

Montana State- Tribal Relations Interim Committee

July 8

2015

The STRC typically tackles a broad array of topics over an interim. Meeting the statutory deadline for this work is rooted in the thoughtful consideration members give to planning the interim workload. This draft work plan is integral to meeting STRC goals.

Draft Work
Plan for the
2015-2016
Interim



History of the State-Tribal Relations Interim Committee

5-5-229, MCA, establishes the STRC and tasks it with the following responsibilities:

- (1) acting as a liaison with tribal governments;
- (2) encouraging state-tribal and local government-tribal cooperation;
- (3) conducting interim studies as assigned; and
- (4) reporting its activities, findings, recommendations, and any proposed legislation to the legislature.

Perhaps the most important responsibility of the STRC is to act as a liaison between the state and the eight tribal governments of Montana. This responsibility has been part and parcel of the work of the Committee since its inception in 1977 as the Committee on Indian Legal Jurisdiction. That Committee was charged with meeting with the various Indian tribes to identify common bonds between Indians and non-Indians and to propose legislation for the mutual benefit of both groups.

The Committee's major recommendation to the 1979 Legislature was the creation of a select committee on Indian affairs to be followed by a permanent committee if the 1981 Legislature felt the select committee proved valuable in improving Indian/non-Indian relations.

The 1979 Legislature accepted the recommendation and created the Select Committee on Indian Affairs. However, although subsequent Legislatures recognized the importance of the Committee's work, there was a reluctance to create a permanent committee.

Finally, in 1989, the Committee on Indian Affairs was established as a permanent, statutory committee. In 1999, the Legislature passed Senate Bill No. 11 (SB 11) that reorganized the interim committee structure by consolidating committees and establishing permanent interim committees with membership drawn from specific session standing committees. SB 11 eliminated the Committee on Indian Affairs and folded its responsibilities into the newly created Law, Justice, and Indian Affairs Interim Committee (LJIAC).

The LJIAC was selected to serve as the forum for state-tribal relations because many of the issues affecting state-tribal relations would most likely be addressed by the House and Senate Judiciary Committees. The membership of the LJIAC was drawn from these committees.

At the same time, the Coordinator of Indian Affairs (a position created by the Legislature in 1951 and appointed by the governor) was circulating a proposal to create a Commission on Indian Affairs that would be attached to the Executive Branch. This proposal eventually became a study resolution assigned to the LJIAC.

At the end of the 1999-2000 interim, after months of study, the LJIAC recommended that because of a lack of general support for the idea, the proposal for a Commission on Indian Affairs be tabled. In its place, the LJIAC recommended to the Legislative Council and the 57th Legislature that a separate State-Tribal Relations Committee be created that would assume the LJIAC's state-tribal liaison responsibilities.

The STRC, as we know it today, was established during the 2001 legislative session with the passage of Senate Bill No. 10.

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Introduction

This is the draft work plan for the State-Tribal Relations Interim Committee (STRC or Committee) for the 2015-2016 interim. In this document you will find:

- An explanation of how this draft work plan will be used
- Instructions for using the draft work plan to make decisions about the final work plan
- A description of potential work plan topics and options for addressing those topics
- A list of potential meeting agenda items
- A draft timeline

How this draft work plan will be used

This draft work plan will assist STRC members in setting priorities and allotting the Committee's budget for staff time and money in order to complete the Committee's work prior to the September 15, 2016, deadline.

During the legislative interim, STRC may focus on one or more study topics, while also visiting two or three Indian reservations to learn about tribal issues of concern.

Based on the decisions made at the July 8-9 STRC meeting, staff will develop detailed work plans for each study topic and timetables for completing each major task.

A draft timeline illustrating the overall schedule that these work plans will fit into is presented at the end of this document.

Instructions

- 1) Review the potential work plan topics, publications, and possible study actions presented in this draft work plan.
- 2) Prioritize which topics and/or publications you want the STRC to focus on this interim.
- 3) Select the FTE you wish to allocate to each of the topics and/or publications in which you're interested. The proposed FTE and the corresponding level of study may be adjusted by the STRC. **The total FTE allocation available is .2 FTE.** The options you choose should add up to .2 FTE. Use the draft decision matrix to assist you with this process. If you choose an "add on" under the possible study actions, you must also choose the "base study" option and include that in your FTE calculation. Conversely, you may choose a "base study" option without choosing an "add on".
- 4) Prioritize the potential meeting agenda items you would like to have the STRC learn more about. The STRC will decide which agenda items to devote more or less meeting time to.

The Draft Decision Matrix

The attached draft STRC Work Plan Decision Matrix is a way to look at topic options side by side and allocate staff time according to member priorities. It can be used in conjunction with the draft work plan.

Potential Work Plan Topics

Member Issues Proposed for STRC Study

1) A study of cultural patrimony and sacred objects and sites – Rep. Kipp

Background: House Bill No. 585 proposed a prohibition of and penalties for the sale or trade of cultural patrimony and sacred objects, but was not enacted.

“Cultural patrimony” was defined as an object that has ongoing historical, traditional, or cultural importance central to an Indian tribe, group, or culture itself, rather than property owned by an individual Native American, and for which the duties as a caretaker are transferred through a ceremonial transfer.

“Sacred object” was defined as a specific ceremonial object that is necessary to traditional Native American religious leaders for the practice of traditional Native American religions by their present day adherents and that requires a ceremonial transfer to be transferred from one person to another.

Possible study actions:

No study

Base study (.03 FTE)

- Summarize current state, federal, and tribal laws and regulations regarding cultural patrimony and sacred objects
- Summarize current state requirements for consultation of Historic Preservation Officers and Tribal Preservation Officers during project development
- Stakeholder panel discussion

Add on (.015 FTE)

- Summary of other states’ laws and regulations

2) Study of economic impacts and financing of tribal colleges – Sen. Windy Boy

Background: Senate Joint Resolution No. 28 sought a study of the economic impacts and financing of tribal colleges, but was not approved.

Montana has seven tribal colleges, the most of any state, that serve over 5,000 Indian and non-Indian students. The state supports the tribal colleges through partial reimbursements for the costs of educating resident nonbeneficiary students, but SJ 28 says this mechanism provides an unpredictable revenue source for the tribal colleges and is not consistent with the mechanism for providing state support for Montana’s community colleges or units of the university system. House Bill No. 196 increased the reimbursement rate from \$3,024 to \$3,280 per nonbeneficiary student.

Possible study actions:

No study

Base study (.075 FTE)

- Summarize tribal college economic data, including wages, employment rates, domestic product, spending, and local and state tax revenue
- Summarize the financing of Montana tribal colleges, including federal contributions, state contributions, and tuition
- Compare state support for tribal colleges, community colleges, and units of the Montana university system
- Stakeholder panel discussion

Add on (.025 FTE)

- Summary of how other states provide support for tribal colleges

3) Study of law enforcement jurisdictional issues – Rep. Doane and Rep. Kipp

Background: Senate Joint Resolution No. 24 requests an interim study of all aspects of sexual assault in Montana, including jurisdictional factors in the state system's response to sexual assault on Indian reservations and coordination of involved agencies. SJ 24 was assigned to the Law and Justice Interim Committee (LJIC), which may seek to collaborate with STRC regarding the concerns of Montana's tribes related to sexual assault and jurisdictional issues.

A wider look at jurisdictional issues between state, tribal, and federal law enforcement entities and individual rights is also proposed by two STRC members.

Possible study actions:

No study

Base study (.02 FTE)

- Seek input from tribes during reservation visits regarding concerns related to sexual assault and jurisdictional issues
- Stakeholder panel discussions regarding tribes' concerns related to sexual assault and jurisdictional issues

Add on (.1 FTE)

- Summarize current parameters of legal jurisdictions and cross-jurisdictional agreements between the state of Montana, counties, or cities and any of the state's Indian tribes on a broad spectrum of law enforcement issues (civil and criminal). Compare differences between tribal agreements and jurisdictions.
- Summarize the legal underpinnings of the various governments' authority and examine the duties, responsibilities, and limitations of each party to cross-jurisdictional agreements to determine how or if any of the agreements could be improved or adapted for use elsewhere

- Identify additional types of cross-jurisdictional legal or programmatic agreements that could be made uniform and potentially implemented between any combination of the state, counties, cities and any of the tribes, including agreement by the United States wherever appropriate and achievable
- Stakeholder panel discussions

4) Upgrades to St. Mary's Diversion and Canal – Sen. Hansen

Background: The St. Mary's Diversion Dam and subsequent 29-mile long canal, located just downstream from Lower St. Mary Lake on the Blackfeet Reservation, are integral parts of the Milk River Project that furnishes irrigation water for about 121,000 acres in north-central Montana. According to a 2009 report prepared for the Department of Natural Resources and Conservation, "the entire Milk River ecosystem is dependent upon water from the St. Mary's diversion. The diversion also supports municipal, industrial and recreational uses of water. . . ." ¹ The system is sometimes called the "lifeline of the Highline".

The St. Mary's Canal discharges into the North Fork of the Milk River approximately 20 miles northeast of Babb and then flows into southern Alberta and southern Saskatchewan before returning to north-central Hill County.

"The Milk River Project has been the subject of much scrutiny for the past several years due to the severe deterioration of major components of the system and inadequate funding available for repairs and reconstruction." ² The St. Mary's diversion and canal system alone is estimated to need \$134 million to \$164 million.

Possible study actions:

No study

Base study (.02 FTE)

- Summarize the project, federal and state actions and appropriations to date, next steps
- Explore funding options for infrastructure
- Stakeholder panel discussion

5) Impact of public charter schools on reservations – Sen. Hansen

Background: According to the Fall 2014 Montana American Indian Student Achievement Data Report produced by the Office of Public Instruction, 13.7% of the students enrolled in Montana's K-12 public schools in the 2013-2014 school year were American Indian. Among those students, the special education rate was 14.3% compared to 10.9% for White students. On statewide assessments for reading, math, and science that school year, American Indian students' proficiency rates were 25% to 35% lower than those of White students. While dropout rates declined overall in 2012-2013, the dropout rate for American

¹ Irrigation in Montana: A Preliminary Inventory of Infrastructure Condition, PBS&J, January 2009, page 86.

² Ibid, page 22.

Indian students remained significantly higher at 9.6% in grades 9-12 when compared to 2.8% for White students.

This study would seek to identify whether charter schools could improve educational opportunities and outcomes for American Indian students in Montana.

Possible study actions:

No study

Base study (.075 FTE)

- Provide data on the existing public and private educational systems for Indian students in Montana on and off the reservations and on student attendance, performance, and other educational outcomes
- Summarize the use of charter schools to educate Indian students in other states and available research on the resulting educational outcomes
- Stakeholder panel discussions

6) Study of financial assistance provided through state agencies to tribes – Rep. Greef

Background: House Bill No. 562 wasn't enacted but sought to require reporting on state and federal financial assistance administered directly or indirectly by 29 state agencies/entities to Montana Indian tribes based on a desire for greater transparency and accountability regarding these funds. Financial assistance could be in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, direct appropriations, or other noncash assistance provided directly or indirectly to tribal entities. Cash payments to individuals were not included.

Possible study actions:

No study

Base study (.03 FTE)

- Solicit and summarize information re: financial assistance provided to Montana Indian tribes by the 29 state agencies/entities listed in HB 562
- Stakeholder panel discussions

Add on (.05 FTE)

- Research information re: financial assistance provided to Montana Indian tribes by the 29 state agencies/entities listed in HB 562
- Summarize the transparency and accountability features of financial assistance programs
- Analyze whether certain financial assistance (e.g. weatherization program funds) could be directly allocated to tribes

Publications

In 1995, the Legislature's predecessor to the STRC, the Committee on Indian Affairs, published "The Tribal Nations of Montana: A Handbook for Legislators" (enclosed). The committee said the purpose of the handbook was primarily educational and intended to contribute to the "harmonious relations between the Indian minority and the non-Indian majority of Montana citizens."

The Legislature and the STRC have used this handbook periodically since 1995. The publication would benefit from updates if the STRC has interest in using it to help educate the public and future legislatures. The Governor's Office of Indian Affairs has indicated a willingness to help with this effort if so desired.

Possible actions:

No action

Update "The Tribal Nations of Montana: A Handbook for Legislators" (.05 FTE)

Potential Meeting Agenda Items

Meeting agenda items require minimal staff time to facilitate and do not count toward the FTE available to the STRC's study topics for the interim. The STRC may choose to receive overviews and updates on any or all of the below options, keeping in mind that some options may be allocated more or less meeting time than others depending on members' interest, available meeting time, complexity of the issue, and any emerging issues that the STRC chooses to respond to during the interim.

Possible review actions for each item include:

- Receive overview and updates at one or more STRC meetings
- Stakeholder panel discussion

For planning purposes, it's recommended that the STRC prioritize which of these items it would like to include in future meeting agendas.

New and Ongoing Initiatives

1) Indian Language Preservation Program Implementation

HB 559 revises the Montana Indian Language Preservation Program, revises performance and output standards, allows tribal governments or their designees to administer local programs, removes the requirement for local program advisory boards, requires the local programs to report to the State-Tribal Economic Development Commission, and requires the Commission to report to the legislature. HB 559 also appropriates \$1.5 million for the biennium and extends the program's termination date to June 30, 2017.

2) Cultural Integrity Commitment Act Implementation

SB 272 enacts the Cultural Integrity Commitment Act, encourages school districts to create Indian language immersion programs, provides a funding formula, and provides a one-time-only biennial appropriation of \$45,000.

3) Indian Country Economic Development Program Grant Awards

HB 2 appropriates \$1.6 million in general fund money this biennium to the Indian Country Economic Development Program (ICED), which awards grants to tribal governments to support business enterprises that produce positive economic benefits for the tribe(s). A positive economic benefit is defined as the near-term creation or retention of job opportunities for tribal members. Examples include:

- business development projects
- workforce training projects
- entrepreneurial training
- feasibility study
- other business development projects

4) Native American Gap Financing Revolving Loan Program

HB 2 appropriates \$500,000 from the Big Sky Economic Development Trust Fund this biennium to the Native American Gap Financing Revolving Loan Program, which is designed to address the lack of capital for Native American-owned businesses.

5) Suicide Prevention

HB 2 appropriates \$250,000 in general fund money to suicide prevention grants to be used on the reservations in Montana.

Member Suggested Items

1) Yellowstone Bison Hunt Update – Rep. Kipp

87-2-731, MCA, which expired July 1, 2015, allocated two free special wild buffalo licenses to each of the eight tribal governments in Montana when the Fish and Wildlife Commission authorized the issuance of 40 or more special wild buffalo licenses in a license year. The licenses were issued by the Department of Fish, Wildlife, and Parks (DFWP) to individuals designated by the respective tribal diabetic programs.

In addition, Indian tribes who have aboriginal rights to hunt bison in Montana under treaties with the United States and have successfully petitioned the DFWP to exercise those rights may hunt bison. Tribal treaty hunters follow their own rules and regulations; however, state laws and regulations will apply in cases involving public safety and bison conservation. The currently eligible tribes include:

- Confederated Salish and Kootenai Tribes
- Shoshone – Bannock Tribes
- Nez Perce Tribe
- Confederated Tribes of the Umatilla Indian Reservation

2) Participation of federally funded Bureau of Indian Education schools in interscholastic competitions – Sen. Hansen

Currently, public schools must be accredited by the state to participate in certain athletic programs sanctioned by the Montana High School Association. Some public reservation schools are federally funded and accredited. House Bill No. 163 (not enacted) sought to allow those schools to participate without being required to seek state accreditation.

3) Impacts of SB 410 (2015) on reservation schools – Sen. Hansen

SB 410 authorizes income tax credits for donations made to student scholarship organizations or to the educational improvement state special revenue account for the purpose of providing supplemental funding to public schools for innovative educational programs and technology deficiencies. The amount of the credit allowed is equal to the amount of the donation, not to exceed \$150. Money donated to the state special revenue account must be allocated to the geographic region or large district schools that serve the taxpayer's residence unless the taxpayer directs the donation to a specific geographic region or large district.

State-Tribal Relations Interim Committee Draft Meeting Schedule

[Note: This draft meeting schedule is provided to give you an idea of the timeline that each study topic will need to fit into in order to complete the work on time. It is subject to final approval of the STRC. The timeline shows the last date for completion of certain items.]

July 9-10, 2015, Browning	STRC meeting. Interim work plan prioritization and STRC organizational meeting. Selection of studies, topics, and reservation visits.
October 21, 2015, Helena*	STRC meeting. Final adoption of detailed work plans for each selected study topic.
January 21, 2016, Helena*	STRC meeting.
April 27-28, 2016	STRC meeting and possible reservation visit. If public comment is desired on an STRC report, the contents of the <i>draft</i> report should be determined by this date.
July 14, 2016, Helena	STRC meeting. Decision on recommendations, any proposed legislation, final report contents. Last date to suggest revisions to a <i>draft</i> document if a 30-day public comment period is desired. Comments received from the public will be compiled by staff and distributed to the STRC 1-2 weeks before the September 2016 meeting.
September 7-8, 2016, Helena	STRC meeting. Final approval of recommendations, reports, proposed legislation. Select bill sponsors.

Committee interim work must be completed September 15, 2016.

***Reservation visits:** Historically, the STRC has visited two to three reservations per interim in fulfilling its duties as a liaison with tribal governments. This interim, the STRC's reservation visit history (see attached) indicates the STRC should visit the Blackfeet and Rocky Boy's Reservations. That visit is tentatively scheduled for April.

If the STRC would like to visit a third reservation this interim, the committee's history would indicate that visiting either the Northern Cheyenne or Fort Peck Reservations would be appropriate. This could be done during a 2 day meeting in October 2015 or January 2016.

The decisions about which reservations to visit and when are up to the committee's discretion and subject to coordination with the respective tribal government.