



State-Tribal Relations Interim Committee

58th Montana Legislature

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SENATE MEMBERS

JOHN BOHLINGER--Chair
EDWARD BUTCHER
KEN HANSEN
CAROLYN SQUIRES

HOUSE MEMBERS

CAROL JUNEAU--Vice Chair
BRUCE MALCOLM
RICK RIPLEY
JONATHAN WINDY BOY

COMMITTEE STAFF

CONNIE ERICKSON, Research Analyst
EDDYE MCCLURE, Staff Attorney
DAWN FIELD, Secretary

MINUTES

December 5, 2003

Room 137, State Capitol
Helena, Montana

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division.
Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.

COMMITTEE MEMBERS PRESENT

SEN. JOHN BOHLINGER, Chair
REP. CAROL JUNEAU, Vice Chair

SEN. EDWARD BUTCHER
SEN. KEN HANSEN
SEN. CAROLYN SQUIRES

REP. BRUCE MALCOLM
REP. RICK RIPLEY

COMMITTEE MEMBERS ABSENT

REP. JONATHAN WINDY BOY

STAFF PRESENT

CONNIE ERICKSON, Research Analyst
EDDYE MCCLURE, Staff Attorney
DAWN FIELD, Secretary

AGENDA & VISITORS

Agenda. Attachment #1
Visitors' list, Attachment #2

COMMITTEE ACTION

- approved the August 27, 2003, minutes as written.
- approved the September 29, 2003, minutes as written.

CALL TO ORDER AND ROLL CALL

Sen. Bohlinger called the meeting to order at 9:30 a.m. Roll call was taken, Rep. Windy Boy was excused and all other members were present.

Sen. Squires **moved** to adopt the August 27, 2003, minutes as written. The motion passed unanimously on a voice vote.

Rep. Ripley **moved** to adopt the September 29, 2003, minutes as written. The motion passed unanimously on a voice vote.

JOBs FOR MONTANA GRADUATES (JMG), NANCY ELLIOTT, DEPARTMENT OF LABOR AND INDUSTRY (DOLI), presented a fact sheet explaining the JMG program (Exhibit #1), statistics listing how the program affects American Indian Reservation schools (Exhibit #2), and an update reviewing the 2003 JMG activities, training opportunities, and competitions (Exhibit #3).

Sen. Squires asked what criteria students had to meet to participate in the JMG program. Ms. Elliott said the program was designed for any student considered to be "at-risk" and the definition of "at-risk" was left very open and broad. She said the final decision on what students would benefit most from the program was left to the local advisory council.

Rep. Juneau asked if the JMG program is designed for high schools and if students enter the program as freshmen. Ms. Elliott said within the JMG program, there are a variety of opportunities. Some of the programs are designed specifically for seniors, while others are available to the younger students as well.

Rep. Juneau asked how the JMG program is funded. Ms. Elliott said the funding is provided by the general fund through sub-grants to the school. The participating schools pay the teachers salaries, but the programs, competitions, and training are funded by the grants.

Rep. Juneau asked if there is an attempt being made to bring high school dropouts back into the program. Ms. Elliott said the programs tracks the students for twelve months after dropping out and makes every effort to bring the student back to the program.

Rep. Juneau said approximately 80% of Indian students that drop out do so in eighth or ninth grade and she would like to know what was being done to address problems in that age group. She said there needs to be some strategies developed to retrieve these students. Ms. Elliott said the JMG program provides for that. She also said there has been a lot of interest expressed in developing a program specifically for middle school-aged students and said the Harlem Middle School is in its first year of such a program. She mentioned there is a pilot project underway in a Maine middle school as well.

Rep. Malcolm commented that self-esteem and self-confidence are as important to a child's success as academic skills and commended Ms. Elliott for making it a focus of the program. Ms. Elliott said the curriculum for each grade includes activities for building self-esteem, along with the skills taught to ensure success in the job market, such as public speaking, proper grooming and attire, teamwork and leadership skills, and communication, etc.

Sen. Hansen asked Ms. Elliott if she had any statistics for schools that are not participating in the JMG program for comparison. Ms. Elliott referred him to the back page of Exhibit #2 and said the state statistics for the same year were listed there. Sen. Hansen asked her if it was difficult to track students who drop out of the program. Ms. Elliott said it was difficult. The staff works very hard and puts a lot of time and resources into staying in touch with these students and works very hard to bring them back. She added they have a very good success rate, with only 5% or less of students not returning.

Sen. Bohlinger referred to the statistics for the Northern Cheyenne Tribal School and the Lame Deer School in Exhibit #2. He said he was puzzled that two communities so close together could have such varying success rates and asked Ms. Elliott to explain. Ms. Elliott said in her opinion, the disparity was likely due to the fact that the JMG program is very new in the Northern Cheyenne School and the success is highly dependent on the job specialists (teachers) administering the program.

Sen. Squires asked the Committee to keep in mind the JMG program was established as a result of Human Resource Development Council (HRDC) budget cuts and was politically motivated. She said she would prefer to see this type of program back under the HRDC but that it seemed to be providing the needed coverage.

Sen. Squires said she would also like more information on the on-going Middle School pilot projects in Maine and Harlem, MT, and asked Ms. Elliott to report back to the Committee at a future meeting.

Rep. Juneau said she had a list of information requests she would like Ms. Elliott to provide to the Committee at the March meeting:

- replace percentages with actual numbers, as listed in Exhibit #2;
- a specific list of barriers encountered by the students;
- follow-up information to the Committee on both the Harlem Middle School and the Maine Middle School projects;
- a detailed JMG budget; and
- credits earned by JMG graduates.

Ms. Elliott agreed to present this information at the March meeting.

DEPARTMENT OF FISH, WILDLIFE, AND PARKS (DFWP), LARRY PETERMAN, CHIEF OF FIELD OPERATIONS appeared before the Committee in response to concerns expressed by the Fort Belknap Tribe that Pittman-Robertson (PR) and Dingell-Johnson (DJ) Funds were not being properly allocated to the Tribe. Mr. Peterman presented information on the use of PR and DJ federal funds as related to Montana Indian Reservations and explained:

- PR Funds are appropriated for wildlife restoration activities and these funds are collected through a federal excise tax on ammunition, guns, rifles and other related equipment and supplies. These funds are allocated to states based on land area (50%) and the number license holders (50%). The state must provide 25% of its license dollars to receive its portion of the PR funds.
- DJ Funds are appropriated for sport fish restoration and these funds are collected through a federal excise tax on fishing equipment, motor boat fuel tax, and other related equipment and items. These funds are allocated based on a formula using land mass (60%) and angler base (40%).
- DFWP is the only state agency authorized to receive and allocate these funds.
- In order to be eligible for either of these funds, non-discriminatory public access must be granted, including private land improvement projects.
- There are severe consequences for mis-use of these funds so the DFWP is very cautious when allocating PR or DJ funds.
- Tribal and other requests for grant funds from the PR or DJ funds are considered on a case-by-case basis.

Mr. Peterman distributed a letter written to the DFWP from the Senate Fish and Game Committee (HB 107 - 2001 session) discussing implications of PR and DJ funds as relating to tribal use (Exhibit #4). The letter listed the conclusions of the Senate Fish and Game Committee, as relating to the use of the funds, and clarifies the Committee's request to establish a cooperative State-Tribal fish and wildlife program.

Mr. Peterman also explained the State's Wildlife Grant program:

- ! This program funds projects designed for conservation of native species.
- ! The Wildlife Grant fund is separate from the DJ and PR Funds because there is no requirement for non-discriminatory public access.
- ! Mr. Peterman said a portion of this fund is allocated for tribal projects.
- ! An independent consulting company assists the Tribes with implementation of the projects by working with the Tribes to:
 - ▶ develop a Memorandum of Understanding (MOU) for how to interact on fish and wildlife issues, and
 - ▶ develop proposals for utilizing this State Wildlife Grant funding set aside for the Tribes.

Mr. Peterman listed several state projects currently underway and included other relevant information:

- \$27,000 for the Blackfeet Tribe: bear-proof dumpsters;
- \$15,000 for Fort Belknap: developing a fish and wildlife plan; and
- a possible survey and inventory of sage grouse and prairie dogs on the Crow Reservation.

All of these projects require a match, either in hard cash or in-kind services.

Mr. Peterman also discussed federal Tribal Wildlife Grants recently made available that require no matching funds and a Tribal-Landowner Incentive Grant program providing money for conservation of threatened and endangered species.

Sen. Hansen referred back to Mr. Peterman's statement that tribal requests for PR and DJ funds are considered on a case-by-case basis and asked what criteria must be met to qualify for these funds to be awarded. Mr. Peterman said most applications are approved. He added that the most common reason an application is not approved is because it is not an appropriate funding source for the request or the applicant could not provide the required matching funds.

Rep. Juneau asked Mr. Peterman to provide the amount of PR and DJ funding Montana has received in the last three years. She also asked him to provide the amount of these funds that have been allocated to Montana Indian Tribes in the last three years. She said this has been a issue of contention with the Tribes for many years now and the DFWP must develop a better working relationship with the Tribes. She stated all Montana citizens pay the federal excise tax that creates these funds and Rep. Eggers, as requested in HB 107, was fighting to get the Tribes' fair share of these funds.

Sen. Butcher asked if the issue of non-discriminatory access is a problem in allocating these funds. Mr. Peterman replied that non-discriminatory public access is a federal requirement so it has been an issue at times.

LORI RYAN, OFFICE OF INDIAN AFFAIRS introduced Mr. Bill Whitehead as the new Tribal Council member of the Fort Peck Tribe and updated the Committee with the following information:

- ! The Government-to-Government Summit between State and Tribal leaders was held October 10, 2003, and was a successful endeavor. Ms. Ryan gave a synopsis of the summit by saying:
 - ▶ Mr. Dave Gibson, Governor's Office of Economic Development discussed MOU's in HB 2, as relating to Tribes;
 - ▶ Fort Peck has already held an economic development meeting with six state agencies and is ready to begin work on economic development projects; and
 - ▶ the Salish-Kootenai and Blackfeet Tribes are developing agendas for economic development meetings.
- ! Medicaid redesign implications were discussed:
 - ▶ Governor Martz has asked Tribal leaders to appoint one member from each Tribe to sit on a Tribal Redesign Task Force;
 - ▶ the Tribal Task Force will be responsible for identifying tribal impacts by the redesign process; and
 - ▶ the first meeting will be held in Billings on December 17, 2003.
- ! HB 608 was discussed:
 - ▶ the Department of Justice discussed plans for a training program for state officials during the 2004 Race Conference;
 - ▶ Sarah Bond is coordinating training efforts;
 - ▶ the Tribal governments will help choose the trainers;
 - ▶ state agencies will be reporting to the Governor in December of their efforts made in enacting HB 608; and

- ! ▶ Rep. Windy Boy has asked the agencies to report to this Committee as well.
- ! The afternoon one-on-one meetings between Tribal government leaders and agency directors was successful and resulted in several follow-up meetings being scheduled.
- ! The State-Tribal Economic Development Commission met on October 29 and is revitalized and reorganized:
 - ▶ The main focus of the meeting was establishing priorities for the Commission.
 - ▶ Noel Sansaver was named Chairman of the Commission.
 - ▶ The structure of tribally-owned enterprises will be reviewed and businesses in Montana that may coordinate with these enterprises will be identified.
 - ▶ No grant funds will be made available for individual tribes at this time.
 - ▶ A plan was made to work with a CPA to identify advantages for businesses to relocate to reservations.
 - ▶ The Federal Assistance Monitor, which is a weekly online document listing all available funding, was discussed.
 - ▶ Plans were made for development of a master list of all available funds and grants available to the tribal nations.
 - ▶ The next meeting is scheduled for January 14, 2004 and the Committee is welcome to attend.
 - ▶ Chairman Sansaver would like to address the State-Tribal Relations Committee at a future meeting.

Rep. Juneau said she was glad the Tribal Economic Development Commission was operating again and asked for a list of members. Ms. Ryan returned with the membership list for the Committee members in the afternoon (Exhibit #12).

Rep. Juneau asked how Dave Gibson planned to include the Little Shell Tribe in the economic development efforts. Ms. Ryan said the focus will be on helping them build their own programs and sources of funding.

Rep. Juneau said one of the issues that has been raised is that Tribes are not eligible to apply for the State Community Development Block Grant. Rep. Juneau said she would like to encourage Mr. Gibson to work with the Tribes to help them become eligible to apply for these grants. Ms. Ryan said this issue is being discussed.

Sen. Bohlinger read an e-mail from Dave Gibson relating to the economic development opportunity planning occurring on Montana Reservations, as required by HB 2. Mr. Gibson reported:

- He has asked each Tribal Chairman to choose a delegate to represent the Tribe in the economic development planning process.
- Fort Peck is the only Tribe that has responded to his request.
- The Flathead Tribe is in the process of identifying its working team and plans to contact Mr. Gibson soon.
- He intends to continue to remind Tribal leaders that participation is crucial to their economic development success and to encourage participation.
- He hopes to develop a team on each Reservation to work on the economic development issues of importance to that particular reservation.

Sen. Bohlinger asked Committee members for suggestions on how to engage the reservations

in this effort. Sen. Butcher said frequent changes in tribal leadership and tribal organization make it difficult for state agencies and personnel to maintain contact with the Tribes.

Rep. Ripley suggested the Committee mail a copy of the Fort Peck plan to the other Reservations so they can see what is being done, with the hope that it encourages action on all of the Reservations.

Ms. Ryan also discussed meetings with the Fort Peck Tribe and the work that is being done by the Fort Peck Tribe and Tribal College in the development of training and certification of employees for the Northrup-Grommen contract.

Sen. Bohlinger asked Ms. Erickson to draft and send a letter to each Tribal government explaining;

- the economic development plans and progress of the Fort Peck Tribe;
- the economic development plans in progress of the Flathead Tribe;
- the economic development plans in progress of the Crow Tribe; and
- encouraging the remaining Tribes to bring forth their own ideas and plans for economic development that would meet the needs of their tribe.

Ms. Ryan reported she is in contact with each Tribe on a weekly basis, she does see forward movement, and wants to continue to assist in that progress.

Sen. Butcher suggested the Tribes do an inventory of their reservation to identify particular resources that might attract industry. He said if Tribes could identify obstacles, then the Legislature could help address them.

Ms. Ryan said industries are looking to relocate and she puts them in touch with tribal governments and will continue to work to bring them together.

PUBLIC COMMENT

Bill Whitehead, Fort Peck Tribal Council, commented that he appreciates Ms. Ryan's assistance with the Tribe's economic development program. He also discussed issues relating to the Fort Peck Tribe such as:

- the economic benefit provided by the tribal and non-tribal employees of A & S Industries;
- the issue of funding for nonbeneficiary students who are attending the Fort Peck Tribal College in preparation for employment by the Northrup-Grommen contract; and
- the need for Tribal representation on the Board of Regents;

Sen. Butcher asked Mr. Whitehead if the Fort Peck Tribal College was fully accredited and if the College had experienced difficulty in getting other colleges to accept the credits earned at the Tribal College. Mr. Whitehead said to his knowledge, there had been no difficulty in this area.

FORT BELKNAP COMMUNITY COUNCIL ISSUES

Ms. Erickson distributed ISSUES PRESENTED TO THE STATE-TRIBAL RELATIONS COMMITTEE BY THE FORT BELKNAP RESERVATION (Exhibit #5) and RESPONSES TO ISSUES PRESENTED TO THE STATE-TRIBAL RELATIONS COMMITTEE (Exhibit #6) as followup to the Committee's visit to the Fort Belknap Reservation in September 2003. Ms. Erickson and Ms. McClure reviewed and discussed each issue with the Committee.

Gaming Compacts

Ms. McClure gave a brief history of the evolution of the gaming industry since the mid-1980's and how it resulted in the Indian Gaming Regulatory Act (IGRA) (Exhibit #7). She noted the IGRA:

- was the result of a U. S. Supreme Court ruling, (California v. Cabazon);
- codifies all court cases and established a basis for regulation; and
- was intended to help Tribes achieve self-sufficiency and produce revenue.

Ms. McClure said:

- Tribes want a broader interpretation of IGRA - it was meant to create "economic advantage" for the Tribes.
- Tribes think any gaming limits should be tribal decisions.
- Tribes want to control the number of machines, machine locations, etc..
- The Tribes need the advantage to bring in new dollars from out-of-state and Canada.
- The Confederated-Salish Tribe has expansion plans in place but won't implement them unless they are given more control.
- The Tribes think the State is over-regulating the industry.
- The State believes it is up to the Legislature to make these decisions.

Ms. McClure explained that Montana has a seven-member Gaming Advisory Council within the Department of Justice that deals with all issues related to gaming. This Council met on December 3, 2003, with Tribes to discuss concerns. It was decided that a Subcommittee would be formed to address Tribal needs and concerns. She noted there is a balancing act required by the Subcommittee because of requests for gaming equality by the community of Butte. The Tribes think IGRA was intended to give them economic advantage.

Ms. Erickson commented the December 3 meeting in Helena was the direct result of Fort Belknap's concerns regarding this issue but they did not attend the meeting. She said she wasn't sure of the Tribe's position at the moment.

Rep. Juneau asked for a list of Subcommittee members. Ms. McClure said she would get this information for the Committee.

Ms. Erickson said Gene Huntington, Gaming Director, DOJ was anxious to work with the State-Tribal Relations Committee on a possible legislative solution.

Rep. Juneau asked if a liquor license was a requirement for a Video Game Machine (VGM) and if that issue could be legislated. Ms. Erickson said it was unclear if this requirement was an absolute or if it was subject to negotiation and it needs to be clarified.

Nonbeneficiary Student Funding

Ms. McClure provided the following information to the Committee:

- There are seven accredited Tribal Community Colleges in Montana.
- Nonbeneficiary students make up a significant portion of the tribal college's enrollment.
- Tribal governments have subsidized the tuition increases in the past but can no longer afford to continue that policy and have asked the State for help.

Ms. McClure referred to 20-25-428, MCA 2003, (Exhibit #8) in her discussion of this issue. She noted in section (2), the distribution amount limit was increased to \$2000 per year and that a bill to delete (4)(b) was introduced in the 2003 session but died.

Rep. Juneau said it was important to note that federal law clarifies that these colleges are public institutions, not private, and Montana legislators must be made aware of this.

Highway 66 Guardrails

Ms. Erickson provided a summary of accidents report on State Highway 66 from U.S. 191 to U.S. 2 dating from 1998 through 9/30 of 2003 (Exhibit #9).

Ms. Erickson said she would contact the Department of Transportation to determine if this section of highway has been identified as in need of attention and if there is a formula used by the DOT in making this determination.

Regional Correctional Facility

Ms. Erickson reported there was little the Committee could do about this issue because Tribes already can establish pre-release centers on their own.

Zortman Landusky Mines

Ms. Erickson said water quality was the Tribe's biggest concern. She added that the Environmental Quality Council is conducting a white paper study that the Committee can monitor. Ms. Erickson said she would ask Larry Mitchell of the Legislative Environmental Policy Office (LEPO) to provide a status report to the Committee at the March meeting.

Unemployment Insurance Benefits

Ms. Erickson said the issue of unemployment benefits for classified school employees has been a perennial problem. State law prohibits them from collecting unemployment benefits. Ms. McClure said a Browning school board member is seeking an Attorney General's opinion on this issue. Ms. McClure said she would continue to monitor this issue.

Senior Citizens

Ms. Erickson said she thought this issue fell more within the realm of the federal government but would follow up with further research.

Chemical Dependency Treatment

No additional information was given or discussed beyond what is contained in Exhibit #5.

Water and Sanitation

No additional information was given or discussed beyond what is contained in Exhibit #5.

State Funding for GED Instruction

No additional information was given or discussed beyond what is contained in Exhibit #5.

Tribal College Representative on Board of Regents/American Indian Representative on Board of Regents

Ms. Erickson distributed an MCA transportation commission statute that she thought would work well as a template to use in designing possible legislation to achieve this goal (Exhibit #10).

Miscellaneous Issues

The Committee briefly discussed the issues of;

- urging the federal government to hire Montanans to fight forest and wild land fires that occur on federal land in Montana;
- the appointment of more Indians to state boards and commissions;
- training and assistance for tribal volunteer fire departments; and
- allowing tribes to have first access to surplus state and county equipment.

There were no decisions made regarding these issues.

Ms. Erickson said it was important to respond to these issues and asked the Committee to decide if it wanted to wait until all of the issues were addressed or to respond with the information gathered to date.

Sen. Bohlinger said the Committee should respond as quickly as possible so that the Fort Belknap Tribe knows their concerns were taken seriously and that the Committee has not forgotten them.

Rep. Juneau asked Ms. Erickson to also include the interested state agencies and departments so that everyone involved would be informed. She also stated there would be openings on the Board of Regents and on the Board of Public Education available soon and the tribes should have names ready to submit for nomination.

Sen. Butcher said he would like all of the Reservations notified of our response to Fort Belknap.

HJR 8 UPDATE

Ms. Erickson said she has accumulated a wealth of information and is working on summarizing

into a report for the Committee. She said she has met with Lori Falcon and Jan Lombardi of OPI to develop action steps and that they would be working collaboratively. She there was lots of information available on national programs and they will pull elements from these programs that will work for Montana.

Ms. Erickson added that the Interagency Coordinating Council (ICC) and Roland Mena, Board of Crime Control, are very interested and have information to share as well.

Sen. Butcher suggested asking school counselors for their input into this issue since they are the people who are on the front lines of this issue with the students. He said they should be consulted on the reasons students drop out.

Ms. Erickson said OPI has developed a survey for Indian students to identify the reasons they chose to stay in school and not drop out. This will be valuable information for the Committee to use.

Rep. Juneau said it is not just reservation students that drop out, that this is an issue in the larger cities such as Billings, Missoula, and Great Falls, as well.

Sen. Butcher asked if it was possible to determine if students are dropping out and staying out or if they drop out of one school and re-enroll in another.

DEPARTMENT OF CORRECTIONS (DOC) AND THE BOARD OF PARDONS AND PAROLE (BPP) - HB 211

Nancy Wikle, DOC, addressed the Committee by stating:

- The Department Of Corrections and the Board of Pardons and Parole are administratively attached but operate as separate and autonomous agencies with different duties and responsibilities.
- The DOC database can identify offenders by race and determine parole eligibility.
- The Board of Pardons and Parole either approves or denies parole applications and the DOC is responsible for implementing the BPP's decision.
- The BPP is developing a new database which will be a report of parole dispositions of Native American inmates (Exhibit #11).
- Craig Thomas, BPP, would like to address the Committee at the March meeting with an overview of this new database.

Rep. Ripley asked when the finalized report would be available to the Committee. Ms. Erickson said she was not certain when the report would be completed and though it was officially being prepared for the Law and Justice Interim Committee, the State-Tribal Relations Interim Committee would receive a copy.

Ms. Wikle reported the University of Montana Indian Law Center was collaborating with the DOC on a joint parole project which will provide representation for Indian inmates. Ms. Wikle said she, UM law professor May Linn Smith and four UM law students have completed parole training. The purpose of this project is to assist Indian inmates with parole applications.

Ms. McClure asked Ms. Wikle if the parole requirement prohibiting the inmate from returning to the scene of the crime was a problem since it essentially prevents an Indian inmate from returning to the Reservation. Ms. Wikle said that was a problem, along with other issues.

WRAP-UP AND PLANNING FOR NEXT MEETING

Sen. Bohlinger said he would like to have a letter sent to all the Tribes containing a full update on economic development activities and encouraging them to contact Mr. Gibson, and asked Ms. Erickson to write the letter and send it on behalf of the Committee.

March 5, 2004 was confirmed as the next meeting date for the Committee and agenda items were suggested;

- follow-up with Dave Gibson on economic development;
- Craig Thomas, BPP, Parole Disposition of Native Americans Report;
- Indian Education update;
- May meeting date;
- report from UM Indian Law School project;
- report on the JMG pilot project in Harlem/Maine;
- Fort Belknap response;
- HJR 8 update; and
- JMG reports with actual numbers, not percentages.

ADJOURNMENT

With no further business before it, the Committee adjourned at 3:00 p.m.

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