



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

July 24 & 25, 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
REP. GORDON HENDRICK, Vice Chair

SEN. GERALD PEASE
SEN. FRANK SMITH
SEN. DONALD STEINBEISSER

REP. JOAN ANDERSEN
REP. JOEY JAYNE

MEMBERS EXCUSED

SEN. JERRY O'NEIL

STAFF PRESENT

CONNIE ERICKSON, Lead Staff
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:

- approved the May 9 & 10, 2006, minutes, as written;
- bill draft for expansion of class III gaming on reservations, excluding Section 7 of the MTGA proposed bill draft;
- redraft of HB 27 (2003) regarding American Indian spiritual leader for the Department of Corrections;

- bill draft outlining accountability requirements and standards for Indian Education For All;
- a letter to Montana Congressional delegation pursuing the issue of PILT monies for tribally owned fee land if it is exempted from state taxation;
- bill draft to amend 2-15-143, MCA (HB 608) to tie the time frame for the annual report to coincide with end of fiscal year and to make sure that agencies not under the control of the governor are required to provide information for the Final Report, to involve the governor in the training process in addition to the Department of Justice, and to create an American Indian Council in Governor's Office; and
- letters of thanks to the Blackfeet Tribe, the Blackfeet Tribal College, and the Crossroads Correctional Center.

CALL TO ORDER AND ROLL CALL

REP. WINDY BOY called the meeting to order at 9:06 a.m. The May 9 and 10, 2006, minutes were approved as written on a unanimous voice vote.

REP. WINDY BOY noted that the presentation by Eleanor Yellow Robe, University of Montana, had been rescheduled for 1:15 p.m.

Connie Erickson, Research Analyst, Legislative Services Division (LSD), reviewed the agenda (Attachment #1).

HB 598: DELAYING EFFECTIVE DATE OF LAW RELATING TO JURY SELECTION

Ms. Erickson said that REP. JAYNE had requested an update on the status of HB 598 at the Committee's May meeting. **Greg Noose, Motor Vehicle Division, Records and Driver Control Bureau, Department of Justice**, reviewed the changes made to jury selection procedures in the State of Montana and explained that the request to delay the effective date was necessary because of several complicating factors. Creating the database involves transfers of information between two titles, six different computer systems, and many personnel. Other issues such as federal voter registry, system changes involving new social security procedures, and identity protection requirements also contributed to the need for an extension. The changes are now on track and the law is scheduled to become effective in October 2007.

REP. ANDERSEN asked if rural addresses remain a complicating issue. Mr. Noose said that address standardization has been a challenge but that the challenges are not insurmountable.

REP. WINDY BOY asked if DOJ planned to request another extension. Mr. Noose said that the effective date would be met and that an extension would not be needed.

Elaine Graveley, Election Deputy, Secretary of State's Office, said the initial use of the data base went fairly smoothly in the recent primary elections. She explained how the elections offices receives regular "data dumps" of voter information and the information is used. She said that the process is being refined and while there may be a few "tweaks" requested in the 2007 legislative session, the changes would not be significant.

REP. WINDY BOY asked if the Secretary of State's Office has been working with the tribes to make sure that tribal members are registered voters, even though they may not have a drivers'

license. Ms. Graveley said that at this point the tribes had not been contacted but that she would be happy to work with the tribal councils to pursue that.

MONTANA INDIAN BUSINESS ALLIANCE

Maria Valandra, Community Development Officer, First Interstate Bank System, reported on the newly formed Montana Indian Business Alliance (MIBA), saying that its purpose is to promote privately-owned Indian businesses in Montana, particularly on the reservations. She said that a February 2006, conference in Great Falls was a success and distributed a Great Falls Tribune article written about the MIBA conference (EXHIBIT #1). She said that South Dakota, North Dakota, Nebraska, and Wyoming plan to establish similar programs using Montana's program as a model. Ms. Valandra said MIBA has developed a mission statement that includes four objectives (EXHIBIT #2). Each objective has been assigned to a team of MIBA members and has an action plan in place for accomplishing the objective. Ms. Valandra explained the purpose and goals of each team:

- Resource Team (EXHIBIT #3);
- Mentoring/Training Team (EXHIBIT #4);
- Business Environment Team (EXHIBIT #5); and
- Financial Resources Team (EXHIBIT #6).

Ms. Valandra distributed copies of the draft MIBA agenda for MIBA's September meeting (EXHIBIT #7) and reviewed the agenda items.

REP. ANDERSEN asked if the laws that need to be changed to help Indian businesses are tribal, state, or federal laws. Ms. Valandra said that tribal laws regarding commercial zoning and land use, for instance, may need to be changed to create a more supportive business environment on reservations. Uniform laws for the reservations would be very helpful in helping new businesses to get established.

REP. HENDRICK asked how many MIBA meetings have been held and if minutes from the meetings are available. Ms. Valandra said that two meetings have been held to date, both of which were organizational in nature, and that formal minutes were not recorded.

REP. WINDY BOY asked Major Robinson if there will a legislative proposal the Governor's Office to extend the State Tribal Economic Development Commission. **Major Robinson, Economic Specialist, Governor's Office of Economic Development (GOED)**, said that an extension for the Commission has been discussed and that the Governor's staff would address the topic with the Committee at the next day's meeting.

TAPE 1 - SIDE B

Ms. Valandra invited the Committee members to the September 7, 2006, MIBA meeting in Billings.

INDIAN GAMING IN MONTANA

Jami Hamel, Chairman, Montana Tribal Gaming Association (MTGA), thanked the Committee for being willing to work with the Association. Ms. Hamel said that:

- since December of 2004, Montana tribes have been working on gaming and economic development issue in Indian country;

- the Association was formed in November 2005 to promote Indian gaming because of the many tribal nations that live in poverty with staggeringly high unemployment and serious health disparity issues; and
- Montana tribes have watched as other tribes in the United States have developed solutions through gaming.

Ms. Hamel noted that the gaming compacts with Montana are the worst in the nation.

Ms. Hamel presented *AN ANALYSIS OF THE ECONOMIC IMPACT OF Indian GAMING IN 2004* (EXHIBIT #8) and 2005 National Indian Gaming Association Survey results (EXHIBIT #9).

Dan Decker discussed *Impact Facts on Indian Gaming*, a study completed by Dr. Wayne Stein and Dr. Walter Fleming, Montana State University. (EXHIBIT #10). He noted that the Committee members had been provided with a copy of proposed legislation drafted by MTGA (EXHIBIT #11). He presented a PowerPoint slide show that highlighted:

- gaming as an economic development tool;
- the purpose and requirements of the Indian Gaming Regulatory Act of 1988 (IGRA);
- tribal jurisdiction - exclusive rights of tribes relating to gaming, tribal regulation, and the responsibilities of tribal gaming commissioners, as set by IGRA;
- the present tribal-state gaming compacts in Montana; and
- the draft legislation, as proposed by MTGA (EXHIBIT #11).

Mr. Decker concluded his presentation by saying that the tribes believe that if they are able to offer different games, they will be able to create a draw to the reservations that doesn't exist currently.

Other MTGA members present at the meeting introduced themselves: Kermit Horn, Fort Belknap Reservation, Earl Old Person, Chairman, Blackfeet Tribe, and Roger "Sassy" Running Crane, Blackfeet Tribe.

TAPE 2 - SIDE A

James Steele Jr., Chairman, Salish & Kootenai Tribal Council, said the issue of gaming should focus primarily on economic development. The Salish Kootenai Tribe is in negotiations with the State right now. Salish Kootenai doesn't have the ability to impose taxes, so the Tribe has to be very creative and proactive in terms of finding revenue sources. Indian Country has the highest unemployment rates and very high poverty rates, so the Indian nations are looking at gaming as way to help. Chairman Steele said that he is not ignorant of the political issues related to gaming but remains hopeful that the 2007 Legislature will look at this from the tribes' perspective. The funds will be used to help the Indian people and to enable them to be less reliant on the Bureau of Indian Affairs (BIA).

Chairman Steele discussed Mission Valley Power, an economic success story from the Salish Kootenai Tribe. Mission Valley Power serves Indians and non Indians and has proven that the Salish Kootenai people are capable of being good managers.

Jamie Hamel concluded MTGA's presentation by emphasizing that the push for expanded gaming in Montana has been an ongoing effort of all of the Montana tribes, as well as Wyoming tribes. Gaming is not only a revenue issue, but is also a sovereignty issue. The tribes want to establish the gaming industry as an entertainment venue, different than anything currently available in Montana.

SEN. PEASE recalled that he had requested information from Gene Huntington on the number of gaming machines in Montana versus the number of tribally-owned gaming machines. He also asked if it would be possible to obtain copies of California's gaming compacts. Ms. Erickson said that Mr. Huntington had provided the gaming machine information at the March meeting.

Mr. Decker said that there are 17,000-plus state-licensed machines and that the number is anticipated to increase rapidly. Regarding the California gaming compacts, Mr. Decker said that all gaming compacts are public information and are easily accessed on the National Indian Gaming Commission website, as well as state government websites.

REP. HENDRICK asked what tribes are not members of MTGA. Ms. Hamel clarified that all of the tribes have been represented at some point in the process, but not necessarily at every meeting. Mr. Decker added that the great traveling distances have presented challenges to the more remote tribes but that the tribes have all been kept up to date on the activities of MTGA.

REP. HENDRICK said that his research of other states' gaming operations indicates that most of the business for tribal gaming operations comes from the reservation itself. He asked how this can be mitigated. Mr. Decker said that in any gaming situation, local dollars will be drawn in, but agreed that it is important to draw money from the outside. In order to do that, the gaming offered will have to be unique and different from what is already available locally. Mr. Decker gave the example of the Prairie Nights Casino on the Standing Rock Sioux Reservation as a casino in a remote area that draws outside dollars from a very large area around the reservation. He also discussed the window or opportunity for establishing successful gaming programs and said that the tribes are very aware that timing is an issue as well.

REP. HENDRICK referred to Section 7(b) of the proposed legislation (EXHIBIT #11)...the general welfare of the Indian Tribe and its members...and said that he is very concerned about the risks associated with increased gaming opportunities. He asked what programs are in place to help struggling families and if gambling dollars will be used to strengthen and improve the existing programs. Mr. Decker said that this issue has been discussed by MTGA. The State is supposed to be providing those types of services to struggling families but is not doing it. The tribes recognize that these services are needed and made the decision to fund such programs, not just for the reservation, but for the community as a whole. The tribes are very interested in public education and in promoting responsible gaming.

Kermit Horn said that Fort Belknap is interested in using gaming revenue to fund prevention programs, such as a teen center, so that the youth have a place to go and something to do to keep them out of trouble. Elder care is another issue that Fort Belknap would like to address. Mr. Horn said that Fort Belknap has created an economic plan of how it would use gaming revenue.

Ms. Hamel said she personally has family members with gambling addictions and agreed that it is a difficult issue. She said that gaming is easily available in almost every town in Montana and that the tribes realize that marketing must be done responsibly, which is why the tribes want to market their gaming as an entertainment destination, rather than just "grinding" on a machine.

REP. HENDRICK asked if the passage of the proposed Class III gaming legislation will affect the gaming compacts. Mr. Decker said that without the legislation, the status quo is maintained

and nothing will change. Mr. Decker quoted the Montana Constitution regarding gaming and noted that the Legislature has the power to decide gambling policy. The question is, is Montana willing to develop a policy to allow certain types of games to be played only in Indian Country? MTGA believes that if the tribes are allowed to offer Class III gaming exclusively, they can create a drawing card. Other issues such as limits and wagers will have to be negotiated in the compact agreement process and at this point, Montana's gaming compacts are terribly restrictive.

REP. JAYNE asked if a revenue sharing agreement between the tribes and the State has been reached. Mr. Decker said that the proposed legislation does not address compacts and that revenue sharing is a bone of contention between the tribes and the State. IGRA specifically states that states cannot tax Indian gaming but states have instead made certain gaming available only if the tribe agrees to share revenue from that gaming.

Ms. Hamel noted that while the proposed legislation is on behalf of all of the tribes, each tribe will negotiate its own compact with the State.

REP. JAYNE asked if the proposed bill draft language follows the language in the compacts. Mr. Decker said that the bill cites the Governor's authority to negotiate with the tribes but does not include language from the compacts. The intent of the proposed legislation is to make it as simple and straightforward as possible to say that Montana is willing to give the tribes the exclusive right to Class III gaming, pursuant to a compact.

REP. JAYNE referred to Section 7 - Use Tribal Government Gaming Revenue - and asked if MTGA would be open to changing or deleting some of that language because of the potential for future legislatures to change how the revenues are used. Mr. Decker said that MTGA wants it to be clear how the revenue will be used but that if Section 7 was eliminated, the tribes probably would not object.

TAPE 2 - SIDE B

SEN. SMITH said that the problems associated with gaming can be dealt with. Mr. Decker said that Indian families want to be economically stable and being able to earn a steady paycheck would be a very good start for many families.

REP. WINDY BOY thanked MTGA for the presentation. He said that the ever-increasing cuts in federal funding are making new revenue sources for tribes increasingly important, and used changes in requirements for Temporary Assistance for Needy Families (TANF) as an example of how Indian families' needs are increasing. REP. WINDY BOY said that he realizes that there will be opposition to the proposed bill draft but that the time has come to "think outside the box" in looking for new revenue streams.

Ms. Hamel thanked the Committee for its consideration of MTGA's proposal for expanded gaming on reservations.

LUNCH BREAK

FOLLOWUP OF MAY VISIT TO BLACKFEET RESERVATION

Ms. McClure reviewed issues from Blackfeet Reservation:

- The tribe asked for a letter of support from STRIC requesting a language change in the bill draft regarding the St. Mary water issue. The proposed language changes were discussed with John Tubbs, Director, DNRC, who said that the objectionable wording had already been changed. Ms. McClure reported that she has contacted the tribe to see if there are any other changes that need to be made and is waiting to hear from the tribe.
- Tribal member George Woodward reported a workers' compensation issue. Ms. McClure said that she has compiled a detailed summary of Mr. Woodward's situation (EXHIBIT #12) and updated the Committee on the status of his workers' compensation claim.

SEN. STEINBEISSER asked if Mr. Woodward is asking for surgery or if his doctor told him was surgery is necessary. McClure said that the recommendation for testing for surgery came from Mr. Woodward's doctor.

REP. JAYNE asked what the Committee could learn from this situation that would benefit their constituency and prevent this from happening to others. She wondered if increased cooperation from the State Fund was an option. Ms. McClure said that Mr. Woodward's situation is not something an interim committee would normally handle but that since he approached the Committee, she followed through with assistance. She said that the State Fund has a great deal of information available and is willing to work with individuals but that Mr. Woodward had not contacted State Fund. Had he done that, State Fund would have walked him through the process and provided assistance.

Ms. Erickson agreed that the role of an interim committee is to deal with broader public policy issues and not to advocate for individuals.

Ms. McClure noted that Mr. Woodward had signed a medical release giving Ms. McClure and the Committee permission to discuss his case.

REPORT FROM GOVERNOR'S AMERICAN INDIAN NATION (GAIN) COUNCIL

BLACKFEET TANF PROGRAM

Hank Hudson, Administrator, Human and Community Services Division, Department of Public Health and Human Services (DPHHS), provided background on the Temporary Assistance to Needy Families (TANF) cash assistance program. He explained that the tribes were given the option of administering their own TANF program, rather than allowing the State to administer the program and the funding and that the Blackfeet, Salish-Kootenai, Chippewa-Cree, and Fort Belknap Tribes all chose to operate their own TANF programs; and that the State is only obligated to provide a set amount of maintenance of effort (MOE) money to the tribes. **TAPE 3 - SIDE A** The amount of federal funding allocated to the tribes is based on the number of tribal members enrolled in 1994. When the Blackfeet Tribe assumed control of the TANF program, many new applications for assistance were received, creating the funding shortage. Mr. Hudson said that DPHHS is aware of the problems being experienced by the Blackfeet Tribe but said that federal law prohibits the State from transferring additional federal TANF grant funding to the Tribe.

In response to a question from REP. WINDY BOY, **George Kipp, Blackfeet TANF Director**, said that when the tribe took over the program, the actual enrollment turned out to be much

higher than the anticipated enrollment. Mr. Kipp said that another issue has been how to identify descendants and that there needs to be a clear definition and process established for doing that. Mr. Kipp provided a handout of the Blackfeet TANF issues (EXHIBIT #13), noting that the tribe was funded for a caseload of 911 but is currently serving 1,195.

Anna Whiting-Sorrell, Chair, GAIN Council, said that the Blackfeet Tribal Council requested to renegotiate the agreement and that the Governor has agreed to do that but that the State is limited by federal regulations as to what it can and can't agree to do. The biggest obstacle at this point is that 1994 numbers have to be used. The Governor's Office has discussed this with the federal officials but to date, the officials will not allow those numbers to be changed.

Mr. Kipp said that one suggestion made by STRIC during its May visit was that the tribe ask DPHHS for a \$270,000 supplement and that STRIC would support the request. He asked if that could still be done and said that \$270,000 would get the program through September and would give the tribe time to plan for its long term needs. Mr. Kipp reviewed measures the tribe has taken to mitigate the effects of the funding shortage such as implementing a means test for child only grants, aggressive child support payment enforcement, and combining jobs.

REP. JAYNE asked if the Blackfeet planned to request a higher amount of funding. Mr. Kipp said that currently, the tribe is paying 8% less in cash benefits than the State and is unable to pay any supportive services. REP. JAYNE asked if that information has been presented to the Governor's Office. Ms. Whiting-Sorrell said that the Governor's Office has not received a formal request from the Blackfeet Tribe. She said that this will be difficult process because of the federal regulation requiring that the funding be based on 1994 numbers.

Mr. Kipp asked if there are other funds that could be used to supplement the Blackfeet TANF program. **David Ewer, Budget Director, Office of Budget and Program Planning (OBPP)**, reiterated that TANF is a federally-funded program that allocates a specific amount of money to the states and that the states manage that amount over a specific period of time. Currently, Montana's viability extends until 2011 and while it is possible to approve a supplement to the Blackfeet Tribe from the general fund, Mr. Ewer said that that would not be a wise decision. Mr. Ewer said that the four tribes that chose to administer their own TANF programs are sovereign nations and were fully informed of the obligations and implications before they made the decision to take over the program. He said that while a final decision has not been made by the Governor's Office on the Blackfeet TANF issue, he does not support setting the precedent that when a program fails, the general fund will be available as backup. Mr. Ewer suggested that the situation would best be addressed through case-load management.

REP. WINDY BOY said that the reality is that there are many programs in great need of supplemental funding, such as the correctional system. He said that the other tribes that took over their own TANF programs are also experiencing financial difficulties. He asked for confirmation that the State MOE percentage rate is 30/70. Mr. Hudson said that the MOE rate is closer to 25/75. REP. WINDY BOY said he is considering sponsoring a bill to request 100% MOE for tribes. Mr. Ewer said that the State has to manage its TANF case load, sometimes in a manner that advocates don't agree with. Tribes are faced with the same difficult choices and will have to make difficult management decisions as well. Regarding REP. WINDY BOY's comments about the correctional system requesting supplemental funding, Mr. Ewer said that the comparison is not an "apples to apples" issue because they are very two different programs.

REP. JAYNE said it appears that the 1994 numbers will have to be used and asked if the only possible source for additional funding is the general fund or MOE. Mr. Hudson said that was correct but that DPHHS did not make such a request in its budget proposal for the 2007 Legislative Session. The only other option at this point is to draft legislation requesting a supplemental for the Blackfeet TANF program.

REP. JAYNE asked what the process is to request a supplemental. Mr. Ewer said that a legislator would be able to request legislation for a supplemental on behalf of the tribe but noted that other supplementals for Medicaid, the Department of Corrections, and fire suppression costs are already being considered by the Executive Branch.

REP. JAYNE said that the Blackfeet Tribe needs to know if supplemental money is a possibility and if so, how to access it. Mr. Ewer said that the issue is between the tribe and the federal government and because of that, a request would not technically be considered a supplemental, nor would it be technically the responsibility of the State. He said that while it may not be to the tribe's liking, a viable alternative would be for the State to take control of the Blackfeet TANF program.

REP. WINDY BOY said that the Committee would take no action on the Blackfeet TANF issue at this time.

PUBLIC COMMENT

Kathy Lumberg, Blackfeet Manpower TANF Program, Blackfeet Tribe, said that that tribe did enter into the agreement to administer its own TANF program with its eyes open but could not have anticipated that the enrollment would have increased so drastically. She said that the tribe is actively seeking funding through writing grants and will not give up.

Chairman Earl Old Person commented he has discussed this situation with Mr. Hudson. He said that programs always sound good but there seems to be factors that enter in to make it difficult to actually do what was intended. Those in charge need to make certain that the possible problems are discussed and acknowledged. **TAPE 3- SIDE B** He asked that whatever decision is made will take into consideration the fact that the welfare of human beings is being affected.

Terryl Matt, Legal Counsel, Blackfeet Tribe, referred to Mr. Ewer's statement that the issue is between the tribe and the federal government, and said that the Blackfeet people are also Montana citizens. She said that the State, when entering into this situation, should have anticipated the problem and that it should have been budgeted for. The State shouldn't be able to shirk its duties to these citizens because they are tribal members, especially since this is a crisis situation. She also stated that it recently came to the attention of the tribes that the State is using tribal head counts to get funding for programs, such as the Montana Board of Crime Control, but that the State had not shared that information with the tribes. Ms. Matt also questioned how the State uses reservation unemployment rates when determining the statewide unemployment rate. REP. JAYNE said that she shared Ms. Matt's concerns.

Mr. Ewer responded by saying that it is an odd concept to plan a budget based on the supposition that something may go wrong and that the anticipated problems should be budgeted for. He said that he was surprised by the notion that the State of Montana has negotiated in bad faith with the tribes and said that he was certain that the people on both sides

negotiated to the best of their ability. Mr. Ewer disputed that the allegation that the State was hiding money from the tribes and using tribal numbers to the detriment of the tribes. He agreed that there are many state programs to keep track of but said that Governor Schweitzer's administration is trying very hard to make sure that all programs are being properly administered. Regarding state unemployment rates, Mr. Ewer said that it is difficult to blend unemployment "phenomena" of tribes with the unemployment rate from the remainder of the State. Mr. Ewer discussed the state definition of unemployment and said that there are vast differences between State and reservation employment opportunities which in turn, affect unemployment statistics.

SEN. SMITH asked Mr. Ewer to clarify his position on the use of Bureau of Indian Affairs (BIA) enrollment data. Mr. Ewer said that because BIA does not have accurate enrollment numbers, both the tribes and the State are struggling to determine accurate enrollment numbers. The Governor's Office is pursuing numbers from the Montana Department of Transportation (MDT) to establish enrolled members living on reservations because MDT uses those numbers in the revenue sharing agreements with the tribes for gasoline, alcohol, and cigarettes.

REP. WINDY BOY said that the Committee will revisit this issue at the September meeting to see if progress has been made between the Governor's Office and the tribe.

Mr. Kipp asked what the possibility was of finding a short term solution and said it appeared to him that there will be no solution. He said that he first requested assistance with this problem in December of 2005, trying to avoid this situation of a last minute funding crisis. REP. WINDY BOY said that STRIC does not have authority to appropriate supplemental funding but that he is hopeful that the Governor's Office will continue to work with the Blackfeet Tribe on this issue. Ms. Whiting-Sorrell suggested continuing with the renegotiation process and to confirm enrollment numbers. She said that the Governor's Office is very concerned and said that all of the tribes would be brought together to explore a long-term solution for this problem. She said that the agreements are between the federal government and the tribes, so the federal government needs to be involved with the process.

BLACKFEET PROPERTY TAX AGREEMENT

Deanne Sandholm, Legal Counsel, Governor's Office, reviewed key points of the Blackfeet Tribe's lawsuit challenging the State's authority to tax tribally-owned fee land within reservation boundaries. The settlement agreement provided that the State would not assess property taxes against these lands until Congress expressly authorizes such taxation. In 1998, through a series of Supreme Court cases, it became clear that Congress did authorize the taxation of tribally-owned fee lands within reservation boundaries. At that time, Department of Revenue wrote to the Blackfeet Tribe that the terms of the agreement had been met and that taxation of fee lands would begin. The Blackfeet Tribe doesn't agree with that interpretation of the settlement agreement and began discussions with the Martz Administration. In 2005, the discussion continues with the Schweitzer Administration. The two sides have agreed to disagree on the interpretation of the prior settlement. An April 25, 2006, meeting was held and the State is waiting to receive a response from the Blackfeet Tribe on the proposed language.

Ms. Sandholm said the gist of the proposed language is that the taxes presently owed on the tribally-owned fee lands would be forgiven, along with penalties accrued up to the time of a settlement agreement. After an agreement is signed, there would be a grace period of five to seven years for the Tribe to actively pursue placing the land in trust. The agreement provides

that during that grace period, no further taxes would be assessed against that property. Should the property not be placed into trust, taxes would be assessed from the date of the settlement agreement forward. Ms. Sandholm said that the State has included the affected counties in the negotiations process. She noted that STRIC has been notified of this in a May 26, 2006, letter.

Ms. McClure asked about if the Blackfeet Tribe also is requesting that state law be amended to exempt all tribally-owned fee lands from property tax. Ms. Sandholm said that part of the request has not been presented to or discussed by GAIN. Ms. McClure said that because exemption of all tribally-owned fee land would affect revenue, she had asked the Department of Revenue (DOR) to prepare information on the impact of such an exemption.

Judy Paynter, OBPP, Governor's Office, discussed a Summary of Estimated Property Tax Liability, prepared by DOR (EXHIBIT #14). The summary listed the amount of property tax liability of each of the seven tribes.

REP. ANDERSEN asked for an explanation of the difference between fee land and trust land. Ms. McClure explained that the title to trust land is held by the federal government for the beneficial use of the tribe and cannot be taxed. Tribally-owned fee lands are taxable, which is what the Blackfeet Tribe is objecting to. It wants to amend Title 15 to eliminate state taxation of all tribally-owned fee property.

Chairman Old Person said that there are newly-elected Blackfeet Tribal Council members but that the Council would respond to the proposal from GAIN as soon as possible. He said that there has been resistance from the Glacier County Commissioners regarding the possibility of putting the tribal lands into trust but that he is confident that if everyone works together, a solution can be achieved.

Ms. Whiting-Sorrell said that the Governor's Office has been trying to set a date to meet with the newly-elected Blackfeet Council in Browning. She said that a list of transition issues would be discussed in order to make sure that everyone was starting from the same page.

REP. WINDY BOY commented that it is a myth that tribes don't pay property taxes. He referred to a recent article in the Great Falls Tribune in which there may be a \$100 million property tax reimbursement and asked if reservation home owners would receive a reimbursement. Mr. Ewer said that under the Schweitzer proposal, a Montana resident who owns a home will receive a \$400 reimbursement. He noted that that he would be remiss in not acknowledging that there is more to this issue than meets the eye. He said that categorical changes in property tax were of great concern to him and that he did not know what the consequences of such a change would be. Mr. Ewer said that he could not make any recommendation until a great deal more is known.

TAPE 4- SIDE A

Ms. Matt distributed copies of 15-6-201, MCA, Governmental, charitable, and educational categories -- exempt property (EXHIBIT #15). She reviewed the provisions of the statute and pointed out that tribal governments are not included in the list of exemptions. She also noted that the land in question is land that was originally owned by the tribe, was sold and then repurchased by the tribe. She asked if the Committee would consider introducing a bill in the 2007 Legislature to amend the statute to include tribal governments in the list of exemptions

contained in 15-6-201, MCA. Ms. Matt also discussed how the 1888 General Allotment Act was used in Supreme Court cases to settle similar issues and because the State chose to settle the case with the Tribe, that created an exception for the tribe and their fee lands are exempt from taxation. This is not a difficult case and would not be difficult to resolve.

Michael DeRosier, Glacier County Commissioner, regarding the Blackfeet Tribe's request to exempt tribal fee land from taxation, suggested that the State pursue the option of having the federal government provide Payment-in-Lieu-of-Taxes (PILT) dollars on these lands.

REP. WINDY BOY said that STRIC, on behalf of the Blackfeet Tribe, would make that request to the federal government. Ms. McClure said that the Committee could draft a resolution urging Congress authorizing PILT funds to be used for this purpose.

OIL AND GAS PRODUCTION TAX ON FORT PECK RESERVATION

Ms. Paynter reviewed a document on Oil and Gas Production Tax (EXHIBIT #16). She said that a meeting to review oil and gas production taxes had been held for all interested tribes and that Rocky Boy and Fort Peck have been the most active participants. Ms. Paynter said that Fort Peck will be providing updated data to OBPP in the next week.

BLACKFEET REQUEST TO CHANGE NAME OF GAIN COUNCIL

REP. WINDY BOY said that a formal request to change the name of GAIN has not been received at this time.

REQUESTS FOR LEGISLATION

REP. WINDY BOY read a legislative request from GAIN Council regarding training on state-tribal communications (EXHIBIT #17). Ms. Whiting-Sorrell said that GAIN has not finalized any proposed legislation and would have to present legislative proposals at a later time.

REP. WINDY BOY said that a letter was being drafted by Blackfeet staff to formally request a supplement for the Blackfeet TANF program and would be delivered later in the day to the Governor's Office. Copies will be provided to the members of the State-Tribal Relations Committee.

HJR 15: SENTENCING EQUITY STUDY

Sheri Heffelfinger, Law and Justice Committee Staff, LSD, distributed a report regarding the HJR 15 study (EXHIBIT #18). Ms. Heffelfinger discussed each portion of the report:

- a power point presentation on purpose of study and activities to date of LJIC;
- a copy of HJR 15;
- tables on sentencing length differences between Indians and non-Indians;
- Montana's 3-year plan for reducing disproportionate minority contact;
- several email communications received by Ms. Heffelfinger regarding the study; and
- a letter from the American Civil Liberties Union (ACLU) outlining its stand on the issue.

Ms. Heffelfinger asked for committee input, noting that LJIC will meet on August 31 and would like input from STRIC before that date.

REP. JAYNE asked why the report was presented so late in the interim and when the Legislative Council directed the study to take place. Ms. Heffelfinger explained how study resolutions are assigned to interim committees and said that the Council assigned HJR 15 to the Law and Justice Committee. She said that the Legislative Council thought that HJR 15 could not be conducted as written because of the massive nature of the study. The Council instructed Ms. Heffelfinger to prepare a staff report outlining a plan on how to conduct the study and what information would be needed to complete the study. Ms. Heffelfinger explained that LJIC instructed her to work on SJR 40 and SJR 6 first and that HJR 15 would be addressed as time allowed.

REP. JAYNE said that she was one of the cosponsors of the resolution and that she was never contacted to see what she knew about this issue. She said that she has received notices regarding LJIC meetings but has not been able to attend. REP. JAYNE asked Ms. Heffelfinger to give her recommendations on how a study could be conducted. Ms. Heffelfinger said while it is unfortunate that there was not more time to devote to HJR 15, she was instructed by LJIC that SJR 40 and SJR 6 would be completed first and that HJR 15 would be handled on a "as time allows" basis. **TAPE 4 - SIDE B**

REP. JAYNE asked if LJIC plans to make a recommendation for a subsequent study of this issue. Ms. Heffelfinger said as written, there are two options for conducting HJR 15 and that it would help her to know which one to pursue. Option one is to focus on gathering the necessary data to prove that there is disparate sentencing is occurring. A second option is to assume that there is disparate sentencing is occurring and focus the study what can be done to create sentence equity. Ms. Heffelfinger said that both options would likely be very involved and expensive to complete.

REP. WINDY BOY suggested contacting the tribes directly and said that it is likely that the tribes have a lot of the data that is needed for the study.

REP. HENDRICK asked if the intent of the study was to create a bill for the 2007 Legislature. He commended Ms. Heffelfinger for her work done and asked what the Committee wished to do.

Ms. Heffelfinger referred to an email from Rep. Carol Juneau in the back of EXHIBIT #18 and said that the email lists Rep. Juneau's expectations. She discussed the recommendations made by Rep. Juneau.

Ms. Erickson pointed out that she included sentencing equity under discussion of legislative proposals at the next day's meeting. Since LJIC is not meeting until the end of August, it may be difficult to make a legislative proposal. Ms. Erickson said that this issue has come before STRIC before and that the lack of time and resources and lack of data have always prevented a thorough study from being conducted. She explained that the Legislative Council wanted LJIC to make recommendations on what resources would be needed and how much time it would take to conduct the full-blown study on sentencing equity, as asked for in HJR 15.

REP. JAYNE commented that evidence of disproportionate sentencing would not show up in statistics because it has not been reported by police officers and court officials. She recommended that the focus should be on what to do about disparate sentencing and that money should be appropriated to conduct the study.

REP. ANDERSEN said that the "whereas" clauses make the assumption that sentence disparity is occurring. She said that the resolution sponsors must have had information in order to make the statements contained in the whereas clauses. She asked why that information had not been brought forth to help out with the study. REP. JAYNE said that she has her own personal data gathered from over 14 years of practicing law. She said that is how the information will have to be gathered - from individuals such as herself, the other bill sponsors, and other individuals who have personal knowledge of this.

REP. ANDERSEN asked if those with personal knowledge of this issue presented their information during the legislative hearing process and if the information is part of the hearing record. REP. JAYNE said didn't recall what committee HJR 15 went through and did not recall what information was presented in the hearing. Ms. Heffelfinger said HJR 15 was heard in the Senate and House Judiciary Committees and that a great deal of information was provided. She referred to Appendix A in EXHIBIT #18 and said that the list explains ten data sources and the limitations of each. Ms. Heffelfinger said that bits and pieces of good data are available but not a complete picture. She said that she could prepare an estimate of what it would cost to find out what is missing in the form of a bill draft, including a fiscal note. The decision still must be made whether to choose one or both options for study, as discussed earlier.

Ms. Erickson said that the second *Whereas* clause in HJR 15 (EXHIBIT #18, page 13) is the meat of the issue and references the information that is missing. She said that the information could be obtained from the sources listed in that clause and would probably have to be done on a court-by-court basis.

Ms. McClure said that a future recommendation could be that District Courts will start to centrally collect on this type of data.

Ms. Erickson said that if it is assumed that sentencing disparity is occurring and the focus of the study is to prove why it is occurring, the information and proof will be very difficult to find. If proof exists, it will be very subtle and will take very sensitive and careful analysis.

TAPE 5 - SIDE A

SEN. SMITH said that in his opinion, it has already been established that this is a problem and that the next step should be to find out why it is occurring.

SEN. STEINBEISSER said that he did not have enough information to make an informed decision asked REP. JAYNE to present her recommendations based on her information and experience.

REP. HENDRICK recalled that the inmates interviewed at the Crossroads Correctional Center in Shelby did not feel that they had been discriminated against until they reached the incarceration stage. He said that he believes the best approach would be to first determine what a full-blown study and then decide where to go from there.

REP. WINDY BOY commented that the methamphetamine epidemic is connected to this issue and that in his area, over 90% of the inmates are Native Americans and many of them were arrested for meth use. He suggested that towns bordering reservations would be good places to gather data in order to compare Native American versus non Native American sentences.

PUBLIC COMMENT

Rodney Fish Gervais, Blackfeet Business Tribal Council, said:

- that the Blackfeet Tribe recently held the first Indian civil rights conference and that it was a great success;
- that border towns would be a good source of information, particularly for information on how federal judges sentence Indians;
- studies, such as the Farmington Report published by the United States Civil Rights Commission as well as others all show that there is discrimination against Indians on many fronts;
- the Blackfeet Tribe created a civil rights training manual and would be willing to share the manual with all Indian tribes;
- that he has been traveling all over the nation speaking on Indian civil rights and on border town racism;
- that work is being done to create a Montana Indian Civil Rights Commission to deal with issues such as sentence disparity;
- that he sat in on arraignments in a Cut Bank court and that he personally witnessed sentencing practices that were discriminatory against Indians;
- the Fort Belknap Tribe recently passed a resolution to deal with ongoing sentence equity issues at the federal level;
- that in order to get to the root of the problem, statistics must be gathered but that they won't be willingly provided by the courts or correctional system;
- that the Blackfeet Tribe conducted its own study on the Montana Highway Patrol and found that there was an extremely high number of tickets written to Indian people; and
- that any study must be mandatory and be broken down by race and sentence and that penalties must be established for the judges and law enforcement personnel committing these acts.

REP. WINDY BOY asked Mr. Gervais to provide Ms. Heffelfinger with copies of his information.

Sandra Watson, Legal Counsel, Blackfeet Tribe, said that she practiced as a criminal defense attorney in Great Falls before becoming legal counsel for the tribe. Ms. Watson said that sentence disparity is an overwhelming problem and that the first step needs to be examining the arrest records. The decision made by the police officer of whether or not to arrest a suspect is the key element of this problem. That is the initial door into the system and is the path that leads to "bad public defenders, bad judges, bad sentencing policies, and bad prisons". Ms. Watson said that there is an enormous gap between the arrest rates of Indians and non Indians.

REP. WINDY BOY reviewed the agenda items for the next day's meeting. The State-Tribal Relations Interim Committee recessed at 5:05 p.m.

TUESDAY, JULY 25, 2006 -- DAY TWO

TAPE 6 - SIDE A

REP. WINDY BOY reconvened the committee at 9:12 a.m. He read into the record a letter from the Blackfeet Indian Business Tribal Council to Governor Schweitzer formally requesting a TANF supplemental appropriation for the Blackfeet Tribe (EXHIBIT #19).

ECONOMIC DEVELOPMENT IN INDIAN COUNTRY

Eleanor Yellow Robe, University of Montana and Bureau of Economic Research,

distributed copies of her report, "*ECONOMIC CONTRIBUTIONS PER RESERVATION TO THE STATE OF MONTANA*" and a copy of HJR 41 - the study of the economic challenges and opportunities facing the tribes of Montana (EXHIBIT #20). She explained how she collaborated with Dr. Paul Polzin, University of Montana and reviewed the sources of data used to determine the economic contributions per reservation to the State of Montana. Ms. Yellow Robe said that a narrative summary of her research results will be available in September 2006.

REP. WINDY BOY asked what the next step is and if the Committee could be of assistance. Ms. Yellow Robe said that she needs assistance in gathering trust numbers from BIA that have not been made available to her. She said that she has visited BIA three times in an attempt to get the information but has not been successful to date.

REP. WINDY BOY said that STRIC would send a letter to BIA requesting that the information be provided to Ms. Yellow Robe and that he would personally call to make the request. REP. WINDY BOY suggested that Ms. Yellow Robe attend the upcoming Tribal Leader's Conference and make a request for assistance to them also. He recommended that she call 406-252-2250 for information.

REP. HENDRICK complimented Ms. Yellow Robe on her good work. He asked if the report will be available to the reservations. Ms. Yellow Robe said that it will be published and copied provided to all of the reservations.

Ms. Erickson said that the Committee would like to include Ms. Yellow Robe's report in the Committee's Final Report as part of the HJR 41 study. Ms. Yellow Robe's research be included as an appendix to the Committee's Final Report with other economic development research completed by Susan Oakert, Department of Commerce, and Chris Lohse, formerly of LSD.

DISCUSSION OF TRIP TO CROSSROADS CORRECTIONAL CENTER

Ms. Erickson said that she has a DVD of the Committee's visit to the correctional center in case there were issues that the Committee wanted to discuss or follow up on. She said that copies would be made available, if a member is interested. (IT WAS LATER DETERMINED THAT LEGISLATIVE SERVICES DID NOT HAVE THE CAPABILITY TO COPY THE DISCS AND THAT THE COST OF DOING SO WOULD BE \$20 PER DISK, SO NO COPIES WERE MADE. THE DISCS REMAIN AVAILABLE FOR VIEWING AT LEGISLATIVE SERVICES FOR ANYONE WHO IS INTERESTED.)

SEN. SMITH asked if the DVD had been edited. Ms. Erickson said that the DVD was of the full interview. REP. WINDY BOY said that he has not had reports of any repercussions.

DISCUSSION OF LEGISLATIVE PROPOSALS

REP. WINDY BOY asked to add a proposal for a TANF supplemental for the Blackfeet Tribe.

Ms. Erickson said that the legislative proposals were derived from ideas and concerns discussed by the Committee throughout the interim. She referred the members to the agenda for a full list of the proposals.

Expansion of Class III Gaming on Reservations -- Ms. Erickson said that Section 7 of the proposed bill draft from MTGA (EXHIBIT #11) must be deleted because the state has no authority over how a tribe spends its money. Ms. McClure agreed.

SEN. SMITH supported removing Section 7 from the proposed bill draft. Ms. Erickson said that action taken today would only be to approve a proposal for drafting and that final approval would be taken at the last meeting of the Committee.

SEN. STEINBEISSER **moved** to approve drafting the proposed legislation to expand gaming on reservations to include Class III games. The motion passed on a 3-2 vote, with REP. ANDERSEN and REP. HENDRICK voting no.

Accountability for Use of Indian Education for All Money

Ms. McClure distributed copies of LC 9999 (EXHIBIT #21). She explained the provisions of LC9999 and said that the Office of Public Instruction planned to comment.

Joe Lamson, Office of Public Instruction (OPI), spoke on behalf of Linda McCulloch, State Superintendent of Public Schools. Mr. Lamson distributed and reviewed a letter from Ms. McCulloch and the annual data collection results, including the accountability measures already in place (EXHIBIT #22). Mr. Lamson said that OPI has trained personnel specifically for this project and that the information will be very accurate. The Office of Public Instruction does not think that a bill is necessary at this time because of the thorough measures already in place.

REP. HENDRICK asked if OPI has discussed the accountability measures with Rep. Juneau. Mr. Lamson said that Rep. Juneau's concerns have been addressed..

TAPE 6 - SIDE B

REP. WINDY BOY asked Mr. Lamson to explain why Indian Education For All funding is placed in a school district's general fund. He said that he would prefer it to be earmarked specifically for Indian education. Mr. Lamson said that the 2005 Legislature made that decision. The vast majority of school funding is deposited in a district's general fund and then disbursed to the programs. The school districts have authority on how to spend the money but are required to report how the money is spent.

REP. WINDY BOY said that STRIC has received reports that there is a disconnect between OPI and the Office of Higher Education (OCHE) regarding funding for teacher education. He said that the \$50,000 allocated for teacher education is not adequate. Mr. Lamson agreed that funding needs to be increased for teacher education in the university system but said that OPI's emphasis is on professional development and education for teachers already in the classroom.

REP. WINDY BOY asked what the makeup is of the Montana Advisory Council for Indian Education (MACIE) and how it fits into this issue. Mr. Lamson to explained that MACIE was created by former State Superintendent Nancy Keenan and the Board of Public Education as an advisory group to the Superintendent on the implementation of Indian Education for All. The current Council has 18 voting members. Eight representatives are from the tribal councils including the Little Shell Tribe, three representatives are Indians from urban communities, and 11 different organizations also have representatives. Mr. Lamson listed several organizations as examples: the Montana Education Association, the Montana School Boards Association, and

the Montana Indian Education Board. There are four non-voting members on the Council: the State Superintendent of Schools, the Board of Public Education, OCHE, and BIA.

REP. WINDY BOY said that his request to statutorily create an American Indian Council in the Governor's Office is in response to concerns about his concern of the makeup of MACIE. He said that he has an issue with the process of how board members are appointed and that in the past, communications between MACIE and the tribes has been lacking. He said that there are too many members on MACIE and said that he may propose an amendment to LC 9999 to have eight tribal members representing the seven federally-recognized tribes and the Little Shell Tribe, have one at-large member to represent urban Indians, and that members from other organizations be subject to approval by the tribes on an annual basis. REP. WINDY BOY said that his biggest concern is accountability and that more needs to be done.

REP. WINDY BOY asked if MACIE is funded with general fund money. Mr. Lamson said that it is. Regarding REP. WINDY BOY's concerns, he said that steps have been taken to improve communications between the tribes and MACIE. He explained that Superintendent McCulloch believes that the choice of a MACIE representative is best made by each tribe and that each representative is responsible for keeping his or her tribe notified of MACIE meetings and activities. Additionally, letters have been sent out to all tribes and entities connected to MACIE to familiarize them with the duties and activities of MACIE. Mr. Lamson noted that MACIE is not established by the legislature but by statutory authority granted to OPI and the Board of Education and that the Superintendent has the authority to set the guidelines and membership. He said that OPI would not support reducing the number of urban Indians serving on MACIE because they represent a significant portion of the American Indian population.

REP. HENDRICK asked if a copy of Superintendent McCulloch's letter (EXHIBIT #22) was provided to Rep. Carol Juneau. Mr. Lamson said that a copy had been sent to Rep. Juneau.

REP. WINDY BOY stated that a good reason to approve LC 9999 is to ensure long term accountability because even though OPI is currently taking accountability measures, that could change with a different superintendent if office. If accountability measures are in statute, they will act as an assurance to the taxpayers that the schools are getting what they need. He also asked about OPI's plan for training and technical assistance and how it will make sure that schools are properly served. Mr. Lamson said that there is a great variety of opportunities for teacher training from classes offered by Montana colleges and universities to workshops being offered by the Montana Education Association. He said that OPI is gathering and reviewing materials and preparing the materials for distribution to schools. A final report will include an accounting of what types of training teachers took part in.

REP. ANDERSEN asked Mr. Lamson if he is comfortable with the accountability measures currently in place and feels that these measures will be followed in future years. Mr. Lamson said that he does understand REP. WINDY BOY's concerns about creating stable requirements for accountability but that if additional requirements and duties were associated with accountability measures, there would have to be funding allocated to defray the costs. Ms. Lamson also noted that MACIE members are reimbursed for their travel costs.

SEN. SMITH **moved** to draft LC 9999 as a committee bill. REP. WINDY BOY asked to include his recommendations for MACIE membership. Ms. McClure suggested that the MACIE recommendations be drafted as a separate bill. REP. WINDY BOY agreed. The motion **passed** on a unanimous voice vote.

Sentence Equity Study

Ms. Erickson recommended, based on the report from Ms. Heffelfinger on the activities of the Law and Justice Committee, that no action be taken by STRIC at this time. REP. ANDERSEN **moved** to table sentencing equity study. The **motion passed** on a 4-1 voice vote. SEN. PEASE voted no.

Oil and Natural Gas Production Tax

Ms. Erickson said that SEN. SMITH had an update for the committee on this issue. SEN. SMITH said that GAIN has been in negotiations with the Fort Peck Tribe last week and that many of the issues were resolved at a meeting held last week. The tribe decided that if the issue is still not settled by January 2007, at that time it will move ahead with a bill draft to address the problems. He asked that STRIC take no action at this time. REP. WINDY BOY agreed, saying that his tribe also recently negotiated a new agreement. He asked if there was objection to tabling this issue. There was no objection.

Property Tax Exemption for Tribal Fee Land

Ms. Erickson said that this issue was discussed at the May meeting with the Blackfeet Tribe. Since then, GAIN made a proposal to the Blackfeet Tribe and if accepted, current taxes, penalties, fees, interest, etc., would be waived; effective from the date of the agreement. From the date of the agreement, taxes would not be assessed for a period of approximately 5-7 years in order to allow the Tribe time to deal with getting the tribally owned fee lands into trust status. At the end of the grace period, if the land has not been placed into trust, then taxes would be assessed. Ms. Erickson said that the Blackfeet Tribe has not had time to respond due to recent changes in its Tribal Council but that a decision would be made soon. She said that if STRIC's concern is just for the Blackfeet Tribe, legislation could be pursued if the GAIN proposal is not accepted by the tribe. If STRIC concern is broader than just the Blackfeet and this is something that should be done for all tribes in Montana, then legislation should probably be drafted now. Ms. McClure said that if the Committee decides to draft legislation to amend 15-201, MCA, to cover all tribes, it must be aware that it will decrease the amount of property tax collected for schools or local governments.

REP. ANDERSEN said that the possibility of PILT money being used in place of property tax had been discussed at the previous day's meeting. She asked Ms. McClure to discuss this further. Ms. McClure said that Montana receives "payment in lieu of taxes" (PILT) on lands that the State is not allowed to tax and that payment is not made on a dollar-for-dollar amount. Expansion of this program to include tribally-owned fee lands would have to be approved by Congress.

TAPE 7 - SIDE A

SEN. SMITH suggested that a letter be written to Congress to request that tribally-owned fee lands be eligible for PILT money and also to allow negotiations with GAIN to progress. Ms. McClure said that a letter could be written to Congress but said that the federal government is very slow to take action and that the Committee should not expect a quick response to its

request. This would be a major request because the decision would have to apply to all tribes in the nation.

REP. ANDERSEN supported sending a letter to Montana's Congressional delegation but said that she also wanted the newly-elected Blackfeet Tribal Council to have the opportunity to deal with this issue.

Chairman Earl Old Person, Blackfeet Tribal Council, asked that the Incoming Tribal Council be given time to deal with this issue and that he was hopeful that an agreement would be reached.

SEN. SMITH **moved** to send a letter of support to Montana's Congressional delegation asking for federal legislation that would allow tribally-owned fee lands to be eligible for PILT payments and a letter to GAIN urging continued negotiations between the Blackfeet Tribe and the State of Montana. The **motion passed** on a unanimous voice vote.

Hiring of American Indian Spiritual Leader in Department of Corrections

Ms. Erickson said that a copy of HB 27, proposed by Rep. Bixby in the 2003 session (EXHIBIT #23) had been provided to members in a mailing. Ms. McClure reviewed that the Committee had visited the Crossroads Correctional Center in May at the request of REP. WINDY BOY and that one of the concerns expressed by the inmates was inadequate access to a Native American spiritual leader.

REP. WINDY BOY said that issue is that Native American inmates must have the opportunity to express and practice their spiritual beliefs. The number of Native American inmates is growing and changes need to be made to accommodate their needs. REP. WINDY BOY said that he has heard allegations of Native American inmates being deliberately denied access to spiritual ceremonies and materials. He asked Ms. Whiting-Sorrell to comment.

Ms. Whiting-Sorrell said that she has personally visited several of the state's correctional facilities and agreed that there is a high number of Native American inmates. There is a demonstration project that is being federally-funded called the Native Cultural Officer. The officer will examine sentencing of Native peoples into correctional facilities. Governor Schweitzer is concerned about this issue and is anxious to find answers. Ms. Whiting-Sorrell said that in her travels to the correctional facilities, she has been assured that Native American inmates have the opportunity to practice their religion. She noted that the women's prison in Billings recently held its first sweat. Ms. Whiting-Sorrell added that whatever a prisoner's religion is, it is important that he or she be able to practice it because it can be a critical part of the rehabilitation process. If that is not happening, steps need to be taken to ensure that it will.

REP. HENDRICK asked what services are currently being provided, for Indian and non Indian inmates alike. Ms. Whiting-Sorrell said that there are opportunities for all inmates to visit with Father Porter at the Deer Lodge facility. REP. HENDRICK asked if that is a paid position. Ms. Whiting-Sorrell said that he is not paid. REP. HENDRICK asked if the majority of the spiritual leaders that come to the prisons are volunteers. Ms. Whiting-Sorrell said that the tribal elders are invited to visit and that the correction system has tried to help with gas and other expenses but that there is not a salary available for these people. REP. HENDRICK said that it is important the inmates' spiritual needs are being met and guessed that each tribe's ceremonies and needs may be different. He said that it would be good if each tribe would designate a representative to oversee that their people are getting their spiritual needs met. REP.

HENDRICK said that he is a strong advocate of volunteerism and said that he wasn't sure that it would be necessary to pay someone to provide this service.

Ms. Erickson said that the intent was not to create a paid position, but rather that the correctional system provide the same level of spiritual support to Native American inmates as it does for inmates who practice Catholicism, for example. The idea was to provide equity.

Ross Swanson, Deputy Warden, Montana State Prison, said that the Montana State Prison has two full-time religious activity coordinators for all religions and cultures, including Native American. He advised against creating a position for just one religion or culture, saying that it would cause equity issues among the inmate population. He said that volunteers are appreciated but that situation also causes equity issues because some religions provide more support than others.

SEN. SMITH pointed out that most prisons are not very close to the reservations so it will be a difficult problem to solve. He supported continued efforts to find a solution and said that funding may have to be allocated for mileage and other expenses.

TAPE 7 - SIDE B

REP. HENDRICK asked if any of the prisons pay expenses when a priest or minister comes to a prison. Warden Swanson said that there is no reimbursement for volunteers. REP. HENDRICK agreed that the distance factor between the prisons and the reservations to create problems. He asked Warden Swanson if it would create problems to facilitate some reimbursement, such as mileage or room expenses. Warden Swanson said that equality of service would be a problem that would have to be dealt with because every denomination would want equal treatment.

REP. HENDRICK asked Chairman Earl Old Person if the Blackfeet Tribe has sent representatives to prisons to meet with inmates. Chairman Old Person said that some representatives have gone on their own and that they did not receive reimbursement from the tribe.

REP. HENDRICK asked if each reservation could afford to reimburse expenses to a spiritual leader for visiting inmates. Chairman Old Person said that he would rather have outside funding but that it was possible that the tribes could provide some reimbursement.

REP. HENDRICK said that prisons are in a tight spot because what it does for one inmate, it must do for all. It is up to society to make certain that religious practice is available to all inmates and in order for that to be done, the tribes may have to help. Chairman Old Person agreed that help for the inmates is necessary. He suggested that prison officials also be educated on the spiritual needs of Native American prisoners and asked if volunteers could meet with the wardens and staff to make sure that they recognize the importance of an inmate's medicine bag, for example.

Ms. Whiting Sorrell said that DOC has an Advisory Board and that the Board met on a reservation last summer for the very first time. Board members are former inmates, a PhD who completed her dissertation on the Women's Prison in Billings, and community members. She said that she anticipates follow-up actions as a result of that meeting.

REP. WINDY BOY said that one inmate at the Crossroads Corrections Center had very specific recommendations for preparing inmates for life outside of prison. REP. WINDY BOY agreed that wraparound services for a newly released inmate would greatly increase the chance of success but that funding for those types of services would be a problem. He discussed the importance of a person's spirituality and said that in his opinion, the correctional system has neglected that aspect of a person in its treatment of inmates. He said that he has personally experienced addiction problems and if not for the guidance of tribal elders and family members, he would have ended up a different person. He said that he was fortunate to have that support at home and that inmates need that same support.

Ms. Whiting-Sorrell said that she has spent many years working with her tribe - Confederated Salish-Kootenai - and that one of her biggest regrets in her work for the tribe is that the issue of Native American inmates was never brought up. She said that is very telling about the relationship between the State and the tribal governments on this particular issue. Ms. Whiting-Sorrell said that recently, all of the tribal governments were invited to meet to discuss this and that she would be willing to reconvene the group to ensure that the spiritual and cultural needs of Native American inmates are being addressed. Ms. Whiting-Sorrell said that Myrna Kooka, Blackfeet Tribe, is the Native Cultural Officer for the pilot project and will be working out of the Public Defender's Office in Great Falls.

REP. WINDY BOY said that he favors the model of restorative justice and that tribes traditionally have used that type of model when dealing with problems.

REP. HENDRICK **moved** to use language in HB 27 to create a bill draft proposal for consideration at the August meeting. REP. WINDY BOY asked staff to include provisions for aftercare for inmates. Ms. McClure said that inmate aftercare would have to be addressed as a separate issue. The **motion passed** on a unanimous voice vote.

HB 608: REQUEST FOR REVISIONS

REP. WINDY BOY discussed HB 608 and said that he would like to have several changes made regarding advisory committees, specifically MACIE. This type of committee defeats the purpose of HB 608. REP. WINDY BOY said that accountability has been one of the biggest concerns to the tribes. He read proposed language to amend 2-15-143, MCA, as proposed by GAIN (EXHIBIT #17). He said that he would like to add additional language to that to strengthen the governor's authority regarding communications and consultations with tribes. Ms. Whiting-Sorrell said that the Governor's Office is on a similar path, which is why is proposed the draft language in EXHIBIT #17. She said that OBPP has worked diligently to complete a report on HB 608 for the tribes but in the process of creating the report, OBPP discovered that it would make a great deal of sense to change the time requirement to make the report consistent with the fiscal year. She said that the Governor's Office would like the opportunity to continue work on this issue further before making a more formal proposal.

Ms. McClure asked what the current time requirement is for the release of the HB 608 report. Judy Paynter, OBPP, recommended that the time requirement for the report could be much more easily met if it coincides with the fiscal year so that the time periods discussed in the report would match the time periods in the fiscal year. Otherwise, time periods are broken up and the report is more difficult to understand. Ms. McClure said that she would work on draft language for an amendment and asked for permission to work with Ms. Paynter to make the changes regarding the report time requirement.

Ms. Paynter said that the issue arose because of several agencies not under the direct control of the Governor. The agencies were very cooperative when asked for their participation but OBPP is of the opinion that they should be required to comply, as other executive branch agencies are. Ms. Erickson announced that a recent email from Sara Bond, Department of Justice, has set the date for this year's HB 608 training for November 28-30, 2006, in conjunction with the Montana Conference on Race. She said that Ellen Swaney, Office of the Commissioner of Higher Education, and Reno Charette, Governor's Office, could be contacted for further information.

REP. WINDY BOY commented that this amplifies the need for his amendment because the tribal governments have not been notified of this yet.

SEN. SMITH **moved** to draft legislation to amend HB 608 for final consideration at the August meeting. The **motion passed** on a unanimous voice vote

Blackfeet Tribe TANF Supplemental

REP. WINDY BOY asked Eleanor Yellow Robe to discuss her research regarding the TANF issue. He said that he realized that a fiscal note would have to be included as a part of any proposed legislation and that the current 70/30 MOE will be a difficult issue. Ms. Yellow Robe referred the Committee to page of EXHIBIT #20 and discussed the state contribution of 6.57%, which amounts to approximately \$68 million. Ms. Yellow Robe explained the case numbers, how money is distributed to counties and to reservation, how TANF is distributed to tribal and non-tribal members, and tribal members living off the reservation. She said that there is data for each tribe contained in her report.

TAPE 8 - SIDE A

REP. WINDY BOY **moved** to draft an amendment that would create a 100% MOE to tribes. No second was made, the motion died.

PUBLIC COMMENT

Jim McDonald, Warden, Crossroads Correctional Center, asked to clarify several statements made earlier in the meeting regarding the Committee visit to the correctional center. Mr. McDonald emphasized that the video testimony recorded during the visit was not edited in any way and that the discs of the interviews contain each interview in its entirety. He noted that the audio quality was not good. He said that he had copies available of his written response. Ms. Erickson said that the members has already been provided with the response.

Mr. McDonald also discussed the correctional center's policy regarding the practice of religious services. He said that inmates have the opportunity to participate in sweat services every Sunday. Federal prisoners are given the opportunity to participate on the last Sunday of every month. Talking circles are scheduled each Friday and the individual who conducts the talking circle is a pipe carrier for the Blackfeet Tribe and a mental health coordinator for the center. Mr. McDonald said that this also provides an opportunity for him to visit with the coordinator to learn more about the needs of Native American inmates and their traditions. He acknowledged that getting volunteers has been a struggle but said that it is not for a lack of effort.

REP. WINDY BOY asked, regarding the talking circles, if inmates are allowed to talk to the prison administrators. Mr. McDonald said that due to mental health and HIIPA confidentiality

requirements, he is not able to participate but that as warden, he makes a point to visit with the inmates and circulate throughout the facility. There is also a grievance process and representatives are provided to advocate for inmates. Also, "town hall" meetings are held on a monthly basis in each wing and time is allocated for inmate requests and concerns. Mr. McDonald said that the prison administration and staff does its best to respond to the inmates' concerns and requests.

REP. WINDY BOY asked if there were any repercussions to the five inmates who testified of their concerns to the Committee. Mr. McDonald said that absolutely were no repercussions to any of the five inmates.

Richard Simms, Director, Montana Historical Society (MHS), said as the newly appointed Director of the Historical Society, he is looking forward to working with the tribal peoples of Montana. He invited the Committee and the public to visit MHS in late September for the opening of *Neither Empty Nor Unknown*, an new permanent exhibit about the inhabitants of Montana predating the arrival of Lewis and Clark.

COMMITTEE BUSINESS

REP. ANDERSEN **moved** that a letter of appreciation be written to the Blackfeet Tribe to thank the tribe for the hospitality shown the Committee and staff during its May visit. The motion **passed** on a unanimous voice vote.

Ms. Erickson reviewed the bill drafts requests approved for drafting and other action taken by the Committee:

- bill draft for expansion of class III gaming on reservations, excluding Section 7 of the MTGA proposed bill draft;
- redraft of HB 27 (2003) regarding American Indian spiritual leader for the Department of Corrections;
- bill draft outlining accountability requirements and standards for Indian Education For All;
- a letter to Montana Congressional delegation pursuing the issue of PILT monies for tribally owned fee land if it is exempted from state taxation;
- bill draft to amend 2-15-143, MCA (HB 608) to tie the time frame for the annual report to coincide with end of fiscal year and to make sure that agencies not under the control of the governor are required to provide information for the Final Report, and to involve the governor in the training process in addition to the Department of Justice; and
- letters of thanks to the Blackfeet Tribe, the Blackfeet Tribal College, and the Crossroads Correctional Center.

Ms. McClure said that REP. WINDY BOY also wanted a board created in the Governor's Office that would supercede MACIE as part of the bill draft to amend HB 608. The board would be a paid membership, would be attached to the Office of Public Instruction, and would have to be funded.

Ms. McClure and Ms. Erickson discussed how the new advisory group to oversee Indian Education would have to be set up and suggested creating it as a line item in HB 2. Ms. Erickson cautioned that this advisory group could be created but that it would have

ramifications. REP. WINDY BOY said that the reason such a group is needed is because the \$7 million allocated for IEFA is a significant amount and that it must be carefully spent and accounted for and that the tribes should have some input on how it is spent.

Ms. Erickson said that the final meeting would be strictly for the approval of draft bills and that no new issues could be presented. She suggested a half-day meeting. After a brief discussion, the Committee chose August 28, 2006, as its next meeting date.

Ms. Erickson said that the Final Report is a compilation of the Committee's work and that it will be complete after she adds the legislative recommendations approved at the day's meeting and Ms. Yellow Robe's report.

REP. HENDRICK thanked Ms. Erickson for her years of dedication and service to the State-Tribal Relations Interim Committee and wished her well on her retirement. REP. WINDY BOY and the other Committee members also expressed their thanks and best wishes.

Ms. Erickson said that copies of the Crossroads Correctional Center visit would be provided to the interested members as soon as the copies are made.

ADJOURNMENT

The State-Tribal Relations Interim Committee adjourned at 12:23 p.m. The next meeting will be held on August 28, 2006, in Helena.

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