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State-Tribal Relations Interim Committee

59th Montana Legislature

SENATE MEMBERS

JERRY O'NEIL
GERALD PEASE
FRANK SMITH
DONALD STEINBEISSER

HOUSE MEMBERS

GORDON HENDRICK--Vice Chair
JONATHAN WINDY BOY--Chair
JOAN ANDERSEN
JOEY JAYNE

COMMITTEE STAFF

CHRIS LOHSE, Lead Staff
EDDYE MCCLURE, Staff Attorney
DAWN FIELD, Secretary

MINUTES

May 9 & 10, 2006

Blackfeet Reservation
Browning, 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. 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.

COMMITTEE MEMBERS PRESENT

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

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

REP. JOAN ANDERSEN
REP. JOEY JAYNE

STAFF PRESENT

CONNIE ERICKSON, Lead Staff
EDDYE MCCLURE, Staff Attorney
DAWN FIELD, Secretary

AGENDA & VISITORS' LIST

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

TUESDAY, MAY 9, 2006 -- DAY ONE

TAPE 1 - SIDE A

CALL TO ORDER

Earl Old Person, Tribal Council, welcomed the State-Tribal Relations Interim Committee (STRIC) members and staff to the Blackfeet Reservation and led a prayer. The Committee members and staff introduced themselves, as did the Blackfeet Tribal Council members.

Tribal Council Chairman Pat Thomas, thanked the Committee for coming to the Blackfeet Reservation and said that he hoped the Committee would gain a better understanding of the Blackfeet people and their needs.

Vice Chair Jay St. Goddard, welcomed STRIC to the Reservation, saying that he appreciated the opportunity to work on difficult issues together. He discussed several issues of concern to him, including gaming compacts, water compact issues, and tax issues, and thanked the Committee for listening to the concerns of the Blackfeet people.

Fred Guardipee, Tribal Council Secretary, said that the agenda items are issues that the Blackfeet Tribe has struggled with for many years. Mr. Guardipee discussed education issues and the importance of funding tribal colleges, the land tax issue, TANF funding concerns, and the importance of the Tribe working with state and local governments on shared concerns.

William Talks About, Tribal Council, thanked STRIC for visiting the Blackfeet Reservation. He agreed that the tribal governments must work with the state government on common issues of concern and said that education is a top priority and key to the future of the Blackfeet people.

James St. Goddard, Tribal Council, stated that he appreciated Governor Schweitzer's commitment to the tribal nations of Montana, that the Blackfeet people have a good working relationship with the Governor, and that it has given the Blackfeet people hope for the future.

Hugh Monroe, Tribal Council, said that both the Tribe and the State need to develop a better understanding of one another.

Edwin Little Plume was sworn in as a new Tribal Council member. Councilman Little Plume briefly addressed the tribal members, Tribal Council, and Committee members. An Honor Song was performed to commemorate Councilman Little Plume's induction onto the Council.

REP. WINDY BOY presented the Tribal Council with a Montana State flag and a CD-ROM copy of the Montana Code Annotated. He thanked the Council members for sharing their concerns and agreed that education is a key issue.

TAPE 1 - SIDE B

INDIAN EDUCATION FOR ALL

Rep. Carol Juneau, HD 16, distributed copies of a draft resolution from the National Caucus of Native American State Legislators (NCNASL) - EXHIBIT #1. Rep. Juneau discussed the goals and objectives, a table indicating the level of funding for Indian Education For All (IEFA) in

Montana schools, and enrollment data and graduation rates for Native American students enrolled in public schools on or near reservations.

Rep. Juneau discussed school funding, IEFA funding, and specifically the funds received by the Blackfeet Reservation. She said that SB 1, passed in the special 2005 legislative session does not contain accountability requirements for how funds are spent and suggested that STRIC draft legislation to rectify this because currently, a school district can deposit IEFA money in its general fund and use it for whatever purpose it chooses.

Rep. Juneau discussed the Temporary Assistance For Needy Families program (TANF), saying that the program on the Reservation is in crisis. She said that the Blackfeet Reservation's caseload is very heavy and that the program does not have enough funding to finish the year. The Tribe has met with state and federal governments in search of assistance. She asked the Committee to investigate the possibility of emergency funding for the Reservation to allow the TANF program to be funded through the end of 2006 and suggested that legislation be drafted to address this issue.

Betty Cooper, Tribal Council, joined the meeting and welcomed the Committee to the Reservation. She said that she appreciated the Committee's efforts to visit the Reservation and listen to the concerns of the Blackfeet people.

Mary Johnson, Superintendent, Browning Public Schools & Blackfeet Tribal Member, thanked Rep. Juneau and the Committee for the work done regarding funding to implement IEFA. She said that the Browning Schools will spend its IEFA funding very carefully and while the funding has given IEFA a good start, there is still work to be done. She discussed additional areas of concern such as the Impact Aid bonding law, the strong link between economic development and education, how school funding has been impacted by the unresolved tribal tax land issues between the Tribe and Glacier County, and how increasing energy costs are rapidly depleting school budgets.

REP. HENDRICK asked if the Office of Public Instruction (OPI) has developed and made available a standardized IEFA curriculum. Rep. Juneau said that grants are being distributed to assist schools in developing materials, a K-12 social studies curriculum will be available for the 2006-2007 school year, and there are many other resources available on the OPI website. She said that it is anticipated that each curricular area will have an IEFA curriculum developed eventually.

REP. HENDRICK asked what educational opportunities will be provided to Montana teachers on how to use the IEFA materials. Rep. Juneau said that each school has money for professional development for its staff and that the University System also needs funding to develop resources for teacher training.

REP. HENDRICK asked if home school programs were eligible to receive IEFA funding. Rep. Juneau said that only state-supported schools are eligible for IEFA funding.

REP. WINDY BOY agreed that there needs to be accountability measures placed in the school funding formula to ensure that the IEFA funds are spent properly. He stated that he would sponsor an amendment to SB 1 to require that accountability measures be implemented.

Robert Rides at the Door, Chairman, Browning School Board, thanked the Committee for coming to Browning and said that the Browning School District is the largest Indian school district in Montana and the third largest in the United States. He noted that he was recently elected as School Board Liaison for the National Association of Federally Impacted Schools and said that he would welcome comments, recommendations, or suggestions from STRIC regarding school funding concerns. Mr. Rides at the Door said that the Browning school staff and school board are working together to develop an IEFA curriculum. He also discussed the land tax issues and the impact on the Browning Schools.

TAPE 2 - SIDE A

BLACKFEET TRIBAL COMMUNITY COLLEGE

John Salois, President, Blackfeet Tribal Community College, said that tribal colleges provide many valuable services to the communities in which they operate. He explained several of the programs offered through the Blackfeet Tribal Community College, such as training programs for many different occupations, collaborative programs with the local schools, and economic development efforts. Mr. Salois said funding is always lacking and the tribal college could be doing more if the budget constraints were lessened.

Mr. Salois said that one of the goals of the Tribal College is to provide a skilled and trained workforce, which is badly needed on the Reservation and would help improve the poor economy. He said that funding is needed for personnel and materials in order to expand the training programs at the Tribal College. He asked that STRIC keep the needs of the tribal colleges in mind, saying that the colleges don't educate just tribal members but anyone who wishes to enroll.

Mr. Salois said that he wished to thank the State of Montana for the \$2 million allocated for a tribal history project and said that the Committee would be given an update on the project status when the members tour the college facilities.

Mr. Salois reported that each tribal college in the state is working on curriculum materials for use in the IEFA programs, and that he anticipated that the materials would be available in 2007.

LAND TAX ISSUES

Mark McGee, Administrator, Tribal Land Department, reported on a property tax dispute with the state. In the early 1980s, the tribe challenged the taxation of tribally-owned fee land on the Blackfeet Reservation. The case was settled out of court with an agreement that the state and counties would not impose property taxes on tribal fee land unless specifically authorized by Congress to do so. In 1998, the U.S. Supreme Court issued a ruling on a similar situation in Minnesota, which was that Minnesota could impose property tax on tribal fee land. As a result of that decision, Montana is now assessing property taxes on tribal fee land. To date, the Tribe has refused to pay the taxes because it believes that the assessment violates the out-of-court agreement between the Blackfeet Tribe and the state. Tax liens have been filed that have prevented the Tribe from placing the lands into trust status, which would then allow the school district to collect impact aid. As it stands now, the schools are losing approximately \$285,000. The Blackfeet Tribe has begun negotiations with the state through the Governor's American Indian Nations Council (GAIN) but no agreement has been reached, and the Tribe is not optimistic about reaching a solution. The Tribe will go back to court if an agreement cannot be reached. The State-Tribal Relations Interim Committee has the power to influence this situation

through legislation. The Tribe requested STRIC to draft legislation that would exempt tribal fee land from taxation.

REP. WINDY BOY said that the Blackfeet Tribe is not the only tribe facing this issue. He asked staff attorney Eddy McClure to comment. Ms. McClure asked Mr. McGee if the Tribe has submitted applications to the federal government for return to trust status on the contested land and also to comment further on the status of the negotiations process with GAIN. Mr. McGee said that the Tribe cannot submit any applications for return to trust status on the protested land until this issue is resolved. In the meantime, federal trust regulations are being reviewed for possible changes, which could further impede the Tribe's ability to place lands in trust. Regarding the negotiations process with GAIN, Mr. McGee said that GAIN made an offer and that the Tribe made a counter offer to GAIN. There is agreement between the Tribe and the Council that should the land be returned to trust, the Tribe will not have opposition from state or county governments. Ms. McClure said that she would consult with legal staff from the Governor's Office on this issue. She commented that this is a "catch-22" situation because if the lands are back into trust, it would financially benefit the Tribe but would decrease the amount of tax revenue collected by the state. She said that she would report back to the Committee at its July meeting.

Michael DeRosier, Glacier County Commissioner, said that as a tribal member and a county commissioner, he is very aware of the conflict this issue has caused. He discussed the accrued interest and penalties accumulating on the fines assessed by the county, the split between county commissioners on this issue, and the need for the two governments to work together to resolve this issue. Mr. De Rosier agreed that little progress is being made in the negotiations with GAIN and asked the Committee to assist in solving this issue.

Ms. Bird said that the Blackfeet Tribe would like to request that the Governor change the name of the Governor's American Indian Nation Council because the acronym, GAIN, has a negative connotation for Native Americans in this area. She said that letters have been written to the Governor about this and asked that STRIC also contact the Governor to discuss a name change for GAIN.

Rosella Many Bears led several school students from the Blackfeet Immersion School in a short prayer, recited in the native tongue of the Blackfeet people.

INDIAN GAMING

Roger Running Crane gave a brief history of gaming on the Blackfeet Reservation. He said because the Tribe does not have a gaming compact with the state, Class III gaming is not allowed on the Reservation, even by non-Indian operators. Mr. Running Crane said that the state tries to force the same gaming compact on every tribe and restricts the number of machines a tribe can have and the amount of the payouts a tribe can make. He said that one corporation in Montana has found a way to own numerous liquor licenses and hundreds of gaming machines and does not need a compact. This is unfair to Indian tribes. Mr. Running Crane said that he would like to see legislation allowing tribes to offer expanded Class III gaming on reservations.

ECONOMIC DEVELOPMENT

Dennis Fitzpatrick, Siyeh Corporation, distributed copies of a Power Point presentation (EXHIBIT #2) explaining why and how the corporation was formed, struggles affecting the corporation, future projects, and measurable successes attained by the corporation. He noted that the Harvard School of Business recently awarded the Siyeh Corporation a national award for Best Indian Business. Mr. Fitzpatrick also distributed copies of the *Blackfeet Heritage Center & Art Gallery* brochure (EXHIBIT #3), a business venture of the Siyeh Corporation.

REP. WINDY BOY said that there was a gaming bill in the 2005 legislative session that addressed this same issue and asked Mr. Running Crane if the working group was using language from that bill. He reminded Mr. Running Crane that any draft legislation has to be completed by September 2006. Mr. Running Crane said that the group has looked at the 2005 bill draft and plans to make changes in some of the language. He said that the group would present their bill draft to STRIC at their next meeting.

Ms. Emorie Davis Bird, Chief Operating Officer for the Blackfeet Tribe, reported that Governor Schweitzer had a team conduct an economic assessment of the Blackfeet Reservation. She said that the tribal industrial park remains empty and that the tribe would like the state to be a partner in establishing new businesses in the industrial park.

George Heavy Runner, Tribal Planner, discussed the Blackfeet Tribe's participation in the Lewis & Clark Bicentennial Celebration. There will be a symposium in July in Browning that will commemorate Lewis & Clark in Blackfeet Country. The "Tent of Many Voices", sponsored by the National Park Service, will be at North American Indian Days in Browning, also scheduled for July. The display will focus on the role of Indians in the expedition, especially the Blackfeet.

TAPE 3 - SIDE A

Councilman Talks About said that the Blackfeet Tribe can assist the state in its economic development efforts, particularly in the areas of energy development. He discussed the importance of farming and ranching as major economic factors on the Reservation. He also discussed the revenue potential for the Reservation if a casinos/resort/conference center were to be developed.

REP. WINDY BOY asked Ms. Erickson to provide an update on HJR 41. Ms. Erickson said she has provided the tribe with a report prepared by Chris Lohse, *Analyzing Montana's Indian Reservation Economies*. Mr. Lohse compiled information on the economic activities of the seven reservations in Montana. Ms. Erickson said that Mr. Lohse's report determined that in order to complete an in-depth economic study, much more information would be needed. She said that two people from the University of Montana will present information to STRIC at the July meeting.

TANF DISCUSSION

Goerge Kipp, TANF Director, reported on the money shortage that the Blackfeet TANF program is experiencing. Mr. Kipp said that the Tribe is serving more people than it has money for and that the program will be \$270,000 short by September 2006. The Tribe is unable to offer supportive services to its TANF clients and that at the end of every quarter, has to carry the program until it is reimbursed by the state. Mr. Kipp asked for a letter of support from STRIC to the Department of Public Health and Human Services (DPHHS) for a supplemental appropriation. He said that a supplemental appropriation would take care of the short-term

problems but that a long-term solution would still be necessary. Mr. Kipp distributed a letter sent to Governor Schweitzer regarding the Blackfeet TANF program contract negotiations (EXHIBIT #4) and a table of statistics relating to the Blackfeet TANF program (EXHIBIT #5).

After discussion between the Tribal Council and Committee members on several factors contributing to the TANF funding crisis, it was decided that the Committee would send a letter to DPHHS in support of the Blackfeet Tribe's request for a supplemental appropriation.

REP. WINDY BOY said that this issue will be brought up as an action item in the Committee meeting to be held on May 10. He said another action item will be the reimbursement problems with the TANF program, an issue that all of the reservations have struggled with. REP. WINDY BOY asked the secretary to note in the meeting record that the Committee will investigate possible solutions.

The Tribal Council and the Committee recessed for a tour of the Blackfeet Tribal Community College. The Committee will reconvene for a committee meeting on Wednesday, May 10, in the Tribal Chambers.

WEDNESDAY, MAY 10, 2006 - DAY TWO

TAPE 4 - SIDE A

The Committee was taken on a tour of part of the reservation, including the eastern portion of Glacier Park, the Blackfeet Heritage Center, the Museum of the Plains Indian, and the construction site of the new casino.

Following the tours, the Committee reconvened for a regular meeting in the Tribal Chambers. The March 13, 2006, meeting minutes were approved as written.

DISCUSSION OF BLACKFEET ISSUES

The Committee discussed issues presented by the Blackfeet on the previous day

- Land Tax controversy -- Ms. McClure will meet with the Governor's Office and the Department of Revenue;
- Use of the "GAIN" acronym -- Ms. McClure will convey to the Governor's Office that the Blackfeet Tribe finds the term offensive and will make a request that a different name be considered for the Council; and
- TANF issue -- Ms. McClure will meet with the Governor's Office and DPHHS to discuss the possibility of the tribe receiving a supplemental appropriation for its TANF program.

ST. MARY WATER DIVERSION PROJECT

Don Wilson, Water Rights Program Director, distributed copies of proposed legislation drafted by the Department of Natural Resources and Conservation (DNRC) regarding the St. Mary's Water Diversion improvements (EXHIBIT #6). Mr. Wilson explained that the tribe is concerned about the language contained in Section 4(A) and 4(B) and said that the draft legislation would result in the Blackfeet Tribe being excluded from the project and having no control.

Mx. McClure asked if the Tribe has formally objected to the language. Mr. Wilson said that the Tribe has expressed its concern to the DNRC but has not written a letter. Ms. McClure

recommended that the Tribe send a letter of opposition to the DNRC and to Senator Max Baucus. She asked Mr. Wilson to provide a copy of the letter to her for the record.

REP. HENDRIX **moved** to send a STRIC letter to DNRC and Sen. Baucus supporting the Blackfeet Tribe's position on this issue. The **motion passed** on a unanimous voice vote.

LAND TAX ISSUE

Ms. McClure said that the Department of Revenue (DOR) would have to be consulted on this matter because of the potential fiscal impact to state revenue. She will report to the Committee at its July meeting on her findings.

Ms. Erickson said it would be helpful to have copies of the agreement between the Blackfeet Tribe and the counties, as well as any documents relating to the court case.

Ms. Bird asked to defer additional discussion until Mark McGee, Blackfeet Tribal Lands Director, could address the Committee. (Mr. McGee joined the meeting a short time later.)

GAMING ISSUES

Ms. Erickson said that it was her understanding that the Montana Indian Gaming Association (MIGA) was to have met on this issue but that she has not heard from MIGA. She said that she would invite MIGA to discuss its position on Class III gaming at the July meeting.

REP. WINDY BOY said that the tribes may meet to review the existing language and decide what changes need to be made. SEN. PEASE has agreed to carry any proposed legislation to expand gaming on Indian reservations.

REP. JAYNE asked that any proposals be provided to the Committee members in advance of the July meeting so that there is adequate time to study them. Ms. Erickson said that she would distribute all information she receives on this issue to the Committee.

TAPE 4 - SIDE B

NEXT MEETING DATE FOR STRIC

After discussion, the Committee decided to have a two-day meeting and set the date for July 24 and 25, 2006, in Helena.

ACCOUNTABILITY REQUIREMENTS IN SB 1 - SCHOOL FUNDING FORMULA

Ms. McClure said that she would use the accountability language from the Quality Schools Interim Committee bill to draft an amendment to SB 1 to require schools to be accountable for how they spend funding designated for Indian Education For All.

AGENDA ITEMS FOR JULY MEETING

Ms. Erickson reviewed proposed agenda items:

- IEFA funding accountability;
- expansion of Indian gaming;
- Indian water rights relating the St. Mary's Canal improvement project;
- a DPHHS report on the TANF funding crisis on the reservation;
- an economic development report from the University of Montana professors;

- a report from the Law and Justice Interim Committee regarding the HJR 41 sentencing equity study; and
- a presentation from the Montana Supreme Court Administrator, Lois Menzies, to discuss what types of records are currently available on sentencing equity.

REP. JAYNE asked to add another item to the agenda, saying that she would like a report from the Secretary of State's Office on the status of a law passed several years ago that required that jury pools be drawn from a list of licensed drivers, rather than registered voters. The law was to be implemented in 2006 and has not happened. REP. JAYNE said that this change will broaden the jury pool, which could have an impact on sentencing equity.

REP. WINDY BOY said another issue that all tribes are struggling with is affordability of health insurance. He asked Ms. Bird to provide information to STRIC on any health issues that the tribe would like assistance with. Ms. Bird said that the Blackfeet would like to have time on the July agenda to address several issues.

Ms. Bird asked to have noted in the meeting record that the lack of accurate unemployment statistics from the Blackfeet Tribe impacts funding for Impact Aid, Indian Health Services, and other services. REP. WINDY BOY said her comments would be officially noted. REP. WINDY BOY said that hard data would give some leverage to the tribes' requests for additional funding and services. Ms. Bird said that the Blackfeet Tribe provides healthcare services to other reservations as well as to the Indian population not living on the reservation. This deeply impacts the funding for services on the Reservation. REP. WINDY BOY suggested that the Blackfeet provide documentation of the services being provided to other reservations and the surrounding area.

REP. HENDRICK requested that the tribe provide the Committee with the current unemployment rate for the Blackfeet Reservation.

PUBLIC COMMENT

George Woodward, tribal member, asked the Committee for assistance in dealing with a workers' compensation issue. He explained that he was injured while working at a local grocery store and that his claim was rejected by Montana State Fund. He was referred to rehabilitation services and was approved for bus driver training. Mr. Woodward said that he completed the training but that the Montana Department of Transportation (MDOT) refused to issue him a license based on his physical examination by a MDOT physician. He said that four different attorneys have handled his case, with no success.

REP. WINDY BOY asked Mr. Woodward to provide copies of his documents to committee staff and that they would look into this matter for him. Ms. McClure said that before she could make any recommendations to Mr. Woodward, she would have to review what has been done up to this point.

James L. Bird, Director, Blackfeet Food Bank, discussed poverty statistics on the Blackfeet Reservation. He said that the Blackfeet Food Bank does not receive any assistance from the Montana Food Bank Network because of the lack of statistics for the Blackfeet Tribe.

REP. WINDY BOY said the Committee would discuss this at the July meeting.

Ms. Erickson explained how the Department of Labor and Industry collects its unemployment statistics. She said that the Bureau of Indian Affairs uses a different formula for determining unemployment rates than the Department of Labor, which is one of the reasons why there is a disparity in the unemployment rates.

Betty Cooper, Tribal Business Council, commented on the unemployment issue, saying that a "skills bank" should be created by the Tribe. She said that she would like to know why some people are considered "untrainable".

Linda Ashworth, agreed that up-to-date and accurate data is needed. She said that that type of information would help every program. She noted that there are tribal members who have been trained in gathering data and that the Tribe could gather reliable and accurate data.

SEN. SMITH asked for an update on the oil severance tax issue discussed at the November meeting, held in Fort Peck. Ms. Erickson said that she would review the January meeting minutes to see what Mr. Lohse had done regarding this issue and would report back to the Committee in July.

ADJOURNMENT

With no further business before it, the Committee adjourned the meeting. The next meeting is scheduled for July 24 & 25, 2006, in Helena.

THURSDAY, MAY 11, 2006 -- TOUR OF THE CROSSROADS CORRECTIONAL CENTER

The Committee toured the Center and met with five American Indian inmates to listen to their concerns relating to the practice of their religion while incarcerated.

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