

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS.

The meeting was called to order by Chairperson Senator Nancey Harrington at 10:30 a.m. on January 15, 2002 in Room 245-N of the Capitol.

All members were present.

Committee staff present:      Russell Mills, Legislative Research Department  
   Dennis Hodgins, Legislative Research Department  
   Theresa Kiernan, Office of the Revisor  
   Nikki Kraus, Committee Secretary

Others attending:      Please see attached

Chairperson Harrington began the meeting by welcoming back the members of the committee and thanking them for their attendance. She then asked the committee for bill introductions.

Theresa Kiernan, Office of the Revisor, briefed the committee on two bills which had been introduced in the joint committee on tribal relations from the interim. Ms. Kiernan stated that the first bill, **SB 383-Interlocal agreements with Native American Indian tribes**, amends the interlocal cooperation act. She stated that it would provide that local units of government, state officers such as the governor, lieutenant governor, attorney general, state treasurer and insurance commissioner, could enter into interlocal agreements with Native American tribes. She stated that the bill does not provide for interlocal government to be able to enter into a gaming compact with the tribes.

Ms. Kiernan went on to brief the committee on **SB 384-Agreements between the governor and Native American Indian tribes**. She stated that the bill was a clarification of the authority of the governor to negotiate and execute agreements with federally recognized Native American Indian tribes. She stated that it did not authorize the governor to enter into a gaming compact.

Chairperson Harrington thanked Ms. Kiernan and asked the committee and audience for bill introductions; there were none.

Chairperson Harrington stated that the committee had a letter available to them from Natalie Haag, Chief of Staff and General Counsel to the Governor of the State of Kansas concerning the findings of the Joint Committee on Tribal Relations if they wished to see it.

Russell Mills, Legislative Research Department, presented the major conclusions from the "Report of the Joint Committee on State-Tribal Relations to the 2002 Kansas Legislature" to the committee. (Attachment 1)

Following his presentation, Mr. Mills added that the Prairie Band Potawatomi Nation had developed a documentary film about their history and the improvements to the reservation following the introduction of casino gaming. He stated that the film was created by the tribe for distribution to schools and other organizations within the state. Chairperson Harrington suggested that the documentary be shown sometime in committee, and the committee members agreed. Mr. Mills concluded his presentation and asked if there were any questions; there were none.

Senator Vratil stated that since the bills briefed by Ms. Kiernan would be referred to the Judiciary committee, and three of that committee's members were also on Federal and State Affairs, members should feel free to discuss any of their concerns with Judiciary members concerning those bills. He also stated that the basic point of those bills was to allow a grievance to be made with the tribe to encourage cooperation from the tribes, state agencies, and local government. He stated that in both law enforcement and other areas, this would increase the efficiency and effectiveness of cooperation.

Senator Gooch asked the committee if there had been a bill passed last year to allow interworking between

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON FEDERAL AND STATE AFFAIRS at on January 15, 2002 in Room 245-N of the Capitol.

tribal and local government. Senator Vratil stated that the bills were introduced last year but that he was not sure if they had been through the entire process. Theresa Kiernan stated that the bills were currently in the house.

Chairperson Harrington went over the committee schedule with the members. Senators Barnett and Brungardt thanked her for her scheduling considerations.

Theresa Kiernan asked Chairperson Harrington if the committee would require a complete bill draft before a request might be made. Chairperson Harrington asked Senators Brungardt and Gooch and the committee, and they agreed to accept conceptual bills.

Chairperson Harrington stated that the committee would be scheduling future briefings from Tracy Diel from the Racing and Gaming Commission, meetings with some of the other commissioners, Alcoholic Beverage Control, and some other briefings for relevant topics. Chairperson Harrington also said that if any of the committee members had suggestions, they would be considered. In response to a question from Senator Gooch, Chairperson Harrington stated that the committee agendas would be scheduled in advance to accommodate conferees.

The meeting was adjourned at 11:00 a.m. The next meeting will be held on January 22, 2002 at 10:30 a.m.



Report of the  
Joint Committee on State-Tribal Relations  
to the  
2002 Kansas Legislature

**CHAIRPERSON:** Senator Lana Oleen

**VICE-CHAIRPERSON:** Representative Tony Powell

**RANKING MINORITY MEMBER:** Senator David Haley

**OTHER MEMBERS:** Senators Mark Gilstrap; Nancey Dean Harrington, and John Vratil;  
Representatives Melany Barnes, Becky J. Hutchins, Doug Mays, and Bonnie Sharp

**NONLEGISLATIVE MEMBERS:** Governor's Representative—Natalie Haag; Attorney  
General's Representative—Julene Miller

**STUDY TOPICS**

Third Annual Report (2001)

*December 2001*

SnFedSt  
01/15/02  
Attach #1

# Joint Committee on State-Tribal Relations

## THIRD ANNUAL REPORT (2001)

### CONCLUSIONS AND RECOMMENDATIONS

The Joint Committee notes issues of concern regarding relations with tribal entities at the state level. The Joint Committee makes the following conclusions and recommendations:

- The Joint Committee recommends the introduction of two bills for consideration during the 2002 Session.
  - The first bill would amend the Interlocal Cooperation Act to allow Native American Indian Tribes to enter into interlocal agreements with public agencies.
  - The second bill would authorize the Governor to negotiate and execute agreements with Native American Indian Tribes on behalf of the State of Kansas.
- The Joint Committee supports the decision of the current Committee Chair to invite the four resident Tribal Chairs (or a Tribal Council designee) to sit at the Committee table, and fully participate in Committee discussion. The Joint Committee encourages this policy to enhance discussion and cooperation between the Joint Committee and the Tribal Chairs.
- The Joint Committee is aware that the Governor's Interstate Indian Council will be hosted by Kansas on August 24-28, 2002 in Topeka. The Joint Committee strongly supports this national conference and stands ready to provide whatever support and participation which the Office of Native American Affairs believes would be appropriate.
- The Joint Committee notes that Chairman Oleen and Vice Chairman Powell served as panelists at the Native Nations Law Symposium held on September 27-28, 2001 in Topeka. The Joint Committee feels that this symposium is an excellent forum for state-tribal relations discussions, and will be happy to participate in the 2002 symposium.
- The Joint Committee is in full agreement with the decision to name the new state office building after Charles Curtis. The Joint Committee plans to participate in the dedication ceremony in some appropriate manner in cooperation with the Department of Administration.

- The Joint Committee reaffirms its support for the Pikitanoi/Northeast Kansas water project and urges the principals involved to resolve the problem areas in order to get the project in motion again.
- The Joint Committee recommends that the State-Tribal Affairs Committee study the tax proposal presented by the Prairie Band Potawatomi Nation during the coming year.
- The Joint Committee commends the Prairie Band Potawatomi Nation for creation of the documentary film and hopes the video will receive widespread distribution in Kansas schools and other organizations.
- The Joint Committee also commends the Prairie Band for its decision to donate \$50,000 to Topeka schools to cover transportation costs and other program activities. The Joint Committee is aware that the Prairie Band has made a number of charitable donations in recent months, including a donation of \$100,000 to the victims of the terrorist attacks in New York and Washington. Such generosity is to be applauded.

**Proposed Legislation:** The Joint Committee recommends two bills.

#### BACKGROUND

The Joint Committee on State-Tribal Relations was created through the enactment of 1999 HB 2065. The responsibilities and organization of the Joint Committee are summarized below.

- The Joint Committee is authorized by statute to:
  - Establish and transmit to the Governor proposed guidelines reflecting the public policies and state interests that the Joint Committee will consider in reviewing proposed compacts;
  - Recommend to the Governor that any gaming compact provide for the imposition and collection of state sales and excise taxes on sales of nongaming goods and services to persons other than tribal members and imposition and collection of state income tax on reve-

nues derived from sales of nongaming goods and services;

- Hold public hearings on proposed gaming compacts submitted to the Joint Committee by the Governor;
- Recommend modification of proposed gaming compacts submitted by the Governor, introduce resolutions approving proposed gaming compacts, recommend that such resolutions be adopted or be not adopted, report such resolutions without recommendation, and notify the Governor, in writing, of the Joint Committee's action;
- Meet, discuss, and hold hearings on issues concerning state and tribal relations;
- Make recommendations on issues of state-tribal relations; and
- Introduce such legislation as

deemed necessary in performing its functions.

- Six members of the Committee constitute a quorum. However, actions of the Committee regarding approval of state-tribal gaming compacts require the affirmative vote of at least eight members—at least four senators and four representatives. The Committee could report a compact without recommendation on the affirmative vote of any five legislative members.
- Annually, the Committee elects its chair and vice chair. The chair alternates between the House (even years) and Senate (odd years). The ranking minority member will be of the same chamber as the chair.
- The Committee is authorized to appoint subcommittees and members may be paid and reimbursed for travel and subsistence for attendance at subcommittee or full Committee meetings. This Joint Committee may meet at any time and at any place within the state at the call of the chair.
- The 2001 Legislature enacted SB 75 which amends several sections of the enabling legislation concerning the Joint Committee. SB 75 amends the law to provide that the Governor (or designee) and the Attorney General (or designee) shall be voting members, except for approval or disapproval of gaming compacts. The bill also provides that the Governor (or designee) would serve as the temporary chairperson and call an organizational meeting of the Joint Committee at the start of each legislative session. The Joint Committee is given the additional responsibility of making recommendations on issues of state-tribal

relations. New language provides that the ranking minority member shall be of the same chamber as the chairperson, *i.e.* a Senate member in odd years and a House member in even years.

## 2001 Session Bills

During the 2001 Legislative Session, several bills pertaining to state-tribal relations were introduced. SB 75, which was enacted and signed by the Governor, made several procedural changes in the statutes which establish the authority of the Joint Committee. The procedural changes clarified that the non-legislative members have the right to vote, except for approval or disapproval of gaming compacts; provided for an organizational meeting at the start of each legislative session; and established a procedure for selecting the ranking minority member. SCR 1611, which was adopted, expresses the Kansas Legislature's opposition to proposed amendments to the federal Indian Gaming Regulatory Act which would eliminate the Governor's right to concur in acquisitions of land for tribal gaming purposes in Kansas.

None of the bills discussed below were enacted, but are still under consideration. SB 74 would provide tribal law enforcement officers and agencies with the same powers, duties, and immunities held by state, county, or city law enforcement officers and agencies, under certain circumstances. SB 76 would establish procedures for the Governor to negotiate state-tribal agreements on topics other than gaming with the four resident tribes. HB 2224 would modify the procedure for approval of a tribal gaming compact by deleting the authority of the Legislative Coordinating Council and requiring the calling of a special session to consider the proposed compact. HB 2216, which was

requested by the State Gaming Agency, would amend the Tribal Gaming Oversight Act in several areas.

### COMMITTEE ACTIVITIES

The Joint Committee met for five days during the 2001 Interim: three days in Topeka, one day at the Prairie Band Potawatomi Reservation, and one day at the Iowa Tribe Reservation. The Joint Committee received input on various issues from the four resident Kansas tribes: the Prairie Band Potawatomi Nation of Kansas, the Kickapoo Tribe, the Sac and Fox Nation of Missouri in Kansas and Nebraska, and the Iowa Tribe of Kansas and Nebraska.

The Joint Committee reviewed the status of tribal-related bills considered during the 2001 Session, and received a staff briefing on pending federal legislation that could impact Kansas. The Joint Committee also was given updates on the status of tribal-related litigation in Kansas by M.J. Willoughby and Brian Johnson, representatives of the Attorney General's Office.

The Executive Directors of the State Gaming Agency, Tracy Diel, and the Kansas Office of Native American Affairs, Brad Hamilton, also provided updated information of the activities of these two agencies.

Mr. Hamilton apprised the Joint Committee that the State of Kansas would host the 53<sup>rd</sup> Governor's Interstate Indian Council on August 24-28, 2002 in Topeka. He briefly reviewed the agenda for the council meeting and invited the members of the Joint Committee to participate fully in this national conference.

Representative Lana Gordon reviewed

the successful effort to name the new state office building after former Vice President Charles Curtis. Representative Gordon noted that the leadership of Topeka and Shawnee County, the Kansas Legislature, and the Topeka Public Building Commission had all gone on record in support of this effort. She stated that a dedication ceremony to name the new building would be scheduled sometime in January, 2002, and she invited the Joint Committee members to participate in this ceremony.

At the July meeting, the Kickapoo Tribal Chair, Nancy Bear, reviewed the efforts of the tribe to develop a long-term project to supply adequate water to the Kickapoo Reservation and to other areas in Northeast Kansas. The Pikitanoi/Northeast Kansas water project is currently in Phase I of development, and funding of \$92,000 has been made available for project planning. The funding comes from the State Water Plan Fund (\$40,000), wholesale water supply districts (\$6,000), and the U.S. Corps of Engineers (\$46,000).

John White, Engineer for the Kickapoo Tribe, briefly reviewed the Pikitanoi/Northeast Kansas water project and its current status. He noted that recently there had been some apparent confusion between the two federal agencies involved, the Bureau of Reclamation and the U.S. Corps of Engineers. He stated that a meeting had been scheduled for early January, 2002, to work out the problems.

David Prager III, Counsel for the Prairie Band Potawatomi Nation, presented information on the lawsuit concerning the issuance of tribal license plates by the Prairie Band. The counsel stated that Kansas recognizes Oklahoma tribal tags

as being legal in Kansas, however Kansas does not accept tags from the four resident tribes as being valid.

At the Joint Committee's December meeting, Mr. Prager presented a proposal for legislation concerning tribal taxes and tribal license plates. The proposal contains three features:

- An excise tax credit would be allowed to the extent a tribal excise tax is imposed with respect to Indian businesses in Indian country.
- State and local tax exemptions would be allowed for the Indian Tribes.
- The State of Kansas would recognize vehicle titles, registrations, and license plates issued by Indian Tribes.

Ron Hein, a representative of Indian Nations in Kansas, presented copies of resolutions signed by the four resident tribes in opposition to any expansion of Indian gaming in Kansas by out-of-state Indian Nations. The tribal councils of all four resident tribes had adopted these resolutions opposing any expansion of Indian gaming by non-resident tribes.

Mr. Hein noted that the four resident tribes had joined with the Governor's office in opposing the efforts of an out-of-state tribe to establish a gaming operation in Kansas.

Also, at the July meeting, the Kickapoo Tribal Chair, Nancy Bear, requested that the tribal chairs be allowed a higher level of participation at meetings of the Joint Committee. In response, the Chair of the Joint Committee invited the four resident tribal chairs to sit with the Joint Committee and be a part of the discussion at future Committee meetings during the

term she serves as Chair of the Joint Committee.

The current tribal chairs are:

Prairie Band Potawatomi Nation: Badger Wahwasuck  
Kickapoo Tribe: Bobbie Darnell  
Sac and Fox Nation: Sandra Keo  
Iowa Tribe: Louis DeRoin

Ron Parks, Administrator of the Kaw Mission State Historic Site in Council Grove, reviewed the history of the outdoor pageant "Voices of the Wind People" which he authored in 1992. He stated that the pageant had been performed on five occasions: 1992, 1993, 1996, 1999, and 2001. He noted the high level of cooperation on the pageant between the citizens of Council Grove, the Kaw Nation of Oklahoma, and the State Historical Society. Mr. Parks presented a short film showing several acts of the play.

The Committee also received a review by Shirley Sicilian and Michael Hale from the Kansas Department of Revenue on the status of current litigation regarding the Prairie Band license plate issue.

The Committee also received a presentation by Susan Johnson, a representative of the National Conference of State Legislatures on the State-Tribal Project which is a joint effort by NCSL and the National Congress of American Indians.

Ms. Johnson's presentation included a review of the efforts in other states to improve relations between state legislatures and the tribes, as well as the important lessons learned in recent years with the rise of Indian gaming. She noted that neither state governments nor tribal governments are going anywhere, and states and tribes are both forced to deal with

each other on governance issues. Ms. Johnson also reviewed the current status of Indian gaming revenue payments to state and local governments in other states. Ms. Johnson briefly discussed an upcoming NCSL publication on state-tribal relations which she will provide to the Joint Committee. Lastly, she reviewed two recent publications: "*Government to Government: Understanding State and Tribal Governments*", and a compilation of papers from the 2000 Midyear Session of the National Congress of American Indians.

Ron Hein, representative of Indian Nations in Kansas, spoke in support of legislation by the Joint Committee for consideration during the 2002 Session.

Mr. Hein stated that Indian Nations in Kansas, which is composed of the Kickapoo Tribe, the Prairie Band Potawatomi Nation, and the Sac and Fox Nation, still supports the enactment of 2001 SB 74, relating to the powers of tribal law enforcement officers. Mr. Hein also proposed several amendments to 2001 SB 76, concerning the power of the Governor to enter into non-gaming compacts and agreements with tribes.

The Joint Committee also reviewed a documentary film prepared by the Prairie Band Potawatomi Nation, entitled "*Keepers of the Fire*". The film reviews the history of the tribe, as well as recent improvements and programs implemented on the Prairie Band reservation.

Other topics reviewed by the Joint Committee included: pending litigation involving tribal-related issues, payments in lieu of taxes, activities of the State Gaming Agency and the Kansas Office of Native American Affairs, deputization of tribal law enforcement personnel, and the

manner of making the state's assessment on the tribes for operation of the State Gaming Agency.

As noted above, the Joint Committee also visited the Prairie Band Potawatomi and Iowa Reservations and toured areas of the reservations and the casinos.

## CONCLUSIONS AND RECOMMENDATIONS

The Joint Committee notes issues of concern regarding relations with tribal entities at the state level. The Joint Committee makes the following conclusions and recommendations:

- The Joint Committee recommends the introduction of two bills for consideration during the 2002 Session.
  - The first bill would amend the Interlocal Cooperation Act to allow Native American Indian Tribes to enter into interlocal agreements with public agencies.
  - The second bill would authorize the Governor to negotiate and execute agreements with Native American Indian Tribes on behalf of the State of Kansas.
- The Joint Committee supports the decision of the current Committee Chair to invite the four resident Tribal Chairs (or a Tribal Council designee) to sit at the Committee table, and fully participate in Committee discussion. The Joint Committee encourages this policy to enhance discussion and cooperation between the Joint Committee and the Tribal Chairs.
- The Joint Committee is aware that the Governor's Interstate Indian Council will be hosted by Kansas on August

24-28, 2002 in Topeka. The Joint Committee strongly supports this national conference and stands ready to provide whatever support and participation which the Office of Native American Affairs believes would be appropriate.

- The Joint Committee notes that Chairman Oleen and Vice Chairman Powell served as panelists at the Native Nations Law Symposium held on September 27-28, 2001 in Topeka. The Joint Committee feels that this symposium is an excellent forum for state-tribal relations discussions, and will be happy to participate in the 2002 symposium.
- The Joint Committee is in full agreement with the decision to name the new state office building after Charles Curtis. The Joint Committee plans to participate in the dedication ceremony in some appropriate manner in cooperation with the Department of Administration.
- The Joint Committee reaffirms its support for the Pikitanoi/Northeast

Kansas water project and urges the principals involved to resolve the problem areas in order to get the project in motion again.

- The Joint Committee recommends that the State-Tribal Affairs Committee study the tax proposal presented by the Prairie Band Potawatomi Nation during the coming year.
- The Joint Committee commends the Prairie Band Potawatomi Nation for creation of the documentary film and hopes the video will receive widespread distribution in Kansas schools and other organizations.
- The Joint Committee also commends the Prairie Band for its decision to donate \$50,000 to Topeka schools to cover transportation costs and other program activities. The Joint Committee is aware that the Prairie Band has made a number of charitable donations in recent months, including a donation of \$100,000 to the victims of the terrorist attacks in New York and Washington. Such generosity is to be applauded.