

MINUTES OF THE SENATE FEDERAL AND STATE AFFAIRS COMMITTEE

The meeting was called to order by Chairman Pete Brungardt at 10:30 a.m. on January 9, 2007 in Room 231-N of the Capitol.

All members were present except:
Senator Hensley

Committee staff present:
Kathie Sparks, Kansas Legislative Research Department
Dennis Hodgins, Kansas Legislative Research Department
Ken Wilke, Revisor of Statutes Office
Connie Burns, Committee Secretary

Conferees appearing before the committee:

Others attending:
See attached list.

Chairman opened the meeting and welcomed committee members and staff. The Chairman welcomed Senator Jim Barnett back to the committee and introduced the new committee member Senator Julia Lynn who replaces Senator O'Connor, new staff members are Ken Wilke, Office of the Revisor, and Kathie Sparks, Legislative Research Department.

Senator Brungardt requested a bill introduction dealing with surplus property and public airport authorities.

Senator Barnett made the motion that this request should be introduced as a committee bill. Senator Brownlee seconded the motion. The motion carried

Dennis Hodgins, Legislative Research, provided an Overview of the Joint Committee on State-Tribal Relations Interim. (Attachment 1) The Joint committee on state-Tribal Relations recommends that:

- A Senate bill, be prefiled, that would require insurance companies to report liability insurance for state police powers on reservations to the Attorney General's Office. It would establish a cap of two million dollars on the liability insurance, and delete the sunset clause of state police powers as contained in KSA 2005 supp. 22-2401a.
- The Kansas Legislative Research Department and the Department of Revenue obtain information on resolution of the license plate tag issue in other states and report that information to Joint committee members by December 15, 2006
- The Senate transportation Committee reach consensus with interested parties to solve the Indian license plate problem and to recommend a bill to accomplish this task during the 2007 Legislative session.

There were several study topics that the committee looked at:

- Congressional bills prohibiting Native American lands from being taken into trust for Class III gaming purposes
- The provision of **SB 9** dealing with Native American liability insurance for tribes which have state police powers on reservations
- The U.S. Supreme Court's Decision on the motor fuel tax case involving the Prairie Band Potawatomi Nation and the State of Kansas and the subsequent appeal decision by the courts
- Court cases dealing with the recognition of the tribal reservation license plates
- The court's decision dealing with the authority of the State of Kansas to seize gaming equipment from the Wyandotte Tribe in Kansas City, Kansas, and the Secretary of the Interior's decision to recognize the Wyandotte Tribe's request for lands to be placed in trust for gaming purposes
- State-Tribal Cooperation

Issuance of Native American License Plates, the State of Kansas does not issue nor allow tribes to issue license plates and does not recognize Indian license plates issued by a tribe with the state. (Attachment 2) Currently, the State of Kansas is in litigation with the tribes over the issuance of license plates. The 2000

CONTINUATION SHEET

MINUTES OF THE Senate Federal and State Affairs Committee at 10:30 a.m. on January 9, 2007 in Room 231-N of the Capitol.

Legislature tried to deal with the issue in **SB 492**, in the bill the state authorized the issuance of a distinctive license plate to resident Native American tribes in Kansas for a \$5 fee. The production of license plates would have been exempt from the 500 license plate requirement, and each resident tribe would have been allowed to design its own distinctive license plate; the bill was not enacted. Selected state examples of the states that issue tribal license plates was provided.

The committee authorized the Chairman to draft a letter to the Chairman of Senate Transportation Committee expressing the wishes of the committee and the joint oversight committee.

Hearing and Discussion of bill:

Senator Brungardt opened the hearing on **SB 13**.

SB 13 -Native American tribal law enforcement jurisdiction; liability insurance coverage, proof of; repealing sunset

Senator Vratil opened the discussion with an amendment to the bill. Page 1, Line 36 delete wording "assessed in state or federal court" and a new subsection page 2 line 3 dealing with precluding the Tribes' claim to sovereign immunity. The Revisor will write the balloon and present to committee.

Senator Vratil moved the amendment. Senator Barnett seconded the motion. The motion carried.

Senator Brungardt continued the hearing on **SB 13**.

The meeting was adjourned at 11:25 am. The next scheduled meeting is on January 10, 2007.

SENATE FEDERAL AND STATE AFFAIRS COMMITTEE
GUEST LIST

DATE 1-9-07

NAME	REPRESENTING
Angela D. D'Amico	Senator Intero → Ostermeyer
RA M. J. J.	LGR
Ron Seiber	Neil Law Firm
Whitney Damon	Kickapoo Tribe
BRANDON BOHNING (DAMON)	Kickapoo Tribe
Matt Bryant (center)	in...
Dr. Philip Bradley	KLBA
John Beveridge	P. Smith & Assoc
Sean Tomb	Division of the Budget
Michael Hooper	Kearney & Ass.
Star Jones	John Peterson

Report of the Joint Committee on State-Tribal Relations to the 2007 Kansas Legislature

CHAIRPERSON: Representative Becky Hutchins

VICE-CHAIRPERSON: Senator Pete Brungardt

OTHER LEGISLATIVE MEMBERS: Senators Les Donovan, Mark Gilstrap, David Haley, and John Vratil; and Representatives John Edmonds, Tom Sawyer, Bonnie Sharp, and Arlen Siegfried

NONLEGISLATIVE MEMBERS: Governor's Representative—Matt All; Attorney General's Representative—Julene Miller

STUDY TOPICS

- Congressional bills prohibiting Native American lands from being taken into trust for Class III gaming purposes;
- The provisions of SB 9 dealing with Native American liability insurance for tribes which have state police powers on reservations;
- The U.S. Supreme Court's Decision on the motor fuel tax case involving the Prairie Band Potawatomi Nation and the State of Kansas and the subsequent appeal decision by the courts;
- Court cases dealing with the recognition of the tribal reservation license plates;
- The court's decision dealing with the authority of the State of Kansas to seize gaming equipment from the Wyandotte Tribe in Kansas City, Kansas, and the Secretary of the Interior's decision to recognize the Wyandotte Tribe's request for lands to be placed in trust for gaming purposes; and
- State-Tribal Cooperation.

January 2007

Joint Committee on State-Tribal Relations

YEARLY REPORT

CONCLUSIONS AND RECOMMENDATIONS

The Joint Committee on State-Tribal Relations recommends that:

- A Senate bill, be prefiled, that would require insurance companies to report liability insurance for state police powers on reservations to the Attorney General's Office. It would establish a cap of two million dollars on the liability insurance, and delete the sunset clause of state police powers as contained in KSA 2005 Supp. 22-2401a.
- The Kansas Legislative Research Department and the Department of Revenue obtain information on resolution of the license plate tag issue in other states and report that information to Joint Committee members by December 15, 2006.
- The Senate Transportation Committee reach consensus with interested parties to solve the Indian license plate problem and to recommend a bill to accomplish this task during the 2007 Legislative Session.

Proposed Legislation: The Committee recommends one bill.

BACKGROUND

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 revenues derived from sales on 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 and introduce resolutions approving proposed gaming compacts and recommend that such resolutions be adopted or not adopted. Or 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-tribal relations;
- Make recommendations on issues of state-tribal relations; and
- Introduce such legislation as deemed necessary in performing its functions.

Annually, the Committee elects its chairperson and vice-chairperson. The chairperson alternates between the House (even years) and the Senate (odd years). The

ranking minority member is from the same chamber as the chairperson.

COMMITTEE ACTIVITIES

The Joint Committee met for two days during the interim, September 26-27, 2006, in Topeka, Kansas.

The Joint Committee elected Representative Becky Hutchins as the Chairperson and Senator Pete Brungardt as the Vice-Chairperson.

Bills Prohibiting Lands Placed Into Trust. Staff from the Revisor of Statutes Office briefed the Joint Committee on the status of two federal bills which would prohibit Indian gaming on lands placed in trust. HR 4893 by Representative Richard Pombo of California would prohibit a tribe from conducting gaming in any other state other than the state where the tribe had a reservation on the date Indian Gaming Regulatory Act (IGRA) was enacted (1988). SB 2078 by Senator John McCain of Arizona would eliminate the exception to IGRA for gaming on land placed into trust after the enactment of IGRA. Representative Pombo's bill was defeated, and Senator John McCain's bill is being considered.

2004 SB 9 and 2006 SB 320– State Police Powers on Reservations. Staff briefed the Joint Committee on 2004 SB 9 and 2006 SB 320. SB 9 was enacted to provide state law enforcement powers to tribal police on the reservations. The Legislature had concerns dealing with the liability insurance reporting requirements to the Attorney General's Office. SB 320, which failed to pass, would have rectified the situation by requiring the insurance company to certify to the Attorney General's Office that a tribe had liability insurance. Tribal Council Chairpersons and the Brown County and Jackson County Sheriffs' Department representatives testified that the police powers were working effectively for the reservations and for the

sheriffs' departments. The Joint Committee discussed the need for a maximum aggregate liability limit in SB 320 and if there was a need to delete the sunset clause on the tribes having police powers.

State-Tribal Litigation. A Special Assistant Attorney General briefed the Joint Committee on the US Supreme Court's ruling dealing with the motor fuel taxes involving the Prairie Band Potawatomi Nation and the State of Kansas. The Committee members learned that the Court upheld the Kansas motor fuel tax on a non-tribal distributor who was delivering motor fuel to the Prairie Band Potawatomi Nation.

The conferee then updated the members of the Joint Committee on the Indian license plate case, stating that the case is before the court. The Chairperson of the Prairie Band Potawatomi Nation testified that the Nation wanted to cooperate with the State on the license plate issue, but problems arose between the Nation and the Kansas Department of Revenue.

After discussion, the Joint Committee requested the Legislative Research Department and the Department of Revenue obtain information from other states to see how they handled the issue of tribal license plates. The Joint Committee requested the information be submitted to the members by December 15, 2006.

Another representative from the Attorney General's Office updated the members of the Joint Committee on the court's decision dealing with seizure of money and gaming equipment by the state from the Wyandotte Tribe in Kansas City, Kansas. The Committee members learned that the federal court ruled that the State of Kansas had no right to seize the money and equipment because the authorization for gaming to take place at the Kansas City site was a federal government matter. The conferee also informed the members of the Joint Committee that the decision to place

lands into trust for the Wyandotte Tribe was appealed by the National Indian Gaming Commission and the US Department of Justice.

State-Tribal Cooperation. The Joint Committee heard testimony from the Kansas Department of Transportation (KDOT) and the Prairie Band Potawatomi Nation dealing with the construction of the US Highway 75 and 150th Road interchange. The Committee members heard from the Chairperson of the Prairie Band Potawatomi Nation that the Nation and Jackson county had signed a cooperative agreement for the costs of the right-of-way, utility relocation, and preliminary engineering of the highway and the interchange. However, due to rising costs, Jackson County had requested the Nation pay additional costs, but the county and Nation could not come to an agreement on those costs. A representative of KDOT, testified that Jackson County was responsible for 100 percent of the costs for preliminary engineering, utility relocation, and right-of-way. He said KDOT is 100 percent responsible for costs of construction and inspection.

The Chairperson of the Kickapoo Tribe testified that there are outstanding issues to be resolved between the state and the tribe which included:

- Motor fuel tax—there could be further progress made between the tribe and the state on motor fuel tax, even if the fuel tax case had been decided;
- Gaming in Kansas City—the Kickapoo Tribe wants to pursue a gaming compact in Kansas City;
- Water—there is a federal lawsuit pending over the tribe’s right to obtain water rights;
- Property taxes—Tribal members should not have to pay property taxes; and
- Veterans’ Services—Tribal veterans are not receiving services in a fair and equitable manner.

The Chairperson of the Prairie Band Potawatomi Nation testified that there are outstanding issues to be resolved which included:

- Excise tax credit—there should be a tribal excise tax credit for Indian businesses on reservations;
- Tax exemption—there should be state and local government tax exemptions for Indian tribes;
- Vehicle titles and registration—there should be a recognition of Indian tribe vehicle titles and registration;
- Health care funds—funds should flow from the federal government, through the state government to the tribes;
- Grants—arbitration for grants should be granted to Indian tribes, so they can retain their sovereignty; and
- Gaming—the Prairie Band Potawatomi Nation supports reservation-based gaming and is opposed to other forms of gaming.

The Executive Director of the State Gaming Agency testified that the agency has a hands-on program to educate agents and tribal employees on the proper use of gaming machines. The program is conducted at the agency’s office in Topeka. This voluntary state-tribal program trains over 730 casino employees per year.

Federal Rules and Regulations Defining Class II and Class III Gaming. The Chief Counsel from the Governor’s Office gave a presentation on the tentative federal Department of Interior’s rules and regulations dealing with the difference between Class II and Class III electronic and electromechanical facsimile gaming machines.

CONCLUSIONS AND RECOMMENDATIONS

The Joint Committee On State-Tribal Relations recommends:

- A Senate bill, to be prefiled, that would require insurance companies to report liability insurance for state police powers on reservations to the Attorney General's Office. It would establish a cap of two million dollars on the liability insurance, and delete the sunset clause of state police powers on the reservations as contained in KSA 2005 Supp. 22-2401a.
- The Kansas Legislative Research

Department and the Department of Revenue obtain information on resolution of the license plate issue in other states and report that information to Joint Committee members by December 15, 2006.

- The Senate Transportation Committee reach consensus with interested parties to solve the Indian license plate problem and recommend a bill to accomplish this task during the 2007 Legislative Session.

ISSUANCE OF NATIVE AMERICAN LICENSE PLATES

Statutes of selected states were reviewed regarding the issuance of tribal license plates. Some states authorize the state to issue the plates to Indian tribes, while others allow tribal governments to issue their own plates. Most states sampled exempted tribal license plates from registration fees, although some require payment for silk screening and reissuance of plates. For example, the State of Washington requires the tribe to provide to the state vehicle registration, including license plate numbers for vehicles. Certain states allow citizens of the state to purchase tribal license plates subject to a contribution which is used by the state to help resident Indian tribes. Other states authorize only resident Indian tribes to have exempt license plates, and these plates are unavailable to the public. The State of Wisconsin allows tribes to issue license plates to tribal members if the tribes have a reciprocal exemption agreement with the state (the Indian tribe or band registering a vehicle would have to allow reciprocal privileges to similar classes of vehicles registered in the state while on Indian land).

The **State of Kansas** does not issue nor allow tribes to issue license plates and does not recognize Indian license plates issued by a tribe within the state. Currently, the State of Kansas is in litigation with the tribes over the issuance of license plates. The 2000 Legislature tried to deal with this issue in SB 492. In the bill, the state authorized the issuance of a distinctive license plate to resident Native American tribes in Kansas for a \$5 fee. The production of license plates would have been exempt from the 500 license plate requirement. Each resident tribe would have been allowed to design its own distinctive license plate. The bill was not enacted.

The Prairie Band Potawatomi Nation published a memorandum, dated December 19, 2001, recommending that the State of Kansas amend KSA 8-138a by adding, "the state shall recognize and permit the use of vehicles and registrations issued by any Indian tribe to the same extent as the titles and registrations of other states. The state, upon request, would certify to any other jurisdictions that such tribal titles and registrations are recognized and permitted by the State of Kansas."

KSA 8-138a states that "nonresident owners (of a motor vehicle), when duly licensed in the state of residence, are hereby granted the privilege of operation of any such vehicle within the state to the extent that reciprocal privileges are granted to residents of the state of residence of such nonresident owner."

The following selected states are examples of states that issue tribal license plates:

Indiana IC 9-18-15-1 IC 9-13-2-125 IC 9-18-44-3	Native Americans are eligible for personalized license plates issued by the state subject to: an annual registration fee; a contribution; and a service charge or excise tax.
Louisiana La R.S. 47:463.78	The state is authorized to issue prestige license plates representing the Native American culture. A minimum of 100 plates is required before distribution of the plates, and the purchase of license plates is open to the public. A \$25 fee every two years and a handling fee of \$3.50 is required. The \$25 fee is used for academic or financial need-based Native American scholarships.

Washington State
46.16.022 RCW

The state is authorized to issue exempt license plates for vehicles owned or leased by the Indian tribe's governing body located in the state and recognized by the U.S. Department of the Interior. The state recognizes the tribe's authority to title, register, and issue license plates. The state has the authority to require the tribe to provide vehicle registration, including license plate numbers, for vehicles.

Tennessee
55-4-201

The state created specialty earmarked plates for Native American tribes, which would be subject to a minimum issuance fee and renewal requirements.

Oklahoma
47 OKL State 1135.1

The state is authorized to design and issue appropriate official special license plates for any exempt Native American vehicle. The registration fee is \$8 in addition to all other fees.

Nevada
NRS 371.00

Vehicles owned by a governing body of a federally recognized tribal government are entitled to exempt license plates provided: vehicles are used for non-commercial purposes; the Indian tribe is recognized under federal law; and the governing body is located on the reservation. Exempt license plate fees are subject to a \$5 fee, \$0.50 per license plate, and a reissuance fee of \$5.

South Dakota
SDCL 32-5-42

The state is authorized to issue an exempt entity license plate to Native American tribes subject to a \$4 silk screening fee and a \$4 shipping fee per set.

Colorado
CRS 42-3-217.5

The Colorado Department of Revenue is authorized to issue special motor vehicle license plates, called the American Indian Scholars License Plate, which also are available to any person who makes a \$25 contribution to the American Indian Scholarship Fund and pays the specialty plate and registration fee. To issue special license plates requires a minimum demand of 2,000 plates by the public.

Wisconsin
Wis. Stat. 341.05
Wis. Stat. 341.409

Tribal license plates are exempt from registration fees if the tribe is exempt under a reciprocal registration exemption agreement in Wisconsin Statute 341.409. This statute authorizes the state to enter into a reciprocal registration exemption agreement with the governing body of any federally recognized Indian tribe or band. The reciprocal agreement may exempt designated classes of vehicles registered by the Indian tribe or band from the registration requirements, if the Indian tribe or band registering a vehicle allows reciprocal privileges to similar classes of vehicles registered in the state.

Nebraska
RRS Neb 60-3,185

The state is authorized to issue license plates to Native American tribes whose motor vehicles are owned and registered by tribal governments. The plates are exempt from Nebraska's motor vehicle registration fees by Indians who are defined under 25 U.S.C. 479.