

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

January 9, 1985

The second meeting of the Senate Judiciary Committee was called to order at 10:10 a.m. on January 9, 1985, by Chairman Joe Mazurek in Room 325 of the Capitol Building.

ROLL CALL: All committee members were present, with the exception of Senator Jack Galt, who was excused to attend a Reserved Water Rights Compact Commission meeting.

CONSIDERATION OF SENATE BILL 24: Senator Tom Towe, sponsor of SB 24, explained this bill was prepared and approved by the Select Committee on Indian Affairs. It is an attempt by the committee to work through some of the problems called to the committee's attention that could be acted upon by the legislature to make things easier for Indian affairs in the state of Montana. SB 24 addresses the matter of state-tribal cooperative agreements. We presently have a system whereby a statute passed several years ago authorized the entering into of state-tribal cooperative agreements between any agency or subdivision of the state and a tribal government. This allows us to handle things that relate to both state administration and tribal administration on which there otherwise might be a problem. We encourage this to try and see that services are received on the reservation. The result hoped for is if we can work together, it makes the system work better for everyone. One problem found in reviewing this is that there are some technical problems in getting cooperative agreements approved. It is substantially because it addresses the issue of jurisdiction. The statutes say we encourage state-tribal cooperative agreements, but no agreement is authorized if it is not permitted by federal law. The bill is an attempt to define jurisdiction. The new language suggested in the introduced copy of the bill throws the burden of definition back to congress. Senator Towe explained that in the last paragraph of the introduced copy of the bill he is proposing that language be deleted because the language is difficult due to problems of jurisdiction. As we have no authority to interfere with the trust responsibilities of federal government, we do not need subsection (4) of the present language, which language could be the cause of yet further confusion.

PROPOSERS: Louie Clayborn, Coordinator of Indian Affairs for the State of Montana, appeared in support of SB 24 (see written testimony attached as Exhibit 1). Edward J. Azure, Administrative Coordinator of the Fort Belknap Indian Community, appeared in support of SB 24 (see written testimony attached as Exhibit 2).

OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: Senator Pinsoneault asked Mr. Azure to give an example of the sort of agreements this bill will help to effectuate. Mr. Azure used the example of dealing with the Department of Social and Rehabilitation Services with services that are joint or shared with the county welfare departments, the state, and the tribes dealing mainly with services for juveniles. The others they have been speaking of have been taxation on alcohol and the joint responsibility of enforcing the Renner decision. Senator Mazurek questioned whether the redundancy in subsection (4) would hurt if it were left in. Senator Towe believes it diminishes the effectiveness of the bill. He explained that if you extend the concept of the federal trust responsibilities of the federal government, you could possibly come to the same conclusion that you cannot touch anything without interfering in some way. When you are talking about water rights, it is a more defined area, but that is not true when you are talking about personal property.

CLOSING STATEMENT: None.

Hearing on SB 24 was then closed.

CONSIDERATION OF SB 26: Senator Tom Towe, sponsor of SB 26, explained that this is a bill prepared and approved by the Select Committee on Indian Affairs. It was called to the committee's attention that there are some outstanding problems with state lands located within a reservation. Two sections out of every township were given for school land. That was also done on the reservations as well. In some places that land has been given back to this state, along with the responsibility of education, but there is some retention of that school land, and it still exists on the reservation. The state provides educational services for all of the children on the reservation, whether they are tribal members or not. Some tribes have handled it differently than others. There are some isolated tracts of land (Sections 16 and 36 or some parts of them) that are state-owned land which are entirely surrounded by the reservation. Some tribes have asked to buy that land. The state has a fairly firm policy against selling state school land. The solution suggested is to trade lands outside the reservation for school lands within. There was some suggestion from the tribes that if we did not want to cooperate, they would not let us cross their land to get to state land, effectively denying access. Senator Towe stated this is just simply a land swap authorization bill.

PROPOSERS: Robert Vandevere, a registered concerned citizen lobbyist, appeared in support of SB 26. He believes the bill looks good and will save a lot of headaches and fighting. He believes it will help non-Indians and Indians alike. He believes that when an agreement is

entered into, so no one gets the short end of the stick, any mineral rights should be divided equally on any land that is sold, bought, or traded. He further believes any ranchers presently occupying the land should be given at least five years to make other arrangements for leasing other lands. Dennis Hemmer, Commissioner of the Department of State Lands, appeared in support of SB 26 (see written testimony attached as Exhibit 3). George H. Snell, Jr., Vice Chairman of the Fort Belknap Tribal Council, the Tribal Government of the Assiniboine and Gros Ventre Tribes of the Fort Belknap Indian Reservation, appeared in support of SB 26. With him were Franklin R. Perez, Chairman of the Fort Belknap Tribal Council, William F. Snell, Sr., a member of the Tribal Council; Francix X. Lamebull, attorney for the Fort Belknap Tribal Council; Edward Azure, Administrative Manager for the Tribal Council; and Delmar Bigby, Natural Resources Specialist for the Fort Belknap Community Council. Mr. Snell introduced written testimony (see Exhibit 4). This written testimony was presented by Delmar Bigby. Mr. Bigby presented the amendments contained in that testimony to the committee (see Exhibit 4 for text of proposed amendments). Brad Trosper, Realty Manager of the Confederated Salish and Kootenai Tribes of the Flathead Reservation, appeared in support of SB 26. Mr. Trosper explained some of the land management problems at the Flathead Reservation, stating there are islands of state land which are surrounded wholly by tribal land, which situation will be cured by this bill. He further stated he believes this bill will help improve the tribes' economic basis. Darryl Wright, an enrolled member of the Chippewa-Cree Tribe, appeared in support of SB 26 on behalf of the Chippewa-Cree Tribe. He believes this bill will assist the tribe in its efforts to consolidate its land holdings. He hopes the passage of this bill will enable the tribes to purchase the isolated tracts of state land located within the reservation. He also believes passage of the bill will open up a new era of state and tribal communication. Louie Clayborn, Coordinator of Indian Affairs of the State of Montana, appeared in support of SB 26 (see written testimony attached hereto as Exhibit 5). Edward J. Azure, representing the Fort Belknap Indian Community, appeared in support of SB 26 (see written testimony attached hereto as Exhibit 6). In addition to his written testimony, Mr. Azure proposed the following amendments to the introduced copy of the bill:

1. Page 2, line 14.
Following: "reservation"
Insert: "as established by acts of Congress"
2. Page 3, line 15.
Following: "reservation"
Insert: "as established by acts of Congress"

Mr. Azure stated the Fort Belknap Indian Community would like the opportunity to submit further written testimony regarding statements made by other proponents to the bill, such as the mineral rights question and authorizing lessors to take charge of state lands within the exterior boundaries of the reservation. This further testimony would also address lands sold at public auction and bids going to the highest bidder. Mr. Azure felt this additional testimony could be presented by the committee by Friday, January 11, 1985.

OPPONENTS: None.

QUESTIONS FROM THE COMMITTEE: Senator Pinsoneault addressed a question to Senator Towe as to whether we can waive the federal requirement that these lands be sold at public auction. Senator Towe felt we probably couldn't because that is part of the enabling act for each state, but suggested we ask the researcher to check into this. Senator Pinsoneault questioned whether the tribes had any authority to negotiate their mineral rights or if there were a federal right that this is not negotiable. Daniel Decker, attorney for the Confederated Salish and Kootenai Tribes, stated the tribes must follow several pieces of federal legislation relating to this matter, and there is a difference between whether the lands are solely owned tribal lands or not. Senator Blaylock addressed a question to Mr. Hemmer. When Senator Towe presented the bill, he stated that under the foundation program, we educate all of the children in Montana, including those on the reservation. These lands would be sold under competitive bid. Senator Blaylock stated he had some concerns about how this is going to work. If the tribe is the bidder and there are no opposing bids, the state could get the short end of the stick. Mr. Hemmer stated that when lands are sold, the base price is the appraised value, so the state would always get at least the appraised value, as no lower bids are accepted. Senator Blaylock asked for confirmation that if the appraised value were not gotten, the bid could be refused. Mr. Hemmer believed this to be true. Senator Blaylock questioned whether the bill could say that rather than selling any of these lands, we want an exchange. Mr. Hemmer responded that he feels the tribes would also be better off getting an exchange. Senator Mazurek questioned whether the lands that are received in an exchange also become school lands. Mr. Hemmer stated that if public school lands are exchanged, the lands received would be credited to public school lands. The same would be true for university lands--the lands received would become university lands. The staff researcher was requested to make a note of that question, because the committee will need an answer on it. Senator Crippen questioned whether the land exchanged should be outside the boundaries of the tribe to keep us out of the same problem in the future. Mr. Hemmer felt that the bill contemplated this would be the case, or at least the lands would be on the boundaries of the reservation to allow for greater access.

CLOSING STATEMENT: Senator Towe apologized for not explaining in his opening remarks section 2 of the bill, which is the sale section, but believes it has been brought to the committee's attention.

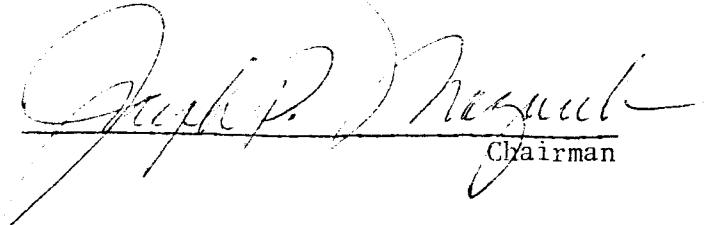
The hearing on SB 26 was then closed.

FURTHER CONSIDERATION OF SB 5: Senator Towe would like to have this bill looked into by our staff researcher to determine if it is possible to identify those sections that are redundant. The committee pointed out that there will be continuing areas that will not be negated by this bill. Senator Crippen emphasized that we still have the uncodified law on the books, and it is still the law of the land. Senator Mazurek stated that if we have acted upon a particular section or if we have enacted a new section that is redundant, by implication we have repealed or amended parts of the RCM and the MCA. He believes this bill will be necessary to cover future instances and any we may have missed in the past. Chairman Mazurek directed our staff researcher to make an effort to determine how large a task it would be to identify the redundant sections in the code. Mr. Petesh stated he would check with Diana Dowling and John McMaster at Legislative Council and attempt to have an answer to this question tomorrow. Senator Mazurek questioned why we did not just repeal everything in the RCM and adopt the MCA.

A motion was made by Senator Towe, which motion unanimously carried, that the committee authorize the chairman to request a fiscal note on behalf of the committee at any time he feels it necessary.

Senator Mazurek pointed out to the committee that the session laws as adopted by the legislature are actually the law of the land--the codes are nothing more than the code commissioner's attempt to make the laws more usable. The session laws are the law, and the code is prepared for the convenience of the user. Senator Brown questioned what the RCM is used for. Senator Towe explained that you often need to know the status of the law in past years, as well as the status of the law today. Senator Towe explained that it wasn't until the 1880's that they thought of compiling codes. Codes are not official. They are the work of an editor who attempts to put all of the laws in one book. They are not the official statutes in the state of Montana. We make them official to the extent we can refer to them. The session laws are still the official laws. If there is any question, the session laws are referred to, to take care of the dispute.

There being no further business to come before the meeting, the meeting was adjourned at 11:18 a.m.


Chairman

(January 9, 1985

Senate Judiciary

58 24 & 26

(Please leave prepared statement with Secretary)

(This sheet to be used by those testifying on a bill.)

NAME: Donald L Clayborn DATE: 1.9.85

ADDRESS: OFFICE / COORDINATOR OF INDIAN AFFAIRS

PHONE: 444-3702

REPRESENTING WHOM? COORDINATOR OF INDIAN AFFAIRS

APPEARING ON WHICH PROPOSAL: SB24 - SB26

DO YOU: SUPPORT? UX AMEND? OPPOSE?

COMMENT: SUBMISSION OF WRITTEN TESTIMONY

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

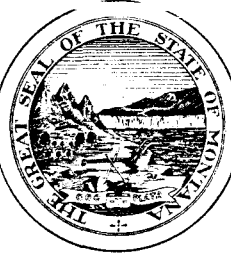
SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 1

DATE 010985

BILL NO. SB24

STATE COORDINATOR OF INDIAN AFFAIRS



TED SCHWINDEN, GOVERNOR

1218 EAST SIXTH AVENUE

STATE OF MONTANA

(406) 444-3702

DONALD L. CLAYBORN, COORDINATOR

HELENA, MONTANA 59620

JANUARY 9, 1985

TESTIMONY

SENATE BILL NO. 24

MR. CHAIRMAN AND MEMBERS OF THE JUDICIARY COMMITTEE. I AM LOUIE CLAYBORN OF THE COORDINATOR OF INDIAN AFFAIRS OFFICE. I AM HERE IN SUPPORT OF SENATE BILL NO. 24, THE ACT OF CLARIFYING LIMITATIONS ON PERMISSABLE SUBJECT MATTER OF STATE/TRIBAL COOPERATIVE AGREEMENTS AMENDING SECTION 18-11-110, MCA.

THIS AMENDMENT, TO THE COOPERATIVE AGREEMENTS ACT, WHICH ALLOWS GOVERNMENTAL COOPERATION BETWEEN THE STATE AND TRIBE, IS SIMPLE IN LANGUAGE, BUT IS SIGNIFICANT IN EFFECT. IT, IN EFFECT, PROTECTS THE JURISDICTIONAL AUTHORITY OF THE COURTS AND GOVERNMENTAL BRANCHES OF BOTH ENTITIES FROM POTENTIAL INFRINGEMENT BY A COOPERATIVE AGREEMENTS. EITHER AS AN INTENTIONAL OR UNINTENTIONAL MATTER. AT THE SAME TIME ALLOWS FOR THE REMOVAL OF A MAJOR STUMBLING BLOCK IN LANGUAGE, IN THE EXISTING COOPERATIVE AGREEMENTS ACT. THIS BILL WILL PROMOTE AN ATMOSPHERE OF COOPERATION BETWEEN TRIBAL GOVERNMENTS, LOCAL GOVERNMENTS AND STATE GOVERNMENT.

THE SECOND AMENDED SECTION IS, FROM ITS APPEARANCE, SOMEWHAT HOUSE-KEEPING IN LIGHT OF THE ADDITION OF THE FIRST AMENDMENT. THE DELETED SECTION ALLOWS FOR THE ALIENATION, FINANCIAL ENCUMBRANCE AND TAXATION OF PROPERTY WHICH OF COURSE IS ALLOWABLE UNDER THE FIRST SECTION.

THE TRIBES OF MONTANA SUPPORT THESE AMENDMENTS TO THIS IMPORTANT LAW AND I HEARTILY ENDORSE A DUE PASS RECOMMENDATION OUT OF COMMISSION.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 1

DATE 010985

BILL NO.

SB 24

NAME: EDWARD J AZURE DATE: 1-9-85

ADDRESS: Box 249 HARLEM MT 59526

PHONE: 353-2205 EXT. 453

REPRESENTING WHOM? FT. BELKNAP INDIAN COMMUNITY

APPEARING ON WHICH PROPOSAL: S. 24 & 26

DO YOU: SUPPORT? X AMEND? OPPOSE?

COMMENT: Please send copies of minutes
on both bills, especially the
verbal testimony and Committee
member questions & responses

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

DATE 010985

BILL NO. SB 24

Fort Belknap Community Council



(406) 353-2205
P.O. Box 249
Fort Belknap Agency
Harlem, Montana 59526

Fort Belknap Indian Community
(Tribal Govt.)
Fort Belknap Indian Community
(Elected to administer the affairs of the comm
and to represent the Assiniboiné and the
Ventre Tribes of the Fort Belknap
Reservation)

1-9-85
DATE

SENATE BILL 24 - STATE/TRIBAL COOPERATIVE AGREEMENTS ACT

The Fort Belknap Indian Community supports Senate Bill 24.

The Fort Belknap Indian Community supports Senate Bill 24 due to the fact that the State and Tribe have to provide services to Tribal members.

Much of our concerns center on the bureaucracy and personalities and roles and interactions of departments rather than the actual legislation.

With support and passage of this legislation, the various Departments and related personnel will have to recognize the fact that services and programs can be effectuated to meet the needs of all Montanans.

This legislation may be the vehicle for many gray areas of State and Tribal concerns. Tribes and the State are at liberty to work toward solving problems on the local level rather than waiting for specific legislation on a broad issue.

To date we have had little or no problems in dealing with the concept and therefore must urge passage of Senate Bill 24.

*Edward J. Gure, Admin. Coordinator
for Tribal Chairman*

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 2

DATE 010985

BILL NO. 5324

TESTIMONY OF THE DEPARTMENT OF STATE LANDS

ON SENATE BILL NO. 26 BEFORE SENATE STATE JUDICIARY COMMITTEE

January 9, 1985

The State of Montana currently owns land on six Indian reservations. Its major holdings are on the Crow, Flathead, and Fort Belknap Reservations. Most of these lands are tracts of 640 acres or less surrounded by private or tribal land. Most of the land is used for grazing.

Currently, the Board of Land Commissioners has no statutory authority to exchange lands with Indian tribes or sell land to Indian tribes.

Although the state is receiving income for its on-reservation lands, there are good reasons why some of those lands should be exchanged for off-reservation tracts or sold. Exchanges resulting in blocks of off-reservation lands would probably increase income to the state. Both sale and exchange would eliminate jurisdictional disputes. On the Fort Belknap Reservation, the tribe administers the state lands as part of its grazing units and charges the state an administrative fee. Although this is the best way for the state to obtain income from these lands, the state could obtain a greater return from off-reservation lands because the middle man would be eliminated.

It was negotiations with the Fort Belknap Community Council that prompted the Board of Land Commissioners, which is composed of the Governor, Attorney General, Secretary of State, State Auditor, and Superintendent of Public Instruction, to unanimously pass a resolution requesting the Legislature to give it authority to sell on-reservation lands to Indian tribes.

SB 26 gives the Board of Land Commissioners the authority it has requested. The Department of State Lands recommends committee approval.

The Department also wishes to interpose one word of caution. The federal Enabling Act, under which Montana was admitted to the Union and was granted its school trust lands, requires that all sales of state lands be conducted by public auction after public notice. Therefore, should the Board be authorized to sell on-reservation lands to a tribe, an on-reservation tract could be sold to the tribe only if the tribe were high bidder on that tract.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 3

DATE 010985

BILL NO. SB26

MINUTES
REGULAR MEETING OF BOARD OF LAND COMMISSIONERS
February 18, 1982, at 10:30 a.m.
Governor's Reception Room

PRESENT: Governor Ted Schwinden, Superintendent of Public Instruction Ed Argenbright, and State Auditor E.V. Omholt

ABSENT: Secretary of State Jim Waltermire, Attorney General Mike Greely

Mr. Omholt moved the minutes of the January 28, 1982, meeting be considered and approved as read. Seconded Mr. Argenbright. Unanimous.

BUSINESS CONSIDERED:

1281-3 REVIEW OF FORT BELKNAP/DSL AGREEMENT CANCELLATION

Commissioner Gareth Moon stated that on February 5, 1980, the department and the Fort Belknap Community Council entered into an agreement whereby the Council is allowed a permit for grazing on trust lands lying on the Fort Belknap Reservation. At the December 21, 1981, Board meeting, the Board directed the department to cancel the agreement, due to failure of the Council to make payments, to put the tracts up for competitive bid as a unit, and to examine the possibility of selling the tracts. Commissioner Moon stated that the department has begun to study the possibility of selling the land, however, state law prohibits the sale of more than 640 acres to a single person. Legislation would be necessary for the Council to purchase the land. He stated that the Council has paid all its back payments to the department. The Commissioner requests direction from the Board as to whether the notice of cancellation should be rescinded. If the Board decides to rescind the cancellation, the Commissioner recommends that a condition of that rescission be that the Council agree to pay at least the minimum rental for the final two years of the agreement, 1982 and 1983. The minimum rental for 1982 is \$3.47 per AUM.

John Allen, representing the Fort Belknap Tribal Council, stated that the Tribe was agreeable to the \$3.47 per AUM rental rate for 1982 and 1983. He also stated that the Tribe was interested in purchasing the land but would not consider a land trade.

Mr. Omholt moved the Board ask the 1983 Legislative session to allow the Board to sell the state tracts on the reservation. Seconded Mr. Argenbright. Unanimous.

Mr. Omholt further moved that the cancellation be rescinded until the 1983 legislative session and the lease be reinstated at the rate of \$3.47/AUM for 1982 and the minimum rental for 1983, but that the department continue to pursue the possibility of the sale of this land. Seconded Mr. Argenbright. Unanimous.

182-1 REAFFIRMATION OF CONSENSUS OF BOARD

Mr. Omholt moved the Board defer action on this item until the next meeting. Seconded Mr. Argenbright. Unanimous.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 3

DATE 010985

(This sheet to be used by those testifying on a bill.)

NAME: Georg H. Amel DATE: 1/9/85

ADDRESS: _____

PHONE: 406-353-2205

REPRESENTING WHOM? For + Belknap Hotel

APPEARING ON WHICH PROPOSAL: SB #26

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENT: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 4

DATE 010985

BILL NO. SB26

(This sheet to be used by those testifying on a bill.)

NAME: Delmar J. Bieby DATE: 1-9-85

ADDRESS: Ft. Belknap Community Council, P.O. Box 249, Harlem, MT
59526

PHONE: 406-353-2205

REPRESENTING WHOM? Ft. Belknap Community Council & Self

APPEARING ON WHICH PROPOSAL: S.B. 26

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENT: See attached written testimony
dated 1-9-85

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 4
DATE 010985
BILL NO. SB26

Fort Belknap Community Council

(406) 353-2205
P.O. Box 249
Fort Belknap Agency
Harlem, Montana 59526



Fort Belknap Indian Community
(Tribal Govt.)
Fort Belknap Indian Community
(Elected to administer the affairs of the community
and to represent the Assinibone and the Gros
Ventre Tribes of the Fort Belknap Indian
Reservation)

1-9-85

DATE

Chairman, Judiciary Committee
State Legislature

Thank You Mr. Chairman.

My name is George H. Snell JR, and I am the Vice-Chairman of the Fort Belknap Tribal Council, the Tribal Government of the Assinibone and Gros Ventre Tribes of the Fort Belknap Indian Reservation, with an enrollment of 4,430 members. With me are Mr. Franklin R. Perez, Chairman of the Fort Belknap Tribal Council; Mr. William F. Snell SR, a member of the Tribal Council; Mr. Francis X. Lamebull, Attorney for the Fort Belknap Tribal Council; Mr. Edward Azure, Administrative Manager for the Tribal Council and Mr. Delmar Bigby, Natural Resources Specialist for the Fort Belknap Community Council.

We are here on behalf of the members of the Assinibone and Gros Ventre Tribes of the Fort Belknap Indian Reservation in support of Senate Bill # 26, A Bill for an Act entitled "AN ACT PERMITTING THE BOARD OF LAND COMMISSIONERS TO EXCHANGE STATE LANDS LOCATED WITHIN INDIAN RESERVATIONS FOR LANDS OWNED BY TRIBAL GOVERNMENTS; PERMITTING THE BOARD TO SELL STATE LANDS LOCATED WITHIN INDIAN RESERVATIONS TO TRIBAL GOVERNMENTS; AMENDING SECTIONS 77-2-201, 77-2-306, and 77-2-307, MCA", introduced by Senator Tom Towe, Billings, Montana.

This legislation is vital to the preservation of the Fort Belknap Indian Community. We have here written testimony that we want to present to you for the record. This written testimony will elaborate on the reasons why we are in support of this bill.

I would like to bring to your attention a few changes that we feel is appropriate to accomplish the intent of this bill.

FIRST, we recommend that in Section 1 'Section 77-2-201' (2) the words wholly within be stricken and replaced with the words 'JUXTAPOSED TO'.

SECOND, we recommend that in Section 2 'Section 77-2-306' (3) the words wholly within be stricken and replaced with the words 'JUXTAPOSED TO'.

THIRD, we recommend that this Legislative Body provide for a waiver of the rules requiring public advertisement and sealed bids on the lands identified by this Bill and negotiate with the Tribal Governments for the purchase and/or exchange of lands identified. This waiver would eliminate any future problems concerning the ownership of the lands identified in this bill.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 4

DATE 010985

I would like to emphasize a portion of our written testimony. Our written testimony is attached to the draft of the Bill (LC 0122/01). The points I would like to emphasize are:

To illustrate the minimal impact any reduction of school lands may have, the Department of State lands, as of June 30, 1980, manages 4,597,691.35 acres (Source: Statistical Report 7-1-1978 to 6-30-1980), of which 19,620.55 acres is located on the Fort Belknap Indian Reservation. This represents less than 0.00426% of the total State School lands in Montana. There are 652,593.61 acres within the boundaries of the Fort Belknap Indian Reservation, of which State school lands constitute 3% of the total land base on the Reservation. The State school lands are all grazing lands, with the exception of 540.0 acres cultivated (Dry Farmland).

The State Land Board received, as rental for grazing lands, in F.Y. 1980, \$4,908,280.79 for grazing State wide, of which \$7,957.25 was paid by the Fort Belknap Tribal Government. The amount paid by the Tribe constitutes less than 0.00162% of the total grazing receipts for F.Y. 1980.

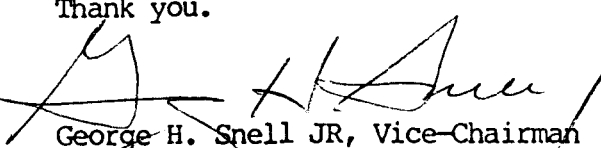
On the other hand, the Federal Government compensated the State of Montana, some \$5,835,000.00 for F.Y. 79, with P.L. 81-874 (Impact Aid) monies, commonly referred to as "In Lieu of Tax", for Federal (Public Domain, Forest Service, Military Reservation, Indian Reservation, etc.) lands within the State that are non-taxable by the State.

Therefore, recognition of Tribal Governments as "Legal entities to purchase State School lands and an exemption to the acreage limitations would not significantly impact the State School funds, even in the extremely unlikely event the Fort Belknap Tribal Government were in financial position to purchase all State land within the Reservation.

With that Mr. Chairman, I or those with me, are willing to respond to any question you or any member of this Committee may have for us on this Bill.

If there are no (further) questions, we thank you for this time you have provided us to present testimony on this very important Bill to the Indian Reservations and request your full support on this Bill when it is presented on the floor of the full legislature.

Thank you.


George H. Snell JR, Vice-Chairman
Fort Belknap Community Council
P.O. Box 249
Harlem, Mt 59526
(406) 353-2205

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 4

DATE 010985

1 _____ BILL NO. _____

2 INTRODUCED BY _____

3 BY REQUEST OF THE SELECT COMMITTEE ON INDIAN AFFAIRS

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT PERMITTING THE BOARD OF
6 LAND COMMISSIONERS TO EXCHANGE STATE LANDS LOCATED WITHIN
7 INDIAN RESERVATIONS FOR LANDS OWNED BY TRIBAL GOVERNMENTS;
8 PERMITTING THE BOARD TO SELL STATE LANDS LOCATED WITHIN
9 INDIAN RESERVATIONS TO TRIBAL GOVERNMENTS; AMENDING SECTIONS
10 77-2-201, 77-2-306, AND 77-2-307, MCA."

11

12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13 Section 1. Section 77-2-201, MCA, is amended to read:

14 "77-2-201. Exchange of land with United States or
15 tribal governments. (1) (a) The board may enter into
16 contracts or agreements with the United States or any
17 department thereof having jurisdiction for the waiving and
18 relinquishment to the United States of any rights of the
19 state in and to sections 16 and 36 of any township and to
20 any other parcel of state lands, provided that the state
21 shall, in lieu of the rights so waived and relinquished,
22 receive from the United States other lands of equal or
23 greater value.

24 {2}(b) The current user of the land transferred to the
25 United States may continue to enjoy the use of the land

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 4

DATE 6/10/85

Section 2. Section 77-2-306, MCA, is amended to read:

"77-2-306. Who may purchase. (1) State lands shall be sold only to citizens of the United States or to persons who have declared their intentions to become citizens or to corporations organized under the laws of this state. No person shall be qualified to purchase state land who has not reached the age of 18 years. As far as possible to determine, the lands shall be sold only to actual settlers or to persons who will improve the same and not to persons

DATE 010985

1 who are likely to hold such lands for speculative purposes
 2 intending to resell the same at a higher price without
 3 having added anything to their value.

4 (2) State lands may be sold to any sovereign state of
 5 the United States or to any board of trustees or public
 6 corporation or agency of such state created by such state as
 7 an agency or political subdivision thereof. Said lands may
 8 be purchased in the quantities set forth in 77-2-307 for use
 9 by such state, board of trustees, public corporation,
 10 agency, or political subdivision for educational or
 11 scientific purposes.

12 (3) State lands located wholly within the exterior
 13 boundaries of the tribal government's reservation may be
 14 sold to a tribal government as defined in 18-11-102."

15 Section 3. Section 77-2-307, MCA, is amended to read:

16 "77-2-307. Limitation on acreage. No (1) Except as
 17 provided in subsection (2), no person or corporation shall
 18 be-entitled-to may purchase more than one section of state
 19 land, and this area shall not include more than 160 acres of
 20 land susceptible of irrigation.

21 (2) These The limitations in subsection (1) as to area
 22 and irrigability shall do not apply to:

23 (a) lands within a federal irrigation project wherein
 24 the Congress of the United States of America authorizes
 25 water to be furnished to an area exceeding 160 irrigable

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1 acres; or

2 (b) lands to be sold to a tribal government as

3 provided in 77-2-306."

-End-

'STATE LANDS BILL TESTIMONY'

The Assiniboiné and Gros Ventre Tribes reserved to themselves the Fort Belknap Indian Reservation by the Agreement of May 1, 1888 (25 Stat. 113) and relinquished millions of acres to the U.S. Government. Prior to this date, various Indian Tribes had control and use of all the lands in the State of Montana.

On February 22, 1889 Congress enacted the North Dakota, South Dakota, Montana and Washington States "Enabling Act" (25 STAT. 676), which authorized their admittance into the Union. Included within the "Enabling Act" were specific conditions in regards to "Indians and their property", specifically Section 4:

"---- The Constitutions (adopted by Montana) shall be republican in form, and make no distinction in civil or political rights on account of race or color, EXCEPT AS TO INDIANS NOT TAXED, and not be repugnant to the Constitution of the United States and the principles of the Declaration of Independence."
(Emphasis added)

SECOND: That the people inhabiting said proposed States do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within said limits owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States; that the lands belonging to citizens of the United States residing without the said States shall never be taxed at a higher rate than the lands belonging to residents thereof; that no taxes shall be imposed by the States on lands or property therein belonging to or which may hereafter be purchased by the United State or reserved for its use. But nothing herein, or in the ordinance herein provided for, shall preclude the said State from taxing as other lands are taxed any lands owned or held by any Indian who has severed his tribal relations, and has obtained from the United State or from any person a title thereto by patent or other grant, save and except such lands as have been or may be granted to any Indian or Indians under any act of Congress containing a provision exempting the lands thus granted from taxation; but said ordinances shall provide that all such lands shall be exempt from taxation by said States so long and to such extent as such act of Congress may prescribe.

The delegates to the Constitutional Convention in the Territory of Montana complied with the provisions of the "Enabling Act" and adopted a Constitution in compliance, thereto, and on November 8, 1889, Benjamin Harrison, President of the United States signed "Proclamation No. 7" which admitted Montana into the Union as a State.

Section 10 of the "Enabling Act" states in part:

"--- PROVIDED: that the sixteenth and thirty-sixth sections embraced in permanent reservations for national purposes SHALL NOT, at any time, be subject to the grants nor to the indemnity provisions of this Act, nor shall any lands embraced in Indian, military, or other resevations of any character be subject to the grants or to the indeminty provisions of this act until the reservation shall have been extinguished and such lands be restored to, and become a part

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of, the public domain." (Emphasis added).

On February 8, 1887 Congress enacted the "General Allotment (Dawes) Act" (24 Stat 388) which states in Section 6 of said Act:

Sec. 6. That upon the completion of said allotments and the patenting of the lands to said allottees, each and every member of the respective bands or tribes of Indians to whom allotments have been made shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside; and no Territory shall pass or enforce any law denying any such Indian within its jurisdiction the equal protection of the law. And every Indian born within the territorial limits of the United States to whom allotments shall have been made under the provisions of this act, or under any law or treaty, and every Indian born within the territorial limits of the United States who has voluntarily taken up, within said limits, his residence separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life, is hereby declared to be a citizen of the United States, and is entitled to all the rights, privileges, and immunities of such citizens, whether said Indians has been or not, by birth or otherwise, a member of any tribe of Indians within the territorial limits of the United States without in any manner impairing or otherwise affecting the right of any such Indian to tribal or other property.

The Fort Belknap Indian Reservation was Tribally owned until the 'Fort Belknap Allotment Act' of March 3, 1921 (41 Stat. 1355), whereby 1,188 individual Indians, Assiniboiné or Gros Ventre, were entitled to select individual tracts of land within the reservation.

Section 7 of the Fort Belknap Allotment Act of March 3, 1921 (41 Stat. 1355) granted all or portions of 34 sections containing approximately 19,620.55 acres of land within the Boundaries of the Fort Belknap Indian Reservation to the State of Montana.

The Fort Belknap Allotment Act, in Section 7, states in part:

"---- And provided further, that all the children, being descendants of Indians entitled to rights on said reservation, shall be permitted to attend the public schools of said State on the same condition as the children of white citizens of said State".

This grant was made, because supposedly, Indians were not citizens of the United States, and therefore ineligible to the benefits of citizenship.

If this be the case, than what "Status" Indians were at this time. Were we "Aliens" in our own lands?

Are not the children of "Citizens of the United States" born within the territorial limits of the United States citizens by birthright?

This taking of Indian lands by the United States and granted to the State is in violation of not only the "Enabling Act", but the civil rights of the Fort Belknap Indians.

The State School lands on Fort Belknap may have been granted because "Indians" were not "Citizens" of the United States and therefore not "entitled" to 'Public Education'.

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If this be the case, than the United States Congress has violated their own Acts, whereby "Indians" of Fort Belknap are entitled to a free education through the Act of May 1, 1888 whereby we relinquished title to vast acreages of land in return for certain considerations.

On June 2, 1924, Congress enacted the "Indian Citizenship Act" (44 Stat. 253), which provided:

"that all non-citizen Indians born within the territorial limits of the United States be, and they are hereby, declared to be citizens of the United States; PROVIDED, that the granting of such citizenship shall not, in any manner, impair or otherwise effect the right of any Indians to Tribal or other property".

For the past several years, representatives of the Fort Belknap Tribal Government has met with the Commissioner of the State lands, his staff and the State Land Board itself to resolve problems and negotiate solutions to the administration of the State School lands on the Reservation. At the December 21, 1981 meeting of the Board of Land Commissioners there was unanimous consent to pursue the sale of the State School lands on the Fort Belknap Indian Reservation.

According to research conducted by the Department of State Lands staff, "State Law currently limits sale of State Lands to persons or corporations organized under the laws of this State (Montana). Thus, legislation would be necessary for the Council (Fort Belknap Tribal Government, a Federally Chartered Organization) to purchase any land (State School)."

During the 45th Legislative Session, House Bill No. 424 (copy attached) was introduced by Representative Kimble. This piece of legislation was ultimately killed on the house floor.

Again, in the 47th Legislative Session, House Bill No. 772 (copy attached) was introduced by Representative Kathleen McBride. Again, the legislation was killed in Committee on the motion "Do Not Pass" by the vote of 10 for the motion and 4 opposed to the motion.

During this, the 49th Legislative Session, the Fort Belknap Indian Reservation Tribal Government, representing 4,430 enrolled members of the Assiniboiné and Gros Ventre Tribes, urges the amendment of existing State Law to recognize the "Legal Status of Tribal Governments as eligible purchasers of State Owned Lands; provide for the participation of Tribal Government in the Laws of the State of Montana; eliminate the discrimination which existing State Laws encourages and to provide for an exemption to the acreage limitations for Indian Tribal Governments within identified Tribal Land Consolidation Areas and/or Indian Reservations".

Previous attempts to amend existing State Law was defeated, primarily because of insufficient information and mis-understanding of the impact that reduction of the State school acres would have to the Education system in Montana.

To illustrate the minimal impact any reduction of school lands may have, the Department of State lands, as of June 30, 1980, manages 4,597,691.35 acres (Source: Statistical Report 7-1-1978 to 6-30-1980), of which 19,620.55 acres is located on the Fort Belknap Indian Reservation. This represents less than 0.00426% of the total State School lands in Montana. There are 652,593.61 acres within the boundaries of

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the Fort Belknap Indian Reservation, of which State school lands constitute 3% of the total land base on the Reservation. The State school lands are all grazing lands, with the exception of 540.0 acres cultivated (Dry Farmland).

The State Land Board received, as rental for grazing lands, in F.Y. 1980, \$4,908,280.79 for grazing State wide, of which \$7,957.25 was paid by the Fort Belknap Tribal Government. The amount paid by the Tribe constitutes less than 0.00162% of the total grazing receipts for F.Y. 1980.

On the other hand, the Federal Government compensated the State of Montana, some \$5,835,000.00 for F.Y. 79, with P.L. 81-874 (Impact Aid) monies, commonly referred to as "In Lieu of Tax", for Federal (Public Domain, Forest Service, Military Reservation, Indian Reservation, etc.) lands within the State that are non-taxable by the State.

Therefore, recognition of Tribal Governments as "Legal entities to purchase State School lands and an exemption to the acreage limitations would not significantly impact the State School funds, even in the extremely unlikely event the Fort Belknap Tribal Government were in financial position to purchase all State land within the Reservation.

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EXHIBIT NO. 41

DATE 010985

BILL NO SB216

(This sheet to be used by those testifying on a bill.)

NAME: Donald L Clayborn DATE: 1.9.85

ADDRESS: OFFICE OF The Coordinator OF Indian Affairs

PHONE: 444-3702

REPRESENTING WHOM? OFFICE OF Coordin/Indian Affairs

APPEARING ON WHICH PROPOSAL: SB 24 - SB 26

DO YOU: SUPPORT? X AMEND? OPPOSE?

COMMENT: Submission of written Testimony

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 5

DATE 010985

RH: NO SR26

STATE COORDINATOR OF INDIAN AFFAIRS



TED SCHWINDEN, GOVERNOR

1218 EAST SIXTH AVENUE

STATE OF MONTANA

(406) 444-3702
DONALD L. CLAYBORN, COORDINATOR

HELENA, MONTANA 59620

JANUARY 9, 1985

TESTIMONY

SENATE BILL NO. 26

GOOD MORNING MR. CHAIRMAN, MEMBERS OF THE JUDICIARY COMMITTEE. I AM LOUIE CLAYBORN. I AM THE COORDINATOR OF INDIAN AFFAIRS OF THE STATE OF MONTANA. I AM HERE IN SUPPORT OF SENATE BILL NO. 26, LEGISLATION WHICH ALLOWS THE EXCHANGE OR SALE OF STATE LANDS ADJACENT TO INDIAN RESERVATIONS.

TECHNICALLY, THIS LEGISLATION IS A SERIES OF SIMPLE AMENDMENTS TO THE MONTANA CODE SECTION 77-2-201, 77-2-306 and 77-2-307 OUTLINING THE SALE OF STATE LANDS TO THE FEDERAL GOVERNMENT. THESE AMENDMENTS WOULD INCLUDE INDIAN TRIBES IN THAT OUTLINE.

THIS LEGISLATION WILL PROVE BENEFICIAL TO THE STATE OF MONTANA AND TO THE INDIAN RESERVATIONS, PARTICULARLY THOSE RESERVATIONS WHICH CONTAIN LARGE NUMBERS OF STATE SCHOOL LAND ACREAGE WITHIN THEIR EXTERIOR BOUNDARIES. IT WILL ALLOW THE STATE AND THE TRIBE TO ACQUIRE LANDS WHICH ARE ADMINISTRATIVELY DIFFICULT TO MANAGE. AT THE PRESENT TIME, STATE ACREAGE OFTEN IS INACCESSIBLE BECAUSE OF NO RIGHT-OF-WAY DUE TO EXCLUSIVE TRIBAL JURISDICTION CONTROLLING ABIDING ACREAGE. THE LACK OF RIGHT-OF-WAY MAKE LESS VALUABLE THE LEASE RIGHTS AND PREDETERMINES OFTEN WHO IS INTERESTED IN LEASING THE STATE LAND. THE ABILITY OF THE STATE TO SWAP OR SELL SUCH LANDS ENABLES THE STATE TO RETRIEVE THE REAL VALUE OF ITS HOLDINGS ON OR NEAR SUCH INDIAN RESERVATION.

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January 9, 1985

THIS LEGISLATION HAS THE GENERAL ENDORSEMENT OF THE VARIOUS TRIBAL
GOVERNMENTS AND OF COURSE: THE ADMINISTRATION. FOR THESE REASONS I HOPE
THE MEMBERS OF THE COMMITTEE WILL GIVE A DUE PASS CONSIDERATION FOR SENATE
BILL NO. 26.

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 5

DATE 010985

DOI NO. 0201

(This sheet to be used by those testifying on a bill.)

NAME: EDWARD J AZURE DATE: 1-9-85

ADDRESS: Box 249 HARLEM NY 59526

PHONE: 353-2205 EXT 453

REPRESENTING WHOM? FT. BELKNAP INDIAN COMMUNITY

APPEARING ON WHICH PROPOSAL: S. 24 & 26

DO YOU: SUPPORT? X AMEND? OPPOSE?

COMMENT: Please send copies of minutes
on both bills, especially the
verbal testimony and Committee
member questions & responses

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

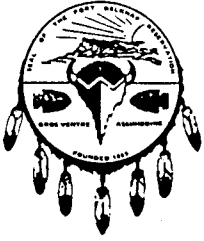
SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 6

DATE 010985

BILL NO. SB26

Fort Belknap Community Council



(406) 353-2205
P.O. Box 249
Fort Belknap Agency
Harlem, Montana 59526

Fort Belknap Indian Community
(Tribal Govt.)
Fort Belknap Indian Community
(Elected to administer the affairs of the community and to represent the Assiniboine and the Ventre Tribes of the Fort Belknap Reservation)

1-9-85
DATE

SENATE BILL 24 - STATE/TRIBAL COOPERATIVE AGREEMENTS ACT

The Fort Belknap Indian Community supports Senate Bill 24.

The Fort Belknap Indian Community supports Senate Bill 24 due to the fact that the State and Tribe have to provide services to Tribal members.

Much of our concerns center on the bureaucracy and personalities and roles and interactions of departments rather than the actual legislation.

With support and passage of this legislation, the various Departments and related personnel will have to recognize the fact that services and programs can be effectuated to meet the needs of all Montanans.

This legislation may be the vehicle for many gray areas of State and Tribal concerns. Tribes and the State are at liberty to work toward solving problems on the local level rather than waiting for specific legislation on a broad issue.

To date we have had little or no problems in dealing with the concept and therefore must urge passage of Senate Bill 24.

*Edward J. Gue, Admin. Coordinator
for Tribal Chairman*

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 6

DATE 010985

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