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## State-Tribal Relations Committee

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### 60th Montana Legislature

#### SENATE MEMBERS

FRANK SMITH--Chair  
DONALD STEINBEISSER--Vice Chair  
RICK LAIBLE  
JOSEPH TROPILA

#### HOUSE MEMBERS

GORDON HENDRICK  
JOEY JAYNE  
KEN PETERSON  
JONATHAN WINDY BOY

#### COMMITTEE STAFF

PAT MURDO, Lead Staff  
EDDYE MCCLURE, Staff Attorney  
DAWN FIELD, Secretary

# MINUTES

April 19, 2008

Little Shell Tribal Offices  
Great Falls, 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.**

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities.

An electronic copy of these minutes may be accessed from the Legislative Branch home page at <http://leg.mt.gov>. On the left-side column of the home page, select *Committees*, then *Interim*, and then the appropriate committee. To view the minutes, locate the meeting date and click on minutes.

#### **COMMITTEE MEMBERS PRESENT**

SEN. FRANK SMITH, Chair  
SEN. DONALD STEINBEISSER, Vice Chair  
SEN. JOSEPH TROPILA  
REP. GORDON HENDRICK  
REP. KEN PETERSON  
REP. JONATHAN WINDY BOY

#### **COMMITTEE MEMBERS EXCUSED**

SEN. RICK LAIBLE  
REP. JOEY JAYNE

#### **STAFF PRESENT**

PAT MURDO, Lead Staff  
DAWN FIELD, Secretary

#### **AGENDA & VISITORS' LIST**

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

## **COMMITTEE ACTION**

The State-Tribal Relations Committee:

- approved the January 16 and 17, 2008, meeting minutes, as written;
- requested that Department of Corrections provide information on Indian staff at Elkhorn and NEXUS facilities;
- approved drafting a letter containing questions about the Access to Recovery grant awarded to the Montana-Wyoming Tribal Leader's Council;
- requested information on federal Substance Abuse and Mental Health Administration dollars and outcome measures;
- approved draft letters to Montana's congressional delegation regarding Title IV-E foster care funds; and
- approved up to \$1,600 for travel expenses for Chris Lohse to travel to Montana to present Indian education report to the Committee.

## **CALL TO ORDER, INTRODUCTIONS, GREETINGS, AND ROLL CALL**

SEN. SMITH called the meeting to order at 1:10. The Secretary noted the roll. Sen. Laible and Rep. Jayne were excused (ATTACHMENT #3). Russell Boham led those in attendance in prayer. Little Shell Tribal Chair John Sinclair welcomed the State-Tribal Relations Committee (STR). The STR approved the January 16 and 17, 2008, meeting minutes as written, on a unanimous voice vote.

## **PRESENTATION OF ISSUES FROM LITTLE SHELL MEMBERS**

Mr. Boham said that most of the issues of concern to the Little Shell Tribe had been covered during the tour [of the Morony Dam site].

## **DEPARTMENT OF CORRECTIONS**

**Rick Deady, Program Manager, Adult Community Corrections, Department of Corrections (DOC)**, updated the Committee on the status of methamphetamine treatment programs administered through DOC. Mr. Deady distributed informational materials on the NEXUS Methamphetamine Treatment Center for adult male offenders (EXHIBIT #1), the Elkhorn Treatment Center for female offenders (EXHIBIT #2), and a list of the services offered and requirements of the two treatment centers (EXHIBIT #3).

## **Committee Questions**

REP. PETERSON asked if the Parole Board can send a meth offender to treatment without being convicted of a meth offense. Mr. Deady said yes, that statutory language allows the Parole Board to look at offenders within 15-20 months of parole eligibility and if the offender has a meth background, the Board will consider that individual for placement at a meth treatment facility. REP. PETERSON asked, if the Parole Board recommends treatment at a meth facility, if the offender also goes before a community screening panel. Mr. Deady said that once the application has been made to a treatment facility, the offender must also be accepted at a pre-release center, so that the DOC knows that the individual will have a place to go after completing treatment. The community screening panel doesn't meet the offender in person, as the Parole Board does, but does do a thorough review before the Parole Board gives its final approval.

REP. WINDY BOY said that in the 2007 legislative session, approximately \$4 million was allocated for meth treatment and asked if any of that funding is paying for the treatment facilities. Mr. Deady said that the treatment facilities are funded through DOC and that most of

the \$4 million went to the Department of Public Health and Human Services (DPHHS) for its meth treatment programs. He said that DOC is working with DPHHS to coordinate treatment programs.

REP. WINDY BOY noted that the Women's Prison population is 40% Native American and that 80% of the Native American inmates are meth addicts. He asked for information on the recidivism rate of meth addicts. Mr. Deady said the recidivism rate measures only those who re-offend within three years of being released from prison. He said it would be sometime before true recidivism data is available, He said DOC is working with Dr. Tim Conley from the University of Montana to identify outcome measures that would be similar to recidivism data and said he is hopeful that information will be available soon.

REP. WINDY BOY asked who will own the data. Mr. Deady said that data on specific offenders would not be available, but that aggregate information will be available to the legislature and the public. REP. WINDY BOY said his point is that the State of Montana gathers data in Indian Country to use for grants and services but the money rarely comes back to Indian Country. He said that the tribes should get some ownership of data in order to compete with the State for grants and funding. He requested that he be provided with data and outcome measure information as it becomes available. Mr. Deady said that he would present REP. WINDY BOY's request to DOC and would make certain he receives outcome measures.

SEN. TROPILA asked if the treatment programs have considerations for Native Americans. Mr. Deady said yes, that the NEXUS program offers a daily smudge, a medicine wheel, and other programs designed for Native Americans, most of which is conducted by volunteers. He said that the Elkhorn program offers a daily smudge and is considering adding more programs.

In response to several questions from REP. PETERSON about how individuals end up in treatment programs, Mr. Deady said that the courts have the ability to recommend treatment as a part of any sentence, even if the charge is not for possession of dangerous drugs. Regarding suspended or deferred sentences, Mr. Deady said that he is not completely clear on the language and would get back to REP. PETERSON after he checked on that. Regarding federal courts, Mr. Deady said there is no DOC relationship with federal treatment facilities. REP. PETERSON said that deferred prosecution can be very beneficial to a person, particularly with young people. He said if it is not available, perhaps legislation should be considered to make it so.

In response to a question from SEN. SMITH about the availability of smudges. Mr. Deady said that anyone who wishes to participate in a smudge is allowed to do so, and that time is allowed on a daily basis to participate in religious or spiritual activities.

REP. PETERSON asked what a smudge is. SEN. SMITH said that light sweet grass and brush are burned together for purification.

### **PUBLIC COMMENT**

**Kermit Horn, Fort Belknap Tribal Council**, asked if tribal courts can refer individuals to any of the DOC treatment programs. Mr. Deady said he would have to check to see what a tribal court's role is and would discuss this with DOC Director Mike Ferriter.

**Frances Onstead, Blackfeet Tribe**, asked what percentage of the treatment facility patients are Native Americans. Mr. Deady said that currently, 11 of 42 residents of the Elkhorn female facility are Native American (25%), and that 12 of 80 patients of the NEXUS male facility are Native American (15%). Ms. Onstead asked if staff at either facility are Native American. Mr. Deady said that he did not know. SEN. SMITH asked to him to provide that information to Ms. Onstead.

### **TRI LATERAL INTERGOVERNMENT AGREEMENT TO ACCESS SAMHSA BLOCK GRANTS**

REP. WINDY BOY said that he was addressing the Committee as a tribal leader and not a legislator. He said that in 2005, he initiated discussion with Dr. Broderick, Deputy Administrator, Substance Abuse Mental Health Services Administration (SAMHSA) on issues of concern and potential "outside the box" solutions. He said that Dr. Broderick's response included a proposal for an Indian Country Meth Initiative (ICMI), and that three demonstration programs have been established as a result.

REP. WINDY BOY described his Tribe's belief system that mental, emotional, physical, and spiritual health are all necessary to be a truly healthy person, and that current systems of care do not include the spiritual health aspect. He said that this approach needs to be looked at from a tribal perspective and that the best chance of success to include a spiritual health component is to allow treatment to be tribally driven. He challenged the state and federal governments to work with the tribes to accomplish this, saying that Dr. Broderick has said that a spiritual health component could be recognized as part of a best practices model.

REP. WINDY BOY said that he was appointed in February by SAMHSA to serve on the Intertribal Government Affairs Committee, appointed as advisors to the national committee, and as a member of that Committee, hosted a meeting in February to which all Montana tribes were invited to discuss the Trilateral Intergovernmental Agreement. REP. WINDY BOY said that most of the tribes attended the meeting and expressed support for the Agreement. He presented a letter from Chippewa Cree Chairman John Houle, expressing that Tribe's support of the proposed Agreement (EXHIBIT #4).

**Toni Plummer-Alvernaz, Chippewa Cree Tribe, Health Board Contractor**, provided a systems and policy perspective, saying that a series of meetings have been held since January with four other tribes and that SAMHSA has asked that the tribes work with tribal, state, and federal governments to create the first model project to develop a trilateral intergovernmental agreement to ensure accessibility to state block grants, increased delivery of programs and services to tribes. Ms. Plummer-Alvernaz said that the group has also been asked to review possible policy changes on a national level.

Ms. Plummer-Alvernaz said that priorities have been set and that six questions have been developed regarding those priorities, and discussed each question (EXHIBIT #5).

REP. WINDY BOY said that as a tribal leader, he feels he is "bounced back and forth" between state and federal governments as a part of the process to obtain funding, and finds that very frustrating.

Ms. Plummer-Alvernaz said that she would like to see a funding method developed that would simplify the process and ensure that funding is more effectively used to provide necessary

services. She said that there will be a May 22 meeting at the Blackfeet Tribe and that all tribal governments, the Governor's Office, and others have been invited to attend. She said that she intends to come back to the STR with legislative requests to implement proposed changes.

Mr. Horn, Fort Belknap Tribal Council, said that the Fort Belknap Tribe is in full support of the efforts.

Ms. Onstead, Blackfeet Tribe, provided copies of a letter from the Blackfeet Tribal Council, indicating its support of the trilateral intergovernmental agreement (EXHIBIT #6). Ms. Onstead discussed the Blackfeet Tribe's needs, and said that several areas in particular are in dire need, such as adolescent treatment services and mental health services. Ms. Onstead said the Blackfeet Tribe wants to work with the state and federal government to find a way to provide services and said that most people are unaware of the severe conditions on the reservations.

SEN. SMITH asked what the STR Committee can do. Ms. Onstead said that funding is what is most needed and discussed a Montana Board of Crime Control (MBCC) grant as an example of a funding opportunity that was not large enough to really provide the level of services that are needed. She said that the Tribe did the same work as other communities, but frequently got a significantly less amount of funding than other Montana communities. She is a grant writer and finds it increasingly difficult to obtain state grant money.

SEN. SMITH asked what tribes have not been participating. Ms. Onstead said that the Fort Peck and Salish and Kootenai Tribes have not participated. Ms. Plummer-Alvernaz said that she has been working with the Fort Peck Tribe to include them. REP. WINDY BOY said that the Northern Cheyenne Tribe's internal issues have prevented them from participating to date. REP. WINDY BOY said that he would find out more.

**RESPONSE FROM MONTANA WYOMING TRIBAL LEADERS KATHY MASIS EXHIBIT #7**

**Pat Murdo, Research Analyst, Legislative Services Division (LSD)**, distributed copies of a "*Update on Rocky Mountain Tribal Access to Recovery*", a PowerPoint presentation from Kathy Masis, MD, Project Director for the SAMHSA Rocky Mountain Tribal Access to Recovery (ATR) SAMHSA grant to the Montana-Wyoming Tribal Leaders Council (EXHIBIT #7). Ms. Murdo said that a family emergency prevented Dr. Masis from addressing the Committee and that she would be invited to present at the June meeting. Ms. Murdo asked STR members to review the presentation in preparation of that meeting.

REP. WINDY BOY asked staff to research the six questions to the Department of Public Health and Human Services (DPHHS), and to have responses prepared by May 16. Ms. Murdo said that the Legislative Fiscal Division has been pushing for departments to come up with performance measures for quite some time, with little success, and said it may be difficult for her to find this information.

REP. WINDY BOY said it was unfortunate that the ATR folks weren't at the meeting because he has questions that he would like to ask of them. He read a list of questions:

- when should tribal governments have agreements in place with ATR;
- define "fee for service";
- are you training tribal program staff regarding Medicaid reimbursement;
- what are your reporting requirements;

- what types of data are you collecting, what is done with that data, and do participating tribes get the data back;
- what are the outcome and/or performance measures;
- do the participating tribes have any input to the process
- who is responsible for liability issues; and
- overall, what are the cultural aspects of this project.

REP. WINDY BOY **moved** to draft the questions into a formal letter with the Committee's signature to the ATR folks and that responses be compiled by the June meeting. The **motion passed** on a unanimous voice vote.

Mr. Boham asked for permission to go out of order. It was granted. Mr. Boham asked what state recognition of a tribe means, how it is statutorily defined, and asked, as a government-to-government relationship, how does that recognition manifest itself regarding state resources. He said that the Little Shell Tribe has contacted the Governor's Office on several occasions regarding this question and that the Tribe has never received a response. He said that he would like the Committee to look into that for him, on behalf of the Little Shell Tribe.

REP. HENDRICK asked if information is based on federal standards. REP. WINDY BOY said that staff would investigate.

REP. PETERSON said that the Indian tribes have signed treaties with the federal government, but not the State of Montana, so there is no obligatory relationship. He said such a relationship would have to be established through an agreement.

SEN. TROPILA said the Little Shell Tribal leadership is scheduled to meet with Governor Schweitzer soon and that he would be there to assist them. He said that this issue could be addressed at that time.

#### **DISCUSSION OF ISSUES IN NEGOTIATIONS RELATED TO LITTLE SHELL TRIBE AND FISH, WILDLIFE & PARKS - MORONY DAM ISSUE.**

**Gary Bertellotti, Great Falls Regional Parks Manager, Montana Department of Fish, Wildlife & Parks (FWP)**, discussed the historical relationship between the Little Shell Tribe and the FWP, saying that HB 284 (2007 regular session) provided that the FWP be given the authority to enter into a 10-year agreement with the Little Shell Tribe to use and maintain the Morony townsite in Great Springs State Park as tribal headquarters for the Little Shell Tribe. Mr. Bertellotti said that he has worked with the Tribe extensively to facilitate the agreement, but that to date, there has been no agreement on what is feasible. Mr. Bertellotti provided a packet of information that included a copy of HB 284, a brief description of town site current status, correspondence between the FWP and the Little Shell Tribe, as well as photos of the townsite and cost estimates for repair of the building (EXHIBIT #8).

#### **Committee Questions**

SEN. TROPILA asked the Little Shell Tribe to state whether or not it is satisfied with what has been proposed. Mr. Boham said that there is no problem right now, and that the Tribal Council will consider all of the information and make a decision. Mr. Boham said the Tribe knows that the Legislature will not be providing additional funding, so that the Tribe will be looking at other options.

Mr. Bertelotti said the FWP is open to suggestions from the Tribe and is willing to provide whatever assistance it can, within the confines of the bill. Mr. Boham expressed the Tribe's appreciation for the STR's and FWP's assistance. SEN. TROPILA said that he would continue to provide whatever assistance he could to the Tribe and the FWP to resolve the issue.

**Darrel Rummel, Little Shell Member, Former Council Member**, thanked the STR for its interest in this issue and the FWP for its continued assistance. She said that she would like to see the issue move forward.

REP. WINDY BOY asked if the State Tribal Economic Development Commission (STED) or the Department of Commerce could provide any financial assistance. Mr. Boham said that the Tribe will be checking and said the Little Shell Tribe is still trying to figure out how to take advantages of the services it is entitled to as a recognized tribe. REP. WINDY BOY asked if legislation is needed to strengthen the meaning of state recognition of a tribe. SEN. TROPILA said that the State of Montana has officially recognized the Little Shell Tribe, but that the federal government has not. Ms. Murdo said that she would look into what could be done legislatively.

## **STR ISSUES UPDATES**

### **Oil and Gas Agreement**

SEN. SMITH reported on a recent meeting regarding the oil and gas agreement with Fort Peck Tribe, saying it was signed recently and that oil companies are already looking at working with the Tribe. He reviewed the history of the tax, and how both the tribe and the state ended up imposing taxes. He said that under the agreement, the Tribe dropped its tax and will receive a portion of the State tax.

### **Reserved Water Compact Negotiations**

MS. Murdo said that this issue will be an agenda item at the June meeting at the Flathead Reservation and that REP. WINDY BOY has requested that followup be given to the issue of roadblocks to water use. Ms. Murdo reported that Sen. Juneau has put in a bill draft request to extend the Reserved Water Rights Compact Commission.

In response to a question from REP. HENDRICK, Ms. Murdo said that Committee will meet on August 21 in Helena. She said the next meeting, scheduled for June 23 and 24, at the Flathead Reservation will begin at 12 p.m. The Committee will tour on the 24th, with stops scheduled for the Elmo housing projects, the Kerr Dam, the Tribal College, and a brief stop at a Salish and Kootenai Tribal Council meeting. She said the tour would conclude with a final stop at S & K Electronics. REP. WINDY BOY asked that the SAMHSA issue be an agenda item.

**Letter on Foster Care Agreements/direct Flow of Funds.** Ms. Murdo discussed a draft letter written to Sen. Max Baucus and Sen. Jon Tester regarding IV-E foster care funds, as discussed at the January meeting (EXHIBIT #9 - Sen. Tester and EXHIBIT #10 - Sen. Baucus). She asked if the Committee had changes or suggestions.

### **Indian Art Issue**

Ms. Murdo discussed draft letters to members of the Montana Retail Association (EXHIBIT #11) and to state tribal leaders (EXHIBIT #12) regarding protection of Indian arts.

### **Ninth Circuit Court Decision on Blackfeet Housing Issue**

Ms. Murdo discussed a newspaper article on the recent 9th Circuit Court ruling on the Blackfeet housing project (EXHIBIT #13). Ms. Murdo said the decision is expected to be appealed.

### **Public Comment**

Mr. Boham thanked the Committee for the draft letters regarding the sale of Indian arts and crafts. He asked to include language about "state recognized tribes". Ms. Murdo said that Mr. Boham's concerns are addressed in 30-14-601, MCA, as listed in the letter.

Regarding the letters to Montana's congressional delegation for Title IV-E foster care funds, Ms. Murdo said that the bill was not moving very quickly and that the Committee could wait to take action, if so desired.

REP. WINDY BOY **moved** to approve the draft letters to Montana's congressional delegation regarding Title IV-E foster care funds. The **motion passed** on a unanimous voice vote.

### **PROSPECTIVE COMMITTEE LEGISLATION**

No legislation was proposed.

Ms. Murdo said that Chris Lohse is conducting a study in Indian education non-completion rates for the National American Indian Congress for the National Congress of State Legislatures (NCSL) and that Sen. Laible has requested that Mr. Lohse present his findings to the State-Tribal Relations Committee. Ms. Murdo said that Mr. Lohse is willing to travel to Montana to make the presentation but would like to have a portion of his travel expenses paid for by STR. Ms. Murdo said the presentation would be at the August meeting and that there is money in the Committee's budget to cover the expense. REP. HENDRICK **moved** to approve the expenditure of up to \$1,600 from the STR Committee budget to assist with Mr. Lohse's travel expenses.

REP. PETERSON questioned the need for the presentation and suggested that the information could be presented through another means. Ms. Murdo said that Sen. Laible, as Chair of the Education and Local Government Interim Committee, felt that the STR Committee should hear the presentation because of its relevance to American Indian education and poverty issues. The **motion passed** on a 4-2 voice vote, with REP. PETERSON and SEN. STEINBEISSER voting no.

### **ADJOURNMENT**

Ms. Murdo reminded the Committee that the next meeting is scheduled for June 23 and 24, at the Flathead Reservation. With no further business before the Committee, SEN. SMITH adjourned the meeting 3:46 p.m.

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