



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

August 28, 2006

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

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

REP. JOAN ANDERSEN
REP. JOEY JAYNE

COMMITTEE MEMBERS EXCUSED

REP. GORDON HENDRICK, Vice Chair
SEN. FRANK SMITH

STAFF PRESENT

EDDYE MCCLURE, Staff Attorney
DAWN FIELD, Secretary

AGENDA & VISITORS' LIST

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

COMMITTEE ACTION

The State-Tribal Relations Interim Committee:

- voted to not approve LC 9999 as a committee bill - accountability for Indian Education For All Funding;
- voted to not approve LC 9996 as a committee bill - creation of an American Indian Education Council;
- voted to approve LC 9997 as a committee bill - expanded Class III gaming on reservations;
- voted to not approve a proposed amendment to LC 9995;
- voted to not approve LC 9995 as a committee bill - American Indian spiritual leader in the Department of Corrections;
- voted to approve LC 9998 as a committee bill - revise 2-15-143, MCA, training statutes;
- voted to rescind action taken at the Fort Peck Reservation regarding sponsoring a bill to equalize the state oil and gas production tax for the tribes; and
- voted to send a letter to Montana's Congressional delegation asking the United States Congress to consider legislation to allow PILT funds to replace state taxation of tribally-owned fee lands.

CALL TO ORDER AND ROLL CALL

REP. WINDY BOY called the meeting to order at 9:03 a.m. The secretary noted the roll, REP. HENDRICK was not present but called in via conference call and SEN. SMITH was excused.

LC 9999 -- ACCOUNTABILITY FOR INDIAN EDUCATION FOR ALL FUNDING

(EXHIBIT #1) **Linda McCulloch, State Superintendent of Public Instruction, Office of Public Instruction (OPI)**, said that LC 9999 duplication of efforts and is unnecessary. She explained that the Montana Code Annotated outlines the powers granted to the Superintendent of Schools, which includes oversight of and administering funding for Montana schools and that Indian Education For All (IEFA) expenditures are already being tracked as a part of that duty.

REP. HENDRICK recalled that the Missoula school district was recently in the news because of possible problems with how that district spent its IEFA funding. He asked Ms. McCulloch to update the Committee. Ms. McCulloch said that she has been in touch with the Missoula Superintendent of Schools and that the issue was how the funding had been classified within the school's accounting system. She said that the problem had been resolved to her satisfaction.

REP. JAYNE said that there is new language on page 1 of the bill to require annual accounting. Ms. McCulloch said that an annual accounting is already being done and that as State Superintendent, she would continue to supervise and monitor the administrations of funds to Montana schools.

REP. WINDY BOY noted that current law (20-9-329(a), MCA) mandates that IEFA funding must be deposited into a school district's general fund. REP. HENDRICK said that LC 9999 would clarify how these funds are to be handled.

SEN. PEASE said that the bill proposal is not needed and **moved** to table the bill. REP. ANDERSEN seconded the motion. **Eddy McClure, Staff Attorney, Legislative Services Division (LSD)**, noted that while the bill would not move forward as a Committee bill, it could be carried by an individual legislator.

REP. JAYNE said that STRIC needs to take a strong position on this issue and the fact that IEFA funds are deposited into a school district's general fund is of great concern to her. She said that LC 9999 did not address her concerns and agreed that the proposed bill draft should not be approved, but said that she would prefer a vote be taken to kill the bill, rather than table it.

REP. JAYNE noted that REP. HENDRICK was participating in the meeting via conference call and asked if he would be allowed to vote on the proposed bill drafts. Ms. McClure said that he would be allowed to vote. REP. JAYNE objected, saying that the Committee had made the decision to not allow proxy voting and that allowing REP. HENDRICK to vote without being physically present would defeat the purpose of the Committee's decision. She said that the entire committee could have called in, rather than traveled to Helena for the meeting. REP. JAYNE asked if SEN. SMITH had been offered the use of a teleconference connection to the meeting. Ms. McClure said that Sen. Smith had been offered the use of a teleconference telephone. REP. JAYNE asked if it had been made clear to SEN. SMITH that he could vote via telephone. Ms. McClure said that the arrangements for REP. HENDRICK to participate via teleconference at the August meeting had been discussed by the Committee at the July meeting and that the protocol regarding conference calls, as established by Legislative Council, had been followed.

REP. JAYNE said that in order to uphold the integrity of the process, the physical presence of the members is necessary in order to vote. REP. WINDY BOY, SEN. STEINBEISSER, and SEN. PEASE agreed that REP. HENDRICK should not vote.

The **motion to table LC 9999 passed** on a 4-2 roll call vote. SEN. O'NEIL and REP. JAYNE voted no. (REP. HENDRICK did not vote and the conference call was disconnected at this point.)

LC 9996 - CREATION OF AN AMERICAN INDIAN EDUCATION COUNCIL

(EXHIBIT #2) Ms. McClure reviewed the key points of the bill draft and noted that much of the draft was taken from the Montana Advisory Council on Indian Education (MACIE).

Ms. McCulloch said that she has concerns regarding LC 9996, particularly regarding separation of powers. She questioned placing the Council in the Governor's Office and said that the Constitution specifies that the Office of Public Instruction is to guide and supervise education in Montana. Ms. McCulloch said that another concern is that the bill draft would be a duplication efforts and that MACIE has been instrumental in guiding the development of Indian education in Montana.

TAPE 1 - SIDE B

REP. WINDY BOY agreed, saying that after discussing the issue with Governor Schweitzer and researching the constitutional provisions already in place, it became clear to him that LC 9996 is not necessary. SEN. O'NEIL and REP. JAYNE also agreed.

REP. WINDY BOY **moved** to not approve LC 9996 as a STRIC bill. The **motion passed** on a unanimous voice vote.

LC 9997 -- EXPANDED CLASS III GAMING ON RESERVATIONS

(EXHIBIT #3) Ms. McClure explained the main points of LC 9997 section by section, including the language regarding "illegal gaming devices".

SEN. ONEIL asked if the state is liable if a tribe loses money in a gambling operation. Ms. McClure said no.

REP. JAYNE said that the Committee has heard many reasons why the tribes would benefit from the proposed legislation and **moved** to approve LC 9997 as a committee bill.

Public Comment

Councilman Kermit Horn, Fort Belknap Reservation, testified in support of LC 9997.

Councilman Horn said that Fort Belknap is isolated but scenic and that his tribe would like to take advantage of the opportunities that LC 9997 would allow.

REP. ANDERSEN said that she could not support LC 9997. She agreed that the needs of the Indian people are great but said that gaming is not a good solution.

SEN. O'NEIL said that he did not think that gaming was the answer to the Indian tribes' needs but that it should be the tribes' decision.

SEN. STEINBEISSER said that he would support LC 9997.

SEN. PEASE said that he has not heard from other tribes on whether they are in favor of expanding gaming or not and that he would not support LC 9997.

Julia Doney, President, Fort Belknap Reservation, testified that her tribe is in favor of having Class III gaming. She said that the issue has been discussed at length with other tribes, as well as tribes in Wyoming.

REP. JAYNE said that problems could be dealt with through the legislative process and emphasized that the proposed legislation could improve the state budget, as well as the tribes. She said that she personally does not care to gamble but that it is a personal decision and that overall, would be a good decision because it would be an additional source of revenue to both the tribes and the state.

The **motion to approve LC 9997 passed** on a 4-2 roll call vote, REP. ANDERSEN and SEN. PEASE voted no.

LC9995 - AMERICAN INDIAN SPIRITUAL LEADER IN DEPARTMENT OF CORRECTIONS.

(EXHIBIT #4) Ms. McClure reviewed the provisions of the proposed bill draft.

SEN. STEINBEISSER asked if there currently is a person being paid to provide these services. Ms. McClure said that this bill would require the Department of Corrections (DOC) to budget for the position and that the bill would require that the same amount of religious and spiritual guidance provided to other inmates would also have to be provided to the Native American inmates as well.

SEN. O'NEIL asked to change the language in the first sentence of Section 1 from "shall provide" to "may allow". Ms. McClure suggested also changing "provided" to "allowed" at the

end of Section 1 in order to keep the language uniform. SEN. O'NEIL **moved** to amend LC 9995 by making the language changes, as discussed.

REP. WINDY BOY asked if the American Religious Freedom Act already provides for this. Ms. McClure said that the bill, if amended, would allow religious and spiritual support for Native Americans to the same degree as for any other religion. The Department of Corrections would not be required to provide it, but would allow it to the same degree as other religions.

Reno Charette, Coordinator of Indian Affairs, Governor's Office, reported that she has toured the state prisons and has visited with many Indian inmates. Ms. Charette testified that the Indian inmates feel very strongly that receiving spiritual support while incarcerated is vital to their rehabilitation and that strong language is needed in the bill draft to act as an insurance policy to make sure that the support is provided. She strongly supported moving LC 9995 forward as written.

SEN. O'NEIL said that the Constitution, under Article 2, section 5, may prohibit state funding of this bill. He asked that the Committee members supported his motion to amend the language in LC 9995.

In response to a question from REP. ANDERSEN, Ms. Charette said that ideally all tribes would be represented at all of the prisons but that she realized that the program would have to be built in small steps. She reemphasized the need for spiritual guidance for Indian inmates, saying that in her visits, all of the inmates reported that it was a rare occasion to be visited by an Indian spiritual leader.

REP. WINDY BOY commented that there is some support but only to a certain extent and that he wanted the bill to be more proactive. He said that LC 9995 would be a good first step in assisting Native American inmates.

Ms. Doney testified in support of LC 9995, saying that a number of Fort Belknap tribal members are incarcerated in prisons throughout the states. She suggested having the tribes take turns in sending spiritual leaders to the prisons.

TAPE 2 - SIDE A

REP. WINDY BOY asked if the bill draft would require a fiscal note. Ms. McClure said there is not an appropriation in the bill draft and that it would be up to DOC to determine how it would be funded.

SEN. O'NEIL closed on his motion to amend the language in LC 9995, saying that he did not believe the current language to be constitutional. The **motion to amend LC 9995 failed** on a 3 - 3 vote, with SEN. STEINBEISSER, SEN. O'NEIL, and REP. ANDERSEN voting no.

REP. JAYNE **moved** to approve LC 9995 as written. The **motion failed** on 3-3 vote, with SEN. STEINBEISSER, SEN. O'NEIL, and REP. ANDERSEN voting no.

In response to a request from SEN. O'NEIL, Ms. McClure reviewed the issue of equalizing the oil and gas severance tax, as discussed on the Committee's trip to the Fort Peck Reservation in

November, 2005. She said that it turned out to be a more complicated issue than previously thought and recommended against drafting a committee bill at this time.

SEN. O'NEIL said that the Committee voted at the committee meeting held at Fort Peck to draft a bill to equalize the oil and gas production tax on and off Montana reservations. He said that there either must be a bill or a vote to rescind the Committee's previous action.

Anna Whiting-Sorrell, Governor's Office, explained that the Governor's Office is working with the tribes on this issue. She said that when additional information from the Fort Peck tribe is received, an agreement will be negotiated to prevent the dual taxation and that the single tax would encourage oil and gas development on the reservations.

SEN. O'NEIL **moved** to rescind the Committee's vote to sponsor a bill to equalize the gas and oil production tax. The **motion to rescind the Committee's action passed** on a unanimous voice vote.

LC 9998 - REVISIONS TO 2-15-143, MCA - TRAINING STATUTE (HB 608, 2003 Legislature) (EXHIBIT #5) Ms. McClure reviewed the provisions of the proposed bill draft, saying that most of the revisions were at the request of the Governor's Office.

Ms. Whiting-Sorrell said that the changes would put the responsibility for the training in the Governor's Office, which is where it needs to be and clarifies the timing of the required report. She said that 2-15-143, MCA, mandates that training on cultural sensitivity and understanding be provided to state employees who work with tribal nations. The Governor's Office is required to prepare a report on the training and the changes in LC 9998 would simplify the reporting requirements and timeline needed to do so.

REP. JAYNE asked what the rationale is for moving oversight of the training from the Department of Justice to the Governor's Office. Ms. Whiting-Sorrell said that it was simply a matter of consolidation for efficiency's sake. She reported that the first report was sent out to the tribal government in December, 2005. REP. JAYNE asked for a copy of the report. Ms. Whiting-Sorrell said that she would provide copies of the report to the Committee members. REP. JAYNE asked if the report was available online. Ms. Whiting-Sorrell said that it is available on the Governor's website.

REP. WINDY BOY said that as sponsor of HB 608, he concurred with the proposed changes. He **moved** to approve LC 9998 to be drafted as a Committee bill. The **motion passed** on a unanimous voice vote.

TAPE 2 - SIDE B

Ms. McClure said that sponsors are needed for LC 9997 (gaming bill) and LC 9998 (revisions to 2-15-143, MCA). REP. JAYNE asked to sponsor LC 9997. REP. WINDY BOY asked to sponsor LC 9998.

LETTER TO CONGRESSIONAL DELEGATION REGARDING TRIBALLY-OWNED FEE LAND TAXATION

Ms. McClure explained that this issue was discussed during the Committee's visit to the Blackfeet Reservation in May, 2006. The Tribe asked that the Committee consider drafting

legislation to exempt tribally-owned fee lands from state taxation. It also asked the Committee to inquire if the federal government would consider enacting legislation to require that it provide a payment-in-lieu-of-tax (PILT) to state governments. Ms. McClure distributed a draft letter (EXHIBIT #6) to Montana's Congressional delegation outlining this issue.

REP. JAYNE **moved** to approve sending the letter to Montana's Congressional delegation. The **motion passed** on a unanimous voice vote. REP. WINDY BOY asked that copies be provided to all tribal chairs.

Ms. McClure said that the Department of Justice, in response to comments made at the July STRIC meeting, provided materials outlining progress being made in reducing racial profiling (EXHIBIT #7).

PUBLIC COMMENT

No public comment was given.

ADJOURNMENT

The Committee members agreed that serving on the State-Tribal Relations Interim Committee had been an educational and enjoyable experience. REP. ANDERSEN noted that this was her final meeting as a legislator and thanked the committee members and staff for their hard work.

With no further business before the Committee, REP. WINDY BOY adjourned the meeting.

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