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# 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

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.**

March 13, 2006

Capitol Building, Room 137  
Helena, Montana

### COMMITTEE MEMBERS PRESENT

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

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

REP. JOAN ANDERSEN  
REP. JOEY JAYNE

### COMMITTEE MEMBERS EXCUSED

SEN. DONALD STEINBEISSER

### STAFF PRESENT

CONNIE ERICKSON, Lead Staff  
EDDYE MCCLURE, Staff Attorney  
FONG HOM, Secretary

### AGENDA AND VISITORS' LIST

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

## **COMMITTEE ACTION**

The June 27, 2005, and January 23, 2006, minutes were approved and adopted.

## **CALL TO ORDER AND ROLL CALL**

Vice Chair Rep. Hendrick called the meeting to order at 9:30 a.m. The Secretary took roll visually. Present at the meeting were Rep. Hendrick, Sen. O'Neil, Sen. Pease, Sen. Smith, Rep. Andersen, Rep. Jayne, and Rep. Windy Boy. Sen. Steinbeisser was excused.

CONNIE ERICKSON gave a review of the meeting agenda.

REP. ANDERSEN said that she attended the Montana Business Outlook Seminar entitled "*We're Open for Business*". In the first portion of the seminar, two University of Montana professors commented that a stumbling block to economic development on reservations is the uncertainty of what law applies on a reservation. REP. ANDERSEN said that she requested additional information from them because their comments were based on surveys they had done on businesses throughout the state. She asked why the Committee could not put this on a future agenda. MS. ERICKSON said that she has been ill and has not had the opportunity to contact the professors. She has learned from Rep. Margaret Campbell that Dr. Paul Polzin and Eleanor Yellow Robe are also working in a study and she hopes to contact Rep. Campbell for more information. REP. ANDERSEN said that the information from the business seminar might fit well with the study that Dr. Polzin and Ms. Yellow Robe are working on.

REP. HENDRICK asked for approval of the June 27 and January 23 minutes. REP. JAYNE moved to adopt the minutes of June 27, 2005, and January 23, 2006. REP. ANDERSEN seconded. MOTION CARRIED UNANIMOUSLY.

## **INDIAN GAMING PRESENTATION**

Gene Huntington, Gambling Control Division, Department of Justice

MR. HUNTINGTON introduced Deanne Sandholm, an attorney with the Governor's Office who heads up the negotiation process with the Tribes, and Sarah Bond, Attorney General's Office, who serves on the negotiation committee and has legal experience related to Indian gaming.

MR. HUNTINGTON gave an overview of the Indian Gaming Regulatory Act and how it fits with Montana law. He also discussed how compact negotiations work and reviewed the status of existing compacts in the state.

Mr. Huntington said that the Indian Gaming Regulatory Act (IGRA) was passed in 1988 and codified court decisions and existing federal law regarding the regulation of Indian gaming. IGRA tried to define the authority that the tribes, the federal government, and the state governments have over gaming. IGRA also established the National Indian Gaming

Commission. In terms of court decisions, there was a Supreme Court case that set down a lot of the principles that were eventually adopted in the Indian Gaming Regulatory Act (IGRA).

IGRA identified three goals, the first of which was to promote economic development, self-sufficiency, and strong tribal governments. IGRA also established that tribal governments would have the strength and authority to regulate gambling that would occur on the reservations. The second goal was to shield tribes from corrupting influences and ensure that the tribe is the primary beneficiary. The third goal was to establish the National Indian Gaming Commission (NIGC) to meet concerns regarding gaming as a means of generating tribal revenue.

The various classes of gaming is a unique approach to federal, state, and tribal division of authority in that each class is regulated by a different level of government or a combination of governments. The classes are: Class I, social and traditional games; i.e., hand games, cards games, and social games; Class II, bingo and certain card games; and Class III, casino gambling and video gambling machines regulated through a compact negotiated between the states and the tribes.

REP. JAYNE asked if Mr. Huntington would give an example of Class III gaming. MR. HUNTINGTON said that blackjack and bank card games are prohibited by law. REP. ANDERSEN asked for an example of authorized games. MR. HUNTINGTON said that an example of a Class III gambling machine is video poker. State law says that there can be no more than 20 machines in a location. How many machines could exist in a tribal casino is subject to negotiation.

MR. HUNTINGTON said that the compacting process is a unique approach. It divides the authority to regulate between the state and the tribe. The state is required to negotiate in good faith. If the state refuses to negotiate, the Secretary of Interior will mediate. Montana's Constitution prohibits gambling unless authorized by acts of the Legislature or by the people. There is a state requirement that in order to have Class III gambling, the establishment must have a liquor license. Some of the reservations in Montana are "dry" so they have no liquor licenses nor gambling prior to the passage of IGRA.

REP. JAYNE asked what the rationale is for having a liquor license. MR. HUNTINGTON said that it is a way to control access of underage people.

#### NEGOTIATION PROCESS

MR. HUNTINGTON discussed the negotiation process. He said that currently the negotiation team is made up of Deanne Sandholm, Governor's Office; Judy Paynter, OBPP, Major Robinson, Governor's Economic Development Office, Sarah Bond, Attorney General's Office; Gene Huntington, Attorney General's Office; and if there are issues of horse racing or the lottery, appropriate people from those agencies participate as well.

MR. HUNTINGTON said that IGRA requires the tribe to initiate negotiations. Once a tribe requests negotiations, the issues are outlined to the Governor, and the negotiation team responds by offering to begin negotiations. As negotiations progress, both sides outline the issues and their positions. Once an agreement is reached, it is approved by the tribal council, the Governor, and the Attorney General; and submitted for final approval to the Secretary of the Department of Interior.

### STATUS OF COMPACTS

MR. HUNTINGTON talked about the status of current compacts:

- The Salish Kootenai Tribe's compact was negotiated in 2001. It was a 5-year compact and come to an end in November, 2006. Because of the large number of non-tribal gaming machines on the reservation, the compact provides that the tribe can have as many gambling machines as non-tribal members. This is a unique provision in their compact. Negotiations are beginning on a new compact.
- The Northern Cheyenne Tribe signed a new compact in May of 2002. It was a 5-year term and negotiations have started in getting a longer term compact.
- The Fort Peck Tribe's compact expired in 2002 and has been expanded until a new compact is negotiated.
- The Chippewa Cree have completed an amendment of their compact. This compact, in the way it is written, remains in effect until another compact is signed.
- The Blackfeet Tribe's previous compact was rescinded in 1997. There was an inquiry for negotiations in 2001, currently there are no ongoing negotiations.
- Fort Belknap has never had a compact, but there have been some discussions between the Governor's Office and Fort Belknap for negotiations.
- The Crow Tribe's compact expired in 2003, and like Fort Peck, has been extended until a new compact has been negotiated. The tribe has been limited to one casino at Crow Agency, and they operate a large casino there. There have been no negotiations since 2004.

### QUESTIONS

REP. ANDERSEN asked if there is a limit to the number of machines that the Crow Tribe can have in that casino. MR. HUNTINGTON said that he believes they are limited to 100 machines. He said that they also have Class II machines which are not covered by the compact, so they probably have more than 100 machines.

SEN. O'NEIL asked if the Blackfeet, because they do not have a compact, go under existing Montana law. MR. HUNTINGTON said that the Blackfeet Tribe has Class II machines, so their gambling is Class II. They have machines that play a form of bingo that has been approved by the National Indian Gaming Commission. SEN. O'NEIL asked, if the Blackfeet are under regular Montana law to have keno and poker machines, do they have to have a compact. MR.

HUNTINGTON said that they would have to have a compact to use the keno/poker machines or to play card games that are at higher limits than state law allows.

REP. JAYNE asked if Mr. Huntington could clarify how the Governor can enter into negotiations with the tribes if HB 132 had changed the language in existing law. MR. HUNTINGTON said that HB 132 attempted to clearly define what the Governor could negotiate and what should come to the Legislature.

JAMIE HAMEL, Montana Tribal Gaming Association

MS. HAMEL said that the Montana Tribal Gaming Association was formed in September of 2005. Ms. Hamel is the Chairman; Roger Running Crane, Blackfeet Reservation, is the Vice-Chair; Gilbert Birding Ground, Crow Reservation, is the Secretary; and Kermit Horn, Fort Belknap, is the Treasurer. She said that Joe Dupuis has been instrumental in forming the Association. The tribes met to try to find ways to benefit from tribal gaming. They met with the Governor last December and they explained that the Association is advocating on behalf of the tribes. They presented the issue that the Montana tribes have the worst compacts in the nation. She said that the Association is looking for ways to help tribes come together and take advantage of the economic tool that is there for them.

Roger Running Crane, Blackfeet Tribe, Blackfeet Gaming Liaison, Vice Chair of the Indian Gaming Association

MR. RUNNING CRANE said that the tribes are dissatisfied with the current compacts and disagree with the compacts that are on the table. The Blackfeet and other tribes are looking at options for negotiations and are hopeful that an agreement can be reached that will allow the tribes to become more self-sufficient, have better economic development, have strong tribal governments, and become working partners with the state.

JOE DUPUIS, Executive Tribal Secretary, Salish and Kootenai

MR. DUPUIS said that they are interested in working with the State Legislature on ways to expand the scope of Indian gaming in the state. He said that the Montana Tribal Gaming Association was formed with the purpose of promoting the Indian gaming interest in the State of Montana, that it is an association that is not strictly held to tribal participation and is inviting vendors and other people who support Indian gaming in the state. He said that as they look at the compacting process, he believes that the Governor has the authority to negotiate with tribes on the scope of gaming that is currently permitted and exists in the state as authorized by the state.

QUESTIONS

SEN. PEASE asked Mr. Running Crane if he knew the number of machines located on the reservations versus the number that are state-owned. MR. RUNNING CRANE said that he had researched that issue two years ago and at that time he compared the numbers and found that

there were about 600 or 700 machines on the seven reservations, versus 1,400 or 1,500 machines for a single non-Indian entity.

SEN. PEASE said that he thinks the state is getting more benefits than tribes and asked to be provided with some figures on that. MR. HUNTINGTON said they keep close track of that and that there are 371 machines on the Salish Kootenai, and 112 on the Fort Peck. REP. HENDRICK asked if Mr. Huntington could provide that data to the Committee.

REP. JAYNE asked if there would be an opportunity to submit what the tribes would like to have, in terms of legislative changes and what the game plan might be for the Salish Kootenai. MR. DUPUIS said that a letter was hand-delivered to Ms. Sandholm requesting a meeting on March 21st in order to present a new proposed compact and what the tribes would support. He said that each tribe would like to keep the ability to deal with the state on an individual basis. Mr. Dupuis said that in terms of the compacting process, he does not believe that the Governor has the authority to change the scope but that the Governor should work on the things that he does have discretion on. MS. HAMEL said that MTGA's next meeting will be March 24, and that is something that could be added to their agenda. She said that a compact containing the basic standards could be drafted for presentation to the legislative body.

SEN. PEASE asked why the tribes are limited to a 5-year contract. DEANNE SANDHOLM said that there is nothing that prohibits longer compacts.

REP. JAYNE asked if this Committee could further examine this issue and make sure that the tribes are aware of this information. MS. ERICKSON said the Committee could put the discussion on the agenda for another meeting. She noted that Ms. Hamel said that the Montana Tribal Gaming Association is meeting on March 24, and once it has met, could report to the Committee on what was discussed and any proposed legislation.

REP. HENDRICK said that he thinks it is a good idea to follow up on Rep. Jayne's concern and said that he would like it on record that the Committee will continue discussions and follow up on information that was requested.

### **REPORT ON GOVERNOR'S AMERICAN INDIAN NATION (GAIN) COUNCIL**

David Ewer, Executive Director of the Office of Budget and Program Planning, gave a report on the Governor's American Indian Nation Council. (GAIN) Mr. Ewer distributed and discussed the GAIN Council's internal strategy framework (**EXHIBIT 1**) and a spreadsheet on State Tribe Revenue Sharing Agreements (**EXHIBIT 2**), which gives an update of where they are with respect to tobacco and alcohol agreements. Mr. Ewer introduced his staff: Deanne Sandholm,

Attorney for the GAIN Council and the Governor's representative with respect to gambling and tribes and Judy Paynter, Chief Staff for the GAIN Council and Supervisor for all revenue estimates and revenue issues in OBPP.

#### QUESTIONS

REP. WINDY BOY asked Mr. Ewer if the Council has discussed the work force investment approach. MR. EWER said that he doesn't remember the GAIN Council specifically addressing particular issues with work force investments. He asked Major Robinson to respond.

#### **REPORT FROM THE GOVERNOR'S OFFICE OF ECONOMIC OPPORTUNITY AND GAIN COUNCIL**

MAJOR ROBINSON, Governor's Office of Economic Opportunity and GAIN Council, said that there are work force investment MOUs in place and that there have been discussions related to the Economic Development core team. He said that GAIN is trying to bring everyone together to share experiences and information. He said that he, Anna Whiting-Sorrell, and Emily Sirota, have coordinated meetings with tribal representatives and have put together a coalition to represent the tribes. Mr. Robinson said that a MOU has been created that includes tribal representatives and all organizations that receive workforce investment dollars. Four of the seven representatives have approved the MOU. This is important for the tribes because they are required to have an agreement with the state to receive their federal funding.

MAJOR ROBINSON said there was a grant from the U.S. Department of Labor to the Governor's Office to put in a plan for Workforce Innovation for Regional Economic Development (WIRED). This grant is \$15M for three years, or \$5M per year. The Governor's Office worked with the Department of Commerce, Department of Labor, and Office of Public Instruction to put together this grant. The grant's focus was on regional economic development as it relates to bio-lubricants and bio-products and other types of industry development. Mr. Robinson said they coordinated a conference call with all the representatives who helped with the drafting of the grant proposal, which included all the tribal nations and all the tribal colleges. He said that the region that they are talking about is central and eastern Montana, which includes 32 counties and includes six of the seven reservations in Montana. Mr. Robinson said that in their grant proposal they drafted a job description for a project manager, with Ms. Emily Sirota as the contact person.

REP. WINDY BOY said that this is not just a tribal deal, it is a 32-county project. He asked if there was going to be a committee set up for coordination efforts. MR. ROBINSON said that Emily Sirota is the contact person and that since it includes three different agencies, Commissioner of Higher Education, Department of Labor, and Department of Commerce, as well as the Governor's Office, there isn't a group.

REP. HENDRICK asked what criteria was used in picking which communities or counties would receive the grant. MR. ROBINSON said that they knew they needed to focus on developing or selecting a region that was aligned with the Governor's vision of making sure that those economic opportunities were available to those areas in Montana whose economies were more stressed.

SEN. O'NEIL asked Mr. Robinson what his vision is of how these areas were going to use the money in order to improve their economy. MR. ROBINSON said that they worked with Montana State University's research department on bio-lubricants and bio-products. Montana State University has said that it hasn't been successful in taking the bio-lubricant and bio-products to commercialization. The intent of these funds is to move that industry forward within that region so that there are more businesses starting up to provide these bio-lubricants.

REP. ANDERSEN asked Mr. Robinson if there is an incentive for a company to come in and set up a process to develop lubricants from the oil seeds. MR. ROBINSON said that there are some incentives on the back end for ethanol production. As far as bio-lubricants and bio-products, this money has just been acquired and incentives haven't yet been built into it. Mr. Robinson said that certain incentives may be considered to help further that type of development.

REP. ANDERSEN asked if they will have to look at competition for those acres that grow corn or the acres that might grow the oil seeds, and if there is a capacity to grow a sufficient amount of both to make both of them viable industries in Montana. MR. ROBINSON said that he doesn't have the complete answer to that and that he would research existing capacity.

EDDYE MCCLURE asked Mr. Robinson to give a brief overview of the Tribal Employment Rights Office (TERO) and how it interacts with state projects. MR. ROBINSON said that he works for the Governor's Office but he is a tribal member from the Northern Cheyenne Tribe and has worked closely with TERO on some of the building projects. The Tribal Employment Rights Office is usually the tribal entity that deals with employment rights issues for the tribal members. TERO's primary purpose is to help tribal employees make sure their rights are adhered to, particularly if the project involves road construction, facility construction, or another similar project. TERO is also a service that tries to find work for tribal members or helps with job placements. TERO helps tribal members develop resumes and helps with interviewing procedures and skills.

SEN. PEASE asked why fishing and big game agreements are not on the list that Mr. Ewer provided because those activities are held on the reservations as well. MR. EWER said that he has a report that lists all of the agreements and could provide a copy to Sen. Pease. Mr. Ewer said that the GAIN Council has not specifically delved into agreements between the tribes and Fish, Wildlife & Parks. One of the things that the GAIN Council wants to acknowledge is that it

is sensitive to the boundaries of the departments. GAIN is not a substitute for the mission of the departments. GAIN serves as a clearinghouse and a sounding board for both. GAIN provides feedback but does not overrule directors; it can strongly encourage and can disagree but GAIN shouldn't be the substitute for running state government with respect to tribes.

REP. WINDY BOY noticed that the Blackfeet and Fort Belknap do not have compacts on gaming. MS. SANDHOLM said that they do not have a compact with the Blackfeet Tribe and there has been no request for negotiations. She said that they are at the present time, setting dates to meet with Fort Belknap. REP. WINDY BOY asked Mr. Ewer if there would be recommendations or suggestions from the GAIN Council for any possible Committee bill before this Committee's last meeting in September. MR. EWER said that there has been some discussion of possible legislation.

### **HJR 11 - COOPERATIVE RESEARCH AGREEMENTS WITH TRIBAL COLLEGES**

#### **Dr. Nathan St. Pierre**

DR. NATHAN ST. PIERRE, member of Chippewa Cree Tribe and Dean of Academics at Stone Child College, Rocky Boy, discussed HJR 11, the Cooperative Research Agreements with Tribal Colleges. Dr. St. Pierre said that he attended a meeting last November with members of the State-Tribal Relations Interim Committee, representatives of the tribal colleges, Agricultural Research Station staff, and members of different tribal groups. He said that they are dealing with a number of different constituents, one being the Rocky Boy Reservation, particularly Stone Child College, the Fort Belknap Assiniboine and Gros Ventre Tribes through Fort Belknap College and the Fort Peck Community College for the Assiniboine and Sioux Tribes. There have been discussions with the University System, particularly through Montana State University - Northern, about collaborative partnerships for obtaining research funds. Dr. St. Pierre said that at tribal colleges, research takes a back seat to community service, community outreach, and cultural programming. But within each tribal reservation along the northern tier of Montana, research is very important and necessary. Dr. St. Pierre said that HJR 11 can create those collaboratives in the spirit of working together, rather than having one particular group or entity be solely responsible for conducting agricultural research. Dr. St. Pierre said that he thinks it is important that they begin talking to some of their cultural people, the elders and the cultural leaders, who have information that they can integrate into their curriculum. Natural resources are tightly bound with cultural and religious traditions.

#### **QUESTIONS**

REP. WINDY BOY asked for an update from the Commissioner of Higher Education on the transfer agreements tribal colleges have with the Montana University System. It would provide an opportunity for non-native students to attend some of the tribal colleges in their area. A lot of this progress made to date has been beneficial, not only for the tribes, but for the whole state because of shared concerns and needs.

ELLEN SWANEY, Commissioner of Higher Education Office, said that they know that there are all kinds of collaboration that goes on between various units of the University System and individual tribes and tribal colleges. There has been discussion regarding establishing a better protocol document and a committee has been formed to focus on Indian education in the University System. Ms. Swaney said she thinks that Commissioner Stearns would be glad to provide any information that the Committee might need for the next meeting

REP. WINDY BOY suggested that Dr. St. Pierre be the point of contact, along with Ms. Swaney, to get Ms. Stearns and other parties to present a progress report to the Committee.

### **REPORT FROM OFFICE OF PUBLIC INSTRUCTION, OFFICE OF INDIAN EDUCATION**

LINDA MCCULLOCH, Superintendent of Public Instruction, discussed Indian Education for All (**EXHIBIT 3**) and (**EXHIBIT 4**). Ms. McCulloch introduced the Indian Education staff: Denise Juneau, Indian Education Director; Lynn Hinch, Assistant Administrator and Bi-Lingual Education Specialist; Mike Jetty, Indian Education Specialist for Indian Education for All; Mandy Broaddus, Indian Education Specialist for Indian Achievement; Amy Sings in the Timber, Indian Education Drop-out Prevention Specialist; Cal Boyle, Gear Up Program Coordinator; and Joan Franke, Administrative Assistant.

### **QUESTIONS**

REP. WINDY BOY asked if OPI is part of the process with the Governor's Office regarding the GAIN Council. SUPERINTENDENT MCCULLOCH said that they are getting Indian education into the schools and that it is important that the materials and resources are both accurate and culturally appropriate. She said that OPI intends to have tribes review materials specific to that tribe before distributing it to schools.

REP. WINDY BOY said that the three individuals who are on MACIE from his tribe have never given an update of the MACIE meetings. Rep. Windy Boy said that he wants to make sure that everything is moving forward and that their input is there. SUPERINTENDENT MCCULLOCH said OPI sends a request to all tribal leaders asking them to appoint someone to represent their tribe on MACIE. She said that she does not know how those representatives are chosen. SUPERINTENDENT MCCULLOCH invited Rep. Windy Boy to attend MACIE meetings. REP. WINDY BOY asked if there are any requirements for members of MACIE to get information of meetings back to the tribes. SUPERINTENDENT MCCULLOCH said that one of the items discussed in the last MACIE meeting was making sure that each MACIE member gets back to whomever they represent with their information.

REP. WINDY BOY asked how tribal curriculums are being developed. DENISE JUNEAU said that the Montana Indian Education Association has asked tribal leaders, teachers, and students from the Little Shell, the Crow, the Blackfeet, Fort Belknap, and Fort Peck Reservations to meet

and discuss different issues, such as treaty rights, sovereignty, and federal Indian policies. From the presentations and discussions, teachers developed lessons surrounding those issues of tribal governments that the students were interested in. REP. WINDY BOY said that there were five tribes mentioned but that the Northern Cheyenne, Chippewa Cree, and Salish Kootenai tribes were left out. He said that he would like all tribes to be included. SUPERINTENDENT MCCULLOCH said that that project is not an OPI project, but a grant that MIEA applied for. She said that she will make sure that his concern is relayed to them.

REP. HENDRICK asked who is teaching the School Board Association representatives and the trustees and if the cost was factored into the cost of implementing Indian Education for All. He said that on local school issues, they will need to be trained on what the curriculum will be for the schools and that they are the ones who will be making local decisions. MS. MCCULLOCH said that professional development programs are open to school board members as well as to educators. She said that the Montana School Board Association is having an Indian Education for All Conference on March 18th and realizes that its members must be trained, just as teachers are.

REP. JAYNE asked Superintendent McCulloch for a timeframe as to when this curriculum will be put into the schools. SUPERINTENDENT MCCULLOCH said that because Montana is a local control state, there is no formal state curriculum. OPI provides materials and resources but each local school district is responsible for choosing and implementing its own curriculum. REP. JAYNE said that she wanted to commend Superintendent McCulloch's department for doing the work in getting everything out there and that she feels that they are headed in the right direction.

SEN. SMITH asked if there are training programs for superintendents unfamiliar with Impact Aid and other federal programs used by reservation schools. SUPERINTENDENT MCCULLOCH said that there is nothing available currently but the need for that kind of training has been discussed.

REP. HENDRICK asked how parents and students will be informed of the new graduation requirements when Indian Education for All is implemented. SUPERINTENDENT MCCULLOCH said that a public education campaign is being planned that will get out the necessary information to parents and students.

REP. WINDY BOY asked Superintendent McCulloch if her office has been working with the Governor's Office on this. SUPERINTENDENT MCCULLOCH said that as a rule, OPI has always worked closely with the Governor's Office.

### **COMMITTEE BUSINESS**

CONNIE ERICKSON said that she has passed out some documents related to earlier presentations. One is a copy of an e-mail (**EXHIBIT 5**) to Deanne Sandholm from Gene Huntington in response to Sen. Pease's question on the number of gaming machines in Montana. The second document is in response to a question about the number of agreements that the state of Montana has with Indian Nations (**EXHIBIT 6**). The third document is a copy of a resolution (**EXHIBIT 7**) from the Montana-Wyoming Tribal Leaders Council, which will be discussed later. The last document is a copy of the grant proposal for the bio-product development titled, *The New Homestead Act: Montanans for Bio-Product Development* (**EXHIBIT 8**).

### **PROPOSED VISIT TO BLACKFEET RESERVATION**

REP. WINDY BOY said that the Committee is planning a visit to the Blackfeet Reservation and suggested including the Crossroads Correctional Center in Shelby in the itinerary. He reported that he, along with others, has received correspondence from many Native inmates and that he would the Committee to look into how these inmates are being dealt with. He said he had hoped the Committee could make a surprise visit, but realized that security requirements would prevent that from happening. He said that he has consulted with the Blackfeet Tribal Council and was told that mid-May was a good time for the Committee to visit. REP. WINDY BOY said he would like to be able to meet directly with some of the Native inmates, perhaps even outside of the prison, and listen to their concerns, first hand. He said it is necessary for the Committee to personally meet with inmates because any potential legislation must be based of first-hand information.

EDDYE MCCLURE discussed the protocol of scheduling a visit to the Blackfeet Reservation and to the Crossroads Correctional Center. JIM MASON, Department of Corrections (DOC), said that the Department would need the full names, dates of birth, and Social Security numbers of Committee members and staff and that this information would have to be provided several weeks in advance.

MR. MASON reported that two spiritual gatherings have been scheduled at the Montana State Prison. On June 3, the High Side will have their spiritual gathering and on June 10, the Low Side will have their gathering. He said that if anyone wishes to attend, the same security protocol will be used.

MR. MASON said that a new sweat lodge will be built at Montana Women's Prison. He said he would invite the Committee members to attend the ceremony as soon as the date is set.

MR. MASON gave an update on the Native Court Worker position. He said that the Native Court Worker is not an attorney but would assist American Indian offenders within the court system and guide them through it, help them seek counsel, and would provide input for the

presentencing reports. He said that Randi Hood, Chief Public Defender for Montana, will be working with the Native Court Worker program.

MR. MASON gave an update on the White Bison 12-Step Program. He said that it is instituted in the Women's Prison and the State Prison in Deer Lodge and that he would like to expand the program to Cascade County and Dawson County by the end of 2006.

MR. MASON reported that he met with Ms. Dawn Stump at Stone Child College and that they worked to set up a family support group for family members who are incarcerated. He said not many attended the meeting and that he would like to get more people involved in this support group.

MR. MASON said that he contacted a Native American from Billings who gives cultural courses to government employees. He would like to come up with a better program on giving American Indian cultural courses to non-Indian people who deal with American Indians in the state.

#### QUESTIONS

REP. WINDY BOY said that statistics given to him indicate that 40% of the state prison population is Native American and that 80% of those inmates are incarcerated on methamphetamine-related sentences. He asked if services are available for inmates with meth addictions. MR. MASON said that he is not aware of a program designed specifically for meth users but that there is a Chemical Dependency program. He said he would investigate further.

REP. SMITH asked Mr. Mason to elaborate on the Native Court Workers program or get a copy of the letter that was distributed last month. MR. MASON said that he would provide a copy of the letter to rest of the Committee. MR. MASON said that the Native Court Workers program had worked very well for the Blood Tribe in Southern Alberta. He explained that a Native Court Worker is very knowledgeable about Native American culture, researches the family background and employment history of each individual, and may speak for the individual when appearing before a judge. The Worker may also participate in pre-sentencing reports and may consult with an attorney, but may not give legal advice. This type of advocacy is very useful in guiding the individual through the court system and a frightening experience. The end result is fewer people being incarcerated and shorter incarceration periods for Native Americans.

REP. HENDRICK asked how incarcerated Native Americans are able to meet their spiritual needs or practice their faith. MR. MASON said that Native American inmates incarcerated in prisons that have facilities such as sweat lodges are allowed to have sweats, to smudge, to have the eagle feathers, to have medicine bags, and other necessary items for their faith.

REP. JAYNE asked if inmates in county jails are allowed to have a priest visit them in their cell or other place where they are not barricaded from one another. MR. MASON said that county

jails are not a part of the Department of Corrections, but he would try to find out. REP. JAYNE said that she would like to know because Native American spiritual leaders should be allowed access as priests or other types of spiritual leaders.

REP. JAYNE asked about the time frames of the different treatment options. MR. MASON said that he did not know the specific time frames of the different options but that he would find out. He said that the Department is pushing for the White Bison Program to be implemented in all institutions because it goes with the medicine wheel and the 12-step program, which has been successful for the Indian inmates. He said that travel expenses for bringing the tribal elders to the Native American inmates is a concern. These expenses have been high and there are no resources available to pay them. REP. JAYNE suggested that as the Native American Liaison, Mr. Mason should plan to attend the Department of Corrections budgeting meetings in order to request funding.

REP. JAYNE asked, as a follow up question regarding Native Court Workers, if Lake County is in line to receive a Native Court Worker. She also asked if the Department of Corrections defines the scope of a Court Worker's duties. MR. MASON said that he was delegated as the project manager of this pilot project and that he doesn't yet know the starting location. The \$100,000 grant, which has not yet been received, will pay the salary of the Worker.

REP. JAYNE said that it is necessary to work with public defenders but suggested including a Native American attorney on the task force because of the knowledge of Native American culture such a person would bring. She said that it is very important that this work be done correctly and that there will have to be a close working relationship between the public defender and the Native Court Worker. She asked if the program in Canada program was operated through the provincial courts or in the tribal courts. MR. MASON said that it ran in provincial courts. He said that when he was a police officer, a Native Court Worker would accompany the offender in court and speak before the court on the person's behalf, not as a lawyer, but as a guide and a counselor.

REP. WINDY BOY asked if the White Bison 12-step program is the same type of program that the Alcoholics Anonymous uses. MR. MASON said it is. REP. WINDY BOY said that 80% of the Indian inmates crimes are meth-related, not alcohol-related. He said that the evaluation of what is being offered to the inmates right now needs to be addressed as far as those numbers are concerned. He said that he did not know what the ratio is with the Montana State Prison as far as the Native Americans, but that in his opinion, Native American inmates have been overlooked for far too long. There are people in the system who have spoken out and legislators are not doing their job if these people are continually ignored. If there are toes to be stepped on, then so be it.

REP. WINDY BOY said that he had a meeting with the Havre County Sheriff and he said that 95% of the inmates that go into that county jail are Native American. He said that those numbers are of great concern to him. Regarding Rep. Jayne's question about inmate access to spiritual leaders, there is a Chaplain for the county jail but not for the Fort Belknap or Rocky Boy jails. He said, regarding sweat lodges and spiritual ceremonies allowed at correctional facilities, that each of the ten different tribes in Montana have different spiritual requirements and that what may work for one inmate may not be appropriate for another. If Native Americans continue to be incarcerated, for whatever reason, there needs to be comprehensive services provided that address their needs, particularly for when they complete their sentence and are ready to be released. If the type of treatment the inmate received in prison is known, it would make it much easier to plan how to help them when they are released.

SEN. SMITH asked if an individual has been cleared for the Montana State Prison at Deer Lodge, if another security clearance would be necessary for admittance to the Shelby facility. MR. MASON said he would find out and provide that information to Ms. Erickson.

#### PUBLIC COMMENT

TINA HAS THE EAGLE, Councilwoman from Fort Belknap, addressed her concerns on the judicial system for Native Americans in Montana and Wyoming. She said that the current judicial system sets up Native Americans for failure. She presented letters from other individuals who share her concern (**EXHIBIT 9**). Ms. Has the Eagle said that she is asking for a review of the judicial system and sentencing guidelines for Native Americans, both state and federal, and for the Committee's support. Ms. Has the Eagle discussed a resolution (**EXHIBIT 7**) to develop a plan of action for remedy regarding the apparent disparate treatment of Native Americans in the federal and state court systems.

EDDYE McCLURE said HJR 15 was Rep. Juneau's resolution to look at disparity in sentencing in state courts and in the prison (**EXHIBIT 10**). The study resolution was sent to the Law and Justice Interim Committee and referred to this Committee. She said that part of the problem is that when a person is charged with a crime, the Parole Board goes by the record of the incarcerated person. The problem with many American Indians is that rather than plead not guilty and go through the process, some of them will plead guilty. The next time they get charged with a crime, there is their record, so the sentencing is stacked against them. In some instances, if you have a non-Indian, they may get probation or have access to an attorney where an American Indian doesn't. By the time you get down to the second or third crime, the non-Indian may have done just as many crimes, but they have less of a record because they understand the system, they understand the state courts, and they may have access to an attorney that an American Indian does not have.

MS. HAS THE EAGLE said that she understands that the Committee can't change the federal sentencing guidelines but that she is requesting an investigational review of the judicial system's

sentences given to Native Americans versus non-Native Americans. She said that she would like Mr. Mason to come to Fort Belknap and visit with her people on the judicial systems that they have. She said that one of the things that has been used in sentencings are tribal court records, which are not released to anyone or considered in sentencing.

CONNIE ERICKSON said that HJR 15 ended in the State-Tribal Relations Interim Committee. At the Committee's first meeting in June, Mr. Chris Lohse, the previous staff research analyst, said the problem is the lack of data and the fact that what data is out there is not electronically available. Mr. Lohse proposed at the time of the June meeting, that a stratified random sampling of a large-sized community, a medium-sized community, and a small-sized community should be done by manually examining court records and using that information as a springboard to get statewide data. Ms. Erickson said that in order to do an effective full study of this topic would take more than what the Committee could take on within its budget.

REP. JAYNE said that the Salish Tribal Court keeps its records in-house. She said that she wanted to know if this Committee could do a resolution to discuss what the impacts are on each of the tribes regarding keeping records in-house. MS. ERICKSON said that a letter from the Committee to the Congressional delegation could be written in support of a resolution to do something. Another option would be to request legislation for a comprehensive study on sentencing disparity. She suggested that any legislation include a funding amount that would be sufficient to hire the study done.

REP. JAYNE asked if this Committee could have a committee bill to address Ms. Has the Eagle's concerns and the Committee's concerns.

MS. HAS THE EAGLE said that Rep. Jayne was speaking on the release of documents from the tribal courts. She said that one of the reasons that their tribal records were released is that the state had access to tribal records through the Judicial Court Management System (JCMS). They are now in the process of changing that system so the state cannot tap into the records. Ms. Has the Eagle requested copies of any draft legislation or letters of support so that she can keep her council and Montana/Wyoming informed.

SEN. O'NEIL asked Ms. Has the Eagle what studies was she referring to regarding the unusual number of prison sentences for Native American defendants in the Montana/Wyoming court systems. MS. HAS THE EAGLE said that she herself does not have any numbers but there is a person from the Blackfeet who works for TERO with the information. She said that she could contact him or could direct Sen. O'Neil to him. SEN. O'NEIL said that it would be very helpful to the Committee to have the information that Ms. Has the Eagle referred to. REP. WINDY BOY directed staff to follow up with Ms. Has the Eagle. MR. MASON said that he also would provide assistance to Ms. Has the Eagle and the staff.

REP. WINDY BOY said that an article on racism in the *Missoulian* newspaper reported that 95% of the inmates in the Lake County jail are Native Americans. He said that some of the complaints that he is receiving indicate that the sentences handed down are not appropriate for the crime and that he is aware of two different cases in which individuals are suing law enforcement officers.

SARAH BOND, Attorney for Department of Justice, said that Rep. Windy Boy has raised a couple of distinct issues, on one of which they have some statistics. There are often allegations with respect to the law enforcement officers' actions in arresting the individual in the first instance. She said she is not familiar with the litigation mentioned, but often an allegation is made that there was no probable cause or there was some particular racially motivated action at the level of the law enforcement officers. Attorney General McGrath is against racial profiling and allegations are carefully tracked. If an allegation is made that Indians are stopped more often or treated differently by the law enforcement officers, he tracks those individually and gets back to the complainant immediately. The fact that video cameras are now in the Highway Patrol cars has changed the nature of those allegations because there is a video record of what has happened. Another issue is variable sentences imposed by state courts throughout the state. The state has jurisdiction over off-reservation crimes, but not over Indians who commit crimes or crimes that are committed against Indians on reservations. These situations fall under federal jurisdiction and the state is powerless to do anything about it. Ms. Bond said that the Montana Board of Crime Control may have funds to study these issues. There is work being done and it will continue.

MS. BOND said she is not familiar with the Justice document system and that it sounds like a court document system, as opposed to a law enforcement information system. The DOJ does manage the Criminal Justice Information Network, which is what the law enforcement officers have access to on their radios. She suggested directing those questions to the Court Administrator of the Supreme Court.

REP. WINDY BOY asked Ms. Bond if the state has any working relationships with federal programs that deal specifically with methamphetamine. MS. BOND said that the DOJ's drug task force works all over the state and that it does work with the federal government. Ms. BOND said she is very concerned about the anticipated budget cuts for law enforcement efforts in Indian Country.

SEN. O'NEIL asked how an individual would be sentenced if convicted of a crime on the Flathead, versus another reservation in Montana. MS BOND said that the Flathead Indian Reservation is the only partial PL280 Jurisdiction in state, which means that it has allowed the state to take felony jurisdiction over crimes committed by Indians or to Indians on the Flathead Indian Reservation. She said that the DOJ retroceded misdemeanor jurisdiction back to the tribes and so they coordinate on any of the pleading downs where the jurisdiction would switch

from state to tribal. The tribe has jurisdiction over misdemeanors committed by or to Indians on the Flathead Reservation. The DOJ has jurisdiction over felonies committed by anybody on the Flathead Reservation. On the rest of the reservations in Montana, under federal law, the state has no criminal jurisdiction over crimes committed by or to Indians on those other reservations, so the state has a much reduced law enforcement presence. The tribes have misdemeanor jurisdiction over Indians, the state retains misdemeanor jurisdiction over non-Indians and felony jurisdiction over non-Indians if they commit a crime against a non-Indian or victimless crimes. It is a difficult issue, governed primarily by federal law, and that is why the DOJ typically tries to promote cooperation and cooperative agreements among law enforcement agencies because that is the only effective way to protect the people.

SEN. O'NEIL said that if sentences or time served for felonies on the Flathead Reservation under state jurisdiction were compared to sentences or time served on the reservations under federal jurisdiction, it would be possible to determine if there is sentencing disparity between state and federal law. MS. BOND said that was a good point and said that data could be obtained from the federal government.

REP. JAYNE said that she thought the wording that would have required the reporting of racial profiling was taken out of HJR 15. MS. BOND said that the reporting requirement is always controversial and discussed the difficulties that can result from allowing racial profiling.

SEN. O'NEIL asked for information regarding the differences in sentencing or prison time served between the Flathead Reservation and other reservations in Montana for felonies. MS. MCCLURE said that the lack of availability of data has been and continues to be an issue. She said that gathering that information could be time consuming because there is no single data base containing this information. She said she could check with the Supreme Court and other databases to see if the data available now is better than in the past. SEN. O'NEIL asked if there needs to be an official recommendation from this Committee to do that. MS. MCCLURE said that had been done when Rep. Juneau was working on her sentencing disparity. MS. MCCLURE pointed out that each county has a different amount and type of information available. A starting place would be to see what data is there, how accessible it is, and then compile it in a way that helps the Committee. Some of the data does not indicate whether that person is American Indian or not. On certain reservations, names are available but on other reservations, it is not. MS. BOND asked when the previous study was done, if it was done before the Supreme Court took control over the District Courts. SEN. O'NEIL said that he suspects that more time may be needed before enough data has been collected to give an accurate picture of the situation. He said it may be necessary to require mandatory reporting of nationality in order to gather the needed information. MS. MCCLURE said that the Committee can check with the Supreme Court to see what information it is collecting and how it is being collected.

SEN. O'NEIL said that he would like to know the percentage of children from single parent families who end up in prison. He asked if keeping a family together makes a difference. REP. JAYNE said that was a different issue than the Native American issues. SEN. O'NEIL disagreed and said it would be important to know if the high incarceration rates were due to dysfunctional families on the reservation, increased use of meth, or to disparate treatment of people who live in the same conditions. REP. JAYNE said that it would seem that there are similar factors across the board, but that she cannot make a connection. MS. MCCLURE said that the question here is not just whether they are in jail, but rather there is disparity in sentencing. She didn't know if a correlation could be made between being from a single parent family and getting a longer prison sentence.

### **INSTRUCTION TO STAFF**

EDDYE MCCLURE told the Committee that the Crow Tribe, in adopting its Constitution, has an 18-member legislature consisting of three people from six districts. She said Greg Petesch, Chief Legal Staff, Legislative Services Division, has received a call from Sherri Matteucci asking that both Ms. McClure and Mr. Petesch work with her in helping the legislative staff of the Crow Nation on codification. She would like Mr. Petesch and Ms. McClure to provide training on codification so the tribe can publish its own codes. Ms. McClure will keep the Committee updated. Ms. McClure is asking for approval from this Committee and will report back to Ms. Matteucci and the Legislative Council. REP. WINDY BOY said he did not anticipate that to be a problem.

### **NEXT COMMITTEE MEETING DATE**

The State-Tribal Relations Interim Committee meeting will be May 9, 10, 11, 2006, at the Blackfeet Reservation and the Crossroads Correctional Center in Shelby. MS. ERICKSON said that she would confirm with the Blackfeet Tribe on the meeting dates.

### **ADJOURNMENT**

REP. WINDY BOY adjourned the meeting at 4:03 p.m.

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