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## State-Tribal Relations Committee

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### 65th Montana Legislature

#### SENATE MEMBERS

JEN GROSS  
STEVE HINEBAUCH  
JASON SMALL  
FRANK SMITH

#### HOUSE MEMBERS

SHARON STEWART-PEREGOY--Chair  
ALAN DOANE--Vice Chair  
JAMES O'HARA  
RAE PEPPERS

#### COMMITTEE STAFF

HOPE STOCKWELL, Lead Staff  
LAURA SANKEY KEIP, Staff Attorney  
LAURA SHERLEY, Secretary

# MINUTES LOG

May 9, 2018  
Great Falls, Montana

Please note: This document is a Minutes Log and provides a notation of the time elapsed between the beginning of the meeting and the time at which the item was presented or discussed, a motion was made, or a vote was taken. The narrative presented here is provided only as a guide to the audio or video record of the meeting. The official discussion, motion, or vote is available on the audio or video archive of this meeting. The Legislature does not prepare a transcript of meeting activities. The time designation may be used to locate the referenced discussion on the audio or video recording of this meeting.

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Please contact the Legislative Services Division at 406-444-3064 for more information.

#### **COMMITTEE MEMBERS PRESENT**

REP. SHARON STEWART-PEREGOY, Chair  
REP. ALAN DOANE, Vice Chair

SEN. STEVE HINEBAUCH  
SEN. FRANK SMITH

REP. JAMES O'HARA  
REP. RAE PEPPERS

#### **COMMITTEE MEMBERS EXCUSED**

SEN. JEN GROSS  
SEN. JASON SMALL

#### **STAFF PRESENT**

HOPE STOCKWELL, Lead Staff  
LAURA SANKEY KEIP, Staff Attorney  
LAURA SHERLEY, Secretary

## **VISITORS' LIST** ([Attachment 1](#))

## **AGENDA** ([Attachment 2](#))

## **COMMITTEE ACTIONS**

### **RECONVENE**

00:00:01 Rep. Stewart-Peregoy reconvened the meeting at 9:08 a.m. The committee secretary took roll ([Attachment 3](#)).

### **ADMINISTRATIVE MATTERS**

#### **STRC Budget Overview -- Ms. Stockwell**

00:00:55 Ms. Stockwell gave an overview of the committee budget.

#### **Committee questions**

00:01:53 Rep. Doane asked for clarification on the projected ending balance of the committee budget.

00:02:39 Rep. Stewart-Peregoy asked the committee to schedule September 7, 2018 for a committee meeting.

## **DISCUSSION OF TOURS TAKEN ON MAY 8 AT FORT BELKNAP**

### **STRC Members**

00:03:33 Rep. Stewart-Peregoy asked the committee to discuss the May 8 tours.

00:04:23 Committee discussion on May 8 tours at Fort Belknap.

00:07:54 Rep. Stewart-Peregoy asked Sen. Smith for clarification on the discussion on the jurisdictional compact issues with the Fort Belknap Indian Community Council. The question was redirected to Ms. Stockwell.

00:09:51 Sen. Smith asked Ms. Stockwell if there is language in statute that recognizes the coalition among all state tribes regarding gaming rights.

00:10:41 Rep. Stewart-Peregoy asked Sen. Smith if he wanted to direct staff to draft bill language that would recognize the coalition.

00:11:59 Rep. Doane commented on casinos on and off the reservations and the effects of gambling in poverty stricken areas.

00:13:23 Sen. Smith recommended the committee review the topic and discussion at the next committee meeting and withhold action at this time.

00:14:07 Rep. Stewart-Peregoy commented on the issue of gaming compacts and asked the committee for further discussion on the tours and issues of medicare expansion and the XL Keystone Pipeline.

00:15:40 Rep. Stewart-Peregoy asked Sen. Smith if there was once support from the Fort Peck tribe for the pipeline and commented on the Tribal Historic Preservation Office's (THPO) protection of historical sites in the pathway of the pipeline.

00:18:10 Sen. Smith commented on the historical sites in the pipeline's pathway.

00:18:45 Rep. Stewart-Peregoy commented on the sacred areas in and around the pipeline's pathway.

00:19:08 Rep. O'Hara asked if there are guidelines on how far pipelines and construction need to be away from historical buildings and sacred sites.

00:24:08 Ms. Stockwell commented on provisions in the National Historic Preservation Act that could have guidelines and will deliver this information to the committee.

00:24:45 Rep. O'Hara asked if similar situations of construction in and around historical sites are reviewed case-by-case by the tribal council.

00:26:20 Sen. Hinebauch asked if there was a map or list of the historical sites that are in the pipeline's pathway and has been given to the pipeline planner.

00:29:44 Committee discussion on the XL Keystone Pipeline and the historical sites that currently lie in the pipeline's pathway.

00:40:10 Rep. Stewart-Peregoy commented on the water diversion at the Zortman-Landusky site and asked the committee for discussion on the issue.

00:41:48 Rep. Stewart-Peregoy commented on the Hecla mining issue and asked what was the negotiation with Fort Belknap on water rights.

00:43:05 Rep. O'Hara commented on the water rights issue and asked Rep. Stewart-Peregoy if the tribe would be liable for clean up if damage were done to the waterways. Ms. Sankey Keip also responded to the question.

00:45:14 Sen. Smith commented on the issue of jurisdiction and roads used by hunters around Fort Belknap.

00:47:07 Ms. Stockwell said she would talk with the Department of Fish, Wildlife, and Parks and Fort Belknap President Werk to get more information for the committee.

**Public comment**

None

**PUBLIC COMMENT ON ANY MATTER NOT CONTAINED IN THIS AGENDA AND THAT IS WITHIN THE JURISDICTION OF THE STRC**

00:48:51 Jason Killsback, President, Northern Cheyenne Tribe  
 00:50:41 Conrad Fisher, Vice President, Northern Cheyenne Tribe

**REVIEW OF HB 562, 2015 -- Ms. Sankey Keip**

00:53:22 Ms. Sankey Keip gave the committee a review of HB 562 (2015): *Require agency reporting on financial assistance to tribes* ([Exhibit 1](#)) and ([Exhibit 2](#)).

**Questions/discussion -- STRC**

00:59:48 Rep. Stewart-Peregoy asked what the total FTE impact of the bill was.

01:01:13 Sen. Smith asked if the bill's fiscal note reviewed the cost of the program so that it could be compared to other programs in the state.

01:02:05 Sen. Smith asked if state tribes will need to change their respective programs because they are not state programs.

01:02:50 Rep. Peppers asked why funding oversight is needed on the program and asked how reporting will benefit the tribes.

01:06:25 Rep. Stewart-Peregoy commented on the HB 562 (2015) hearing and the Native American Caucus' position on the bill.

01:09:12 Rep. Doane commented on the state's administrative fees that are charged on passthrough monies and asked Ms. Stockwell if a notification went to the tribes that HB 562 (2015) was on the agenda for discussion.

01:10:35 Sen. Smith commented on the notification that went out to tribes regarding HB 562 (2015) being on the agenda and asked for clarification of the language in section two of the bill regarding funding for tribal entities.

01:12:19 Rep. Doane commented on the bill's FTE.

01:13:20 Sen. Hinebauch commented on saving money by preparing a new fiscal note.

01:13:46 Rep. Stewart-Peregoy commented on the bill's fiscal note and potentially preparing a new fiscal note and if there will be a decision to support the bill.

### **Public comment**

01:17:36 Jason Killsback, President, Northern Cheyenne Tribe

### **Questions/discussion -- STRC**

01:19:39 Rep. Stewart-Peregoy asked Ms. Sankey Keip and Ms. Stockwell what the state policy is regarding tribal consultation on tribal issues.

01:22:27 Rep. Stewart-Peregoy commented on state-tribe communications and asked Ms. Stockwell if there will be allotted time during the committee's September 7, 2018, meeting to take action on the bill.

01:27:20 Rep. Doane recommended allowing more time for tribes to comment on the bill.

01:27:50 Ms. Stockwell said she would send a letter to the tribes notifying them of the planned discussion on the bill at the September 7, 2018, committee meeting.

### **AMERICAN INDIAN STUDENT ACHIEVEMENT STUDY**

#### **English Learner funding concepts -- Pad McCracken, research analyst, EDIC**

01:28:47 Mr. McCracken reviewed the background of English Learner programs and gave information on funding concepts to support them ([Exhibit 3](#)).

### **Questions/discussion -- STRC**

01:46:25 Rep. Stewart-Peregoy commented on the funding for Indian Country that was part of the budget cuts and asked Mr. McCracken for clarification of the English Learner funding and potential committee legislation.

01:49:39 Rep. Doane asked if a portion of natural resource taxes could be diverted to fund the program.

01:51:50 Rep. Stewart-Peregoy asked if there was a discussion in the Education Interim Committee to support the expansion of school districts in concentric circles.

01:54:28 Rep. Stewart-Peregoy commented on the history of tax diversion and how this could impact English Learner programs.

02:00:24 Rep. Peppers commented on extending the sunset for the Montana Indian Language Preservation Program (MILPP) and the Cultural Integrity and Commitment Act (CICA), and the importance of strengthening both English and tribal languages for educational success.

### **Public comment**

None

### **Committee action**

02:02:21 Rep. Stewart-Peregoy asked the committee if it wished to take any action.

02:03:19 Rep. Stewart-Peregoy commented on Rep. Peppers' proposal to lift the sunset date on SB 272 (2015).

### **Motion**

02:04:29 Rep. Peppers moved to extend the sunset dates of the MILPP and CICA.

### **Discussion on the motion**

02:04:55 Rep. Doane asked the committee to postpone action until the last committee meeting.

### **Motion withdrawn**

02:06:30 Rep. Peppers withdrew her motion.

### **Questions/discussion -- STRC**

- 02:06:37 Ms. Stockwell reviewed options of next steps the committee can take and asked for direction to the staff.
- 02:08:17 Rep. Stewart-Peregoy commented on the information requested by the committee on English Learner funding and asked Mr. McCracken for clarification of immersion program funding.
- 02:13:20 Rep. Stewart-Peregoy commented on the recommendations the committee can take on immersion program funding and asked if the committee is supportive of reviewing funding mechanisms for language immersion and preservation.
- 02:15:24 Rep. Stewart-Peregoy asked Rep. Doane for clarification of his recommendation to review funding sources.
- 02:18:37 Ms. Stockwell recommended that committee staff could research and deliver information to the committee on funding options and then the members could review these options at their next meeting.

### **SJ 20 FOLLOW UP REQUESTED IN MARCH**

#### **How high poverty areas are determined for the Big Sky Economic Development Program -- Pat Murdo, research analyst, Economic Affairs Interim Committee (EAIC)**

- 02:20:30 Ms. Murdo presented on how high poverty areas are determined for the Big Sky Economic Development Program ([Exhibit 4](#)).

### **Public comment**

- 02:37:58 Jason Killsback, President, Northern Cheyenne Tribe

### **Questions/discussion -- STRC**

- 02:40:00 Rep. Stewart-Peregoy commented on her EAIC membership and recommended the committee not take action on the issue until Sen. Small can be part of the discussion.

**BREAK** (Reconvened at 12:19 p.m.)

### **MISSING PERSONS, POTENTIAL LEGISLATIVE PROPOSALS**

#### **Review of concepts -- Ms. Stockwell and Jen Viets, Criminal Justice Information Network (CJIN) Services program manager**

- 02:44:12 Ms. Stockwell reviewed legislative proposals on missing persons ([Exhibit 5](#)), ([Exhibit 6](#)), ([Exhibit 7](#)), ([Exhibit 8](#)), ([Exhibit 9](#)), and ([Exhibit 10](#)).

### **Questions/discussion -- STRC**

- 02:52:55 Rep. Stewart-Peregoy asked the committee how it would like to proceed with the potential legislation.
- 02:54:07 Rep. Doane asked Ms. Stockwell for clarification of the Department of Justice's vacancy savings of .5 FTE. The question was redirected to Ms. Viets.
- 02:58:47 Ms. Stockwell continued the presentation ([Exhibit 11](#)).
- 03:02:22 Ms. Viets

### **Questions/discussion -- STRC**

- 03:11:48 Rep. Doane asked Ms. Stockwell what the MCA definition of 'law enforcement' includes. The question was redirected to Rachel Weiss, research analyst, Law & Justice Interim Committee.

03:13:50 Rep. Doane asked Ms. Weiss if the potential legislation requires all law enforcement authorities to participate in missing children cases.

03:16:00 Ms. Stockwell continued the presentation (see Exhibit 5), (see Exhibit 6), ([Exhibit 12](#)), and ([Exhibit 13](#)).

03:23:59 Ms. Viets

03:27:56 Melissa Schlichting, Montana deputy attorney general

03:30:23 Ms. Viets

#### Questions/discussion -- STRC

03:32:01 Rep. Stewart-Peregoy asked how the proposal would interface with the Indian Child Welfare Act.

03:33:41 Ms. Stockwell continued the presentation.

03:33:50 Ms. Sankey Keip (see Exhibit 7), (see Exhibit 8), and ([Exhibit 14](#))

#### Questions/discussion -- STRC

03:40:07 Rep. Peppers asked Ms. Sankey Keip if any cost analysis has been done on the proposed child photo directory program.

03:40:56 Ms. Sankey Keip continued the presentation (see Exhibit 14).

03:43:27 Ms. Stockwell

#### Public comment

03:44:41 Conrad Fisher, Vice President, Northern Cheyenne Tribe

#### Questions/discussion -- STRC

##### LCdoj1

03:53:52 Rep. Stewart-Peregoy asked the committee to review and discuss LCdoj1 for potential action at the committee's July 6, 2018, meeting and gave direction to staff to amend the bill draft to reflect the committee's requested changes.

##### LCdoj2

03:57:18 Rep. Stewart-Peregoy asked the committee to review and discuss LCdoj2 and asked Ms. Weiss if the definition of 'law enforcement' needs to be further defined.

04:00:50 Rep. Stewart-Peregoy asked Ms. Viets for clarification of the potential legislation's intent regarding tribal law enforcement.

04:03:04 Rep. Doane asked if the bill draft language is too inclusive regarding law enforcement authorities.

##### LCdoj3

04:05:46 Rep. Stewart-Peregoy asked the committee to review and discuss LCdoj3 and asked Ms. Stockwell for clarification of the bill draft language.

04:08:18 Rep. Peppers commented on the importance of the potential study.

04:09:10 Rep. Stewart-Peregoy asked Rep. Peppers for clarification on her language change request.

##### LCdoj4

04:11:14 Rep. Stewart-Peregoy asked the committee to review and discuss LCdoj4 and asked Ms. Sankey Keip for clarification of the proposal process.

04:13:08 Rep. Stewart-Peregoy asked Ms. Stockwell for clarification on the draft language.  
04:13:41 Rep. Stewart-Peregoy asked Ms. Schlichting to speak on the custodial orders by the judicial system regarding a child taken outside of the reservation.  
04:15:00 Rep. Stewart-Peregoy asked Ms. Schlichting for clarification of the bill draft language that involves federal, state, and tribal law enforcement.  
04:17:21 Sen. Smith commented on the draft bill language regarding law enforcement.  
04:18:07 Ms. Stockwell made clarifying comments on the bill draft language regarding custody orders.  
04:18:28 Rep. Stewart-Peregoy commented on the bill draft intent and asked Ms. Weiss to comment on the discussion.  
04:20:10 Rep. Stewart-Peregoy commented on the importance of legislative intent.

#### LCFOTO

04:20:45 Rep. Stewart-Peregoy asked the committee to review and discuss LCFOTO.  
04:21:13 Rep. Doane commented on the FTE and funding to implement the program.  
04:21:59 Rep. Stewart-Peregoy asked Ms. Sankey Keip if there will be a fiscal note.  
04:23:11 Rep. Stewart-Peregoy asked Rep. Doane if he would like to request a fiscal note or an estimated cost review of the program.  
04:25:36 Sen. Smith commented on the reservation's policy regarding the release of juvenile information.  
04:26:10 Rep. Stewart-Peregoy asked Ms. Sankey Keip to comment on how the program would affect public schools on reservations.  
04:26:54 Sen. Smith asked Ms. Sankey Keip if it would be a privacy issue to collect juvenile information and releasing that information to law enforcement.  
04:28:21 Sen. Smith asked Ms. Sankey Keip how the information will be maintained.  
04:29:58 Rep. Doane asked Ms. Sankey Keip if there is language in the bill draft that would include a form that allows parents to opt-in or opt-out of the program.  
04:31:23 Rep. Doane commented on allowing parents to opt-in to the program.  
04:32:58 Sen. Smith asked the committee to review further options before taking action.  
04:34:33 Ms. Stockwell made clarifying comments regarding the draft letter to Superintendent Elsie Arntzen (see Exhibit 8).

#### JOINT SESSION WITH LITTLE SHELL TRIBAL COUNCIL

04:35:26 Rep. Stewart-Peregoy welcomed the council and reviewed the studies and topics the committee is studying.  
04:36:40 Chairman Gerald Gray commented on the tribe's effort to gain federal recognition, the buffalo hunts in Gardiner and treaty rights, the tribe's intent to purchase a quarry, and the issue of the Keystone XL pipeline's pathway running through tribal cultural sites.  
04:40:08 Rep. Doane asked Chairman Gray where the tribe's traditional borders were located.  
04:42:38 Rep. Peppers asked Chairman Gray if the tribe had received communication from the federal government on the resolution for federal recognition.  
04:44:48 Sen. Hinebauch asked how many members are in the Little Shell Tribe.  
04:45:23 Rep. Doane asked Chairman Gray how the tribe operates if it is not federally recognized.  
04:48:19 Rep. O'Hara asked Chairman Gray how the purchased quarry would be structured and how monies would be controlled under a 501(c)3.

- 04:49:11 Committee and council discussion on the Gardiner buffalo hunts and treaty rights, and the Keystone XL pipeline's pathway through cultural sites.
- 04:58:37 Sen. Hinebauch asked Chairman Gray if he has had communication with the Keystone XL pipeline corporation and recommended the tribe be involved in the plans of the pipeline to reroute the pathway away from cultural sites.
- 04:59:57 Rep. Stewart-Peregoy asked Chairman Gray if the state historic preservation officer had been contacted regarding the Keystone XL pipeline.
- 05:00:23 Sen. Smith recommended creating a map of the cultural sites that are in the pipeline's pathway.
- 05:02:06 Rep. Stewart-Peregoy commented on the committee's work on these issues.
- 05:02:30 Sen. Smith commented on the size of the quarantine facility for bison on the Fort Peck reservation.
- 05:03:00 Rep. Stewart-Peregoy asked Chairman Gray for maps of the cultural sites in the path of the Keystone XL pipeline. Chairman Gray said he would provide a map.

**BREAK** (Reconvened at 3:01 p.m.)

**CRIMINAL JURISDICTION IN INDIAN COUNTRY: AN OVERVIEW -- Maylinn Smith, Co-Director Margery Hunter Brown Indian Law Clinic, University of Montana**

- 05:05:45 Ms. Smith gave the committee an overview of criminal jurisdiction in Indian Country ([Exhibit 15](#)).

**Questions/discussion -- STRC**

- 05:14:37 Rep. Stewart-Peregoy commented on the presentation, the public comment that was given on the issue, and asked Ms. Smith to review the history of criminal jurisdiction in Indian Country.
- 05:23:44 Rep. Stewart-Peregoy asked for clarification on the court case of Crow Dog vs. Spotted Tail (1868).
- 05:25:32 Rep. Stewart-Peregoy asked what obstacles would the Crow Dog vs. Spotted Tail (1868) case have today if the tribe had a recognized traditional tribal court.
- 05:27:44 Rep. Stewart-Peregoy asked Ms. Smith to review Public Law 280 (1953).
- 05:31:00 Ms. Smith continued her presentation.

**Questions/discussion -- STRC**

- 05:33:55 Rep. Stewart-Peregoy asked what the court decision was on the 9th circuit for tribal membership and how it interfaces into the Jim Crow laws before 1850.
- 05:35:58 Rep. Stewart-Peregoy commented on the preliminary cases of state versus tribal nations that helped shape Indian law.
- 05:40:50 Rep. O'Hara asked if a Native American commits an offense and requests a defender, would they receive a state public defender or a tribal public defender.
- 05:42:21 Rep. Doane asked how the state legislature can help streamline the process.
- 05:43:57 Rep. Doane asked if the state tribes could create their own compacts and negotiate jurisdictional agreements without federal government assistance.
- 05:45:47 Rep. Stewart-Peregoy commented on domestic violence crimes in Indian Country and asked Ms. Smith to comment on the Indian Child Welfare Act (ICWA).
- 05:49:20 Rep. Stewart-Peregoy asked Ms. Smith to speak on the involvement of the Bureau of Indian Affairs (BIA) in these issues.
- 05:51:11 Rep. Stewart-Peregoy spoke on the concerns regarding missing persons and children and human trafficking in Indian Country.

**BREAK** (Reconvened at 4:01 p.m.)

**STATE, FEDERAL, AND TRIBAL PERSPECTIVES ON JURISDICTION RELATED TO DRUG CRIMES, MISSING PERSONS, HUMAN TRAFFICKING, AND VIOLENCE AGAINST WOMEN IN INDIAN COUNTRY**

**Melissa Schlichting, Montana deputy attorney general**

**Kurt Alme, U.S. attorney**

**Jared Cobell, assistant U.S. attorney and tribal liaison**

**Travis Burrows, FBI supervisory senior resident agent**

05:58:42 Ms. Schlichting  
06:04:08 Mr. Alme  
06:08:26 Mr. Cobell  
06:10:23 Mr. Burrows  
06:15:01 Fawn Williamson, Victim Witness Specialist, Fort Belknap Indian Community  
06:15:12 Brandy King, councilwoman, Fort Belknap Indian Community Council  
06:15:34 Ms. Smith  
06:16:04 Ms. King  
06:20:57 Ms. Williamson  
06:24:49 Ms. Smith

**Questions/discussion -- STRC**

06:25:41 Rep. Stewart-Peregoy asked the panel for discussion and possible solutions to the issues of tribal jurisdiction.  
06:47:22 Rep. Stewart-Peregoy asked the panel what type of training their respective agencies have for tribal communities.  
06:57:50 Rep. Stewart-Peregoy asked the panel to discuss the implementation process of federal law in Indian Country.  
07:13:07 Committee and panel discussion on implementation issues.  
07:25:05 Rep. Peppers commented on the work that can be done by the tribes and the community and the need for better criminal resolutions and laws.  
07:28:18 Sen. Smith commented on law enforcement on the Fort Peck Reservation.  
07:36:18 Sen. Hinebauch commented on tribal jurisdiction and the information the committee has received from the presenters.  
07:38:23 Rep. O'Hara commented on the issues of criminal jurisdiction in Indian Country and thanked the panel for their presentation.  
07:39:16 Rep. Doane asked the panel to comment on how federal government is handling the issue of criminal jurisdiction in Indian Country.  
07:57:42 Rep. Stewart-Peregoy thanked the panel for its time and presentation.

**Public comment**

None

**RECESS**

08:03:15 Rep. Stewart-Peregoy recessed the meeting at 6:10 p.m. to reconvene May 10, 2018, in Great Falls, MT.