

## JOURNAL OF THE SENATE

## Fifty-sixth Legislative Assembly

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Bismarck, January 7, 1999

The Senate convened at 1:00 p.m., with President Myrdal presiding.

The prayer was offered by Pastor Don Burnett, Bismarck Baptist Church, Bismarck.

The roll was called and all members were present except Senators Grindberg, Nething, and W. Stenehjelm.

A quorum was declared by the President.

## MOTION

**SEN. ST. AUBYN MOVED** that a committee of two be appointed to escort Richard LaFromboise, Chairman of the Turtle Mountain Band of Chippewa to the rostrum to present the Tribal-State Relations Address, which motion prevailed. The President appointed as such committee Sens. Traynor and Bercier.

Chairman LaFromboise was escorted to the rostrum to present the Tribal-State Relations Address. Chairman LaFromboise requested that the record reflect his written address.

## STATE OF THE RELATIONSHIP ADDRESS

**Richard LaFromboise, Chairman  
Turtle Mountain Band of Chippewa**

## History

American Indian people have a unique relationship with this country. It is a political relationship based on treaties negotiated when land, minerals, water, and human lives were taken from America's first citizens. In exchange, the federal government promised to provide and do certain things, i.e., health care, education, etc.

This unique relationship has been perpetuated through laws, acts, orders, and precedents. Many federal policies were initiated to "deal" with Indian people--colonization, removal, civilize, reservation systems, allotment and assimilation, Indian reorganization, relocation, termination, and self-determination, which is the current policy era.

Through this unique relationship and the many policies, Indian people have learned dependency. Tribal governments are fairly new with most formed during the Indian reorganization period of the 1930s and 1940s. Most tribal governments are formed under the federal democratic model which was and is alien to the traditional form of consensus-style government.

Within the current policy era of "self-determination" for Indian people, the federal government is decentralizing. This devolution is focused on state and local control, including tribal control. Federal decentralization is putting state-tribal relationships into a new and expanded environment.

At the same time, Indian people and tribes are growing and unlearning the dependency that has been taught. Tribal governments and Indian leaders are more sophisticated and progressing toward real self-sufficiency that is defined by Indian needs and Indian dreams for a better way of life.

In North Dakota, state-tribal relationships have generally been positive. The state established the North Dakota Indian Affairs Commission in 1949 to address issues and to define the relationship. Since 1987 a tribal leader has been invited to present the "State of the Relationship Address" to the North Dakota legislators as a way to express Indian concerns and suggestions for working together. With the ending of an era and beginning of a new millennium, it is time to review the past, to heal and forgive, and to enter into a new phase of state-tribal relationships. There are good, positive examples of how the roles can be expanded--the accords initiated by Governor Schafer and signed between the state and Standing Rock Tribe and Turtle Mountain Tribe or the recent fuel tax agreement between Standing Rock and the state. Mutual respect and understanding are the basis for the accords and the agreements.

**Unmet Need**

There is a perception that the federal government takes care of Indians and that there is an endless "pot of money" from that source. It can be very complex in being Indian and living as an Indian. To varying extent, essentially every American Indian and Alaska Native community in America has experienced social and economic change, adjustment, and adversity. The various federal policies to take care of Indian people have mostly compounded the socioeconomic disadvantages facing Indian communities.

While the policies were supposedly well-intended, the federal agencies charged with providing services for Indian people have been historically underfunded. The Indian Health Service (federal) per capita expenditure in fiscal year 1997 was \$1,132, as compared to the United States health per capita expenditure of \$3,261. The Indian Health Service is funded at approximately 65 percent of need and the Bureau of Indian Affairs at maybe 50 to 60 percent of need. When you look at the Indian Health Service budget for mental health and prevention programs, they are funded at less than 25 percent of need.

In addition to the perception that the federal government provides for all the needs of Indian people, there is a new perception that Indian people are all millionaires from gaming operations. These perceptions permeate mainstream America including North Dakotans, but these perceptions are not true!

Tribal gaming is relatively new and the Indian casinos in North Dakota are realizing small profit margins but not near what the Minnesota or Connecticut tribes are realizing. As per the North Dakota compacts, virtually all the small profit is going back into economic development, social programs, and services for the reservation community.

Community-based ventures that germinate from and are nurtured with local experience, knowledge, and initiative have greatest promise for success in bridging gaps and barriers that remain for Indian families. However, tribal community-based efforts alone will not be fully successful. Resources from the larger society (federal and state governments and private sources) in building better access and in assuring availability of comprehensive services are essential and critically needed.

**Contributors**

According to 1998 United States census data, about 30,000 American Indians live in North Dakota with 41 percent living off the reservation in neighboring communities. Indians are a very young population with the average age 18 as compared to 32 for North Dakota in general. Indians are a fast-growing population at a rate of 2.1 percent per year. All counties in North Dakota, except one, reported Indian residents according to the 1998 census data.

Every Indian pays federal income tax if they are employed. Most all shopping is done off reservation and Indians do pay sales, gas, cigarette, and alcohol taxes. Many Indians live and work off the reservation and pay state income tax. Individual Indian people are contributors to the state's economy.

From an economic point of view, business development in Indian country is significant and enhances the state's economic vitality. Job creation and employment for both Indian and non-Indian state citizens at tribal casinos have created over 2,500 jobs across the state. Each reservation has also developed other enterprises that are putting people to work and off welfare rolls. These businesses contribute to the success of local merchants and help to sustain the state's rural economy.

**Working Together**

As citizens of the state and contributors to the state's economy, North Dakota's tribal leaders are seeking the cooperation and collaboration of the state to improve the quality of life for Indian people. Specific areas to be worked on include the following:

**Water management** - As water projects and the state water plan are developed in North Dakota, the needs of Indian tribes and their members, as well as the needs of the non-Indians who live on or near the reservations, must be met. For example, we have cooperated with state leaders and other Indian tribes to have funding for municipal, rural, and industrial water projects included in the North Dakota Water Resources Act. While pending in Congress, we appreciate the support North Dakota legislative leaders have given to our efforts to provide us a dependable source of good quality water for our homes and businesses.

**Law enforcement** - Cooperation is critical for this area. In Rolette County we have an excellent working relationship between our local county sheriff, tribal, and BIA police. I am also aware of strong cooperation in our continued efforts against illegal drugs. A recent murder in Bismarck led to full cooperation by Standing Rock tribal authorities for the investigation to be

conducted on reservation land. We encourage continued efforts in this area, including the strengthening of the federal component of law enforcement on reservations.

**Disaster management** - Winter storms in 1996-97 and the spring flooding of 1997 created problems for Indians and non-Indians on several reservations, including the rising waters of Devils Lake, which has forced the relocation of over 40 families and homes on the Spirit Lake Reservation. Better cooperation among federal, state, and tribal agencies is critical in addressing this issue. Federal Emergency Management Agency (FEMA) funds come into the state with pass-through authority for the local sites, including tribal governments. We need to make sure that emergency funds are used to help all citizens of North Dakota, whether or not they happen to reside on a reservation.

**Social/health programming and services** - In July 2002, the five-year eligibility for benefits runs out for some welfare recipients due to changes in the welfare system. Fifty-six percent of the TANF caseload in North Dakota are American Indian families. Literally thousands of children and the adults who care for them may be affected. In Rolette County, where approximately 25 percent of all state welfare cases are located, we have been working with the county toward a cooperative welfare delivery plan. But training and jobs are key to the success of the plan.

Increased access and improved understanding of the gaps and barriers for Indian citizens need to be addressed especially in the area of mental health and alcohol/drug treatment. The new children's health insurance program (CHIP) has specific guidance for the inclusion of Indian children and consultation with tribes. North Dakota's Healthy Steps could be a model for coordination of services with culturally appropriate outreach.

The state's human services is to be commended for creating and hiring a tribal liaison position that will assist in coordinating the working relationships and promoting better understanding between the tribes and the state. I would encourage the State Department of Health to consider doing likewise.

**Financing for economic development** - The advent of welfare reform emphasizes putting people to work. Job creation is crucial and the need to coordinate and cooperate becomes imperative to success. The North Dakota reservations have an average unemployment rate of 50 percent. Eliminating red tape and bureaucratic barriers to access economic development and financing funds would go a long way in creating new ventures. The assistance of the Bank of North Dakota and especially John Hoeven for efforts to assist financing development on the reservation is to be commended and hopefully expanded.

**Education** - Tribal leaders have previously mentioned that Indian community colleges are serving and graduating non-Indian students at their institutions, yet receive no state funds for this effort. At the same time, the federal support received for Indian students is less than one-half the average expenditure per student by states and the federal government for public postsecondary education. Even if tribes were to spend all of their gaming profits in this area, we would not meet the average spent per student in postsecondary programs by the state of North Dakota. We need your help so that we can continue to educate non-Indian students who want the services our local tribal colleges and United Tribes Technical College can provide. I urge you to support a modest appropriation to benefit the education of non-Indian students at Indian community colleges.

In 1973 the North Dakota Legislature recognized the significant need for education services for the state's Indian students and established the Indian scholarship fund. The scholarship award is \$700 per year and this past year 148 awards were granted. Applicants must be North Dakota residents of Indian heritage, accepted into a North Dakota institution of higher learning or vocational education program, and enrolled full time with a minimum grade point average of 2.0. There are 182 Indian students on the waiting list for this scholarship. I would ask and encourage the legislature to consider an increase for this needed and successful program.

**Road management/upkeep** - The disaster declarations within North Dakota this past year compounded the issues regarding road upkeep across the state and including reservation roadways. Major road projects are underway on three reservations. I believe we can improve how we work together to plan for and implement road projects and road maintenance on and near the reservations. We understand that the State Department of Transportation has recently hosted training on tribal relations and it has plans to enhance and continue that dialogue. I would suggest the consideration of a tribal advisory committee and/or the hiring of a tribal liaison to assist in the dialogue and planning processes of road management. Three Affiliated Tribes has been advocating for a cooperative effort for the replacement of the Four Bears Bridge.

**Taxation** - Tribes have taxation powers within reservation boundaries. However, local county governments tax nontrust land owned by non-Indians within the reservation. The recent agreement on motor fuel taxes entered into between the state and the Standing Rock Tribe is a good example of our government figuring out the best interests of our mutual citizens. The agreement is a model that should be offered to the other tribal communities and expanded on to other areas.

**Housing** - Critical to the social and economic development on reservations is adequate housing. The housing needs survey conducted for the Governor's Housing Task Force Report issued July 1998 found that housing needs on the reservation were one of the most pressing problems in the state. We need to work together to reduce the barriers to home financing for Indian homeowners and new home buyers.

**Gaming/compact negotiations** - The North Dakota tribes have casino operations on the reservations offering entertainment to local and nonlocal residents alike. While profits are modest, tribal casinos have provided over 2,500 jobs in North Dakota. Approximately 17 percent of the employees are non-Indian. The North Dakota Indian Gaming Association estimates that over \$28 million of supplies to operate the casinos are purchased at North Dakota businesses.

The North Dakota tribal leaders are working with Governor Schafer and legislative leaders to ensure that we can continue to operate successful gaming enterprises, keep people employed, keep the dollars in our reservations and state, and at the same time minimize any negative effects from gaming. As the attorney general and Governor can tell you, gaming operations are well-regulated.

In September 1998, the tribal casinos entered into a one-year agreement with the North Dakota Mental Health Association to address the issues of addictive gambling. The tribal leaders wanted to be at the forefront of acknowledging that problems do exist and that it makes good business sense to provide services. We anticipate continuing this arrangement and hopefully expanding it with assistance from the state.

We know that gaming is not an economic panacea. We are constantly using our dollars for improvements to tribal infrastructure, economic development, and to help our tribal members in many ways. Gaming operations are also tourist destinations, bringing many dollars into the state, and with continued improvements, i.e., hotels, recreational activities, can even be more of a tourist attraction of which we can all be proud.

**Tourism** - The state is preparing for the Lewis and Clark Expedition Bicentennial. We believe that this observation can renew a spirit of cooperation and understanding between Indian and non-Indian citizens of the state. Acknowledgment of the contributions of American Indian people toward the successful settlement of this country and this state would go a long way bridging cultural differences. We can showcase the efforts of the Mandan people and Sakakawea that contributed to the success of the expedition. I urge the legislature to include Indian people throughout the various planning processes for the celebration. I hope that you will also consider funding specific tribal museum or education enhancements within the various state agency budget requests.

### **Tribal-State Relations**

The North Dakota Indian Affairs Commission is an important part of the relationship between the state, the tribes, and all the citizens. The commission gathers and disseminates facts and information about the issues we must deal with together as governments. More importantly, the commission serves as an educator and improves understanding between both sides.

The North Dakota Indian Affairs Commission will celebrate its 50th anniversary during 1999 and would like to plan special events to commemorate state-tribal relations. We are proud that we get along and that we are able to call up the Governor or a legislator and sit down and discuss issues to find common ground and solutions. Adequate funding is necessary to carry out the role and responsibilities of the commission. I urge the legislature to support the modest increase requested by the commission and to assist in finding adequate office space for its needs.

As North Dakotans, we have much in common as neighbors and we have enjoyed fairly positive relationships. Of course, anything can be improved, so we ask your assistance in opening doors so that Indian people can better access services provided by the state. We ask your assistance in funding specific projects that incorporate appropriate cultural programming.

The year 1999 represents the 50th anniversary of state-tribal relations. It is also designated as the "Year of the Older Person." The year 1999 marks the ending of an era and the beginning of a new millennium. There is much work to be done to truly extend the wonderful North Dakota

quality of life into Indian country. Together we can make it happen. Thank you for this opportunity for better understanding between our governments.

#### MOTION

**SEN. ST. AUBYN MOVED** that the written address submitted by Chairman LaFromboise be printed in the Journal, which motion prevailed.

#### SECOND READING OF SENATE BILL

**SB 2046:** A BILL for an Act to repeal chapter 26.1-45.1 of the North Dakota Century Code, relating to the partnership for long-term care program.

#### ROLL CALL

The question being on the final passage of the bill, which has been read, and has committee recommendation of DO PASS, the roll was called and there were 46 YEAS, 0 NAYS, 0 EXCUSED, 3 ABSENT AND NOT VOTING.

**YEAS:** Andrist; Bercier; Bowman; Christmann; Cook; DeMers; Fischer; Flakoll; Freborg; Heitkamp; Holmberg; Kelsh; Kilzer; Kinnoin; Klein; Krauter; Krebsbach; Kringstad; Kroeplin; Lee; Lindaas; Lyson; Mathern, D.; Mathern, T.; Mutch; Mutzenberger; Naaden; Nelson, C.; Nelson, G.; O'Connell; Redlin; Robinson; Sand; Schobinger; Solberg; St. Aubyn; Stenehjem, B.; Tallackson; Thane; Thompson; Tomac; Traynor; Urlacher; Wanzek; Wardner; Watne

**ABSENT AND NOT VOTING:** Grindberg; Nothing; Stenehjem, W.

SB 2046 passed and the title was agreed to.

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#### SECOND READING OF SENATE BILL

**SB 2052:** A BILL for an Act to amend and reenact section 57-02-27.2 of the North Dakota Century Code, relating to the valuation and assessment of inundated agricultural land for property tax purposes; and to provide an effective date.

#### ROLL CALL

The question being on the final passage of the bill, which has been read, and has committee recommendation of DO PASS, the roll was called and there were 46 YEAS, 0 NAYS, 0 EXCUSED, 3 ABSENT AND NOT VOTING.

**YEAS:** Andrist; Bercier; Bowman; Christmann; Cook; DeMers; Fischer; Flakoll; Freborg; Heitkamp; Holmberg; Kelsh; Kilzer; Kinnoin; Klein; Krauter; Krebsbach; Kringstad; Kroeplin; Lee; Lindaas; Lyson; Mathern, D.; Mathern, T.; Mutch; Mutzenberger; Naaden; Nelson, C.; Nelson, G.; O'Connell; Redlin; Robinson; Sand; Schobinger; Solberg; St. Aubyn; Stenehjem, B.; Tallackson; Thane; Thompson; Tomac; Traynor; Urlacher; Wanzek; Wardner; Watne

**ABSENT AND NOT VOTING:** Grindberg; Nothing; Stenehjem, W.

SB 2052 passed and the title was agreed to.

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#### MOTION

**SEN. ST. AUBYN MOVED** that the absent members be excused, which motion prevailed.

#### MOTION

**SEN. ST. AUBYN MOVED** that the Senate be on the Fifth and Ninth orders of business and at the conclusion of those order, the Senate stand adjourned until 12:30 p.m., Friday, January 8, 1999, which motion prevailed.

#### REPORT OF STANDING COMMITTEE

**SB 2018: Appropriations Committee (Sen. Nothing, Chairman)** recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2018 was placed on the Eleventh order on the calendar.

#### REPORT OF STANDING COMMITTEE

**SB 2028: Political Subdivisions Committee (Sen. Lee, Chairman)** recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2028 was placed on the Eleventh order on the calendar.

**REPORT OF STANDING COMMITTEE**

**SB 2063: Agriculture Committee (Sen. Wanzek, Chairman)** recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2063 was placed on the Eleventh order on the calendar.

**REPORT OF STANDING COMMITTEE**

**SB 2077: Transportation Committee (Sen. B. Stenehjem, Chairman)** recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2077 was placed on the Eleventh order on the calendar.

**REPORT OF STANDING COMMITTEE**

**SB 2083: Government and Veterans Affairs Committee (Sen. Krebsbach, Chairman)** recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2083 was placed on the Eleventh order on the calendar.

**REPORT OF STANDING COMMITTEE**

**SB 2085: Transportation Committee (Sen. B. Stenehjem, Chairman)** recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2085 was placed on the Eleventh order on the calendar.

**REPORT OF STANDING COMMITTEE**

**SB 2091: Natural Resources Committee (Sen. Traynor, Chairman)** recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2091 was placed on the Eleventh order on the calendar.

**REPORT OF STANDING COMMITTEE**

**SB 2117: Government and Veterans Affairs Committee (Sen. Krebsbach, Chairman)** recommends **DO PASS** (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2117 was placed on the Eleventh order on the calendar.

**REPORT OF STANDING COMMITTEE**

**SB 2118: Political Subdivisions Committee (Sen. Lee, Chairman)** recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2118 was placed on the Eleventh order on the calendar.

**REPORT OF STANDING COMMITTEE**

**SB 2150: Industry, Business and Labor Committee (Sen. Mutch, Chairman)** recommends **DO PASS** (7 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2150 was placed on the Eleventh order on the calendar.

**FIRST READING OF SENATE BILLS**

Sens. Watne, Lyson, W. Stenehjem introduced:

**SB 2185:** A BILL for an Act to create and enact a new section to chapter 12-56 of the North Dakota Century Code, relating to the violation by parolees and probationers of the interstate compact for out-of-state supervision; and to provide a penalty.

Was read the first time and referred to the **Government and Veterans Affairs Committee**.

Sens. Watne, Lyson, W. Stenehjem introduced:

**SB 2186:** A BILL for an Act to create and enact two new sections to chapter 12.1-17 of the North Dakota Century Code, relating to contact by bodily fluids or excrement of an inmate; and to provide a penalty.

Was read the first time and referred to the **Judiciary Committee**.

Sens. Solberg, Bowman, Tomac and Reps. Berg, DeKrey, Meyer introduced:

**SB 2187:** A BILL for an Act to provide for a special fund; to amend and reenact sections 36-01-30, 36-05-12, 36-09-18, 36-22-03, 36-22-04, and 36-22-08 of the North Dakota Century Code, relating to feedlot registration fees, brand recording and inspection fees, and estray inspections; to repeal section 36-22-05 of the North Dakota Century Code, relating to the estray fund; to provide for a continuing appropriation; and to declare an emergency.

Was read the first time and referred to the **Agriculture Committee**.

Sen. Traynor and Reps. Brekke, Grosz, D. Johnson introduced:

**SB 2188:** A BILL for an Act to amend and reenact subdivision d of subsection 3 of section 1 and section 5 of chapter 511 of the 1997 Session Laws, relating to the authority of the state water commission to issue bonds to finance construction of an outlet to Devils Lake and to finance a statewide water development program.

Was read the first time and referred to the **Natural Resources Committee**.

Sen. Cook and Reps. R. Kelsch, Porter introduced:

**SB 2189:** A BILL for an Act to amend and reenact section 29-19-02 of the North Dakota Century Code, relating to a speedy trial.

Was read the first time and referred to the **Judiciary Committee**.

Sens. Wardner, Urlacher introduced:

**SB 2190:** A BILL for an Act to amend and reenact sections 43-36-04, 43-36-07, 43-36-11, and 43-36-15 of the North Dakota Century Code, relating to the state board of registration for professional soil classifiers, reciprocal registration, and registration fees.

Was read the first time and referred to the **Agriculture Committee**.

Sens. C. Nelson, O'Connell and Reps. Fairfield, S. Kelsh, Maragos introduced:

**SB 2191:** A BILL for an Act to provide for rights of organization and representation of state employees, collective bargaining negotiations between the state of North Dakota and its employees, establishment of a state employment relations board, and public employment relations.

Was read the first time and referred to the **Government and Veterans Affairs Committee**.

Sens. Holmberg, W. Stenehjem, Wardner and Reps. DeKrey, Hawken, Mahoney introduced:

**SB 2192:** A BILL for an Act to amend and reenact section 15-49-12 of the North Dakota Century Code, relating to the scope of school weapons policies.

Was read the first time and referred to the **Judiciary Committee**.

Sens. Solberg, B. Stenehjem, Wanzek and Reps. Lemieux, Nicholas, Renner introduced:

**SB 2193:** A BILL for an Act to create and enact three new sections to chapter 36-21 of the North Dakota Century Code, relating to the use of ultrasound equipment to determine pregnancy of livestock.

Was read the first time and referred to the **Agriculture Committee**.

The Senate stood adjourned pursuant to Senator St. Aubyn's motion.

**WILLIAM C. PARKER, Secretary**