

# MINUTES

## State-Tribal Relations



Senator Michael Rohl, Co-Chair  
Representative Tamara St. John, Co-Chair

Sixth Meeting, 2023 Interim  
Friday, September 22, 2023

Banquet Room - Fort Randall Casino and Hotel  
Lake Andes, South Dakota

The sixth interim meeting of the 2023 State-Tribal Relations Committee was called to order by Senator Michael Rohl at 1:33 p.m. (CT) in the Banquet Room of the Fort Randall Casino and Hotel in Lake Andes, South Dakota.

A quorum was determined with the following members answering roll call: Senators Shawn Bordeaux (remote), Red Dawn Foster (remote), Kyle Schoenfish, and Michael Rohl (Co-Chair); and Representatives Eric Emery, Will Mortenson, and Peri Pourier (remote). Senator Tom Pischke, Representative Donnell, and Representative Tamara St. John (Co-Chair) were excused.

Staff members present included Jacob Carlson, Research Analyst.

*NOTE: For the purposes of continuity, the following minutes are not necessarily in chronological order. All referenced documents distributed at the meeting are hyperlinked to the document on the Legislative Research Council Website. This meeting was live streamed. The archived live stream is available on the LRC website at [sdlegislature.gov](https://sdlegislature.gov).*

### Approval of the Minutes

***Senator Schoenfish moved, seconded by Representative Emery, to approve the minutes of the August 31, 2023, State-Tribal Relations Committee meeting. The motion prevailed on a voice vote.***

### State-Tribal Tax Agreements

Mr. Mike Houdyshell, Secretary, Department of Revenue (DOR), shared an overview of the tax collection agreement system in South Dakota. He said there are certain situations where the state can impose a tax in tribal land, where the tribe can impose their own tax within tribal land, and where both the state and the tribe can impose a tax in tribal land. Because of that complexity, Mr. Houdyshell said, in the 1970s the legislature created the tax collection agreement system ([SDCL 10-12A](#)). He said the benefits of tax collection agreements are that they generate revenue for both the state and the tribes, provide efficiency and fairness for businesses that are selling goods and services in tribal land, and provide that both tribal and non-tribal members are treated similarly within business conducted on tribal land.

Mr. Houdyshell also covered the general rules on taxation in tribal land, which have been developed primarily through case law and decisions from the United States Supreme Court. First, a state cannot impose a state tax where the legal incidence of the tax falls on an enrolled tribal member in tribal land under the control of the enrolled tribal member's tribe. Second, a state can impose a state tax where the legal incidence of the state tax falls on non-members on tribal land, except where the balance of the federal, state, and tribal interests favors the resident tribe. Third, if a tribal member is outside tribal land that is under the control of their tribe, the individual can be subject to nondiscriminatory state laws, including tax laws. Fourth, a member of one tribe who is located on tribal land controlled by another tribe is treated like a non-member for purposes of taxation.

Mr. Houdyshell said the DOR currently has agreements with eight of the nine tribes. He said the agreements cover several different taxes and the different taxes are individually negotiated by the state and the tribes. He said the agreements can exist for a term of no longer than five years and can be renewed upon expiration. The DOR and the tribes can agree to a percentage split of the total tax revenue collected under the agreement in a defined area. The percentage is determined by census data: the percentage of Native Americans in the agreement area versus non-Native American.

Representative Pourier asked about the telecommunications aspect of tax collection agreements. Mr. Houdyshell responded that if the DOR has an agreement with the tribe that includes the sales tax, any sales tax that is paid on the telecommunications services within that agreement area is included in the revenue collected. Mr. Houdyshell said there is a sales tax on the actual telecommunications services and there is also the telecommunications gross receipts tax, which is on the company and is in lieu of a property tax on their operating property in South Dakota. Representative Pourier also asked if the same regulations apply to broadband. Mr. Houdyshell replied that under federal law, the state cannot impose a sales tax on internet access. He said the internet access charge is preempted by federal law under the Internet Tax Freedom Act.

Representative Emery asked for an explanation of the 0.3% reduction in taxes and how that has affected any agreements with the nine tribes. Mr. Houdyshell said in tax collection agreements the state tax and the tribal tax must be identical. He said the rate was lowered to 4.2% this July 1, impacting the revenues that are collected from the sales tax within the agreement areas. He said it negatively impacts the state treasury because it is collecting less sales tax, and negatively impacts the tribes because there is a lower rate that is paid in agreement areas.

Senator Bordeaux commented on the Wayfair or the online sales tax, and asked if the state collects any taxes from Native Americans living in Tripp, Gregory, Mellette, or Lyman counties from online sales, and if any of that revenue is returned to the tribes. Mr. Houdyshell replied that concerning the Wayfair decision and the ability of the state to impose its state sales tax on remote sellers, in Todd County (which is the agreement area for the current agreement with the Rosebud Sioux Tribe) the sales are captured through the agreement and the tax revenues are included in the portion that is divided and distributed back to the tribe.

### **Yankton Sioux Tribe**

**Mr. Ross Garelick Bell, Lobbyist, Yankton Sioux Tribe**, emphasized that it is important the committee understand the damage done to Lake Andes and the White Swan housing area and the necessary repairs. He said the Yankton Sioux Tribe is appreciative of the state assisting with that repair. He also emphasized the importance of the state and the Yankton Sioux Tribe working together regarding the education system, the Missing and Murdered Indigenous Women program (MMIW), and law enforcement.

**Mr. Kip Spotted Eagle, Business and Claims Committee, Yankton Sioux Tribe**, said he is a former Tribal Historic Preservation Officer for Yankton Sioux Tribe, and encourages the protection of sacred sites. He encouraged the Department of Game, Fish, and Parks, the National Park Service, and the Corp of Engineers to be more aware of looting in sacred sites.

Mr. Spotted Eagle also spoke on the lack of law enforcement in Artesian, South Dakota. The tribe has difficulty recruiting and training law enforcement officers. Currently, he said, those being trained for law enforcement must spend 16 weeks away from their homes for training. Mr. Spotted Eagle said the Yankton Sioux Tribe asks the Bureau of Indian Affairs (BIA) for assistance with the shortage of law enforcement. He said it would be beneficial for the tribe to have more officers in the State Academy and to work with the BIA regarding the federal aspect of the training they receive at Artesian.

Mr. Spotted Eagle said one of the most prominent issues in the Yankton Sioux Tribe is the methamphetamine epidemic, along with the tribe's housing shortage and lack of treatment programs. He encouraged the discussion of a state-tribal cooperative on creating a treatment facility. Mr. Spotted Eagle also addressed the education systems, which are state education systems within the reservations. He said most students within these education systems on the reservation are tribal members. He encouraged discussions on a state-accredited vocational school for the Yankton Sioux Tribe.

Mr. Spotted Eagle also covered the contamination of Lake Andes, which in the past had flooded the surrounding community. He said Concentrated Animal Feeding Operations and other large animal feeding operations surrounding the lake have contributed to its contamination.

**Mr. Derrick Marks, Business and Claims Committee, Yankton Sioux Tribe,** emphasized the importance of a tax agreement for the Yankton Sioux Tribe, which needs tax revenue to support state programs. A tax agreement would help the tribe pay teachers a livable wage, upgrade infrastructure, increase the police force, and give them resources to efficiently protect tribal members and fund rehabilitation centers. Mr. Marks also asked for the committee's support for the tribe's education system, emphasizing the importance of preserving Native American history in education.

**Ms. Diane Merrick, Business and Claims Committee, Yankton Sioux Tribe,** spoke on the challenges the Yankton Sioux Tribe faces, saying health inequities are a primary issue. The tribe lacks a medical facility and a medical alcohol and drug treatment program with a detox center. She asked the committee to consider how treatment services can be provided through the state and tribal government. She said the tribe has a treaty agreement with the United States government to provide health, education, and welfare.

**Mr. Jim Stone, General Manager, Fort Randall Casino,** said the tribe recently approved sports betting. The approval was sent as an amendment to the tribe's gaming compact to the state. As part of that discussion, he said, there was an offer to open the compact again and discuss a 10-year term and a machine increase. The tribe would like to have sports betting, and to eventually begin discussions concerning online betting. Mr. Stone said there are several contingencies that the tribe would like to see covered, particularly concerning moving gaming to a virtual realm, which would eliminate gaming facilities in rural areas. Mr. Stone said the Fort Randall Casino provides 200 jobs, and approximately \$6.5 million to the local economy. He added that the potential for job creation is very low in the Yankton Sioux Tribe. In the tribe's compact with the state, poker is included as a regulated class 3 type game, yet as defined by the National Indian Gaming Commission (NIGC) poker is a class 2 game, which causes a conflict for the tribe as to which regulations the tribe adheres to in operating the game. He also encouraged the state to have more involvement in the management of Lake Andes.

Senator Schoenfish asked how the Fort Randall Casino's gaming revenue has varied in the last few years. Mr. Stone said the loss of a road, the loss of a bridge in Nebraska, and COVID-19 negatively impacted gaming revenue, and the casino is working to build its revenue back to a sustainable level.

**Mr. Arthur Standing Cloud, Chairman, Indian Gaming Commission,** said the Indian Gaming Regulatory Act (IGRA) put the Indian Gaming Commission into compacts with the state. He said both the state and the NIGC have input on gaming compacts, which causes confusion on gaming rules and classifications. He said it would be beneficial for the tribes to have clarification from the state on gaming regulation.

Senator Schoenfish asked what the state can do to help clarify gaming regulation. Mr. Standing Cloud replied that it would be helpful if the NIGC was less involved with the tribes. Mr. Standing Cloud added that the tribe faces fines from the NIGC if the tribe fails to give the NIGC a report on poker.

**Ms. Faith Spotted Eagle, Treaty Committee, Yankton Sioux Tribe**, spoke on the Murdered and Missing Indigenous Women Relatives (MMIWR), saying it is in need of funding. She also covered Lake Andes, saying the tribe worked with U.S. Fish and Wildlife, which determined that the lake is contaminated and dangerous to humans, animals, and fish. The tribe is also working with U.S. Fish and Wildlife Service to install signage about the danger of the lake. She also addressed the issue of education and co-stewardship of land with the U.S. Fish and Wildlife Service.

### **South Dakota Game, Fish, and Parks and Tribe Cooperation**

**Mr. Bill Eastman, Conservation Officer, Department of Game, Fish, and Parks (GFP)**, spoke on a memorandum of understanding that GFP has with the Yankton Sioux Tribe Fish and Wildlife Department, saying it is a written agreement expressing their support for working together ([Document 1](#)). He also gave the committee contact information for wildlife agencies that the tribes can access ([Document 2](#)).

**Mr. Kevin Robling, Secretary, GFP**, spoke on the collaborative efforts between tribal nations and GFP ([Document 3](#)). He spoke on GFP's strategic plan, mission, vision, and priorities. Mr. Robling said GFP is always seeking meaningful collaboration with the tribes and exploring alternative approaches while preserving shared priorities. He covered how tribal partnerships advance GFP's mission and how GFP partners with the tribes through Wildlife management, habitat management, aquatics management, fisheries, education, professional training, law enforcement, park access, advisory boards, wildlife damage responses, equipment sharing, facilities management and use, public information sharing, and annual coordination meetings.

Mr. Robling said GFP has projects such as big game surveys and management, deer and pronghorn collaring, collaborative bighorn sheep capture, turkey relocation, habitat management, native plant community restorations, aquatic fisheries management, tag allocations and distributions, GFP Wildlife Damage Specialist training, coyote removal program, training on boat enforcement, cultural sensitivity and awareness training, and archeological surveys.

Senator Bordeaux asked about GFP's recruitment efforts within tribal colleges. Mr. Robling replied that GFP does have recruiting efforts within tribal colleges, and that GFP has an individual who focuses on tribal involvement, engagement, recruitment, retention, and reactivation.

Representative Mortenson asked about GFP's efforts regarding lakes. Mr. Robling responded that GFP focuses on creating riparian buffer strips and has incentive programs for private landowners to enroll their lands into buffer strips to help direct runoff. Mr. Robling said GFP also has the Conservation Reserve Enhancement Program (CREP), which focuses on water quality and soil health.

### **Policy Discussion**

Senator Rohl presented on [Draft 210](#). He said it is an act to extend the length of time allowed for a tax agreement with an Indian tribe. Under current law, he said, it is a five-year period. He said discussions with the DOR resulted in findings that showed most tax agreements take approximately three to four years to negotiate, costing time for both the DOR and tribes. The proposed bill would extend the period to a ten-year maximum, while allowing the tribes and the DOR to negotiate a shorter period. Senator Rohl said this will provide more flexibility for them to manage their resources better, as each tribe has multiple agreements at one time.

Representative Mortenson said this proposal provides more stability for the tribes and the DOR. It does not add requirements regarding tax agreements, allowing tribes and the DOR to negotiate shorter tax agreements. It also includes walk-away terms so that the tribe or the state can withdraw from an agreement if it is not working for them.

***Representative Mortenson moved, seconded by Representative Emery, that the State-Tribal Relations committee endorse Draft 210. Motion prevailed on a voice vote with 7 voting AYE; 3 EXCUSED. Voting AYE: Bordeaux, Foster, Schoenfish, Emery, Mortenson, Pourier, and Rohl. EXCUSED: Pischke, Donnell, and St. John.***

### **Adjournment**

***Senator Schoenfish moved, seconded by Representative Mortenson, that the State-Tribal Relations Committee be adjourned. The motion prevailed on a voice vote.***

The Committee adjourned at 3:55 p.m.