



State-Tribal Relations Interim Committee

59th Montana Legislature

SENATE MEMBERS

JERRY O'NEIL
GERALD PEASE
FRANK SMITH
DONALD STEINBEISSER

HOUSE MEMBERS

GORDON HENDRICK--Vice Chair
JONATHAN WINDY BOY--Chair
JOAN ANDERSEN
JOEY JAYNE

COMMITTEE STAFF

CHRIS LOHSE, Lead Staff
EDDYE MCCLURE, Staff Attorney
DAWN FIELD, Secretary

MINUTES

June 27, 2005

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

REP. JONATHAN WINDY BOY, Chair
REP. GORDON HENDRICK, Vice Chair

SEN. JERRY O'NEIL
SEN. GERALD PEASE
SEN. FRANK SMITH
SEN. DONALD STEINBEISSER

REP. JOAN ANDERSEN
REP. JOEY JAYNE

STAFF PRESENT

CHRIS LOHSE, Lead Staff
EDDYE MCCLURE, Staff Attorney
DAWN FIELD, Secretary

AGENDA & VISITOR'S LIST

Agenda, [Attachment #1](#).
Visitors' list, [Attachment #2](#).

COMMITTEE ACTION

The State-Tribal Relations Committee:

- elected REP. WINDY BOY Chair and elected REP. HENDRICK Vice Chair;
- voted to not allow the use of proxy votes;

- approved updating the Legislator's Handbook;
- approved the meeting calendar for the 2005-2006 interim as discussed;
- approved the proposed work plan for the 2005-2006 interim; and
- approved LSD staff to work with the Department of Corrections on issues of concern relating to Native American inmates.

TAPE 1 - SIDE A

CALL TO ORDER AND ROLL CALL

SEN. PEASE called the meeting to order at 10:05 a.m. Member and staff introductions were made. The secretary noted the attendance. It was announced that REP. WINDY BOY was en route and that SEN. O'NEIL was excused. All other members were present.

ELECTION OF OFFICERS

REP. JAYNE nominated REP. WINDY BOY for Chair. SEN. SMITH moved to close nominations. REP. WINDY BOY was elected Chair by consensus.

SEN. STEINBEISSER nominated REP. HENDRICK for Vice Chair. REP. ANDERSON moved to close nominations. REP. HENDRICK was elected Vice Chair by consensus.

REVIEW OF 2005 LEGISLATION

Connie Erickson, Research Analyst, Legislative Services Division (LSD), presented a report on the legislation affecting American Indians as considered by the 2005 Montana Legislature ([EXHIBIT #1](#)). Ms. Erickson said the report provides a historical record of all the issues that the Legislature addressed which specifically affected American Indians. She pointed out that her report listed both proposed legislation and enacted legislation.

REPORT FROM OFFICE OF INDIAN AFFAIRS AND OFFICE OF ECONOMIC DEVELOPMENT

Major Robinson, Economic Development Specialist, Governor's Office of Economic Development (GOED), addressed the Committee and stated that the Governor's Office:

- supports the HJR 41 study resolution - economic development in Indian Country - and wishes to participate in whatever manner it can;
- has a strong commitment to work with all Montana Indian nations on economic development;
- has met with each of the tribes and is working with each one individually on specific needs;
- has met with Chris Lohse, Research Analyst, LSD, and is supportive of the direction the State-Tribal Relations Interim Committee has planned for HJR 41. Mr. Robinson said:
 - ▶ HJR 41 will greatly benefit all Indian nations in Montana and will allow the tribes to partner and participate by contributing funding and resources and working toward self sufficiency
 - ▶ the Governor's Office and the Committee should develop a Memorandum of Understanding (MOU) with tribes to assure them that the information gathered for

- the study will be used for the intended purpose of economic development and will be critical to keeping trust; and
- ▶ the secured transaction code issue is critical and the Governor's Office has developed a model secured transaction code. This will be helpful in encouraging outside entities and the State to come in and do business with tribes.

REP. JAYNE said she was curious about the funding for Indian Country economic development. Mr. Robinson said House Bill 2 set aside \$500,000 per year for the next two years for Indian Country economic development. The Governor's Office and the Department of Commerce have had one meeting with the State Tribal Economic Development Commission and are working with the Commission to determine the priorities of each of the tribes and how best to utilize the money. There is another conference call scheduled to discuss this further and to make a plan for the usage of those funds.

REP. ANDERSON referred to Mr. Robinson's comment that the Governor's Office has met with all of the tribes and has discussed relevant issues and priorities of the tribes. She asked if the outcomes of those discussions could be made available to the State Tribal Relations Committee. Mr. Robinson said that he would work with Reno Charette to compile the information gathered at those meetings and would make certain the State-Tribal Relations Committee members received it.

SEN. SMITH asked for a list of all of the members of the State Tribal Economic Development Commission. Mr. Robinson said he would provide that information to the Committee.

Reno Charette, Coordinator of Indian Affairs, Governor's Office, reported on her activities as Coordinator. Ms. Charette said she:

- is a member of the Governor's American Indian Nation (GAIN) Council, which reviews and manages all negotiations with the tribes and meets every Wednesday to study current agreements;
- is responsible for setting up diplomatic meetings when a tribe visits the Governor's Office. The Governor's Cabinet members are invited to attend and meet with their Indian counterparts, in order to work more effectively together;
- accompanies the Governor on reservation visits;
- is responsible for educating the staff and Cabinet members on each of the tribes in Montana;
- is a traditional dancer and plans to attend as many of the tribal pow wows as time will allow; and
- makes shawls with the Governor's "new day" logo to present as gifts to tribes.

Mr. Robinson explained that the GAIN Council was formed by the Governor's executive order and its purpose is to deal with any issue relating to tribal nations, as well as monitor negotiations between state agencies and tribes.

Ms. Charette said that at the last GAIN Council meeting, it was discussed that a better method of communication was needed between tribes and state agencies. The Council decided to establish a master calendar of all tribal-agency meetings, including those scheduled on the reservations. She reported that REP. JAYNE requested that the State-Tribal Relations Interim Committee meetings be included on the calendar and also that the Committee be notified of any upcoming events and meetings. Ms. Charette asked the Committee to name a contact person

for the State-Tribal Relations Committee. Eddy McClure and Chris Lohse of LSD were designated as the contacts for the Committee.

Eddy McClure, Legal Staff, LSD encouraged the new Committee members to review Title 18, Chapter 11, Part 1, MCA, (State Tribal Agreements) and explained that this is what Mr. Robinson and Ms. Charette were referring to when they spoke of the negotiations they are participating in. The statute was enacted in the early 1980s and Ms. McClure said that since then, approximately 1,000 agreements between the sovereign tribes of Montana and state agencies have been reached.

OVERVIEW OF RESPONSIBILITIES AND GUIDELINES

Mr. Lohse reviewed 5-5-229, MCA, the statute defining the State-Tribal Relations Interim Committee ([EXHIBIT #2](#)) and briefly discussed the statutory duties of the Committee.

Mr. Lohse suggested that the Committee visit the Fort Peck and the Blackfeet Reservations in the 2005-2006 interim, pursuant to the statutory requirements that the Committee act as a liaison with tribal governments and encourage state-tribal and local government-tribal relations.

Mr. Lohse said the Committee has been assigned HJR 41 - study of economic development in Indian Country. He asked the Committee to consider studying HJR 15 - study of sentencing equity. Mr. Lohse said the Law and Justice Interim Committee declined the study because it felt there was not enough data or funding to conduct the study in its full detail. The Law and Justice Committee has asked if the State-Tribal Relations Committee would consider including HJR 15 in its responsibilities. Mr. Lohse said he feels it could be done on a scaled-back basis.

HJR 41 - Study of Economic Development in Indian Country

Mr. Lohse reviewed the components of HJR 41 ([EXHIBIT #3](#)) and asked the members for their input on how best to conduct the study. Mr. Lohse felt that, because of the \$500,000 allotted to the Department of Commerce and because of the work the Governor's Office is already doing, the most effective approach would be for the Committee to work cooperatively with the executive branch to assist in compiling data. He said the Committee budget would not allow for a large-scale study and that a cooperative approach would best serve the intent of the study resolution.

TAPE 1 - SIDE B

HJR 15 - Study of Sentencing Equity

Mr. Lohse said the question of disparate sentencing practices has been discussed at length in the State and resulted in HJR 15 ([EXHIBIT #4](#)). There was an attempt to study this issue in previous interims and it was determined that the real problem is the lack of data. There simply isn't enough information about what some areas of the state are doing. Requests for funding to gather the data, so the data available now is much the same as it was four years ago. Mr. Lohse said after extensive discussion with Joe Kolman, Legislative Service Research Analyst, they determined that the best approach would be to choose one specific area of the state to study. Mr. Lohse recommended that a stratified random sampling be done of one large community in the area, one medium-sized community, and of one small community. A complete

and exhaustive study of what the sentencing practices have been over the past ten years would be done on each community. Mr. Lohse said that none of that information is available electronically and would require that Mr. Kolman and himself manually examine the court records. This would be a scaled down approach but would reveal what happened in three communities. This information could then be used as the springboard for eventually getting the statewide data that is needed.

Mr. Lohse felt that HJR 15 could be folded into the HJR 41 study because of the economic implications involved with HJR 15. He explained that if there are great numbers of people being put in prison for long periods of time, it can impact the economy.

Legislative Guidelines for Interim Committees

Mr. Lohse said the Legislative Council Guide for Interim Committees ([EXHIBIT #5](#)) serves as a rule book for interim committees. A question that must be dealt with is the issue of proxy voting. Mr. Lohse said proxy voting is highly discouraged by the Guidelines, but that the final decision is left to each Committee to decide.

REP. JAYNE asked SEN. PEASE, as an experienced legislator, how previous interim committees have used proxy votes. SEN. PEASE said he has seen little use of proxy votes in his experience on interim committees.

Ms. Erickson said proxy voting is used more during a legislative session because of the fast-paced nature of a legislative session and the frequency of hearings. Some interim committees have allowed proxy voting and have adopted specific requirements for their use. Ms. Erickson noted that in the many interims she has served as staff for the State-Tribal Relations Interim Committee, it has not allowed proxy voting.

REP. ANDERSEN **moved** to continue to State-Tribal Relations Interim Committee past practice of not allowing proxy votes. The **motion** passed on a unanimous voice vote.

Staff Responsibilities for State-Tribal Relations Interim Committee

Ms. McClure said the responsibilities of the State-Tribal Relations Interim Committee are unique from other interim committees because this Committee deals with six sovereign nations, in addition to the Little Shell tribe. It also serves as a sort of clearinghouse for tribal governments when they have issues that state government can resolve. MS. McClure noted that because tribal governments don't always follow what is going on in state government, the staff of the State-Tribal Relations Committee works diligently to develop a working relationship with the tribal officials to help them with whatever issues they may have and to make sure the tribes are informed of what is happening at the state level.

Ms. McClure also pointed out that this Committee visits the reservations, but only at the tribe's invitation. She said the usual procedure is that staff sends a letter to the tribe expressing the Committee's interest in visiting. The Committee then waits until an invitation is extended by the tribe. The tribe sets the agenda and while input is given by the Committee, the tribe ultimately decides what issues will be discussed. She said the tribes go to a lot of trouble to arrange a Committee visit, so member attendance is very important for the reservation visits.

Legislator's Handbook Revision

Ms. McClure also discussed *The Tribal Nations of Montana - A Handbook for Legislature*, (EXHIBIT #6), saying the handbook was written in 1995. She explained that the purpose of the handbook is to help educate legislators on the history of each tribe and to provide an outline of the issues and problems facing the tribes. Ms. McClure said the handbook is becoming outdated on certain issues and needs to be updated.

Ms. Erickson said the handbook has been reprinted three times because it has become such a valued resource by legislators, elected officials, state agencies, public schools, and libraries. Ms. Erickson reported that other state legislatures and several law schools from across the nation have requested copies as well. Ms. Erickson asked the Committee for its approval to update the Handbook. The Committee gave Ms. Erickson its approval to update the Handbook.

REP. HENDRICK said he has found it to be an excellent resource and encouraged the other Committee members to read it, if they hadn't already done so.

INTERIM WORK PLAN

Approve Calendar for Committee Meetings

Mr. Lohse presented the tentative meeting dates for the 2005-2006 interim (EXHIBIT #7). He asked members to identify any dates when they knew they would not be able to attend a Committee meeting.

SEN. SMITH asked for information on the drop out rate for the police academy, particularly American Indian candidates who drop out of the academy. He said this would help tribes identify how they could help prepare candidates for the academy, which in turn, may help lower the drop out rate. Mr. Lohse said that issue could be included in the human and natural resources development portion of the HJR 41 economic development study.

Ms. McClure and Mr. Lohse asked the members to notify them of any agencies they would like a report from or of any issues of concern the member would like to address during the upcoming interim.

REP. HENDRICK asked for a history of past reservation visits. Ms. Erickson said all of the Montana reservations have been visited and the Committee is now on the second round of visits.

Jim Mason, Native American Liaison, Department of Corrections, said his main job is to assure that the cultural rights of Native American inmates, male and female, juvenile and adult, are taken care of and that they are not punished in any way that takes away their rights. He also acts as an advocate for them with other issues that they may be having trouble with, such as health care. Mr. Mason said he works closely with Indian legislators and Tribal Councils, he teaches sensitivity training on Native American customs and issues at the Montana Law Enforcement Academy to probation, parole, and correctional officers.

TAPE 2 - SIDE A

Proposed Work Plan

Mr. Lohse explained the proposed work plan for the 2005-2006 interim ([EXHIBIT #8](#)). He said he designed the work plan to be flexible, fluid, and to have a cooperative approach with other state agencies. He said as staff, he would coordinate Committee efforts to work with other entities and would provide reports and updates for members. He said it is his hope that this approach will produce a strong set of recommendations from the Committee regarding economic development to present to the 2007 Legislature. Mr. Lohse said he would present information on American Indian student achievement and socioeconomic profiles of several communities, using Joseph Kalt's model and methodology.

Mr. Lohse proposed visiting the Fort Peck and Blackfeet Tribes in the 2005-2006 interim but said it is up to the Committee to make the final decision.

Committee Discussion and Approval of Committee Meeting Dates

SEN. PEASE favored visiting the Salish-Kootenai Reservation because of its strong economic development program. He said the Committee members could observe what is going on there and use the information to formulate a plan to help other tribes.

SEN. SMITH said all of the reservations have positive things going on but that he still supported visiting the Fort Peck in the 2005-2006 interim.

REP. ANDERSEN suggested that, in lieu of a reservation visit, staff prepare a report for the Committee members on the economic development projects on the Salish-Kootenai reservation.

SEN. SMITH **moved** to plan a fall visit to Fort Peck Reservation. The **motion passed** on a unanimous voice vote.

After discussion, REP. JAYNE **moved** to schedule the Fort Peck Reservation visit for September 15 and 16, 2005. The **motion passed** on a unanimous voice vote.

SEN. STEINBEISSER **moved** to approve the proposed meeting date of January 25, 2006. The **motion passed** on a unanimous voice vote.

Mr. Lohse said the budget would allow an additional meeting to be scheduled in March if the Committee desired, and suggested March 15, 2006 as a convenient date.

REP. JAYNE **moved** to approve the proposed meeting date of March 15, 2006. The **motion passed** on a unanimous voice vote.

REP. JAYNE **moved** to approve the proposed date of May 17 and 18, 2006, to visit the Blackfeet Reservation. The **motion passed** on a unanimous voice vote.

SEN. PEASE **moved** to approve the proposed meeting date of June 19, 2006. The **motion passed** on a unanimous voice vote.

REP. ANDERSEN **moved** to approve the proposed meeting date of August 21, 2006. The **motion passed** on a unanimous voice vote.

REP. HENDRICK **moved** to adopt the proposed work plan ([EXHIBIT #8](#)).

REP. JAYNE asked if the work plan would become more detailed and specific as to what work the Committee will undertake. Mr. Lohse said as the Committee begins its work, the work plan will become more concrete and specific. He said he would be in contact with the members to ask their input and to discuss the work plan in more detail.

REP. ANDERSEN asked if the Committee will be receiving information from the Governor's staff and the Department of Commerce regarding economic development and other issues of interest to the State-Tribal Relations Interim Committee. Mr. Lohse that information will be provided to all of the Committee members.

REP. ANDERSEN's motion **passed** on a unanimous voice vote.

PUBLIC COMMENT

Jim Mason, Native American Liaison, Department of Corrections (DOC), said he testified in support of HJR 15 twice during the 2005 Legislative Session. He said he personally was disappointed that the bill did not pass and that it is his opinion that Native Americans, in some cases, do receive longer prison sentences. He said it is an important issue and strongly urged the Committee to examine the issue.

SEN. SMITH asked if there were certain courts or judges that received more complaints about sentences than others. Mr. Mason said that if a generous cross section of data is studied, it should provide adequate information to analyze. He said he would support looking at individual judges' sentencing records as a part of the process. Mr. Mason said public defenders often carry a heavy workload and in the interest of time, don't always take the time to properly educate the Native American people of their rights on appeals or other avenues that may be open to them. He also pointed out that many Indian prisoners either are given a very high bail amount or denied bail completely.

SEN. SMITH asked if the officers making the arrests are the problem or if it could be how the arrest policies and guidelines are written. Mr. Mason said young officers coming out of the Montana Law Enforcement Academy do not receive much, if any, cultural training. Mr. Mason said he provides training for the probation and parole officers at the prison for the new correctional officers and that providing that same type of training for the Law Enforcement Academy candidates would be a good start. He stated that it is important to educate the young officers on the street and that he has personally observed a certain amount of prejudice against Native Americans. He said it starts at the street level and is pervasive right through the court system, in some but not all instances.

SEN. SMITH said Captain Summers is an excellent trainer and that he hasn't been asked to provide the training for the last two years. He asked to have him be included in the training process for new officers. Mr. Mason said he has met with Captain Summers personally and agreed that he would be a tremendous asset to the training program.

REP. HENDRICK **moved** to have LSD staff work with Mr. Mason to address his concerns and to research how to best approach the HJR 15 study. The motion **passed** on a unanimous voice vote.

Jim Baker, AFL-CIO, Cut Bank, informed the Committee of his concerns relating to the hiring practices of Glacier Park Incorporated as the concessionaire for Glacier Park. Mr. Baker said:

- for the last several years, Native American workers from the Blackfeet Reservation have been not hired by the concessionaire;
- this has become a point of contention between the County Commissioners, the Tribe and Glacier Park;
- there is a 70% unemployment rate on the Blackfeet Reservation and that there are qualified people who want to work;
- Glacier Park Incorporated is hiring workers from Europe;
- to date, efforts have been unsuccessful in changing this but another meeting is scheduled for October to determine if any progress has been made.

Mr. Baker added that when a Blackfeet Indian is hired by the Park, they are frequently placed in a food service position and that very few Indians are placed in positions of responsibility, despite the fact that there are many qualified Blackfeet candidates for such positions.

SEN. SMITH asked if the Park is using a local employment office to find local employees. Mr. Baker said the local job service is not currently being used by the Park to recruit new employees.

TAPE 2 - SIDE B

REP. HENDRICK referred to the fact that Europeans are being hired by the Park and asked if there is any sort of an exchange program in place for Montana workers to be hired overseas. Mr. Baker said the Park has stated it is recruiting under the guidelines of the Homeland Security Act. He said the Tribe plans to request a copy of the concessionaire agreement. He said there have been recent efforts to minimize the hostility between the Park and the Tribe and that it is hoped that there will be a more cooperative effort to hire Blackfeet workers in the near future. Mr. Baker also pointed out that this issue affects Glacier Park Lodge only because it is located on the Blackfeet Reservation.

James Kembel, Montana Police Protective Association, Montana Association of Chiefs of Police, said, in reference to earlier comments regarding racial issues and arrest and sentencing practices of Native Americans, that measures had been taken in the last legislative session to correct some of these problems. Recruits are being taught cultural sensitivity and there has been an outcry from existing law enforcement personnel that training be provided for them as well. It is thought by some that the worst offenders may be officers that have been around for some time. Mr. Kembel said it is largely due to SEN. SMITH's efforts that changes are beginning to be made. He asked the Committee to contact him with any concerns or questions the members may have. He said that the associations he represents wish to work with the Committee on these issues, particularly on any proposed legislation for the 2007 Legislative Session.

Instructions to Staff

Mr. Lohse asked reminded Committee members to contact him if there were items of interest or issues of concern they wished to have on the September meeting agenda.

Ms. McClure said she would contact Mr. Mason to begin discussion of the issues he raised to the Committee. She said that education of the legal system is the key to establishing fair sentences for all and that frequently an Indian defendant doesn't have an attorney, doesn't plead out or negotiate, so their record may much bigger at an earlier age than a non Indian defendant.

REP. HENDRICK asked if further education for public defenders would be beneficial. Ms. McClure said in her opinion, public defenders are overwhelmed with their work load. They are usually young, inexperienced, and overworked. Ms. McClure said she will be working with the public defender project and said better pay will result in more public defenders and better representation for all.

REP. JAYNE commented that the Public Defender Commission will begin its work soon and suggested that the Committee stay abreast of the work done by the Commission.

Ms. Erickson said she thought the Law and Justice Interim Committee was planning to continue to work on the public defender issue. She suggested that the State-Tribal Relations Committee work with the Law and Justice Committee to coordinate efforts and research.

ADJOURN

With no further business before the Committee, REP. WINDY BOY adjourned the meeting at 1:55 p.m. The next meeting is scheduled for September 15 and 16, 2005 and will be held on the Fort Peck Reservation.

CI0429 5255dfxa.