

# Report of the Joint Committee on State-Tribal Relations to the 2025 Kansas Legislature

**CHAIRPERSON:** Representative Will Carpenter

**VICE-CHAIRPERSON:** Senator Larry Alley

**OTHER MEMBERS:** Senators Elaine Bowers, David Haley, Tom Holland, and Dan Kerschen; and Representatives John Alcala, Christina Haswood, Tom Kessler, and Sean Tarwater

**CHARGE**

***Receive Information and Make Recommendations on State and Tribal Relations***

KSA 46-2303 directs the Joint Committee to recommend modification of proposed gaming compacts and to meet, discuss, and hold hearings on issues concerning state and tribal relations. KSA 46-2303 also permits the Joint Committee to establish and transmit to the Governor proposed guidelines reflecting the public policies and state interests the Joint Committee will consider in reviewing proposed gaming compacts, make recommendations to the Governor that any gaming compact provide for the imposition and collection of state sales and excise taxes of non-gaming goods and services, hold public hearings on proposed gaming compacts, make recommendations on issues concerning state and tribal relations, and introduce legislation as deemed necessary.



# Joint Committee on State-Tribal Relations

## ANNUAL REPORT

### Conclusions and Recommendations

The Joint Committee on State-Tribal Relations recommended the approval of the proposed amendment to the Iowa Tribe of Kansas and Nebraska-Kansas Gaming Compact and introduced resolutions to that effect. [Note: On April 2, 2024, those resolutions were adopted: SR 1750 was adopted by the Senate, and HR 6045 was adopted by the House of Representatives.]

*Proposed Legislation:* None.

### BACKGROUND

The Joint Committee on State-Tribal Relations (Committee), created in 1993, is required by KSA 46-2302 to:

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

KSA 2023 Supp. 46-2303 authorizes the Committee to:

- Establish and transmit to the Governor proposed guidelines reflecting the public policies and state interests, as embodied in the constitution, statutes, and case law of the State of Kansas, consistent with the Indian Gaming Regulatory Act (25 USC § 2701 *et seq.*), that the 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 non-gaming goods and services to persons other than tribal members and imposition and collection of state income tax on revenues derived from sales of non-gaming goods and services;

- Hold public hearings on proposed gaming compacts submitted to the Committee by the Governor;
- Make recommendations on issues concerning state and tribal relations;
- Introduce legislation as deemed necessary in performing its functions; and
- Meet at any time and place within the state on the call of the chairperson.

The Committee is composed of 12 members: 5 from the House of Representatives; 5 from the Senate; the Governor, or the Governor's designee; and the Attorney General, or the Attorney General's designee. At the commencement of each regular session of the Legislature, the Governor, or the Governor's designee, is statutorily required to call an organizational meeting of the Committee to elect a chairperson, vice-chairperson, and ranking minority member from its membership.

## COMMITTEE ACTIVITIES

The Committee met twice during the 2024 Session (February 28 and April 1) and once during the 2024 Interim (September 11), as authorized by the Legislative Coordinating Council.

### February 28 Meeting

The Committee met for the purposes of organizing. A representative of the Office of the Governor called the organizational meeting of the Committee to elect the Committee's leadership, pursuant to KSA 2023 Supp. 46-2303. The Committee elected a chairperson, vice-chairperson, and ranking minority member.

The Committee also heard from representatives of three Tribes in Kansas: Prairie Band Potawatomi Nation, Iowa Tribe of Kansas and Missouri (Iowa Tribe), and Kickapoo Tribe in Kansas. The Tribal Chairperson of each Tribe discussed various issues, including tribal recognition, water supplies, road construction and maintenance, taxes, and state oversight and collaboration.

### April 1 Meeting

The Committee met to consider proposed amendments to the gaming compact between the Iowa Tribe and the State of Kansas.

#### *Review of Committee Statutory Responsibilities*

A Senior Assistant Revisor of Statutes, Office of Revisor of Statutes, reviewed a memorandum discussing the statutory provisions governing the Committee's review of gaming compacts. The Senior Assistant Revisor stated the Committee could take one of four actions:

- Recommend changes to the proposed gaming compact;
- Approve the proposed gaming compact;
- Reject the proposed gaming compact; or
- Report the proposed gaming compact to the Legislature without recommendation.

The Senior Assistant Revisor noted the statute prohibits the Governor, or the Governor's designee, and the Attorney General, or the Attorney General's designee, from voting on any

motion to approve, reject, or report the proposed gaming compact without recommendation.

#### *Review of Proposed Amendments*

The Chief Counsel, Office of the Governor, explained the amendment applies to the 1995 Compact between the State of Kansas and the Iowa Tribe and consists of ten sections. The Chief Counsel briefly explained each section. The Chief Counsel also stated the amendment was negotiated with the Council for the Iowa Tribe; the negotiations proceeded in good faith; and those involved in the negotiations were pleased to bring the amendment before the Committee for consideration.

The Outside Counsel for the Iowa Tribe stated the proposed amendment between the Iowa Tribe and the State of Kansas complies with federal law.

### September 11 Meeting

The Committee met to review various topics related to state-tribal relations and receive an update from each of the four federally recognized Tribes in Kansas: the Iowa Tribe, Prairie Band Pottawatomi Nation, Kickapoo Tribe in Kansas, and Sac and Fox Nation of Missouri in Kansas and Nebraska.

#### *Review of Topic and Resources*

A Senior Research Analyst from the Kansas Legislative Research Department (KLRD) reviewed the Committee's study topic and additional resources provided by staff.

#### *Historical Overview of the Joint Committee on State-Tribal Relations*

A Research Analyst from KLRD provided an overview of the Committee's meeting history and stated the Committee has met for purposes beyond organizing ten times.

#### *Review of Recent State-Tribal Legislation*

A Senior Research Analyst from KLRD provided brief summaries of state-tribal legislation introduced, passed, or enacted in Kansas since 2013 and state-tribal legislation enacted in other states since 2019.

## ***Overview of the Kansas Native American Affairs Office***

The Executive Director provided an overview of the Kansas Native American Affairs Office (KNAA) and stated KNAA is responsible for maintaining and enhancing the State's government-to-government relationship with the four sovereign Tribal Nations of Kansas.

The Executive Director explained KNAA works with the constitutionally elected tribal officials to assist with issues on tribal lands and to access programs and services throughout state agencies.

The Executive Director briefly discussed the history of the four federally recognized Tribes in Kansas, including the locations of the Tribes' reservations and treaties between the Tribes and the federal government. The Executive Director also provided a brief overview of the structure of each Tribe, which includes a Tribal Constitution approved by the U.S. Secretary of the Interior.

The Executive Director provided detailed information about federal recognition of a tribe, tribal sovereignty, tribal self-determination, tribal citizenship, and tribal jurisdiction.

The Executive Director also highlighted KNAA's 2025 initiatives: re-instituting the Native American Law Symposium and assuming the responsibilities of the Native American Legislative Day at the Capitol.

## ***Overview of the Kansas State Gaming Agency***

The Executive Director of the Kansas State Gaming Agency (KSGA) provided an overview of the agency, including the agency's mission and goal of protecting the integrity of gaming by ensuring compliance with Tribal-State Compacts, the Tribal Gaming Oversight Act, and all applicable federal and state laws.

The Executive Director stated the KSGA's staff includes enforcement agents who are sworn law enforcement officers, special investigators, and technical and support staff. The Executive Director also stated the KSGA is responsible for conducting background investigations on all employees connected with gaming operations at each casino and on each vendor that sells more

than \$10,000 of gaming equipment to a tribal casino in Kansas each year.

The Executive Director provided a brief history of the gaming compacts between the State of Kansas and the four Tribes in Kansas and the establishment and operation of Class III casinos. The Executive Director noted that two Class II casinos located in the State of Kansas are not subject to a current gaming compact and are not regulated by the State.

The Executive Director also briefly discussed the KSGA's relationship with the Kansas Racing and Gaming Commission and the differences between the two agencies.

## ***Presentation on Tribal Water Rights***

A professor from Washburn University School of Law presented information about tribal water rights and tribal sovereignty and justice.

The professor discussed the basic principles of western water law, issues associated with water rights, and over-appropriation as the result of those issues.

The professor discussed the Kansas Water Appropriation Act of 1945 (KWAA). The KWAA adopted the prior appropriation doctrine ("first in time, first in right") statewide for both surface water and groundwater and put the administration of all water rights in Kansas under the jurisdiction of the Chief Engineer. The professor explained the KWAA and the administration thereof has contributed to over-appropriation of water resources and the under-protection of senior water rights.

The professor briefly discussed Kansas water rights data and highlighted the decrease in thickness of the Kansas High Plains Aquifer using data from the Kansas Geological Survey. He also provided information from the Kansas Department of Agriculture regarding groundwater pumping and the depletion of stream flows statewide.

The professor discussed historical events, legislation, and court decisions impacting tribal rights from time immemorial through 1981. Legislation highlighted included the General Allotment Act of 1887, which allowed for tribal

land that was held by the tribe as a corporate body to be individually parceled out and allotted to individual members of the tribe. Three court decisions were discussed:

- *Winters v. United States* (1908);
- *Arizona v. California* (1963); and
- *Colville Confederated Tribes v. Walton* (1981).

Based on the findings in these decisions, the professor stated, tribal water rights are strong, established, and consistently recognized under federal law. However, he further explained, even though courts may find that a tribe is entitled to large amounts of water and has a senior water right, there is no guarantee that such tribe will get the actual water to which it is entitled. He stated that political support is crucial to translate legal rights into actual water and water projects.

The professor explained three sovereigns are involved when recognizing and adjudicating tribal water rights:

- The United States;
- Native American Tribes; and
- The State of Kansas.

The professor also noted that adjudications are a way to reconcile the federal system of water rights and state systems of water rights and are typically authorized by state legislation.

The professor also provided information about tribal water right settlements, common settlement terms, and examples of settlements in other states.

The professor concluded by stating that negotiated settlements are superior to litigated results; states, tribes, and the United States have accomplished creative and effective solutions; trustworthy data and enforceable laws are critical; congressional support is usually the most difficult obstacle; and Kansas faces fewer obstacles in terms of hydrology and state-tribal relations to reaching effective settlements than do other western states.

#### ***Update from the Prairie Band Potawatomi Nation***

The Tribal Chairman of the Prairie Band Potawatomi Nation (PBPN) provided historical

information about PBPN. The Chairman explained that the PBPN was a Great Lakes Tribe that was removed to Illinois, Missouri, and Iowa due to the Indian Removal Act of 1830. The PBPN later purchased more than 900 square miles within Kansas with funds that came from the land ceded in Illinois and Iowa; the PBPN began occupying its current reservation in Kansas in 1847. The Chairman also explained the “checkerboard” effect the General Allotment Act of 1887 had on the reservation land.

The Chairman reviewed the Kansas Act of 1940 and noted that, because of this act, Indians are the only individuals who may be prosecuted in three different courts.

The Chairman also highlighted various provisions of the *U.S. Constitution*, the *Kansas Constitution*, the Kansas-Nebraska Act of 1854, and the Act for the Admission of Kansas into the Union concerning tribal sovereignty.

The Chairman reviewed the PBPN’s struggle with county official overreach, legal representation, utility project developments, federal legislation, and taxes and stated that more must be done to support tribal sovereignty, self-sufficiency, and self-determination.

The Chairman also recommended the Legislature remove all blood quantum references from state laws and rules and regulations.

#### ***Update from the Iowa Tribe of Kansas and Nebraska***

The Tribal Historic Preservation Officer discussed the Iowa Tribe’s history and relocation, explained the State of Iowa is named after the Iowa, and stated Iowa is the heart of the Iowa Tribe’s homelands. The Deputy Tribal Historic Preservation Officer also discussed the importance of regaining tribal sovereignty.

The Tribal Chairman discussed concerns about the Iowa Tribe’s reservation lands located in northeast Kansas and southeast Nebraska, wildlife and hunting, water, law enforcement, and taxes. The Chairman stated that state-issued hunting permits have been used on Iowa Tribal lands and requested the Committee look into the issue. The Chairman also discussed water quality issues, such

as high nitrate levels. The Chairman stated the Iowa Tribe is in support of contesting the Kansas Act of 1940 and returning jurisdiction to the Tribes. The Chairman also stated that revenue from road maintenance performed by the Iowa Tribe is going to the county in which they reside through taxes.

### ***Update from the Kickapoo Tribe in Kansas***

The Tribal Council Secretary provided a presentation on the Kickapoo Tribe in Kansas' (Kickapoo Tribe) treaties and agreements with foreign entities. The Kickapoo Tribe has treaties and agreements with numerous foreign entities, including Canada, France, Great Britain, Mexico, and Spain, as well as the United States. The most recent treaty signed by the Kickapoo Tribe was with the United States in 1854, and all three bands of Kickapoo (the Kickapoo Tribe in Kansas, the Kickapoo Tribe of Oklahoma, and the Kickapoo Traditional Tribe of Texas) maintain treaty rights established by this treaty.

The Tribal Council Secretary highlighted provisions of the Kansas-Nebraska Act of 1854 and the Act for the Admission of Kansas into the Union concerning tribal sovereignty and provisions of the Kansas Act of 1940 that give criminal jurisdiction to the State of Kansas over Indian reservations.

The Tribal Council Secretary also discussed various tax-related issues the Kickapoo Tribe faces and suggested a tax compact between the Kickapoo Tribe and the State of Kansas as a possible solution to address the issues. The Tribal

Council Secretary provided examples of tax compacts entered into by other tribes and states and highlighted the key features of those compacts.

The Environmental Director for the Kickapoo Tribe discussed the Kickapoo Tribe's programs, grants, and initiatives to safeguard water. The Environmental Director also discussed the Kickapoo Tribe's challenges related to water resources and infrastructure. The Environmental Director concluded by providing several ideas to the Committee to further engagement, collaboration, and legislative support for the Kickapoo Tribe and clean water.

The Tribal Chairwoman requested that the Legislature establish subcommittees to address tribal issues.

### **CONCLUSIONS AND RECOMMENDATIONS**

The Committee recommended the approval of the proposed amendment to the Iowa Tribe of Kansas and Nebraska-Kansas Gaming Compact and introduced corresponding resolutions to provide legislative approval of the amendment to the compact.

[*Note:* On April 2, 2024, those resolutions were adopted: SR 1750 was adopted by the Senate, and HR 6045 was adopted by the House of Representatives.]

The Committee made no additional recommendations to the 2025 Legislature.