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State-Tribal Relations Committee

61st Montana Legislature

SENATE MEMBERS

SHARON STEWART-PEREGOY--Vice Chair
JOHN BRUEGGEMAN
RICK LAIBLE
JONATHAN WINDY BOY

HOUSE MEMBERS

SCOTT REICHNER--Chair
FROSTY BOSS RIBS
KEN PETERSON
J. DAVID ROUNDSTONE

COMMITTEE STAFF

CASEY BARRS, Research Analyst
JEREMY GERSOVITZ, Staff Attorney
CLAUDIA (CJ) JOHNSON, Secretary

MINUTES

January 14, 2010
Room 137

Capitol Bldg.
Helena, MT

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. The minutes are accompanied by an audio recording. For each action listed, the minutes indicate the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time may be used to locate the activity on the audio recording.

An electronic copy of these minutes and the audio recording 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. To hear the audio recording, click on the Real Player icon. Note: You must have Real Player to listen to the audio recording.

COMMITTEE MEMBERS PRESENT

REP. SCOTT REICHNER, Chair
SEN. SHARON STEWART-PEREGOY, Vice Chair
SEN. JONATHAN WINDY BOY
REP. FROSTY BOSS RIBS
REP. KEN PETERSON
REP. J. DAVID ROUNDSTONE

COMMITTEE MEMBERS ABSENT

SEN. JOHN BRUEGGEMAN

COMMITTEE MEMBERS EXCUSED

SEN. RICK LAIBLE

STAFF PRESENT

CASEY BARRS, Research Analyst
JEREMY GERSOVITZ, Staff Attorney
CLAUDIA (CJ) JOHNSON, Secretary

Visitors

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

COMMITTEE ACTION

The State-Tribal Relations Interim Committee approved:

- the minutes from October 7, 8 & 9, 2009.
- addressing the delivery of the Indian health care system at the next meeting.

CALL TO ORDER AND ROLL CALL

00:00:00 Chair Reichner called the State-Tribal Relations Interim Committee meeting to order at 8:35 a.m. The secretary called the roll. Attachment #3. Sen. Brueggeman is absent. Sen. Laible is excused and provided a proxy. Attachment #4

AGENDA

Approval of minutes

00:00:44 Rep. Peterson made the motion to approve the minutes from the Rocky Boy's and Fort Belknap Reservations held on Oct 7, 8 and 9, 2009. The motion **passed**. Sen. Laible voted aye by proxy.

Update on Indian affairs

- **Ms. Jennifer Perez-Cole, Director, Governor's Office of Indian Affairs**

00:03:16 Ms. Perez-Cole gave an overview of the Governor's Tribal training that took place at the Red Lion, Helena, on December 9, 2009. She distributed updated material of the new Tribal Council members, and a booklet on Tribal Relations-a guide for state employees on preserving the State-Tribal Relationship. **(Exhibit 1)** She distributed information about the State Tribal Economic Development Commission (STED). The handout addresses stimulus funds provided through HB 645 and the projects being funded by the Commission. **(Exhibit 2)**

Extradition cooperation

- **Mr. Jim Smith, Co-Executive Director, Montana Sheriffs and Peace Officers Association and the Montana County Attorneys Association**

00:08:05 Mr. Smith distributed a handout regarding relationship improvement between state law enforcement agencies and the Tribal Nations, specifically about the issue of racial profiling. **(Exhibit 3)**

00:00:05 Jeremy Gersovitz, Staff Attorney, explained the statutes that are currently in place regarding state and tribal extraditions. He talked about how a court of record when appealed can be reviewed by a higher court, such as the Supreme Court. He said that all records can be reviewed in regard to extraditions. **(Exhibit 4)**

00:06:25 The committee members discussed restrictions on extraditions, such as being extradited on the reservation or off the reservation and brought back onto the reservation. Indians are only extradited for misdemeanors and the federal government handles the felonies.

- 00:15:36 Chair Reichner concluded that the best course of action is to allow the county attorney and the Tribal Chair to work out the extraditions between them.
- 00:19:11 The committee talked about an incident that had taken place at the Hill County Jail, and the treatment toward the Indians when there has been an agreement between the Tribal Chair and the county attorney.
- 00:26:36 Bum Stiffarm, Administrator from Fort Belknap, talked about the Tribes and their position on extraditions. He said the fault lies with everyone and he hopes that the issues can be resolved. He stated that he doesn't want to see the reservations become safe havens for convicts. He said the autopsy report has come back relative to Mr. Long Soldier, but he couldn't reveal the results at this time because of the on-going investigation.

Montana University System: (2-year education for Indians)

- **Ms. Mary Sheehy Moe, Deputy Commissioner for Two-Year Education, Office of the Commissioner of Higher Education (OCHE)**

- 00:33:36 Ms. Sheehy Moe distributed handouts that explain:
- The tribal colleges on reservations and the two-year education delivery system and their locations. **(Exhibit 5)**
 - The ethnic/racial minority enrollment counts and distribution. **(Exhibit 6)**
 - A report by the Montana University System (MUS) regarding higher education enrollment compared to the Montana population. **(Exhibit 7)**
 - Information on Tribal Colleges two-year graduation rates. **(Exhibit 8)**
 - New transfer student enrollment from Montana Tribal Colleges to MUS 4-year colleges. **(Exhibit 9)**
 - A sample of a discipline (college courses required to possess a master's or a bachelor's degree) of a transfer initiative from a Tribal College to a 4-year college. **(Exhibit 10)**
- 00:48:32 Sandy Merdinger, Director of GEAR UP, distributed a handout and explained what GEAR UP is, its mission, goals and the services they offer. GEAR UP is a program that assists Montana students starting from the 7th grade through college by providing information on the importance of postsecondary education through funding assistance, such as financial aid and scholarships for higher education. **(Exhibit 11)**
- 01:01:42 Jamie Shell, Assistant Director of the Talent Search Program, OCHE, distributed a handbook titled: Montana TRiO Fact Book 2009. It addresses a combination of three federal programs that promotes and assists students who want to go on and receive a higher education. **(Exhibit 12)**
- 01:11:01 There was discussion about students being in more than one TRiO program. It was noted that federal guidelines do not provide for a student to be enrolled in more than one program at a time.
- 01:46:41 Rep. Peterson questioned transferability and the content of a discipline, such as a Tribal college 101 class - is it the same in a 4-year college 101 class. Ms.

Sheehy Moe said they may not all be the same, but the content is the same. She talked about a new program that will track students better in the future.

- 01:17:47 Rep. Boss Ribs questioned Ms. Merdinger about tracking students in the GEAR UP program and wanted to know what they are doing for drop outs. She also wanted to know if GEAR UP can find some programs to keep students in school. Ms. Merdinger said that GEAR UP cannot serve students that drop out of school.
- 01:20:04 Chair Reichner talked about the GEAR UP program and wanted to see a copy of the track record for GEAR UP. Ms. Merdinger said she can get copies of the retention rates, but not by individual schools.
- 01:22:50 Rep. Roundstone asked about state funding for Tribal colleges. Ms. Sheehy Moe said that Tribal colleges are funded through the federal program, and the state reimburses Tribal colleges for non-Indians. Ms. Sheehy Moe said that it is the Legislature that appropriates funding for schools.
- 01:26:02 Rep. Peterson asked further questions on who can participate in the program. Ms. Shell replied there are two guidelines required of the students to participate in the Talent Search Program; 1) be low income, and 2) be a first time college student. Ms. Shell distributed a handout that explains the Montana Educational Talent Search Program, which is one of the three TRiO federal programs.
(Exhibit 13)
- 01:33:22 Rep. Roundstone asked why the Tribes do not have a tax system for educational purposes. Ms. Sheehy Moe thought it was constitutional. Rep. Roundstone said that this is something the Legislature could address.
- 01:36:43 Bum Stiffarm asked that the STR committee take on the challenge to address funding for Tribal colleges. He said there is funding in place through the BIA for scholarships, but it isn't enough. He informed the committee that the universities will be holding a Career Fair at Fort Belknap to assist anyone wanting a higher education.
- 02:02:02 **Break**
- Office of Public Instruction:** (Drop out solutions, charter schools)
- **Ms. Denise Juneau, Superintendent, Office of Public Instruction (OPI)**
- 02:05:36 Ms. Juneau presented a PowerPoint of the OPI and their efforts at providing support for schools that are having problems with academic achievement.
(Exhibit 14) She identified five areas that OPI will be addressing.
- 02:18:33 Chair Reichner questioned why the Hays school board have not done anything about the data on the area of math by Indian students. Ms. Juneau said they have talked with the school boards and stated that some of the data is derived from areas where there is high unemployment and high poverty. She said that OPI has met with administrators, Tribal governments and organizations, and that

- communities know they need to participate to increase the study skills for Indian students in math and reading.
- 02:33:20 Ms. Juneau closed stating that OPI's goal is making sure the Indian schools are providing an education so that the students can go out and provide a quality life for themselves and their communities.
- 03:12:49 The committee talked about the achievement gap and why it is present and is it the teachers. Ms. Juneau responded that the problems found in inner cities and Indian reservations relate to trauma, health, communities engaged in the process from school board members, teachers, and superintendents. They talked about programs in place to assist parents on the reservation like PAST (a program that helps parents learn more about navigating the education system). Ms. Juneau said when parents know how to do this they become more involved with their children's education.
- 02:44:41 Rep. Peterson asked if there are other poverty schools in Montana. Ms. Juneau said they have identified all the schools across the state that have met criteria within their system to assist by providing support that is needed by those various schools. They discussed boarding schools and if they are still in use. Ms. Juneau provided names of boarding schools that are still in service.
- 02:50:05 Rep. Peterson wanted to know how half white and half Indian fit into the data. Ms. Juneau said there is still a gap. Students in urban areas do better in schools and vice versa for students on the reservation.
- 02:51:53 Madalyn Quinlan, OPI, talked about the data from the system. She said there is a new system in place that will provide information regarding ethnic and racial funding for schools.
- 02:53:50 Sen. Windy Boy talked about experiences of Native Americans students in boarding schools. He addressed the culture of the Tribes and how each one has their own individual beliefs and teachings.
- 03:01:48 Chair Reichner talked about the data from Ms. Juneau's PowerPoint and asked if there are solutions because there is no money. He wanted to know more about the virtual academy. Ms. Juneau said that charter schools are not viable. The Legislature has not supported them and they do not work in Montana especially in the rural areas. The Legislature did provide funds for the Virtual Academy and it will be available for all schools across the state. She asked that Dr. Messinger and the Board Director be invited to the next STR meeting to give a presentation on the Virtual Academy.
- 03:08:27 Rep. Roundstone said he agrees with Sen. Windy Boy's comments. They talked about state funding for all schools that include Tribal schools. Ms. Juneau said that state funding is for the state's public school system only.
- 03:12:10 Break for lunch - back at 1:45 p.m.

Indian Health Service (IHS): (Mapping of Indian health care, funding, prescription drug abuse, Medicaid)

- **Mr. Pete Conway, Director, Billings Area, Indian Health Service**

- 05:42:19 Mr. Conway gave an overview of the IHS, its duties and responsibilities. He talked about the services that IHS provides. He discussed mental health services and that the state and Tribal communities need to work together. He informed the committee that IHS is meeting with OPI. He talked about IHS working with the medical budget and how a lot of their services are off the reservation. He talked about the IHS data system and how it provides shared medical information.
- 05:58:22 Garfield Little Light, Executive Officer of the IHS in Billings, explained that IHS is both a provider and a payer. The IHS contracts with a federal program called Contract Health Services (CHS), which provides medical/dental care when there is no IHS or tribal health care facility, and also provide services that IHS is not capable of providing. He said that IHS monitors and controls where services are provided for Indians. Mr. Little Light said that CHS is not an entitlement program and an IHS referral does not imply that the care will be paid for. If IHS is requested to pay, then a patient must meet the residency requirements, notification requirements, medical priority, and use of alternate resources.
- 06:13:31 The committee discussed Indians having transplants out-of-state and that Medicaid and IHS do not cover these services and how is this type of situation handled. Mr. Little Light said they follow Medicare guidelines under the Centers for Medical Services (CMS). He said if Medicaid doesn't cover the procedure than Medicare can.
- 06:22:45 Mr. Little Light talked about Medicaid and Medicare being entitlement programs - if an Indian qualifies and is eligible and if they have Indian services they are only entitled to Indian funds that are appropriated by Congress. Sen. Stewart-Peregoy and Mr. Little Light talked about their hopes for IHS. They discussed national health care reform that is going on, which will provide better insurance because they will be able to gain revenue through IHS by billing insurance and then cost-shifting on to the CHS program.
- 06:26:57 Dr. Doug Moore, Chief Medical Officer for Indian Health Services, discussed illegal narcotics and addictive medication. He said that IHS has been addressing this for the past decade. He said that the clinics today when dealing with those that are on a controlled substances have to sign an agreement with IHS and if a patient has a problem with a drug - a group of providers look at that medication to make a determination if there is a need to change the course of treatment for that patient. Dr. Moore said they have the best data system on controlled substances that is going out of the IHS clinics, but it is not available to non-reservation clinics. He said that a group of health care providers get together quarterly and compare information regarding medication between each clinic. He stated that they have such tight control of medication through IHS clinics that when there is a drug problem it is coming from the outside.

06:31:50 The committee talked about IHS being federally funded and how the state and the Tribes need a more cooperative partnership and education. The funds received by IHS is 100% pass through, which means there are no state general funds only from the federal level.

Department of Corrections: (Recidivism & training: Inmate Indians)

- **Ms. Myrma Kuka, American Indian Liaison, Department of Corrections (DoC)**

06:36:54 Ms. Kuka explained her duties and responsibilities through the Department of Corrections (DoC). Her three main duties for American Indians include:

- 1) going into all of the facilities to ensure that American Indians receive their religious rights.
- 2) cultural awareness training for DoC workers and other state offices as they request.
- 3) recruiting American Indians to work for the DoC.

Ms. Kuka said that the University of Montana did a study on recidivism (a person who comes out of prison for a certain amount of time and if they return to prison within the first three years is considered recidivist) by going through the pre-release centers. When the inmates are released from prison and they have not served their full term they go to a pre-release center. She talked about the assessments that are done to determine the needs of a person just released from prison. She addressed:

- mental health illness,
- parenting classes,
- anger management, and
- providing a treatment coordinator.

06:42:51 Ms. Kuka talked about when Indians are in prison they are out of their cultural surroundings, which is different than other cultures. She said that the DoC has applied for a grant to hire seven new positions to work as Indian Probation and Parole officers, and three of them will be located in Hamilton, Butte and Livingston.

Fort Belknap liaison issue: Tribal-State foster care and IV-E concerns

- **Ms. Anna Whiting Sorrell, Director, Department of Public Health and Human Services (DPHHS)**
- **Ms. Shirley Brown, Division Administrator, Children and Family Services Division, Department of Public Health and Human Services**

06:53:36 Ms. Whiting Sorrell talked about Title IV-E funding for the Foster Care Program. She discussed the historic relationship that the state has with the Tribes. She said that Montana is more aggressive with IV-E than the rest of the country. She talked about renegotiating contracts between the Tribes and the state on a template that could become the foundation for government to government relations. Ms. Whiting Sorrell said that DPHHS has six agreements with the tribes, but the Fort Peck Tribe wanted to keep the program they currently have. She discussed the partnerships between the state, federal government, and the Tribes.

07:00:59 Shirley Brown, Administrator of Child and Family Services, Department of Public Health and Human Services (DPHHS), distributed a handout that describes the functions of her office. **(Exhibit 15)** She discussed:

- Subsidized adoption program.
- Tribal Title IV-E Foster Care Contracts.
- Expanded Justifications.
- Child Protective Services Continuum.
- A list of services that are paid for on the reservation.

07:13:17 Sen. Windy Boy wanted to know if the IV-E program has been affected by the cuts that are taking place in state government. Ms. Whiting Sorrell said there is a process in place to review options suggested by her division administrators to determine what services will not be cut. She said the services need to increase even when resources decrease.

07:16:44 Chair Reichner asked if there is a solution for Fort Belknap's issue, such as giving the Tribes the money up front for the Foster Care Program, and he also wanted to know if the concern regarding the funds is only the reimbursement issue. Ms Whiting Sorrell said they did advance funds to one Tribe. She said the problem they encountered was the reimbursement issue for reconciliation purposes, but that the state and the Tribes need to come to a consensus to determine if there is a budget based on estimates from projections from previous years so the Tribes could receive their IV-E funding in advance. She addressed time restraints, the budget, and how the department and the Tribes can formulate an agreement on what can be advanced, and how they will reconcile those advanced funds. Mr. Stiffarm said he will take this message regarding the advance payment of one-twelfth of the IV-E funds back to the Fort Belknap Council.

Rocky Boy's liaison issue: LIEAP funding and census count

- **Casey Barrs, LSD staff**

07:22:05 Mr. Barrs talked about LIEAP and how the Tribes are being under-counted by the census so they cannot receive these funds because LIEAP is driven by numbers, and Rocky Boy's Reservation did not participate in the last Census.

Mr. Barrs recapped the conversation of Jim Nolan, Administrator of LIEAP, who said that the state has created an equalizer so that each Tribe will receive 300% of the agreement except Rocky Boy's Reservation, because they have signed an agreement on January 13, 2010, to keep their contract the same.

Fort Belknap liaison issue: Motor fuel tax and road maintenance

- **Mr. Andrew Huff, GAIN attorney, Office of Budget and Program Planning (OBPP), Office of the Governor**

- 07:34:07 Andy Huff, Counsel on Indian Law and Policy Matters, distributed a handout addressing the issue of who should maintain the county roads and the transfer of funds to the Tribes to maintain the roads. **(Exhibit 16)** He said that the state (Montana Department of Transportation (MDT)) cannot enter into an agreement directly with the Fort Belknap Tribe, but the county can. He said that Blaine County's position is that they do not want to enter into an agreement with Fort Belknap, and the County feels that the State can enter into an agreement with Fort Belknap for the provision of road maintenance. MDT has issued an opinion in 2007 that Blaine County can resolve the issue of road maintenance. In June of 2008, at the Fort Belknap council meeting, Blaine County would not enter into an agreement with Ft. Belknap. Mr. Huff discussed drafting legislation to address this issue, but said it cannot be specific to the one tribe. He stated that he didn't know if this issue is specific to Blaine County and Ft. Belknap or if there are situations with other tribes and counties. He said that Tribal contracting has become sophisticated in the last 20 years and has become more difficult to do. He said in drafting legislation to address this issue it has to be general and not site specific.
- 07:43:06 When Mr. Gersovitz was asked the same question he stated that he came to the same conclusion as Mr. Huff.
- 07:43:58 Mr. Stiffarm responded to comments that Blaine County will not work with the Tribe. He said the maintenance fees are \$28,000 per year and the issue of who maintains the roads has gone on for 10 years.
- 07:45:59 Chair Reichner and Mr. Stiffarm talked about an agreement regarding Tribal sovereignty for road maintenance.
- 07:47:56 Rep. Peterson asked Mr. Stiffarm if it is the money the Tribe wants or do they want Blaine County to pay the Tribe to maintain the roads. Mr. Stiffarm said they tried the road maintenance, but it didn't work. He said if the Tribe is to maintain their own roads, then they want the funding that is available through the state. Rep. Peterson asked Mr. Stiffarm what does the Tribe want. Mr. Stiffarm responded they want the money.
- Health disparities: (Options the committee might consider)**
- **Sen. Sharon Stewart-Peregoy**
- 07:51:47 Sen. Stewart-Peregoy distributed two handouts explaining the history and background of the Indian Health Care System.
- Reforming the Indian Health Care System - by Congressman Senator Dorgan. **(Exhibit 17)**
 - Health Care Bill aids Indian Country - and the original intent that Senator Dorgan has brought together. **(Exhibit 18)**
- 08:02:36 Sen. Stewart-Peregoy said that the Fort Peck Tribe is the only Tribe that has an agreement with the state to share data/information, not only in the health area

but all areas across the board. It was noted that Fort Peck has the only recognized Tribal health department.

08:12:56 Chair Reichner said that IHS, DPHHS, and the Tribes need to work together. Sen. Stewart-Peregoy said that the data information from the Tribes can be contained in one area and said it would be a solution to control diseases, but the Tribes need to have control of their own data.

08:17:33 Chair Reichner, Rep. Peterson, Mr. Barrs and the committee members talked about the difficulty in the collection of data from the Tribes. One of the conclusions is that the delivery system fails because the Tribes, state and county do not work together. The committee discussed working on a better way for delivery of Indian health care services.

Motion

08:32:48 Rep. Peterson made a motion that the committee will address the delivery of the Indian health care system at the next meeting. The motion **passed**.

Public Comment

08:33:25 Mr. Stiffarm asked that the Bureau of Indian Affairs (BIA), be invited to attend one of the STR Interim Committee meetings.

08:35:42 Mr. Barrs talked about setting aside time at the next meeting to hear issues on the historic work plan to be addressed by Sen. Windy Boy.

Sen. Windy Boy informed the committee that the Tribes are having a meeting with the archeologist in February, 2010, in Great Falls regarding historic preservation.

08:40:12 Cil Robinson, Montana Board of Crime Control, Juvenile Justice Planner, discussed kids in the justice system. She said that non-Indians do not understand being taken away from their culture like the Indian kids. When the Indians kids are taken away from home or from the reservation and placed in an institution it takes away their knowledge of where they are from and their culture.

08:47:01 Sen. Windy Boy suggested that the STR committee invite the new U.S. Marshall to attend one of the meetings for his input and compare his views with that of the former U.S. Marshall Bill Mercer.

Adjourn

08:51:22 There being no further discussion, Chair Reichner adjourned the STR Interim Committee at 5:05 p.m.