

HOUSE BILL NO. 25

INTRODUCED BY CONROY

BY REQUEST OF THE SELECT COMMITTEE ON INDIAN AFFAIRS

IN THE HOUSE

January 6, 1981	Introduced and referred to Committee on State Administration.
January 8, 1981	Committee recommend bill do pass. Report adopted.
January 10, 1981	Bill printed and placed on members' desks. Second reading, do pass.
January 12, 1981	Third reading, passed. Transmitted to Senate.

IN THE SENATE

January 13, 1981	Introduced and referred to Committee on State Administration.
March 25, 1981	Committee recommend bill be concurrred in. Report adopted.
March 26, 1981	Second reading, pass consideration.
March 27, 1981	Second reading, concurrred in.
March 30, 1981	Motion pass consideration.
March 31, 1981	On motion rules suspended. Bill allowed to be transmitted on 71st legislative day. Motion adopted. Third reading, concurrred in. Ayes, 47; Noes, 3.

IN THE HOUSE

April 1, 1981

Returned from Senate. Concurred
in. Sent to enrolling.

Reported correctly enrolled.

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 2 INTRODUCED BY CONROY
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 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO AUTHORIZE PUBLIC
 6 AGENCIES TO ENTER INTO COOPERATIVE AGREEMENTS WITH INDIAN
 7 TRIBES LOCATED IN MONTANA; AMENDING SECTIONS 53-30-204 AND
 8 87-1-228, MCA; AND REPEALING SECTION 20-3-333, MCA."
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 10 WHEREAS, it is in the best interest of the state of
 11 Montana to establish a legal framework that will enable this
 12 state, its political subdivisions, and Indian tribes to
 13 achieve maximum harmony and facilitate cooperative efforts
 14 in the orderly administration of their respective
 15 governments; and
 16 WHEREAS, it is in the best interest of the state of
 17 Montana to establish a legal framework for viable agreements
 18 between itself and tribal governments located in Montana
 19 that are based on mutual consent and mutual benefit.
 20 WHEREAS, it is in the best interest of the state of
 21 Montana to permit public agencies to make the most efficient
 22 use of their powers by enabling them to cooperate with
 23 tribal governments on a basis of mutual benefit and thereby
 24 provide services and facilities in a manner and pursuant to
 25 forms of governmental organization that will accord best

1 with geographic, economic, population, and other factors
 2 influencing the needs and development of public agencies and
 3 local communities.
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 5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 6 NEW SECTION. Section 1. Short title. [This act] shall
 7 be known and may be cited as the "State-Tribal Cooperative
 8 Agreements Act".
 9 NEW SECTION. Section 2. Definitions. As used in [this
 10 act], unless the context clearly indicates otherwise, the
 11 following definitions apply:
 12 (1) "Public agency" means any political subdivision,
 13 including municipalities, counties, school districts, and
 14 any agency or department of the state of Montana.
 15 (2) "Tribal government" means the officially recognized
 16 government of any Indian tribe, nation, or other organized
 17 group or community located in Montana exercising
 18 self-government powers and recognized as eligible for
 19 services provided by the United States to Indians because of
 20 their status as Indians.
 21 NEW SECTION. Section 3. Authorization to enter
 22 agreement -- general contents. (1) Any one or more public
 23 agencies may enter into an agreement with any one or more
 24 tribal governments to perform any administrative service,
 25 activity, or undertaking that any of the public agencies or

1 tribal governments entering into the contract is authorized
2 by law to perform. The agreement shall be authorized and
3 approved by the governing body of each party to the
4 agreement.

5 (2) The agreement shall set forth fully the powers,
6 rights, obligations, and responsibilities of the parties to
7 the agreement.

8 NEW SECTION. Section 4. Detailed contents of
9 agreement. The agreement authorized by [section 3] shall
10 specify the following:

11 (1) its duration;

12 (2) the precise organization, composition, and nature
13 of any separate legal entity created thereby;

14 (3) the purpose of the agreement;

15 (4) the manner of financing the agreement and
16 establishing and maintaining a budget therefor;

17 (5) the method to be employed in accomplishing the
18 partial or complete termination of the agreement and for
19 disposing of property upon such partial or complete
20 termination;

21 (6) provision for administering the agreement, which
22 may include creation of a joint board responsible for such
23 administration;

24 (7) the manner of acquiring, holding, and disposing of
25 real and personal property used in the agreement;

1 (8) when an agreement involves law enforcement:

2 (a) the minimum training standards and qualifications
3 of law enforcement personnel;

4 (b) the respective liability of each public agency and
5 tribal government for the actions of law enforcement
6 officers when acting under the provisions of an agreement;

7 (c) the minimum insurance required of both the public
8 agency and the tribal government; and

9 (d) the exact chain of command to be followed by law
10 enforcement officers acting under the provisions of an
11 agreement; and

12 (9) any other necessary and proper matters.

13 NEW SECTION. Section 5. Submission of agreement to
14 attorney general. (1) As a condition precedent to an
15 agreement made under [this act] becoming effective, it must
16 have the approval of the attorney general of Montana.

17 (2) The attorney general shall approve an agreement
18 submitted to him under [this act] unless he finds it is not
19 in proper form or does not meet the requirements set forth
20 in [this act] or otherwise does not conform to the laws of
21 Montana. If he disapproves an agreement, he shall provide a
22 detailed, written statement to the governing bodies of the
23 public agency and tribal government concerned, specifying
24 the reasons for his disapproval.

25 (3) If the attorney general does not disapprove the

1 agreement within 30 days after its submission to him, it
2 shall be considered approved by him.

3 NEW SECTION. Section 6. Agreements by state agencies
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7 general under [section 5], the approval of the governor.
8 The criteria and time for the governor's approval shall be
9 the same as that for the attorney general's approval as
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11 NEW SECTION. Section 7. Filing of agreement. Within 10
12 days after approval by the attorney general and prior to
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- 15 (1) the secretary of the United States department of
16 the interior;
- 17 (2) each county clerk and recorder of each county where
18 the principal office of one of the parties to the agreement
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- 20 (3) the secretary of state; and
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11 NEW SECTION. Section 10. Specific limitations on
12 agreements. Nothing in [this act] may be construed to
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- 14 (1) enlarges or diminishes the jurisdiction over civil
15 or criminal matters that may be exercised by either the
16 state of Montana or tribal governments located in Montana;
- 17 (2) authorizes a public agency or tribal government,
18 either separately or pursuant to agreement, to expand or
19 diminish the jurisdiction presently exercised by the
20 government of the United States to make criminal laws for or
21 enforce criminal laws in Indian country;
- 22 (3) authorizes a public agency or tribal government to
23 enter into an agreement except as authorized by their own
24 organizational documents or enabling laws; or
- 25 (4) provides for the alienation, financial encumbrance,

1 or taxation of any real or personal property, including
2 water rights, belonging to any Indian or any Indian tribe,
3 band, or community that is held in trust by the United
4 States or is subject to a restriction against alienation
5 imposed by the United States.

6 NEW SECTION. Section 11. Validity of existing
7 agreements. (1) Except as provided in subsection (2),
8 [sections 1 through 10] do not effect the validity of any
9 agreement entered into between a tribe and a public agency
10 prior to July 1, 1981.

11 (2) However, any such agreement must satisfy the
12 requirements of [sections 1 through 10] no later than July
13 1, 1983.

14 Section 12. Section 53-30-204, MCA, is amended to read:
15 "53-30-204. ~~Contracts~~ Cooperative agreements for
16 services with governing body of Indian reservation ~~tribe~~.
17 (1) The department of institutions may ~~contract~~ enter into
18 agreements with the governing body of an Indian reservation
19 ~~tribe~~ within the state for residential and educational
20 services:

21 ~~(1)(a)~~ at Mountain View school, Pine Hills school,
22 aftercare division, or other juvenile facility maintained by
23 the department for children who have been adjudicated
24 delinquent by the tribal court, subject to the provisions of
25 this part and parts 1 and 2 of chapter 1; or

1 ~~(1)(b)~~ at the Montana children's center for children
2 who have been found by the tribal court to be dependent and
3 neglected, subject to the provisions of [Title 80, chapter
4 21].

5 ~~(2) Any agreement entered into under subsection (1)~~
6 ~~must also satisfy the requirements of [sections 1 through~~
7 ~~11]."~~

8 Section 13. Section 87-1-228, MCA, is amended to read:
9 "87-1-228. Agreement with Indians concerning hunting
10 and fishing -- Indian treaty of 1855. (1) Whereas, by treaty
11 of July 16, 1855, between the United States of America,
12 represented by Isaac I. Stephens, governor and
13 superintendent of Indian affairs for the territory of
14 Washington, and the chiefs, headmen, and delegates of the
15 confederated tribes of the Flathead, Kootenai, and Upper
16 Pend Oreille Indians, the said Indians were given the
17 exclusive right to fish and hunt on the Flathead Indian
18 reservation and the privilege of hunting in their usual
19 hunting grounds on large areas of Montana; and whereas,
20 nonmembers of such tribes have the right to hunt and fish on
21 Indian lands by sufferance of such tribes only; and whereas,
22 it appears to be to the common advantage of the state and
23 such Indian tribes that hunting and fishing regulations and
24 privileges on other lands of the state and on Indian lands
25 shall be uniform and that hunting and fishing on such Indian

1 lands shall be in common with the public, now, therefore,
 2 the department may negotiate and conclude an agreement with
 3 the council of the Confederated Salish and Kootenai tribes
 4 of the Flathead Indian reservation for the purpose of:

5 (a) obtaining and establishing for the citizens of
 6 Montana, regularly licensed to hunt and fish in the state,
 7 the privileges of hunting and fishing on Indian lands on the
 8 Flathead Indian reservation;

9 (b) the conservation and protection of fish and game
 10 and fur-bearing animals on such Indian lands and on lands
 11 adjacent thereto;

12 (c) setting dates for the opening and closing of
 13 seasons for hunting and fishing on such lands for Indians
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16 (d) doing what in its judgment is necessary by way of
 17 granting to such tribal Indians state permits to hunt and
 18 fish, to be issued without charge to such Indians;

19 (e) stocking streams and land areas of such Indian
 20 lands for the common benefit;

21 (f) policing such Indian lands for the protection of
 22 fish and game; and

23 (g) in general carrying out the purposes of this
 24 section.

25 (2) If any part of such agreement provides for the

1 payment of money to the tribes, that part must first have
 2 the approval of the state legislature.

3 ~~(3) Any agreement entered into under subsection (1)~~
 4 ~~must also satisfy the requirements of [sections 1 through~~
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6 Section 14. Repealer. Section 20-3-332, MCA, is
 7 repealed.

-End-

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19 diminish the jurisdiction presently exercised by the
20 government of the United States to make criminal laws for or
21 enforce criminal laws in Indian country;

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23 enter into an agreement except as authorized by their own
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 24 delinquent by the tribal court, subject to the provisions of
 25 this part and parts 1 and 2 of chapter 1; or

1 ~~††(b)~~ at the Montana children's center for children
 2 who have been found by the tribal court to be dependent and
 3 neglected, subject to the provisions of [Title 80, chapter
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 17 exclusive right to fish and hunt on the Flathead Indian
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 19 hunting grounds on large areas of Montana; and whereas,
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 21 Indian lands by sufferance of such tribes only; and whereas,
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 24 privileges on other lands of the state and on Indian lands
 25 shall be uniform and that hunting and fishing on such Indian

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10 and fur-bearing animals on such Indian lands and on lands
11 adjacent thereto;

12 (c) setting dates for the opening and closing of
13 seasons for hunting and fishing on such lands for Indians
14 and non-Indians alike, opening and closing of streams and
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16 (d) doing what in its judgment is necessary by way of
17 granting to such tribal Indians state permits to hunt and
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19 (e) stocking streams and land areas of such Indian
20 lands for the common benefit;

21 (f) policing such Indian lands for the protection of
22 fish and game; and

23 (g) in general carrying out the purposes of this
24 section.

25 (2) If any part of such agreement provides for the

1 payment of money to the tribes, that part must first have
2 the approval of the state legislature.

3 ~~(3) Any agreement entered into under subsection (1)~~
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7 repealed.

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HB 25

1 HOUSE BILL NO. 25
2 INTRODUCED BY CONROY

3 BY REQUEST OF THE SELECT COMMITTEE ON INDIAN AFFAIRS

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO AUTHORIZE PUBLIC
6 AGENCIES TO ENTER INTO COOPERATIVE AGREEMENTS WITH INDIAN
7 TRIBES LOCATED IN MONTANA; AMENDING SECTIONS 53-30-204 AND
8 87-1-228, MCA; AND REPEALING SECTION 20-3-333, MCA."

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10 WHEREAS, it is in the best interest of the state of
11 Montana to establish a legal framework that will enable this
12 state, its political subdivisions, and Indian tribes to
13 achieve maximum harmony and facilitate cooperative efforts
14 in the orderly administration of their respective
15 governments; and

16 WHEREAS, it is in the best interest of the state of
17 Montana to establish a legal framework for viable agreements
18 between itself and tribal governments located in Montana
19 that are based on mutual consent and mutual benefit.

20 WHEREAS, it is in the best interest of the state of
21 Montana to permit public agencies to make the most efficient
22 use of their powers by enabling them to cooperate with
23 tribal governments on a basis of mutual benefit and thereby
24 provide services and facilities in a manner and pursuant to
25 forms of governmental organization that will accord best

1 with geographic, economic, population, and other factors
2 influencing the needs and development of public agencies and
3 local communities.

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

6 NEW SECTION. Section 1. Short title. [This act] shall
7 be known and may be cited as the "State-Tribal Cooperative
8 Agreements Act".

9 NEW SECTION. Section 2. Definitions. As used in [this
10 act], unless the context clearly indicates otherwise, the
11 following definitions apply:

12 (1) "Public agency" means any political subdivision,
13 including municipalities, counties, school districts, and
14 any agency or department of the state of Montana.

15 (2) "Tribal government" means the officially recognized
16 government of any Indian tribe, nation, or other organized
17 group or community located in Montana exercising
18 self-government powers and recognized as eligible for
19 services provided by the United States to Indians because of
20 their status as Indians.

21 NEW SECTION. Section 3. Authorization to enter
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25 activity, or undertaking that any of the public agencies or

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3 approved by the governing body of each party to the
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5 (2) The agreement shall set forth fully the powers,
6 rights, obligations, and responsibilities of the parties to
7 the agreement.

8 NEW SECTION. Section 4. Detailed contents of
9 agreement. The agreement authorized by [section 3] shall
10 specify the following:

11 (1) its duration;

12 (2) the precise organization, composition, and nature
13 of any separate legal entity created thereby;

14 (3) the purpose of the agreement;

15 (4) the manner of financing the agreement and
16 establishing and maintaining a budget therefor;

17 (5) the method to be employed in accomplishing the
18 partial or complete termination of the agreement and for
19 disposing of property upon such partial or complete
20 termination;

21 (6) provision for administering the agreement, which
22 may include creation of a joint board responsible for such
23 administration;

24 (7) the manner of acquiring, holding, and disposing of
25 real and personal property used in the agreement;

1 (8) when an agreement involves law enforcement:

2 (a) the minimum training standards and qualifications
3 of law enforcement personnel;

4 (b) the respective liability of each public agency and
5 tribal government for the actions of law enforcement
6 officers when acting under the provisions of an agreement;

7 (c) the minimum insurance required of both the public
8 agency and the tribal government; and

9 (d) the exact chain of command to be followed by law
10 enforcement officers acting under the provisions of an
11 agreement; and

12 (9) any other necessary and proper matters.

13 NEW SECTION. Section 5. Submission of agreement to
14 attorney general. (1) As a condition precedent to an
15 agreement made under [this act] becoming effective, it must
16 have the approval of the attorney general of Montana.

17 (2) The attorney general shall approve an agreement
18 submitted to him under [this act] unless he finds it is not
19 in proper form or does not meet the requirements set forth
20 in [this act] or otherwise does not conform to the laws of
21 Montana. If he disapproves an agreement, he shall provide a
22 detailed, written statement to the governing bodies of the
23 public agency and tribal government concerned, specifying
24 the reasons for his disapproval.

25 (3) If the attorney general does not disapprove the

1 agreement within 30 days after its submission to him, it
2 shall be considered approved by him.

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4 -- requirements. As a condition precedent to an agreement
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9 the same as that for the attorney general's approval as
10 provided in [section 5].

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12 days after approval by the attorney general and prior to
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16 the interior;

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18 the principal office of one of the parties to the agreement
19 is located;

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21 (4) the affected tribal government.

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24 revocation by any party upon 6 months' notice to the other
25 unless a different notice period of time is provided for

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2 period for revocation in excess of 5 years.

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4 funds for purpose of agreement. Any public agency entering
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