



**Third Meeting
2007 – 2008 Interim
October 15 & 16, 2007**

**Standing Rock Sioux Tribe
Grand River Casino**

Monday, October 15, 2007

The third meeting of the Legislature's State-Tribal Relations Committee was called to order by Vice Chair Senator Theresa Two Bulls at 9:15 am, October 15, 2007, at the Grand River Casino on the Standing Rock Reservation.

A quorum was determined with the following members answering the roll call: Senators Tom Katus and Theresa Two Bulls; and Representatives Jim Bradford, Mark DeVries, Tom Van Norman, and Keri Weems. Excused were Senators Julie Bartling, Tom Dempster, and Cooper Garnos; and Representative Kent Juhnke.

Staff member present was Tom Magedanz, Principal Research Analyst, Legislative Research Council.

(**NOTE:** For the sake of continuity, the following minutes are not necessarily in chronological order. All referenced documents are on file with the Master Minutes.)

Opening Remarks

Senator Theresa Two Bulls, Chair, welcomed everyone to the meeting and thanked the Standing Rock Sioux Tribe for hosting this meeting. **Mr. Steve Emery**, Tribal Attorney with the Standing Rock Sioux Tribe, welcomed the committee to the Standing Rock Reservation.

An opening prayer was offered.

Approval of Minutes

REPRESENTATIVE KERI WEEMS MOVED, SECONDED BY REPRESENTATIVE MARK DEVRIES, THAT THE MINUTES OF THE AUGUST 13-14, 2007, MEETING OF THE STATE-TRIBAL RELATIONS COMMITTEE BE APPROVED. The motion prevailed on a voice vote.

Chairman Ron His Horse is Thunder, Tribal Chairman of the Standing Rock Sioux Tribe, welcomed the committee to the Standing Rock Reservation and made remarks on several topics, including recent state legislation to require coursework for teachers on Native American language and culture and to establish a pilot program for the teaching of the Lakota language to teachers and students. He also noted that he appreciated the fact that the state of South Dakota observes Native American Day rather than Columbus Day. He also stressed the need for improved relations among all ethnic and racial groups in the state. **Senator Tom Katus** commented on the history of the observance of Native American Day in South Dakota and

also described North Dakota's accords with the various Native American tribes in that state, a practice that he feels should be adopted in South Dakota.

Department of Human Services

Mr. Jerry Hofer, Secretary, Department of Human Services, discussed the activities of the department that affect Native Americans and distributed a handout entitled "South Dakota Department of Human Services Choices" (**Document #1**). He stated that the department's primary goal is to allow the people under its care to function as independently as possible. The department has a staff of 1200 FTE and a budget of \$322 million. The department operates the South Dakota Developmental Center in Redfield for persons with developmental disabilities and the South Dakota Human Services Center in Yankton for persons who are mentally ill. He also described activities of the other divisions of the department, including Developmental Disabilities, Rehabilitation Services, Service to the Blind and Visually Impaired, Mental Health, and Alcohol and Drug Abuse. **Mr. Emery** asked why the Human Services center does not have a contract with the Indian Health Service (IHS) for referrals and stated that if IHS pays the bill, funds are freed up for mental health purposes rather than being used for negotiations. **Mr. Hofer** responded that DHS is open to this idea and will look into the possibility of a contract with the IHS. **Mr. Emery** also asked whether DHS funds alcohol services grants through the University of South Dakota and noted that the method and documentation for passing money through USD appears to waive tribal sovereign immunity. If this situation is not corrected, the tribe may be forced to forgo funding from this program.

Ms. Kim Claussen, a member of the Tribal Council of the Oglala Sioux Tribe, stated that many school-aged youth are not in school and is concerned about this generation of young people and the need to get them back in school. She expressed frustration, saying that there is a wall between the tribes and the state and that things need to improve.

Mr. Gib Sudbeck, Director of the Division of Alcohol and Drug Abuse, Department of Human Services, discussed the division's programs, as well as activities and ongoing meetings on issues related to the tribes. He noted collaborative efforts with tribes and expenditures and statistics for treatment services, and he discussed tribal agency requirements to be met in order to be recognized by the division for Title 19 reimbursement to provide services under the Early Periodic Screening Diagnosis and Treatment Program to adolescents and pregnant women. **Representative Weems** asked how many tribal alcohol and drug treatment centers are accredited by the state. **Mr. Sudbeck** stated that Sisseton-Wahpeton Oyate is accredited, the Rosebud Sioux Tribe is recognized, a facility in Mobridge holds "deemed status", and that a facility in Winner is accredited.

Representative Tom Van Norman stated that the issue of accreditation of tribal alcohol and drug treatment programs affects individual tribes differently and asked how the program at Rosebud is working. He also asked about the status of the request for accreditation of the program on the Pine Ridge Reservation.

Ms. Terryl Blue-White Eyes of the Oglala Sioux Tribe discussed the alcohol and drug treatment programs on the Pine Ridge Reservation and stated that they had been excluded from the state referral process and had not been accredited by the state. She stated that alcohol is the fundamental underlying problem that must be addressed. "Efforts to Network

with the South Dakota Division of AODA” (**Document #2**) was provided to committee staff by **Ms. Blue-White Eyes** and was distributed to committee members. **Ms. Blue-White Eyes** discussed previous contacts and meetings with the department on these topics dating back to 2000 and noted that their program is not accredited by the state even though their counselors are accredited. She expressed frustration that they were under the impression that all that was needed was a change of administrative rules, but this has not happened and new requirements were put in place by the division instead. She stated that they believed the problem had been solved but then learned that they were only recognized for Title 19 expenditures, not others. She said that there are problems of duplicating services, and some reservation residents must travel to Winner, Hot Springs, and other areas. She recommended that tribal programs be recognized for providing these services and that tribal programs be included in the state accreditation process.

Senator Two Bulls stated that she attended a meeting in January 2006 with former DHS Secretary Betty Oldenkamp and Mr. Sudbeck and was told that only a change in administrative rules was needed. She asked whether anything had been done since then. **Mr. Sudbeck** answered that the department would like to accredit those programs, but that “deemed status” can not be given to programs under the IHS. He said that statutory changes would be needed to allow the department to provide deemed status for programs with the IHS. He stated that recognition for programs can be provided in three ways: deemed status, direct accreditation, and Title 19 recognition for certain populations.

Ms. Florence Janis, Native Healing, Rapid City, stated that she is certified as a drug and alcohol treatment counselor but is not recognized under the state system. She wants the tribal accreditation process and standards to be recognized by the state and wants to be treated the same as state counselors. She said there is only a token number of Native American state counselors.

Ms. Lydia Bear Killer, Oglala Sioux Tribe, stated that the negotiation process between the tribes and the DHS on the accreditation issue was interrupted by the change in department secretaries last year and has not resumed. She noted that there are jurisdiction questions between two sovereign entities in this issue and suggested the use of MOA and MOU mechanisms (memorandum of agreement or understanding) be used. She said that each time the tribal programs meet a requirement, a new issue comes up and that this situation must be settled.

Representative DeVries asked about the percentage of repeat offenders in alcohol and drug programs. **Mr. Sudbeck** stated that about 30% had repeated, based on one-year post-treatment data. **Representative DeVries** asked about other sources of funds in addition to federal Title 19 money. **Mr. Sudbeck** said that the department receives \$5 million in Title 19 funds, \$4.6 million in federal block grant funds, and \$3.5 million in state general funds.

Mr. Tom Eaglestaff, Aberdeen Area Regional Treatment Center, Mobridge, stated that even though his agency has deemed status from the state, they still only received three referrals from the state. He said that funding is the basic problem and that more referrals to the facility would mean a savings for the state and more Title 19 funds to the facility. He also recommended that recognition be granted to tribal alcohol and drug programs.

Mr. Duane Silk, Standing Rock Sioux Tribe, Ft. Yates, ND, stated that it is difficult for many people to access services under programs operated by nonprofit core agencies. These programs must set fees to operate and people cannot afford the fee. He said that the core agencies are not functioning fully and that instead tribal programs should be recognized and allowed to do the work.

Representative Jim Bradford asked what can be done in Pierre by the Legislature and by state agencies. **Senator Two Bulls** asked how tribal drug and alcohol treatment programs can become accredited by the state. **Mr. Hofer** stated that much of this discussion began before he was appointed as department secretary and that he understood that the issue was primarily a funding issue. He said that today's discussion indicates additional issues and that he is interested in looking at this further. He said that federal requirements will also be a factor.

Ms. Claussen stated that there are core agencies for each county, but there is no county seat for Shannon County on the Pine Ridge Reservation. She said that the state accredits core agencies, why not tribal programs. She said that when the tribal programs meet specified requirements, new requirements are put in place. She said that excuses are not acceptable and that this situation must be resolved as soon as possible.

Representative Van Norman requested that the department provide a simplified listing and summary of federal and state requirements to allow tribal drug and alcohol programs to be recognized and accredited. **Senator Two Bulls** requested that the summary be provided to the committee and to the tribes within thirty days and that delays are not acceptable.

Gaming Compacts

Mr. Steve Emery, Tribal Attorney, Standing Rock Sioux Tribe, gave a presentation to the committee on tribal gaming compacts and related issues, particularly as they affect the Standing Rock Sioux Tribe. He distributed a memorandum on gaming issues to the committee (**Document #3**). **Mr. Emery** stated that since February of 2005, the Standing Rock Sioux Tribe has been operating its casino in South Dakota under a series of 180-day extensions to the compact. The existing compact would otherwise have expired and the state shows little interest in negotiating a new one. He discussed five issues of concern to the tribe in these negotiations:

1. The current compact has a four-year term. The tribe would prefer a ten-year term, which would make it easier to obtain financing and easier for lenders and employers to participate. Four years is too short and does not provide the level of certainty and stability for lenders and employers that a longer term would provide. Many other states have longer terms and automatic renewals.
2. The tribe requests that the compact include a "most favored nation" provision, so that the tribe would be included in any new benefit that may be negotiated with another tribe in the future.
3. The current compact limits each South Dakota tribe to 250 machines. The tribe favors a higher number (or a market-driven basis for machine numbers) and also favors a

machine leasing provision under which one tribe could transfer its unused machine numbers to another tribe for a fee.

4. The tribe desires a change in the provisions related to background and credit investigations for potential employees. Credit checks are not required under federal law and should be deleted because they make it difficult for many potential good employees to be hired. The tribe favors criminal background checks, but not credit history checks.
5. The tribe wishes to delete provisions in the compact that prohibit the use of gaming revenues to influence federal, state, or local elections. The tribe believes that this provision is contrary to the federal Indian Gaming Regulatory Act.

Mr. Emery stated that the state has been unwilling to come to terms on these issues and that there are huge differences in tribal gaming policy between South Dakota and North Dakota. He asked committee members to visit the Standing Rock Sioux Tribe's Prairie Knights Casino in North Dakota and compare with casinos in South Dakota. He also asked why the tribes should have to keep defending their interests on this in the state legislature. He stated that there is a need to remedy past situations and that tribal gaming is one step in this direction; gaming is one of the few economic benefits that allow tribes to develop their infrastructure. **Senator Katus** commented on the gaming industry in South Dakota and said there are several unusual aspects in South Dakota's gaming compacts. He noted that North Dakota uses a ten-year, market-driven tribal gaming compact, and he stated that South Dakota's machine limit numbers are purely arbitrary. Representative Van Norman said that Deadwood gaming and the state's video lottery program have been expanded, but the tribes are still under the same limits as they have been from the beginning.

K-12 Education Issues

Ms. Sacheen Whitetail-Cross, Tribal K-12 Education Manager, Standing Rock/Fort Yates Community Schools, Fort Yates, ND, discussed K-12 education issues on the Standing Rock Reservation. She distributed two documents: "Tribal Education Initiatives" (**Document #4**), and "Gangs in Indian Country" (**Document #5**). **Ms. Whitetail-Cross** discussed the implementation of the No Child Left Behind Act as well as the teaching of Native American culture and language in schools, although she noted that some schools in the area have resisted doing this. She also discussed the Tribal Education Consortium, which consists of representatives from all schools on the Standing Rock Reservation. The consortium meets periodically to address common issues, including language and culture programs throughout the system, tribal education programs, tribal education standards that meet both North Dakota and South Dakota state education standards, and a wellness policy that includes health and spirituality components.

Dr. Harold Larson, Superintendent, Standing Rock/Fort Yates Community Schools, Fort Yates, ND, discussed further education issues and initiatives on the Standing Rock Reservation. Dr. Larson distributed three documents: "The Choice Game 2006-2007 Annual Report" (**Document #6**), "Problem Solving, Respect, Honesty - The Choice Game" (**Document #6A**), and "The Choice Game (Tribal Education Initiatives)" (**Document #7**). **Dr. Larson** described for the committee The Choice Game, an interactive software product that was first used on the Standing Rock Reservation as a simulation of choices that young people

face in their everyday lives. The program was implemented in both the middle school and high school and is now being used in other parts of the nation. This project led to the release of "Confusion Burning", which was filmed at Standing Rock, as another version of The Choice Game and has won awards as an educational documentary film. The film is being converted for use by other tribes and also non-Indian groups around the nation. **Dr. Larson** also discussed recent problems with gang violence in the area.

Representative Bradford asked whether there had been progress at Standing Rock schools toward AYP (adequate yearly progress) under the No Child Left Behind Act and he noted that there is an achievement gap for Native American children. **Ms. Whitetail-Cross** responded that there have been gains and that they have been using tribally-initiated standards.

Mr. Jesse Taken Alive, Standing Rock Sioux Tribe, and a member of the McLaughlin School Board, said that their school made their AYP for the high school but not for the elementary school. He said it is important to first think as a Lakota person, then look at things in the non-Indian way, and then formulate what course of action to take. He said the tribe will develop tribal education standards and curriculum, and he noted that Native Americans are now in a cultural renaissance era. He said that North and South Dakota should work together and urge the federal government to uphold its treaty obligations. He also described a program in Idaho in which teachers are required to make visits to students' homes in order to better understand the community.

Mr. Emery stated that the federal No Child Left Behind Legislation does not properly address some situations involving reservation schools and described the new Little Eagle School which is still saddled with old AYP data and requirements from the previous BIA school even though Little Eagle is a completely new school with new administration. He also said that some schools are not complying with requirements for teaching language and culture. **Senator Katus** discussed problems in the McIntosh school district and problems of gang violence. He also discussed his proposed legislation to authorize charter schools in South Dakota to deal with special circumstances for Native American schools, and he noted that there is also significant federal funding available for charter schools.

Higher Education Issues

Dr. Laurel Vermillion, President, Sitting Bull College, Fort Yates, ND, discussed higher education issues affecting tribes and provided information on tribal colleges. She provided a PowerPoint presentation entitled "Higher Education Issues" (**Document #8**). She also distributed a packet of information related to funding for tribal colleges in North Dakota (**Document #9**). There are 35 tribal colleges in the nation and four in South Dakota: Oglala Lakota College at Pine Ridge, Sisseton-Wahpeton College at Agency Village, Sinte Gleska University at Rosebud, and Sitting Bull College on the Standing Rock Reservation, which serves students in both North and South Dakota. The tribal colleges serve both Indian and non-Indian students and all students pay the same fees (\$100 per credit at Sitting Bull). Approximately 20% of students at Sitting Bull College are "nonbeneficiary students" meaning that they are not enrolled members of the tribe and they are not counted in determining federal funding that the school receives for students who are tribal members. Nonbeneficiary students receive an education at low cost and reduce the education burden on the state by not attending state institutions, and many tribal colleges believe that the colleges should receive

financial assistance from the state to offset some of the costs of educating these nonbeneficiary students who are not covered by federal funding.

Dr. Vermillion stated that the North Dakota legislature passed bill to provide funding to tribal colleges to offset some of their costs incurred in serving nonbeneficiary students. **Senator Katus** noted that legislation dealing with this issue was passed in South Dakota in 1992 but was not enforced. He also stated that Montana passed a bill similar to North Dakota's four years ago and similar legislation in South Dakota has failed the past two years. He asked the amount of the gap between fees paid by nonbeneficiary students and the actual cost of providing educational services to them. Dr. Vermillion stated that this amounts to \$6000 per student. **Mr. Emery** stated that having tribal colleges available saves money for students and for the state, and funding is needed for tribal colleges.

Dr. Vermillion stated that another issue of concern is that some credits have not been recognized because teachers did not have a masters degree. This has not been an issue in North Dakota but has been a problem on occasion in South Dakota. She also discussed the American Indian Higher Education Consortium (AIHEC), which represents all tribal colleges in the U.S. -- 35 tribal colleges in 13 states. **Representative Bradford** asked whether the college does any tracking or follow-up on their students to determine how many are working in South Dakota and why some teachers do not stay in the profession.

Public Testimony

Ms. Marletta Pacheco, Rapid City, South Dakota Prisoner Support Group, updated the committee on her activities with the Prisoner Support Group. She works with prison inmates and stated that the State-Tribal Relations Committee has helped in various areas although there are still many problems for inmates. She discussed parole issues and mental health treatment needs for inmates. She is also concerned about the continuing disproportionate number of Native Americans who are incarcerated in comparison with the general population, and she noted that when federal prisoners are included in the numbers, the situation is even worse. She also discussed cultural programs and resources at the prison. **Representative Van Norman** thanked **Ms. Pacheco** for her continuing efforts and discussed his concerns about racial disparities in the prison system as well as issues about how statistics are gathered and maintained. He also discussed the need to keep statistics on arrests by race and said that it is important to keep on top of these issues. He also noted that a bill to require that one of the members of the Board of Pardons and Paroles be a Native American failed in the legislature, but Governor Rounds did appoint a Native American to an opening on the board anyway.

Mr. Ron Walters, Fort Yates, ND, discussed several instances of racism in South Dakota in governmental and institutional settings, as well as racism between private citizens. He said that he had experienced racism as a student, in his capacity as a journalist, and as Resource Director at Sitting Bull College. He said there is a need for groups to talk openly together and that these issues should be examined in the legislature.

Ms. Mary Louise Defender thanked the committee for coming to the Standing Rock Reservation and stated that it is important that the committee realize the conditions and lack of resources for average people on the reservation.

Mr. Emery discussed the pending case of former legislator Ted Klautdt and asked why the investigation and indictment did not become public until after the election. He stated that when Indians are arrested it is often in the most embarrassing place and situation, but Mr. Klautdt was allowed to turn himself in. He feels that there are many examples of double standard in this case. He said that it should not have taken a year for Mr. Klautdt to be indicted, and he asked whether the committee will seek an investigation on this matter.

REPRESENTATIVE VAN NORMAN MOVED, SECONDED BY SENATOR KATUS, THAT THE COMMITTEE SEND AN INQUIRY TO THE ATTORNEY GENERAL ABOUT THE TIMING OF THE INVESTIGATION AND INDICTMENT IN THE TED KLAUDT CASE AND WHY IT TOOK SO LONG TO ACT ON THE INFORMATION IN THE CASE. The motion failed by way of a substitute motion.

Representative Weems stated that she was unsure about the information and timing of events in the case and could not support the motion. Senator Katus stated that he was aware of the case and that people in the local area were discussing the situation as early as July of 2006. **Representative DeVries** said that he believes that the timing of the release of information was intended to make a solid case and was not related to the election. **Senator Two Bulls** stated that she did not learn of the case until after information was made public but feels that the committee should make an inquiry into the matter.

SENATOR KATUS MOVED A SUBSTITUTE MOTION, SECONDED BY REPRESENTATIVE BRADFORD, THAT THE COMMITTEE SEND AN INQUIRY TO THE ATTORNEY GENERAL ABOUT THE TIMING OF THE INVESTIGATION AND INDICTMENT IN THE TED KLAUDT CASE. The motion passed on a roll call vote by a margin of 4-2. Voting "Yes" were Representative Bradford, Senator Katus, Senator Two Bulls, and Representative Van Norman. Voting "No" were Representative DeVries and Representative Weems.

Mr. Emery raised the issue of law enforcement officers having video cameras in their vehicles. He supports this practice and suggested that the committee recommend that funds be requested from the U.S. Department of Homeland Security to provide cameras in municipal and county law enforcement vehicles. Video cameras protect officers as well as improve the conduct of officers, and they help to sort out the facts of the case. South Dakota Highway Patrol vehicles are already equipped with video cameras. **Mr. Emery** also thanked the committee for coming to the Standing Rock Reservation and holding its meeting here, and **Senator Katus** thanked the Standing Rock Sioux Tribe and **Mr. Emery** for hosting the meeting.

The committee recessed until the following day.

**Sisseton-Wahpeton Oyate
Dakota Sioux Casino
October 16, 2007**

Tuesday, October 16, 2007

The committee resumed its meeting on Tuesday, October 16, 2007, at 8:00 am at the Dakota Sioux Casino north of Watertown operated by the Sisseton-Wahpeton Oyate.

A quorum was determined with the following members answering the roll call: Senators Tom Katus and Theresa Two Bulls; and Representatives Jim Bradford, Mark DeVries, Tom Van Norman, and Keri Weems. Excused were Senators Julie Bartling, Tom Dempster, and Cooper Garnos; and Representatives Kent Juhnke.

Staff member present was Tom Magedanz, Principal Research Analyst, Legislative Research Council.

Mr. Barry Wilfahrt, Sisseton-Wahpeton Oyate, provided the committee with an overview of gaming operations by the Sisseton-Wahpeton Oyate with a PowerPoint presentation entitled "Dakota Nation Gaming Enterprise" (**Document #10**). The Sisseton-Wahpeton Oyate operates Dakota Nation Gaming Enterprises (DNG), which operates three casinos: Dakota Magic just north of the North Dakota-South Dakota border on Interstate 29, Dakota Sioux a few miles north of Watertown, and Dakota Connection at the Sisseton exit on Interstate 29. **Mr. Wilfahrt** discussed how the tribe's gaming operations are organized and the status of gaming compact negotiations with the state. He said that the tribe is limited to 250 Class III machines in South Dakota. Of these, 200 are at the Dakota Sioux Casino near Watertown and 50 are at the Dakota Connection Casino near Sisseton. The Dakota Magic Casino, located in North Dakota, has 900 Class III machines, and the tribe is requesting in its compact negotiations an additional 500 machines for its operations in South Dakota. **Mr. Wilfahrt** stated that machine numbers allowed in surrounding states are larger. He discussed the economic impacts of gaming for the Sisseton-Wahpeton Oyate and for northeastern South Dakota. DNG employs 1006 people, of whom 55% are tribal members and 45% are not tribal members, and has a payroll of \$18.8 million annually. In addition, the casinos attract large numbers of patrons who spend money in nearby communities in the region. DNG estimates the total goods and services purchased in the area as a result of gaming operations at \$25.4 million annually. Gaming increases tribal employment, reduces unemployment and poverty rates, reduces costs for state and county programs, and allows the tribe to fund new programs and infrastructure.

Senator Katus noted that in North Dakota all tribes negotiated their gaming compact as a group with the state and he asked whether this approach could be used in South Dakota. He discussed legislation in South Dakota that prohibits revenue from casinos from being used in election campaigns, and he said that some of the resistance to increasing machine numbers in South Dakota is based on personal opposition to gambling on moral grounds by some officials. **Mr. Wilfahrt** stated that the tribes are working together on this issue more closely than in the past and that in North Dakota the term of the compact is 17 years, rather than four years in South Dakota. The shorter term makes it more difficult to plan and to obtain long-term financing. In answering a question by **Representative Weems**, he stated that the compact term in South Dakota has always been four years. **Representative David Sigdestad** asked the current status of the negotiations, and **Mr. Wilfahrt** stated that not much has changed recently.

The committee was taken on a tour of the Dakota Sioux Casino and Hotel and then traveled to Sisseton-Wahpeton Oyate Tribal Headquarters at Agency Village south of Sisseton to continue the meeting, which resumed at 10:30 am.

Tribal Chairman Michael Selvage, Jr., Sisseton-Wahpeton Oyate, welcomed the committee and introduced the following members of the Sisseton-Wahpeton Oyate Tribal Council: **Virginia Max**, Long Hollow District; **Norma Perkle**, Big Coulee District; **Delbert Hopkins, Jr.**, Tribal Secretary; **Jerry Flute**, Lake Traverse District; **Terry Larson**, Buffalo Lake District; **Winfield J. R. Rondell**, Heipa District; and **Audrey Bernard**, Enemy Swim District. **Mr. Flute** discussed a state and tribal committee structure in previous years that included tribal chairs and state officials. He also referred to current disputes with the Governor on gaming issues, including the 250 cap on machine numbers. **Mr. Rondell** stated that the tribe faces a housing shortage and that sometimes families will share a home. He also stated that there are sometimes problems of racism in the town of Sisseton.

Chairman Selvage addressed the committee on several topics and distributed a document entitled "Statement of Michael I. Selvage, Jr., Tribal Chairman" (**Document #11**). **Chairman Selvage** discussed ongoing negotiations with the Department of Revenue and Regulation on tax agreements with the state. He reported that there is tentative agreement in the areas of fuel, cigarettes, contractors excise, and use taxes but there is a disputed parcel of land near the Dakota Sioux Casino. There are also discussions continuing over the percentage of tax revenues going to the tribe and to the state under the agreement. Sisseton-Wahpeton Oyate is the only tribe in South Dakota that has its own tax collection office, which makes the negotiations more complex. He stated that the two sides are close to agreement and that the agreement needs to be completed soon because it affects liquor licenses at the two South Dakota casinos.

Representative Van Norman discussed previous tax agreements with tribes and the gasoline tax court case. He said that the state should work with tribes to promote economic development for the entire state and he feels that the state should expand the list of taxes that can be part of tribal-state tax agreements. He said that some elements in state government have tended to obstruct progress on these issues and that a lot depends who you are dealing with in discussions with the state. **Senator Katus** congratulated the Sisseton-Wahpeton Oyate on its progressiveness and on the work it has done in conjunction with the state. He said that a lot of money has been wasted in the past on litigation on various issues and urged the tribes to work together in their dealings with the state, similar to the case in North Dakota. **Senator Katus** also asked how the tribe has dealt with North Dakota in the area of taxation. **Chairman Selvage** replied that there is no tax collection agreement with North Dakota because North Dakota allows the tribes to collect all tax in their areas.

Representative Bradford discussed the Governor's House program and the fact that these are no longer available for purchase by tribes. **Representative Van Norman** stated that they tried to preserve this program in the legislature for tribes, but private contractors fought the proposal in the legislature fearing competition for their businesses.

Chairman Selvage, in response to a comment by **Representative Bradford** on gaming compacts, said that North Dakota uses a market-driven approach to determine machine numbers and that this works much better than South Dakota's 250 machine limit, particularly

when the expansion of gaming in Deadwood is taken into account. He stated that the state constitution refers to "limited gaming" but Deadwood gaming and video lottery have expanded while the tribes have stayed the same. **Representative Van Norman** suggested that the committee could request an update on the status of negotiations in the areas of gaming and taxation, including a request for an explanation of the rationale for the proposed taxation split and a specific request for a response. **Representative DeVries** stated that the two parties are close to agreement in the taxation negotiations and that action by the committee might hamper this process. **Chairman Selvage** said that they are still working on the percentage taxation share between the tribe and the state and feels that a committee recommendation might be helpful. **Representative Weems** stated that the Sisseton-Wahpeton Oyate seems to be a leader in relations between the state and the tribes and asked whether any other tribes have their own tax collection program. She also asked whether the tribe had worked with any state legislators in their region to assist with negotiations. **Mr. Wilfahrt** answered that the tribe briefed area legislators on the negotiations and asked them to intervene if possible.

Gaming Issues

Mr. Verlyn Boudreau, Chairman of the Sisseton-Wahpeton Oyate Gaming Commission, made a presentation on gaming issues. He stated that the tribe favors an increase in machine numbers and a longer term for the gaming compact, which would make planning and securing long-term financing easier. The tribe also asks that the compact provision by which the state requires a credit history check on potential employees be deleted. He said that this requirement is a barrier to employment and that people need to be employed in order to have good credit. **Mr. Boudreau** noted that the tribe has spent \$1.6 million in gaming revenues for housing purposes for tribal members. He asked that the tribes be treated equally with other gaming entities. He stated that Deadwood went from 863 Class III machines in 1999-2005 to 2966 Class III machines now. Video lottery machines in the state also increased, but there has been no increase for machines allowed for tribes. In comparing North and South Dakota, he said that North Dakota's compact duration is 17 years vs. four years in South Dakota; in licensing of employees in North Dakota, the tribe has the final decision, except that felons who are not rehabilitated are prohibited; and in machine numbers, North Dakota has no limit and is market driven, while South Dakota restricts each tribe to 250 Class III machines.

Law Enforcement Issues

Mr. Gary Gaikowski, Sisseton-Wahpeton Oyate Tribal Police, discussed law enforcement issues with the committee and distributed a Wisconsin document containing legislation passed there in 1993 on tribal law enforcement officers (**Document #12**). He discussed problems related to jurisdiction issues and stated that some states attorneys do not recognize tribal police as law enforcement officers and that in presenting testimony in court, they are sometimes considered as "citizens" rather than law enforcement officers. He said that he has good working relationships with county and municipal law enforcement personnel and with the Highway Patrol. He referred to other issues such as the need to improve crash reporting data to the state, the need for better consultation by the state with the tribes on state authority to come on the reservation to make arrests, and the need for the state to recognize disaster declarations by the tribe. He also stated that there are increasing numbers of non-Indians coming onto the reservation and that increased methamphetamine problems sometimes go with this.

Discussion of cross deputization and jurisdiction issues ensued. A tribal council member stated that there is a need for cross deputization, particularly in dealing with methamphetamine. **Representative Weems** asked whether a nontribal member can be arrested by tribal police. **Mr. Gaikowski** replied that a nontribal member cannot be arrested by tribal police and that they are on a “checkerboard reservation” which leads to jurisdiction uncertainties. **Senator Katus** asked whether the tribe had used cross deputization in the past. **Mr. Gaikowski** stated that there had been cross deputization in the past but it ended over disputes about how the workload is divided. **Representative Bradford** discussed the situation in Bennett County which lies between the Rosebud and Oglala Sioux Tribes. **Representative Van Norman** stated that jurisdiction is an extremely complicated and complex issue and varies on a case-by-case basis. He said that the U.S. Attorney is responsible for deciding whether a change is warranted and he advised the tribe to contact and meet with the U.S. Attorney on these matters.

K-12 Education Issues

Dr. Sherry Johnson, Superintendent, Enemy Swim Day School, distributed (**Document #13**) to the committee and briefed the committee on K-12 education issues. She stated that one problem is that there are state requirements for tribal schools for funding, accreditation, and school activities. A state law requires state accreditation as a condition of membership in the South Dakota High School Activities Association. Another concern is that the 2007 legislature adopted a Lakota language immersion program, but neglected to include the Dakota and Nakota languages, both of which are spoken in South Dakota. She also said that the state is developing Native American standards for schools based on a model from Montana, which may not be appropriate for South Dakota and was done without consulting South Dakota tribes. She would recommend that the tribes be consulted and have input into these decisions. She also discussed the problem of the tribe being requested to waive sovereign immunity in order to obtain federal funds under the 21st Century Learning Center program.

Representative Van Norman stated that four committee members are also members of the House Education Committee and that last year’s bill could be amended to include the Dakota and Nakota languages as well as make further adjustments to the language and culture program included in last year’s bill. **Representative Weems** asked whether they have had any contacts with Keith Moore, Director of Indian Education with the Department of Education. **Dr. Johnson** responded that they have met with Mr. Moore. **Mr. Rondell** asked whether Mr. Moore is a tribal member and committee members responded that Mr. Moore is a tribal member. **Senator Katus** said that he intends to introduce a bill during the next legislative session to authorize charter schools, and **Dr. Johnson** replied that the charter school concept may be helpful in tribal education.

Higher Education Issues

Ms. Diana Canku, President, Sisseton-Wahpeton College, discussed higher education issues and raised the issue of no state funding to assist with costs incurred in educating nonbeneficiary students. She stated that SWC receives some funding from gaming revenues, which is helpful because BIA funding is decreasing. **Representative Weems** asked whether the number of nonbeneficiary students is increasing at SWC, and **Ms. Canku** replied that 5%

to 10% of their students are nonbeneficiary and that most are in the nursing program, in part because of lower tuition (\$96/credit hour). SWC has a total enrollment of 249 students this year.

Representative DeVries asked whether SWC has other campuses, and **Ms. Canku** replied that the only campus is in Agency Village but they are working on other possible locations. He also asked whether credits from SWC transfer to state schools, and **Ms. Canku** stated that credits are transferable and that SWC is accredited by North Central. **Representative Van Norman** asked whether the college has any students commuting from North Dakota and whether there is any tracking system of graduates. **Ms. Canku** stated that there are no commuters from North Dakota and that most students are local. They do not have a formal tracking system in place, but many of their graduates work in the gaming industry, and many of their nursing students take jobs in North Dakota and Minnesota. **Dr. Frank Pelleria**, Superintendent, Tiyospa Zina High School, Agency Village, stated that many of their students take courses at SWC and that this opportunity has been a significant benefit for them. **Senator Katus** asked whether teachers at SWC were required to have masters degrees. **Ms. Canku** responded that this has not been a problem. Teachers for freshmen and sophomores need bachelors degrees, teachers for juniors and seniors need masters degrees, and teachers for graduate students need doctorates. Transferring credits has not been a problem except sometimes in nursing because the South Dakota Board of Nursing requires a masters degree.

Document #14, "Professional Empowerment Program", was distributed to the committee.

Racism Issues

Ms. Myrna Thompson, Sisseton-Wahpeton Oyate, made a presentation to the committee on racism, which included a PowerPoint presentation (**Document #15**). **Document #16**, "Five Essential Elements of a Data Collection Program" by the ACLU of the Dakotas dealing with racial profiling was also distributed. Ms. Thompson discussed many aspects of racism in the state and the community. She noted the disparity among racial groups in the corrections system, and she discussed local actions to reduce racism. She would like to have the racial profiling bill reintroduced at the next legislative session, and she proposed the establishment of a permanent Equal Justice Commission and the creation of a State Civil Rights Office in Pierre with branches each at reservation to take complaints related to minority situations. **Representative Bradford** asked whether they had the situation in Roberts County of having a tribal member elected as sheriff but not receiving cooperation from the non-Indian county commission. He said that they had a similar problem in Bennett County.

Child Protection Issues

Mr. Ken Hardy, Sisseton-Wahpeton Oyate Child Protection Program, informed the committee that the Sisseton-Wahpeton Oyate has had an agreement in place with the state Department of Social Services for the past 29 years to operate their own child protection program. They are the only tribe in South Dakota to run their own child protection program. They handle the entire program, including foster care, adoption, and abuse and neglect, and they have a good relationship with the state. However, in December of 2006, the State Supreme Court ruled on a case that may negatively impact their program. The tribe's contract with the state is currently under review by the Attorney General to determine whether the court's decision would restrict

or prohibit the tribe's child protection services contract with the state. **Mr. Hardy** wants the agreement to remain in place and in operation and noted that if the agreement is cancelled, the tribe would have to go through the ICWA process and the state for these programs, which would be cumbersome for both parties and would undo many years of hard work. He asked for the committee's support in keeping the agreement in place. Representative Van Norman said that the Sisseton-Wahpeton Oyate has the agreement in place ahead of the other tribes, and the committee will do what it can to help.

Tribal Historic Preservation

Mr. Vine Marks, Chair, Sisseton-Wahpeton Oyate Tribal Historic Preservation Board, briefed the committee on historic preservation issues facing the tribes. In 1998, the tribes began having their own historic preservation offices, in addition to state historic preservation offices. The tribal offices have taken over some of the duties of state offices, but they have not been receiving the same amount of funding. Tribal historic preservation offices are often involved with burial laws and the discovery of human remains and associated artifacts. In the case of Native remains, a complicated repatriation process is followed. **Mr. Marks** would like to see the state burial laws simplified. He also noted that tribal historic preservation officers are involved in federal projects if Native artifacts are found. **Mr. Flute** said that the tribe would like to be notified sooner on activities that involve historic preservation and he stated that they do not get enough help from the state archeologist and must hire an archeologist from Montana. **Mr. Flute** also said that many times in the past when human remains were found, the state archeologist would separate the remains from artifacts and then repatriate the remains. He said the office in Rapid City currently has artifacts but has been unable to determine where the artifacts belong. **Representative Van Norman** stated that there needs to be improved communication on these types of issues and that tribes and relatives need to be involved.

Public Testimony

Mr. Rondell discussed the Governor's House program and said that the tribe needs housing and that the state needs to resist outside influences. **Representative Bradford** stated that individual tribal members can still purchase houses under the Governor's House program, but tribes are no longer able to purchase these houses. He said that qualifications have changed and it is difficult for individuals to afford to purchase the houses. **Representative Van Norman** stated that the Housing Development authority had changed its policy because industry was worried about competition from the Governor's House program.

Chairman Selvage expressed support for tribal colleges and urged the committee and the legislature to provide reimbursement for tribal colleges to help offset the cost incurred in serving nonbeneficiary students.

Committee Discussion and Action

The committee discussed ongoing tax agreement negotiations between the state and the tribes.

REPRESENTATIVE VAN NORMAN MOVED, SECONDED BY SENATOR KATUS, THAT THE COMMITTEE SEND A LETTER TO THE GOVERNOR EXPRESSING SUPPORT FOR

FAIRNESS AND EQUITABILITY IN THE TAX AGREEMENT NEGOTIATIONS BETWEEN THE STATE AND THE TRIBES AND REQUESTING AN EXPLANATION OF THE RATIONALE FOR THE STATE'S POSITION IN DETERMINING THE PERCENTAGE OF TAX REVENUES ALLOCATED TO THE STATE AND THE TRIBES. THE LETTER SHOULD ALSO NOTE THAT THE TRIBE USES ITS TAX REVENUES TO SERVE ALL CITIZENS, INCLUDING NON-INDIANS AND TO FUND OTHER SOCIAL, EDUCATIONAL, AND ECONOMIC DEVELOPMENT PROGRAMS IN THE COMMUNITY. The motion prevailed on a voice vote.

The committee discussed gaming issues and ongoing gaming compact negotiations. **Senator Katus** noted the positive economic impact of gaming in northeastern South Dakota. **Representative Weems** stated that she opposes gambling in general and the expansion of gambling and would be unable to support a market-driven provision for determining machine numbers. Discussion followed about sending a letter to the Governor on the gaming compacts and whether the letter should include an endorsement of a market-driven approach for determining machine numbers. **Representative DeVries** stated that he is concerned that a letter to the Governor might have a positive effect and that some of the provisions may be too strong. **Senator Two Bulls** said that maybe the letter could refer to a market-driven approach in comparing South Dakota with other states.

REPRESENTATIVE BRADFORD MOVED, SECONDED BY SENATOR KATUS, THAT THE COMMITTEE SEND A LETTER TO THE GOVERNOR INQUIRING ABOUT THE STATUS OF THE GAMING COMPACT NEGOTIATIONS BETWEEN THE STATE AND THE TRIBES, EXPRESSING SUPPORT FOR FAIRNESS AND EQUITABILITY IN THE NEGOTIATIONS, AND REQUESTING THAT THE NEGOTIATIONS BE COMPLETED IN A TIMELY MANNER. THE LETTER WOULD ALSO POINT OUT THE ECONOMIC BENEFITS OF TRIBAL GAMING IN SOUTH DAKOTA AND THE LEVEL OF COMPETITION FROM NEIGHBORING STATES, PARTICULARLY NORTH DAKOTA, WHICH BASE MACHINE NUMBER ON MARKET-DRIVEN CRITERIA. THE LETTER WOULD REQUEST CLARIFICATION OF THE CONCEPT OF "LIMITED GAMING" GIVEN RECENT INCREASES IN DEADWOOD GAMING FACILITIES WHILE THE CAP FOR MACHINE NUMBERS FOR TRIBES HAS REMAINED THE SAME. THE LETTER WOULD REQUEST A RESPONSE FROM THE GOVERNOR. The motion prevailed on a voice vote.

The committee discussed law enforcement issues and directed LRC staff to do further research on issues related to the recognition of tribal law enforcement officers and possible legislation using the Wisconsin model or other approaches to amend South Dakota law to provide recognition for tribal law enforcement officers.

The committee discussed K-12 education issues and language and cultural training programs.

REPRESENTATIVE DEVRIES MOVED, SECONDED BY REPRESENTATIVE WEEMS, THAT THE COMMITTEE INTRODUCE A BILL TO AMEND HB 1290 FROM THE 2007 SESSION TO INCLUDE INSTRUCTION IN THE DAKOTA AND NAKOTA LANGUAGES AS WELL AS LAKOTA AS PROVIDED IN THE CURRENT LAW. The motion prevailed on a voice vote.

REPRESENTATIVE WEEMS MOVED, SECONDED BY REPRESENTATIVE DEVRIES, THAT THE COMMITTEE SEND A LETTER TO SECRETARY MELMER OF THE DEPARTMENT OF EDUCATION REQUESTING THAT THE STATE INDIAN EDUCATION COORDINATOR KEITH MOORE MEET WITH ALL TRIBAL CHAIRS, TRIBAL COUNCILS, AND TRIBAL K-12 SCHOOL ADMINISTRATORS. The motion prevailed on a voice vote.

The committee discussed higher education issues. The committee requested LRC staff to research the topic of the transfer of credits earned at tribal colleges depending on whether the instructor holds a masters degree and state requirements on the education level of higher education teachers.

The committee discussed racism issues and the possibility of introducing the racial profiling bill, a bill for a pilot project on data collection during arrests, or legislation to provide for video cameras in local law enforcement vehicles. **Representative Van Norman** stated that racial profiling occurs before and after the camera is turned on, when the officer decides whom to go after.

REPRESENTATIVE DE VRIES MOVED, SECONDED BY REPRESENTATIVE WEEMS, THAT THE COMMITTEE INTRODUCE A CONCURRENT RESOLUTION SUPPORTING THE INSTALLATION OF VIDEO CAMERAS IN LAW ENFORCEMENT VEHICLES. The motion prevailed on a voice vote.

Representative Bradford discussed the possibility of creating a state civil rights office. The committee requested LRC staff to research the establishment and use of civil rights offices in other states and to also look at the possibility of making the Equal Justice Commission a permanent body.

The committee discussed child protection services and the South Dakota Supreme Court case that may threaten the contract between the state and the Sisseton-Wahpeton Oyate under which the tribe operates its own child protection program.

REPRESENTATIVE WEEMS MOVED, SECONDED BY SENATOR KATUS, THAT THE COMMITTEE SEND A LETTER TO THE ATTORNEY GENERAL EXPRESSING SUPPORT FOR THE CONTINUATION OF THE CHILD PROTECTION SERVICES AGREEMENT BETWEEN THE STATE AND THE SISSETON-WAHPETON OYATE. The motion prevailed on a voice vote.

The committee discussed historic preservation issues and the funding needs of tribal historic preservation offices.

REPRESENTATIVE VAN NORMAN MOVED, SECONDED BY SENATOR KATUS, THAT THE COMMITTEE INTRODUCE A CONCURRENT RESOLUTION URGING THE FEDERAL GOVERNMENT AND THE NATIONAL PARK SERVICE TO PROVIDE INCREASED FUNDING FOR TRIBAL HISTORIC PRESERVATION OFFICES. The motion prevailed on a voice vote.

REPRESENTATIVE WEEMS MOVED, SECONDED BY REPRESENTATIVE VAN NORMAN, THAT THE COMMITTEE SEND A LETTER TO THE STATE HISTORIC PRESERVATION OFFICE TO REQUEST INFORMATION ON THE PROCEDURES USED IN HANDLING NATIVE HUMAN REMAINS AND ARTIFACTS TO ENSURE THAT THEY ARE ACCOUNTED FOR AND ARE NOT SEPARATED. The motion prevailed on a voice vote.

SENATOR KATUS MOVED, SECONDED BY REPRESENTATIVE WEEMS, THAT THE COMMITTEE SEND LETTERS TO ALL TRIBAL CHAIRS REQUESTING THEM TO SUBMIT ANY POTENTIAL LEGISLATION TO LRC BY DECEMBER 1 TO BE FORWARDED TO COMMITTEE MEMBERS FOR POSSIBLE INTRODUCTION DURING THE 2008 LEGISLATIVE SESSION. The motion prevailed on a voice vote.

Adjournment

MOTION BY REPRESENTATIVE WEEMS, SECONDED BY SENATOR KATUS THAT THE MEETING BE ADJOURNED. The motion prevailed on a voice vote.

The meeting was adjourned at 5:30 p.m.



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