noted that representatives from four of the tribes were in attendance at today's meeting. He thanked them for their input on issues important to both the state and the tribes and urged continued dialogue.

Chair Adelstein told Tribal Chairman Jandreau that the Legislature will try to maintain continuity in the State-Tribal Relations Committee

### **Dakota, Montana, and Eastern (DM&E) Railroad Expansion Project**

Chairman Jandreau said that grant money for the DM&E expansion project has already been received and placed in the Department of Transportation. After nearly a year of discussions, Chairman Jandreau said that the city of Pierre then asked the tribal council for its concurrence in the bypass, which led the council to believe that it was left out of the process. He said that the tribe is willing to enter into discussions with the city of Pierre. The tribe is concerned about the cultural impact of the bypass and also wants to discuss employment and mitigation. Chairman Jandreau said perhaps the tribe could build the bypass and receive some of the economic benefits. He said that the tribe also is requesting \$250,000 of the grant money to develop a study regarding its concerns.

**Mr. Dennis Eisnach**, Mayor, Pierre, South Dakota, briefed the committee on the DM&E plan and the city of Pierre's negotiations with DM&E regarding a bypass around the city. Mr. Eisnach said that Pierre is waiting to hear from the federal government whether additional funding is available. Mr. Eisnach said that the amount needed to build the bypass would not be available given the current situation.

Responding to Representative Putnam, Mr. Eisnach said that if the city received the dollars from the federal government, it is absolutely willing to negotiate with the tribes regarding land and money.

Responding to **Senator Gil Koetzle**, Mr. Eisnach said that Pierre would receive a tax benefit if there is a bypass. There are only negatives to Pierre if there is not a bypass.

Also responding to Senator Koetzle, Chairman Jandreau said that the tribes may receive benefits from DM&E. There are no benefits for the tribe if the train goes through Pierre.

The committee recessed at 11:00 a.m. and reconvened at 11:20 a.m.

Chairman Jandreau briefly discussed the land into trust issue. He said that he understands the Attorney General's opinions on this matter; however, Chairman Jandreau said that in his opinion preserving the tax base is not uppermost in the Attorney General's dealings on this issue. Also, Chairman Jandreau said that the counties quite often oppose placing land into trust. Regarding the concerns of the counties, Chairman Jandreau said that the tribe has offered to pay in services in lieu of taxes to the counties.

Chair Adelstein asked whether there is any action that the tribes would like the committee to take on any issues.

Chairman Jandreau said that he would appreciate an identification of the role of the Attorney General.

Chairman Crawford expressed his objection to a statement that he heard when the Sisseton-Wahpeton Sioux Tribe tried to take land into trust. He relayed the statement as he remembered it to be—something to the effect of: "When they become civilized there is less need for land." Chairman Crawford said that the tribes need land for economic development, and they need the authority to tax.

Chair Adelstein asked for the exact comment and by whom the comment was stated, and Chairman Crawford responded that this was an old comment from the 19<sup>th</sup> Century that was restated recently in regard to the land into trust issue.

Regarding gaming, Tribal Chairman Crawford said that the Sisseton-Wahpeton Sioux Tribe has given \$1.2 million plus for people to buy homes, and fifty homes were bought and are beginning to pay taxes to the county on that property.

Representative Putnam said that there is an undercurrent in South Dakota not to expand gaming whether on the reservations or anywhere else in the state.

Representative Van Norman said that there is not a level playing field regarding gaming. The federal law states that the tribes can only have gaming by entering into a compact with the state.

Representative Putnam said that the two governments need to continue discussions.

### **Public Testimony**

Ms. Turney distributed copies of a letter and supporting documents from her daughter, Melissa Turney, regarding Melissa's concerns about the guidelines and obstacles for a TANF recipient when the recipient is trying to pursue educational opportunities (**Document #1**).

Ms. Turney said that she supports a casino on the Pine Ridge Reservation because it provides employment.

Ms. Turney said that housing is badly needed on the Pine Ridge Reservation.

Chair Adelstein asked someone to develop proposed changes to the rules that apply to college students on reservations in such areas as TANF and food stamps. Ms. Turney said that she would work on such a project.

**Ms. Marletta Pacheco**, Rapid City, South Dakota, spoke positively about the proceedings of the committee. Ms. Pacheco explained that there are tribal prison liaisons who work with the prison system, but sometimes a liaison cannot attend the spiritual council at the prison and asked whether this problem can be addressed. She stated a list of concerns as follows:

- Some prisoners need help in receiving tribal enrollment;
- There are still some complaints about not being able to practice Native American religion—other inmates are able to attend bible studies once a week and meet with a chaplain;
- Behavior and attitudes of some guards is still a problem; and
- Mental and physical health of Native American inmates remains a problem.

Ms. Pacheco said that she understands that people are in prison because they have committed a crime; however, she said that there sometimes is abuse in the system based on race.

Responding to Senator Koetzle, Ms. Pacheco said that she has presented this testimony to the Corrections Commission and that she is a member of the commission.

**Senator Michael LaPointe** asked Ms. Pacheco what response she receives when she addresses prison issues.

Ms. Pacheco said that people do not completely understand the situation of Native Americans in the prison system. She said that some of the rules do not fit the Native American situations.

**Representative Jim Bradford** said that reentry programs were discussed at a Council of State Governments' meeting. He said that many states have programs for released inmates who are reentering society and their environments.

Ms. Turney reported that Pine Ridge is building a veterans home that also will be available for released inmates who are trying to reenter society. She expressed her concern that some prisoners are not released because jobs are scarce on the reservations, and the Department of Corrections will not release them until they have a job.

The committee recessed at 12:30 p.m. and reconvened at 1:43 p.m.

### **Review of 2004 Election Issues**

**Mr. Chris Nelson**, Secretary of State, discussed what happened on November 2, 2004—Election Day. Mr. Nelson listed the following unique circumstances that came together on that day:

- Unprecedented number of procedural changes;
- Abundance of poll watchers and observers;
- The second most watched senate race in the nation after the presidential race; and
- A record turnout.

In part, Mr. Nelson attributed the successful election day to a flow chart given to each county auditor which represents all possible options for a voter along with a list of appropriate responses from an election worker. He also said that a durable sign was posted at every polling place regarding the Identification requirement. Mr. Nelson said that he spoke to representatives from every county with a reservation, except Roberts County, regarding voting.

Mr. Nelson said that 55,000 more people voted on November 2 than in the June election—78.6% of the registered voters turned out to vote, which is the highest percentage since 1968. Also, Mr. Nelson said that 69.4% of the voting age population voted—the fourth highest in the nation. He said that 22.6% more of the people who live in areas of the state's Indian population voted.

Regarding the November 2, 2004, election, Mr. Nelson cited the following facts regarding voting in counties which encompass a reservation:

- Corson County                      40% increase;
- Dewey County                        50% increase;
- Shannon County                      122% increase;

- Todd County 139 % increase; and
- Ziebach County 57% increase.

In counties with an Indian Reservation, Mr. Nelson listed the following facts regarding possession of identification:

- Corson County 88.9% provided valid identification;
- Dewey County 93% provided valid identification;
- Shannon County 75.1% provided valid identification;
- Todd County 82% provided valid identification; and
- Ziebach County 87.7% provided valid identification.

Mr. Nelson said that statewide 97.8% of the people who voted on November 2 had their ID with them. He said those who did not provide valid identification were offered an affidavit to sign stating that they were who they said they were. He reminded everyone that the voter identification legislation also provided for no-excuse absentee balloting.

Mr. Nelson said that the identification law worked; the IDs were verified, and for people who did not have an ID, an affidavit was offered and signed. He said that the Secretary of State's Office did not hear a single complaint on November 2 regarding the identification requirement. Mr. Nelson said that if there is ever a question about an affidavit, all affidavits are kept on file.

Mr. Nelson said that he could not support the draft legislation to revise certain requirements related to the identification of voters (**Document #2**) and that his office will not be offering any proposed legislation in the 2005 Legislative Session.

Representative Adelstein said that the legislation allows for the special cultural circumstances on a reservation regarding identification.

Mr. Nelson said that the current process works and the legislation may hamper the ability of the auditors to prepare for an election. He noted that the language "personal recognition and without a doubt" adds a subjective nature to the process. Mr. Nelson said that it clearly disadvantages those who are not well-known in the community. He said that it also could create a conflict among poll workers and make their jobs more difficult. Mr. Nelson said that he has not received a positive response from the poll watchers regarding this concept.

Representative Van Norman asked for statistics concerning how many people did not go to the polling place to vote because they did not have identification. He expressed concern about the provisional ballot and suggested that cards, along with signs, could be distributed to alert citizens where they are to vote. Representative Van Norman said that he hears that people do not know where to vote.

Mr. Nelson said that a notice alerting citizens where they are to vote is published twice in newspapers across the state. Also, when a person registers to vote a card is sent to that person with instructions on where to vote. He said that the counties could do a mailing but it would cost the counties money. Mr. Nelson said that a precinct is a geographic area within a county and that, within a precinct, people are directed to vote at a certain polling place. He

said that some counties have a proactive stance when a polling place is changed and send out notification cards to all registered voters who vote at that polling place.

Representative Bradford questioned whether the election is a true reflection, especially on the reservations, because he observed many abuses.

Representative Juhnke said that he was very impressed with the voting experience at Lower Brule and that he did not witness abuses there.

**REPRESENTATIVE BRADFORD MOVED, SECONDED BY REPRESENTATIVE VAN NORMAN, THAT THE COMMITTEE APPROVE THE DRAFT LEGISLATION FOR INTRODUCTION AS A COMMITTEE BILL IN THE 2005 LEGISLATIVE SESSION. THE DRAFT IS ENTITLED "AN ACT TO REVISE CERTAIN REQUIREMENTS RELATED TO THE IDENTIFICATION OF VOTERS." MOTION FAILED AN ROLL CALL VOTE WITH 4 VOTING AYE, 4 VOTING NAY, AND 2 EXCUSED. Those voting AYE: LaPointe, Bradford, Van Norman, and Adelstein. Those voting NAY: Greenfield, Koetzle, Nachtigal, and Juhnke. Those EXCUSED: de Hueck and Putnam.**

**REPRESENTATIVE VAN NORMAN MOVED, SECONDED BY REPRESENTATIVE BRADFORD, THAT THE COMMITTEE ASK THE ELECTION COMMISSION TO CONSIDER THIS DRAFT LEGISLATION. MOTION PREVAILED ON A VOICE VOTE.**

### **Native American Health Issues**

**Dr. Jeffrey Henderson**, Black Hills Center for American Indian Health, said that the center is conducting research and solutions for the wellness of Native Americans over the central plains. He said that the center is working on issues of cancer, heart disease, diabetes prevention, and attitudes, particularly among Indian women, and follow-up treatment for cervical and breast cancer.

Dr. Henderson said that the specter of diabetes on reservations and in the state and the nation has reached epidemic proportions. He expressed concern about the underfunding of Indian Health Services. Dr. Henderson said that the federal government spends far more health dollars for other groups than the \$1,200 per person spent for Native American health.

In discussing outside medical assistance programs for South Dakota reservations, Dr. Henderson noted the offer from some health and cultural administrators in Tuscany, Italy, to send some physicians and medical supplies to reservations. He expressed support for the offer because it might ameliorate some of the diabetes problems in the state. Dr. Henderson said that Rosebud is mentioned as a possible area to receive these services. He said that the experience perhaps should be treated as a cultural exchange between Italy and the United States to experience first-hand what is done in each other's countries.

Representative Van Norman again expressed concern about the levels of mercury in rivers and streams on the reservations, mostly due to gold mining refuse leaching into groundwater. He said that fish caught from the streams and rivers is not safe for human consumption.

Representative Van Norman suggested that tribal residents be surveyed regarding health care, personal and cultural practices, and food that is consumed.

Dr. Henderson said that the center is working on training a cadre of individuals and lay workers who can assist in the health of Native Americans on the reservations. He said that Native Americans must also deal with the high fat and carbohydrate contents of commodity foods and environmental health issues. Dr. Henderson said that the commodity program is trying to improve the offerings of food to include fresh fruits and vegetables.

Chair Adelstein referred to a resolution stating that the State-Tribal Relations Committee agrees, in principle, with the concept of accepting assistance from the Regional Government of Tuscany, Italy, for the purpose of addressing problems of diabetes treatment and education on South Dakota Indian reservations and accepting the concept of cultural exchange and tourism development between the two governments (**Document #3**).

Responding to Representative Van Norman, who asked whether a person who is diabetic will be diabetic for a lifetime, Dr. Henderson responded negatively and said that, often, the biggest deterrent to whether a person who is diabetic always will be diabetic is weight loss and exercise.

**SENATOR KOETZLE MOVED, SECONDED BY REPRESENTATIVE VAN NORMAN, THAT THE STATE-TRIBAL RELATIONS COMMITTEE APPROVE THE RESOLUTION. MOTION PREVAILED ON A VOICE VOTE.**

The committee recessed at 3:33 p.m. and reconvened at 3:45 p.m.

### **Public Testimony**

**Ms. Marge Two Hawk** testified on the family's continued concerns regarding their granddaughter's placement outside the family by the Department of Social Services (DSS). She said that family members who love the child are available and want to take care of her. Ms. Two Hawk said that DSS does not follow the Indian Child Welfare Act (ICWA). Ms. Two Hawk said that she will not give up fighting for the family rights of her granddaughter.

**Mr. John Boyles** distributed a letter outlining a court case concerning his son (**Document #4**). He said that his son had an unfair trial and was sentenced to prison for a crime that he did not commit. Mr. Boyles said that the justice system works a lot differently if a person is poor.

Chair Adelstein said that he understands and sympathizes with Mr. Boyles and his family; however, unfortunately, the committee is unable to do anything to resolve the matter.

Representative Van Norman suggested that Mr. Boyles present his testimony to the Equal Justice Commission. Also, Representative Van Norman said that perhaps Mr. Boyles could contact **Mr. Dallas Johnson**, State Court Administrator, regarding his concerns.

**Ms. Mary Ann Bear Heels McCowan**, representing the Great Sioux Nation Indian Child Welfare Consortium and First Voices, distributed copies of the schedule for March for the Children and Their Families event on December 14, 2005, sponsored by the Great Sioux National Indian Child Welfare Act Consortium (**Document #5**). She said that the consortium is planning for the protection of Native American children. Ms. Bear Heels McCowan said that the consortium is focusing on the following as some of its concerns:

- Work to increase Native American foster parents;
- Allow tribes to be the primary voice and authority in all child custody proceedings; and
- Track all the Native American children and let the tribe know the numbers.

Ms. Bear Heels McCowan said that the consortium wants to protect the rights of Native American children and wants the DSS to recognize the tribes' authority regarding these matters.

Chair Adelstein distributed an informational brochure on the Wolakota Center at the Wakpa Sica Reconciliation Place near Fort Pierre (**Document #6**).

**Ms. Brenda Blue Arm Carroll**, Cheyenne River Sioux Tribe (CRST), related a personal experience regarding efforts to move her business to the reservation. Ms. Blue Arm Carroll said that after she told the lending institution that she planned to move her business and to live on the Cheyenne River Sioux Tribe Reservation, the institution rescinded her loan.

Senator LaPointe said that the CRST is one of the most forward-looking tribes regarding business and its efforts concerning the Uniform Commercial Code.

Representative Van Norman stated that it is difficult to obtain credit on Indian reservations and that interest rates are high. He suggested that the state should encourage development on reservations and make use of the REDI fund for this purpose.

Chair Adelstein asked that the Banking Commission be invited to the committee's next meeting to provide input into businesses on the reservations.

Ms. Turney spoke on behalf of incarcerated Native Americans. She raised questions about the nutrition of the food being served in the prisons and expressed concern that the tribes were not given a reason by prison officials for turning down the buffalo meat that was donated by tribes in South Dakota for the pow wow in the prison. Ms. Turney spoke about continued concern regarding health care in the prisons.

Chair Adelstein said that the committee will find out why the buffalo meat was disallowed. He also said that the health care issue will be discussed in the upcoming legislative session.

At this time, Chair Adelstein asked Ms. Turney to provide a closing prayer. Ms. Turney complied.

## Adjournment

There being no further business, Chair Adelstein adjourned the meeting at 5:00 p.m.



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