

MINUTES
Approved by Council
Idaho Council on Indian Affairs
Wednesday, July 19, 2017
9:00 A.M.
Room WW53
Boise, Idaho

Chairman Senator Jim Guthrie called the meeting to order at 9:05 a.m.; a silent roll call was taken. Council members in attendance: Senators Jim Guthrie and Cherie Buckner-Webb; Pete Katsilometes, Office of the Governor; Gary Aitken, Jr., Kootenai Tribe; Chief Allan, Coeur d'Alene Tribe; Shannon Wheeler, Nez Perce Tribe; Nathan Small, Shoshone-Bannock Tribes; and Ted Howard, Shoshone-Paiute Tribes. Absent and excused: Representatives Neil Anderson and Paulette Jordan. Legislative Services Office staff present were: Mike Nugent and Ana Lara.

Other attendees: Tim Olson, Steve Rector, Darren Williams, and Christopher Luke, Nez Perce Tribe; John Foster, Kestrel West/Coeur d'Alene Tribe; Pam Johnson, Northwest Portland Area Indian Health Board; Susan Burke, Department of Environmental Quality; Benjamin Brocksome and Randy'l Teton, Shoshone-Bannock Tribes; Clay Smith, Office of the Attorney General; and Janet Gallimore, Idaho State Historical Society.

Note: presentations and handouts provided by presenters/speakers are posted on the Idaho Legislature website: www.legislature.idaho.gov; and copies of those items are on file at the Legislative Services Office in the State Capitol.

Chairman Guthrie began the meeting by addressing the agenda and invited Mr. Howard to offer an opening prayer in his native tongue. Vice-chair Aitken, Jr. welcomed the council members. Chairman Guthrie called for the approval of the March 6, 2017 minutes. Senator Buckner-Webb made a motion to approve the minutes of March 6, 2017. Vice-chair Aitken, Jr. seconded the motion. The motion passed unanimously.

Shoshone-Paiute Tribes:

Mr. Howard introduced himself as the new chairman for the Shoshone-Paiute Tribes.

Shoshone-Bannock Tribes:

Mr. Small introduced himself as the new chairman for the Shoshone-Bannock Tribes and introduced some of the newly elected council members.

Coeur d'Alene Tribe:

Mr. Allan introduced Mr. Christopher Luke as the newest member of the Coeur d'Alene Tribal Council.

Kootenai Tribe:

Vice-chair Aitken, Jr. announced the upcoming council elections in September.

Update Since the OPE Study Presentation - Director Rakesh Mohan, Mr. Ryan Langrill and Ms. Hannah Crumrine, Office of Performance Evaluations (OPE)

Chairman called upon Mr. Langrill to begin his presentation. Mr. Ryan Langrill, Senior Evaluator for OPE, introduced himself to the council and provided a brief overview of the OPE study report that was presented to the council earlier this year and explained how each presenter tied into the study report.

Overview on the State Jurisdiction in Indian Country Report

Public Law 280 was passed by Congress in 1953. Idaho adopted Public Law 280, in part, in 1963; jurisdiction extended to seven subject matters. Retrocession is the process by which the state returns its jurisdiction to the federal government. This process must be initiated by the state legislature, unless it has provided an alternative means for retrocession. Any retrocession request is directed to the Assistant Secretary over Indian Affairs, who consults with the Attorney General to evaluate changes on the ground and to ensure that retrocession does not lead to any gaps in law enforcement. The Assistant Secretary may ultimately accept or deny any part of the request.

OPE had four recommendations for the Legislature to consider, regardless of any retrocession request:

- Consider options for funding tribal, local or joint law enforcement efforts to fill gaps created by Public Law 280;
- Consider facilitating state-court recognition of tribal court orders for involuntary commitment related to the mental illness component of Idaho's law;
- Consider granting limited state authority to tribal police officers (e.g., right of fresh pursuit);
- Consider investing in forums of intergovernmental cooperation and consider a dedicated liaison or office within the Office of the Governor.

OPE's recommendations for the Legislature, should it choose to consider retrocession:

- Consider the effects of the transition (e.g., county/city law enforcement would be transferring responsibilities to tribal or federal law enforcement);
- Consider partial jurisdiction on an individual subject matter basis (state can choose to retrocede any of the seven subject matters);
- Consider the institutional knowledge of the local ground operatives (e.g., county, local, and tribal officers); and
- Consider the right to tribal self-determination.

Mr. Langrill explained that the Yakama Nation would be addressing this area as well as Professor Anderson, who helped craft legislation in the state of Washington to allow for tribally initiated retrocession requests. He also informed the council that OPE had received a postcard from Mr. Kevin Washburn, former Head of the Bureau of Indian Affairs, complimenting their work on the study report. Lastly, Mr. Langrill shared one major update since the release of the OPE report - the Montana Legislature passed Senate Bill 310, which gives the Confederated Salish and Kootenai Tribes of the Flathead Reservation the right to initiate the retrocession of state jurisdiction over felonies.

He explained that Director Smith, from the Montana Governor's Office of Indian Affairs, will be helpful in discussing what it entails to have a liaison within the Governor's office and other practical applications. Professor Anderson, Director of the Native American Law Center at the University of Washington, authored a paper on retroceding state jurisdiction over Indian Country and argued that the federal government should provide for tribally initiated retrocession. The Yakama Nation is the first tribe to have retroceded in over a decade, which went into effect in April, 2016. Mr. Rocky Watson was the Sheriff for Kootenai County during the years 1999 - 2012. During his time as the Kootenai County Sheriff, he developed a formal mutual aid in cross-deputization agreement with the Coeur d'Alene Tribe.

Mr. Katsilometes inquired about why Congress decided to give states jurisdiction in the 1950s. Mr. Langrill responded that there were two stated reasons for the adoption of Public Law 280:

1. The claim that because there was lawlessness on reservations, the states needed to get involved; and
2. To save the federal government money in areas such as law enforcement.

Most of the tribes affected by Public Law 280 were in the west, since the federal government did not have much of a presence in that part of the country. Chairman Guthrie asked if the request to retrocede can be tailored to fit the specific needs of an individual state. Mr. Langrill responded

yes; the state legislature can craft legislation that specifies the areas wherein it wishes to retrocede state jurisdiction.

Montana Governor's Office on Indian Affairs - Director Jason Smith

Mr. Jason Smith, Director of Montana Governor's Office of Indian Affairs, joined the council via conference-phone and began his [presentation](#) thanking the council for the opportunity to present.

He referred to a picture of the Montana tribal flags on slide two and explained the history behind how the tribal flags came to be placed in the Montana Capitol Building. The Montana Office of Indian Affairs was established in 1951 by the state legislature as part of the Governor's Office. The Office of Indian Affairs is a liaison between the State and the Tribes and promotes economic development, environmental stewardship, education, support for social services, and enduring good will.

Some of the duties of the Indian Affairs office are:

- Maintain effective tribal-state communications;
- Meet with state agency directors on issues concerning tribal governments and Indian people;
- Report to and advise the Governor's cabinet (also a member of the cabinet; and
- Serve on the following State advisory councils and boards: the State Tribal Economic Development Commission, American Indian Monument and Montana Tribal Flag Circle Advisory Committee, Montana Board of Veterans Affairs, the Interagency Coordinating Council and an advisory group on renaming geographic sites.

There is one other person in the Office of Indian Affairs - an administrative assistant. The biennial budget for the Office of Indian Affairs is \$380,063.

Director Smith proceeded to explain the annual Tribal Leaders Summit, where the Governor meets with all the tribal leaders and they discuss rules and policies that impact tribal governments or people and potential solutions to any concerns that are raised. Montana Code provides for the Office of Indian Affairs to conduct an annual training for state agencies regarding Indian education and economic development, as well as providing education regarding tribal culture and norms. The State-Tribal Activities Database includes hundreds of agreements or cooperative projects in effect between the Tribes and the State of Montana. The primary state statute that enables state-tribal cooperation is the State-Tribal Cooperative Agreements Act, §§18-11-101, et seq., MCA. The act promotes state-tribal cooperation with regard to mutually beneficial activities and services. The act also provides for tax revenue sharing to prevent the possibility of dual taxation by governments, while promoting state, local and tribal economic development.

Director Smith spoke about the Montana American Indian Caucus, which is a bipartisan caucus that focuses on:

- Passing laws for tourism, economic development, access to health care and education;
- Montana American Indian Language Program;
- CSKT water compact;
- HELP Act;
- Revising laws related to criminal jurisdiction on the Flathead Indian Reservation; and
- Recognizing tribally organized business entities.

He stated that he visited each one of the tribes in Idaho and is familiar with some of the tribal leaders. He ended his presentation by expressing his gratitude for the opportunity to explain the work that Office of Indian Affairs does in the state of Montana. He emphasized the importance of a tribal liaison position and how it can help influence policy and build stronger relationships between stakeholders.

Discussion:

Mr. Allan asked Director Smith if they had seen fewer anti-tribal bills since the inception of the liaison position within the Governor's Office. Director Smith explained that in his five years as the Director, he has seen more controversy between counties and tribes than from the state. Mr. Allan congratulated Director Smith for his position in the state of Montana and expressed his desire to see a liaison position in the Idaho Governor's Office, much like they have in many of the neighboring states. He expressed his wish for the tribes in Idaho to be seen as a partner instead of an adversary. Director Smith expanded on his earlier comments, stating that some republican legislators do not always embrace bills or policies that could benefit tribes or tribal communities. However, he has found that once those legislators become part of a committee that visits reservations and become culturally aware, they become supporters of legislation that is positive for tribal communities. He advocated for the Idaho Council of Indian Affairs to hold meetings on the reservations and become familiar with the tribes.

Chairman Guthrie asked if the positive relationship between the Governor and the tribes changes, depending on different administrations. He also inquired about his relationship with the Montana Legislature. Director Smith responded that, while he is sure the relationship changes to some extent depending on the administration, there is a long history of the governor interacting with tribes. He added that in the last 12 years, it has changed dramatically in terms of an increase of direct communication as well as an increase of state agency employment for American Indians. Director Smith explained his relationship with the state legislature has been more productive than not, but has been challenging at times, given that he is a part of the Executive branch. His position allows him to navigate these relationships and assist in building relationships between tribes and entities with opposing views.

Mr. Small asked for any examples of success in regards to securing economic developments in reservations through the Dept. of Commerce. Director Smith explained that there are three programs that assist in this. The Montana Indian Equity Fund allows tribes to submit an application and business plan for potential approval of up to \$15,000 for each tribe - no more than two tribes - to begin a business. The Native American Business Advisors assist in funding native economic development organizations that support private sector business development on reservations and in tribal communities. The Native American Collateral Support Program provides critical gap financing for the local community lender to finance projects when the business lacks sufficient equity or collateral to permit the lender to finance a loan. The program has provided certificates of deposit (CDs) to secure collateral loans for businesses.

Chairman Guthrie inquired about the pushback received regarding the placement of tribal flags in the Capitol Building. Director Smith replied that he was not aware of the specifics; this was relayed to him by the previous administration.

Update on Idaho State Historical Museum - Executive Director Janet Gallimore, Idaho State Historical Society

Chairman Guthrie called upon Ms. Janet Gallimore, Executive Director for the Idaho State Historical Society, to begin her presentation. Director Gallimore introduced herself and thanked the tribal council members for their assistance in developing the Idaho State Historical Museum. She emphasized that this museum had not been updated since the 1980s and, over the last few years, they have worked with the tribes to ensure that the content for Idaho tribes was created in a joint effort. She thanked the tribal liaisons for their work and the consultation provided for this renovation project.

Director Gallimore stated that the Idaho State Historical Museum square footage will be about 45,000 sq. ft., 7,000 sq. ft. of which is dedicated to telling the story of Idaho's history; all five tribal stories will be told comprehensively in this museum. The Origins gallery will feature an introduction to each tribe, a tribal theatre that illuminates tribal creation stories, a large artifact

display area, and a hands-on opportunity to design and create a parfleche. There will also be an exhibition on petroglyphs within this gallery.

In the Introduction Gallery, a feature will be Sacajawea and her role in the Lewis and Clark expedition and Wat-Ku-Weis in greeting the Lewis and Clark expedition as they entered the Nez Perce territory. Also under development, pursuant to the request of our Tribal Advisory Committee, is a section that illuminates historical/generational trauma.

Director Gallimore proceeded to begin her [presentation](#) by introducing the Origins exhibition experience. One of the first stories that visitors will see is the story of Idaho's first people; there is a panel for each one of Idaho's tribes. The tribal staff emphasized the importance for each panel to have both the English name and tribal name. Each panel has a pre-contact photo, a contemporary land stewardship photo, a tribal culture photo, and a tribal youth photo.

Idaho: The Land and its People Gallery will feature contemporary tribal land stewardship stories:

- The contemporary Kootenai story will feature the tribe's efforts in bringing the white sturgeon back from the brink of extinction;
- The contemporary Nez Perce story will feature fishing rights within the context of the 1980 Rapid River conflict;
- The contemporary Coeur d'Alene story will feature the tribe's monitoring of Lake Coeur d'Alene;
- The contemporary Shoshone-Bannock story will feature the tribe's role in helping the sockeye salmon endangered species and recovery; and
- The contemporary Shoshone-Paiute story will feature the protection of the Canyonlands and sacred and cultural sites in the southwest desert.

Director Gallimore asked the tribal chairmen for their assistance in applying again to the National Endowment for the Humanities (NEH) for a grant to help support the tribal exhibitions. Last year's application resulted in a small grant that will help defray the cost of travel when tribal liaisons travel to Boise for meetings, and provide a stipend to the tribal elders who are assisting in the origin stories recordings and videography. NEH asked that the Idaho State Historical Society apply again for the larger grant and emphasized how strong their initial proposal was. Director Gallimore asked the tribal chairmen to update last year's letters of support and to provide them to her by July 28, 2017.

Oral Healthcare Access on Tribal Reservations - Pam Johnson, Northwest Portland Area Indian Health Board

Chairman Guthrie called upon Ms. Pam Johnson, Oral Health Project Specialist, to present next. Ms. Johnson introduced herself and began her [presentation](#) by providing some background on the Northwest Portland Area Indian Health Board boundaries, which do not include the Shoshone-Paiute Tribes, but do include the Northwestern Band of Shoshone.

Ms. Johnson emphasized the importance of the concept that oral health is important to overall health. Dental decay leads to not just pain and discomfort, but serious health problems like heart disease, infection and even death. A person's social well-being can be impacted when he has missing teeth; pain and discomfort from tooth decay can lead to children missing school or adults missing work.

Ms. Johnson referred to the current Indian Health Services health survey on oral health of American Indian and Alaska Native American preschool children. Oral health disparities are significantly greater for American Indian and Alaska Native children:

- Prevalence of tooth decay in native children, ages two to five, is nearly three times the national average;
- More than 70%, ages two to five, have a history of tooth decay experience compared to 23% of the general population; and
- More than 40% of native children, ages three to five, have untreated tooth decay compared to 14% of the general population.

This issue is not specific to American Indian and Alaska Native children, but native adults as well. The Healthy Patients 2020 Objective for native adults, ages 35-44, is to have only 25% of its population with untreated tooth decay as opposed to 65%. The objective for the native adults, ages 65-75, is to have only 15% of its population with untreated tooth decay instead of 45%.

Barriers to care:

- Shortage and high turnover rate of dentists in tribal communities;
- Lack of resources (Indian Health Services (IHS) is chronically underfunded every year);
- Cost of care is high;
- Historical trauma;
- Lack of culturally competent providers; and
- Geographic isolation.

[Slide 10](#) shows the Idaho dental health professional shortage service areas.

The Indian Health Programs can be grouped into three categories:

- Operated directly by IHS;
- Tribally operated (P.L. 93-638 ISDEAA); and
- Urban programs.

Shoshone-Bannock Tribes:

IHS Fort Hall Service Unit is comprised of the Not-Tsoo Gah-nee Indian Health Center, which is jointly accredited with the Shoshone-Bannock Tribal Health and Human Services Department. They serve over 20,000 registered American Indian patients in the medical clinic and have two dentists currently on staff.

Kootenai Tribe:

They established their own clinic in 1993, housing all health services and it serves about 300 patients. As a result of providing on-site services, there has been a substantial increase in utilization of healthcare. There are no dental services at the clinic at this time.

Coeur d'Alene Tribe:

The Tribe owns and operates the Benewah Medical and Wellness Center in Plummer, Idaho. Of 6,000 patients, 30% utilize the dental clinic. Dental services are provided by four full-time dentists and occasional part-time dentists. They also serve as the region's federally qualified health center, with the patient population split 55% American Indian and 45% non-American Indian.

Nez Perce Tribe:

The Tribe owns and operates Nimiipuu Health with clinics in Lapwai and Kamiah. They provide dental services to about 4,000 patients in both locations, with two full-time dentists.

A potential oral health care solution is the use of a mid-level provider - a dental health aide therapist (DHAT). Dental therapists practice in 54 countries, including the United States. They are authorized to work in Alaska, Minnesota, Maine, Vermont, Washington, and Oregon. The Alaska DHAT Education program is where DHATs are trained and students graduate with an Associates in Applied Science Degree. After a 400-hour preceptorship, dental therapists can practice in remote or clinic settings under the general supervision of a dentist.

DHATs have a very concentrated scope; they learn 50 procedures versus the 500 procedures a dentist would learn in a dental school. Some of those procedures include:

- Diagnosis and treatment;
- Prevention;
- Radiographs; and

- Extractions.

The DHAT model has worked in Alaska for the last twelve years. There are over 45,000 Alaska natives now receiving direct oral health care and they tend to stay in their communities providing continuity of care. Children in communities with DHATs are also showing better outcomes:

- 284% decrease in D-E-F-G extractions (front four teeth);
- 44% decrease in general anesthesia; and
- 60% increase in preventive care.

Adults in communities with DHATs have also seen better outcomes:

- 26% decrease in extractions; and
- 75% increase in preventive care.

Tribal health clinics are not in the business of producing profits; their goal is to take care of their communities. According to a May, 2013 Community Catalyst Study on the economic viability of dental therapists in Alaska and Minnesota, dental therapists cost their employers less than 30 cents for every dollar of revenue they generate.

There are complications in expanding the DHAT framework to the rest of the country. In Alaska, the DHATs work under a federal aid health program called Community Health Aide Program (CHAP). When the Indian Healthcare Improvement Act was reauthorized, the American Dental Association successfully lobbied to have the expansion of CHAP exclude DHATs. However, the language allowed for an exemption from this prohibition in states where legislation has passed authorizing the use of DHATs.

In Washington, the Swinomish Tribe, as a sovereign nation, hired their first DHAT after four years of unsuccessful requests to the legislature to pass legislation authorizing the use of DHATs. However, they were unable to get medicaid reimbursement or use their Indian Health Services funding for the use of their DHATs. After another two years, Washington passed legislation authorizing the use of DHATs. The American Dental Association did not oppose this legislation since the use of DHATs had proved to be effective. The next steps for the state of Washington are to not only offer this program for other tribes, but also to set up an education program to train DHATs in the lower 48 states. The Oregon Dental Pilot Projects were authorized by state legislation in 2011 to increase access to and improve quality of oral healthcare by:

- Teaching new skills to existing providers;
- Developing new categories of dental providers; and
- Accelerating and expanding the training to current providers.

Ms. Johnson emphasized that DHATs are especially essential for rural areas. Coeur d'Alene has a student, Ms. Anna Degraffenreid, who is going to begin classes in Alaska to become a DHAT this year. DHATs are one piece of the solution to increase access to care and solve some of the barriers to care in tribal communities.

The committee recessed for a break at 11:00 a.m.

The committee reconvened at 11:13 a.m.

Public Law 280 - Professor Robert Anderson, University of Washington School of Law

Chairman Guthrie called upon Professor Anderson, Director of the Native American Law Center and professor at the University of Washington School of Law, to present next. Professor Anderson joined the committee via conference-phone and began his presentation by providing some occupational background and experience. He also stated his extensive involvement in the Washington state legislation that developed an approach and method for retrocession of state jurisdiction in Washington and assisted with the retrocession of the Yakama Nation.

Professor Anderson explained that Washington is a permissive state, much like Idaho, meaning state legislation was passed asserting jurisdiction in one or more areas. When Public Law 280 was passed and allowed this permissive state jurisdiction, it did not consider the role of the tribes in the process. Congress considered it wrong to allow states to assert authority without tribal consent. In 1968, they passed the Indian Civil Rights Act, which included a provision that precluded any state from asserting jurisdiction without tribal consent, but left intact any assertion of jurisdiction that had taken place prior to 1968. The 1968 statute also included a provision that allowed retrocession of state jurisdiction to the federal government. The statute is not specific on how this process should take place; the process for states to request to relinquish state jurisdiction is a matter of state law.

For example, Washington had a statute passed in the early 1970s that authorized the state to issue a proclamation through the Governor to the Secretary of the Interior to accept a surrender of state jurisdiction. He emphasized that Public Law 280 did not affect the scope of tribal jurisdiction. In regard to the permissive states, the law clearly states that federal jurisdiction remains in place over criminal matters as well. As a practical matter, in states where criminal jurisdiction is assumed over certain areas, the federal government and US attorneys have largely left it to the states to prosecute crimes within the state's jurisdiction under Public Law 280.

The retrocession legislation that Congress passed in 1968 authorized the Secretary of the Interior to accept state offers of retrocession after consultation with the Department of Justice. The petition is received by the Secretary of the Interior and routed to the Assistant Secretary for Indian Affairs who creates a response after consulting with the Department of Justice, namely the local US Attorney's Office. The issue with the federal government is that there is no process in place for dealing with retrocession petitions from states; it is completely ad hoc. The most fundamental aspect of a retrocession petition is that it be done only if a particular tribe wishes it and with consultation from the tribe through a collaborative process.

In Washington, legislation was introduced in 2010 to allow for retrocession to occur by gubernatorial proclamation at the request of any tribe; the bill did not pass. The Governor and the Legislature appointed a task force to study the issue and propose legislation; Professor Anderson was a member of the task force, along with legislators, local representatives, tribal political leaders and their attorneys, county attorneys, and the US Attorney's Office. The 2012 legislation was produced by this task force and sets a one-year timeline for action by the Governor upon receipt of a request from a tribe asking that the state retrocede its jurisdiction over that tribe's reservation in Indian Country. The filing of that petition sets into motion a consultation process with local jurisdictions, counties, local municipalities, and relevant state officers to discuss the issues and produce a recommendation for the Governor on how this tribal request should be dealt with.

The retrocession process, especially in Washington, involves Public Law 280 jurisdiction that is the most complicated within federal Indian Law; Idaho has asserted jurisdiction in a more straightforward way compared to Washington and should have less difficulties in dealing with this issue. The problem in Washington's case, Professor Anderson said, is that the Governor's proclamation that was sent to the Secretary of the Interior seems to ask that the Secretary accept the surrender of all criminal jurisdiction (except in a couple of very narrow areas involving public highways) and mental health. The Secretary of the Interior accepted the petition, and in its response specified what jurisdictional matters had been surrendered in the proclamation. The Governor responded with clarification regarding what jurisdictional matters the State of Washington had actually intended to surrender, which wasn't exactly what the proclamation stated.

This dispute over what the proclamation actually means is before the Washington State Court of Appeals in a criminal case, which doesn't involve the tribe itself, but an American Indian individual who is being prosecuted and contested state jurisdiction over him. Professor Anderson emphasized that the need for clarity is paramount and explained that stakeholders should review a jurisdictional

chart to study who has jurisdiction before and after retrocession. He stated that ambiguity in jurisdictions has caused issues for the stakeholders in Washington.

There are also issues that arise from funding, he added. The Bureau of Indian Affairs (BIA) has taken the position that, even though tribes retain full jurisdiction after a state assumes Public Law 280 jurisdiction, they tend to place the tribes that are subject to Public Law 280 at the bottom of the priority list for funding for tribal law enforcement and tribal courts. He further added that all administrations have done this, regardless of political party affiliation, and expressed his discontent with this practice.

Discussion:

Chairman Guthrie asked if there has been any tension or remorse from the Legislature since last year when the State of Washington retroceded most of their jurisdictions. Professor Anderson opined that the Legislature did great work and he was more concerned with the Governor's administration due to the lack of explicit contract negotiations with the tribes, which was evident in the petition sent to the Secretary of the Interior.

Mr. Wheeler voiced his concern that, under Public Law 280, tribal law enforcement is unable to arrest or prosecute non-tribal members for any criminal activities that take place on the reservations. Unfortunately, criminals have become aware of this and are increasingly performing illegal activities on reservations. He appreciated Professor Anderson's acknowledgement of the importance for tribes to have involvement in any type of retrocession request. Professor Anderson emphasized that the key is to ensure that whoever has jurisdiction exercises it, whether that is the state or federal government, by providing the necessary resources.

Mr. Small inquired whether highways found on reservations are subject to retrocession. Professor Anderson responded in the affirmative. Mr. Allan inquired whether retrocession would help in reducing tension between local law enforcement and tribal law enforcement. He explained that the Coeur d'Alene Tribe had entered into agreements with local counties and their tribal law enforcement were sent to POST Academy. Professor Anderson responded that cross-deputization agreements are effective and it is a matter of whether each individual tribe wishes to enter into those agreements.

Chairman Guthrie inquired about the financial impact that retrocession can have on the state or tribe. Professor Anderson stated that he had not performed a study on this matter, but opined that if a tribe has a greater jurisdictional role due to the state no longer enforcing criminal laws, then the tribe may have the opportunity for enhanced funding from the federal government. However, he said, this is all dependent on appropriation; certainly it would enhance federal law enforcement's presence and US attorneys' involvement if they are the primary prosecutor instead of the state. Chairman Guthrie asked if a retrocession request could be crafted to address specific areas of the law. Professor Anderson opined that because the retrocession request is a negotiation between the state and tribe, it can be crafted to address particular subject matters within a particular reservation.

The committee adjourned for lunch break at 11:48 a.m.

The committee reconvened after lunch break.

A Tribal Nation's Perspective and Experience with Retrocession - Mathew Tomaskin, Yakama Nation

Chairman Guthrie called upon Mr. Mathew Tomaskin, legislative liaison for the Yakama Nation, to present next. Mr. Tomaskin joined the committee via conference-phone and began by introducing himself and providing some background on the Yakama Nation. He began his [presentation](#) by defining retrocession under Public Law 280. He informed the committee that as of April 19, 2016, retrocession had come into effect for the Yakama Nation. He emphasized that the retrocession process is lengthy, even after it is initiated. He provided a brief history timeline outlining the events that took place leading to retrocession on [slides 4-10](#).

The five subject matters that were retroceded on the Yakama Nation reservation regarding American Indians include:

- Compulsory school attendance;
- Juvenile delinquency;
- Domestic relations;
- Public Assistance; and
- Operation of motor vehicles on public roadways.

Mr. Tomaskin stated that retrocession of operation of motor vehicles on public roads has become an issue with Washington State Patrol (WSP). He explained that WSP's union felt it was a conflict of interest to share jurisdiction and has not patrolled the reservation since retrocession passed on April 19, 2016. However, they have assisted in fatal motor vehicle accidents on the reservation. He added that great partnerships have been built with neighboring counties and they have increased their patrols on the Yakama Nation reservation since retrocession.

Mr. Tomaskin addressed a few issues that are being addressed presently:

- Regarding the subject matter areas over which the State of Washington retroceded its jurisdiction, it does not have civil or criminal jurisdiction over American Indians;
- The local US Attorney has to assume many severe criminal cases and this can become burdensome for the office;
- For public safety, Yakama Nation is negotiating agreements so that any officer may pull over or detain any individual whom the officer has observed, or has probable cause to believe, committed an unlawful act; and
- Depending on whether the individual is enrolled in a federally recognized tribe, the individual will be taken into custody by the Yakama Nation or another jurisdiction.

He also emphasized the following points:

- Yakama Nation is not the only governmental authority on the Yakama Reservation;
- Yakama Nation has not gained criminal authority over non-Indians;
- Yakama Nation has not excluded non-Indians from the Yakama Reservation; and
- Yakama Reservation is not a haven from criminal prosecution.

Steps taken to implement retrocession:

- Evaluate programs for improvement (identify new staffing needs and clarify roles of programs);
- Budget modifications to meet anticipated needs; and
- Review and update the Yakama Code.

Chairman Guthrie inquired whether there were any delays or lack of effort from the federal government after retrocession. Mr. Tomaskin replied there were some delays, but felt it was due to lack of appointments made by the federal government, particularly in the Dept. of Justice. Chairman Guthrie inquired about whether crimes involving American Indians are automatically prosecuted on the federal level or if some crimes could be dealt with by local court systems. Mr. Tomaskin explained that the federal government assumes the role in prosecuting severe crimes on the Yakama Nation reservation. If the crime was committed by an American Indian, then local authorities would hand the individual to the tribal police, and if the crime was committed by a non-Indian, then tribal police would hand him over to the local authorities. The exception would be if it was a crime against an American Indian, then this scenario would be addressed by the federal government.

Mr. Allen asked if there was any coordination with local counties and if there was any opposition to the legislation. Mr. Tomaskin responded in the affirmative; they are still facing opposition from one of the counties. Mr. Wheeler inquired about any financial burdens that the Yakama Nation has taken on since retrocession. Mr. Tomaskin stated that they spent a significant amount of money on attorney fees and lobbying efforts - both on the state and national level. He further explained

that there was also a financial burden due to only having a six-month notice from the Secretary of the Interior and the timing of the Yakama Nation's fiscal year. Since they had already approved their fiscal budget, they had to transfer funds to accommodate for shortfalls in that time period. They have since adjusted their fiscal planning to accommodate the changes due to retrocession. Chairman Guthrie asked if the Yakama Nation was content with the decision it made in regards to retrocession. Mr. Tomaskin responded that while the cost was substantial, the tribe is pleased with its decision and the strong relationship that has developed between the tribe and Yakama County. Senator Buckner-Webb asked if there was disruption in the execution of services once retrocession became effective. Mr. Tomaskin responded that the transition went smoothly.

Collaboration Between Counties and Tribes - Rocky Watson, Former Kootenai County Sheriff

Chairman Guthrie called upon former Kootenai County Sheriff, Rocky Watson, to present next. Mr. Watson began his presentation by providing some personal background and occupational background. He explained that in 1999, as Sheriff of Kootenai County, the county entered into a formal agreement with the Coeur d'Alene Tribe. Unfortunately, it was a rocky transition due to the obstructionists. When he expressed his desire to do a cross-deputization between the tribe and the county, it was denied by Kootenai County's legal counsel, who stated that there was opposition from the insurance companies. However, when Mr. Watson contacted Idaho Counties Risk Management Program (ICRMP), he was told that they had no issue with his cross-deputization request.

The Coeur d'Alene Tribe hires its tribal officers to the same standards as Kootenai County and the State of Idaho and they attend Peace Officer Standards and Training (POST). However, they must attend as Kootenai County employees; they are not allowed to attend as tribal police officers and he expressed his discontent with this differentiation. In Kootenai County, the closest agency takes the call made from the reservation; they are completely cross-deputized. For example, if Kootenai County Sheriff Office cites a tribal member, it does so under tribal court. If tribal police cite a non-tribal member, they do so under district court. He explained that no single agency has funding to accomplish all its goals and that cooperation among agencies is vital. They also have multi-agency teams that include the Coeur d'Alene Tribe. He emphasized that before cross-deputization, there were many issues, conflicts, and concerns.

Mr. Watson explained that when the program began, he met regularly with the administrative judge and Kootenai County prosecutor to see if any issues had developed, particularly because now there were tribal officers presenting cases against non-tribal members in court. Their responses were that it was a smooth transition and there were no issues. The agreements in place have helped create a system that benefits all agencies involved, he said.

Discussion:

Mr. Allen stated that Public Law 280 is sometimes misunderstood by states and counties that believe there is a significant amount of resources spent on reservations and that retrocession will remove funding for these resources. He explained that there hadn't been any resources spent on the Coeur d'Alene reservation from any county or law enforcement; this is why tribes have their own tribal officers. The reservation had a difficult time addressing non-tribal members' criminal activity on the reservation, which is why these agreements were created. Vice-chair Aitken, Jr. applauded Mr. Watson's efforts. He was content to report that the Kootenai Tribe and Boundary County are now cross-deputized, in part thanks to the blueprint that Mr. Watson had created in building the relationships and agreements with the Coeur d'Alene Tribe and other agencies.

Tribal Flags in the Idaho Capitol Building Discussion:

Vice Chair Aitken, Jr. and Mr. Small opened the discussion and expressed their approval for placing tribal flags in the Idaho Capitol. Senator Buckner-Webb and Mr. Wheeler expressed their approval as well. Chairman Guthrie asked LSO staff to check with the appropriate parties to provide feedback regarding this request and a potential location.

Final Discussion

Mr. Wheeler expressed a concern about Public Law 280 regarding the funding for mental illness. There have been annual shortfalls within their social services program and mental health program and he asked that it be included in the next meeting agenda. He followed up with another concern regarding the criminal activity on the reservations. He explained that there are two counties within the Nez Perce Reservation that will not use their certified drug dogs, even though ISP uses them routinely. He expressed his desire to see these two issues addressed.

Mr. Small expressed his discontent regarding Public Law 280 as the Chairman of the Shoshone-Bannock Tribes. He was dissatisfied with the timeliness, lack of funding, and pushback regarding subject matter areas (specifically mental illness and juvenile justice) under Public Law 280 that the Shoshone-Bannock Tribes had difficulties getting the counties to address. He was content with the Public Law 280 presentations and stated the Shoshone-Bannock Tribes' intent to pursue retrocession. Mr. Small expressed his hope that the council would support the Shoshone-Bannock Tribes in their efforts to retrocede. Mr. Small also suggested the tribes would greatly benefit from having a tribal liaison within the Governor's Office, similar to the state of Montana.

Chairman Guthrie invited the public to speak to the council if they had anything pertinent to state. Director Mohan invited the council to request further study reports to JLOC for OPE to conduct if they believe it will be useful and beneficial to their work. He emphasized the importance for the counties and tribes to be willing to provide data so that OPE may analyze it when conducting its research. Ms. Teton suggested a framed summary of what each tribal flag represents to accompany each individual tribal flag. She also informed the council that the Shoshone-Bannock Tribes did a flag exchange with Senator Nye and Representative Anderson at their pow-wow at Fort Hall. Ms. Burke introduced herself as the tribal liaison for the Dept. of Environmental Quality (DEQ) and said she would provide contact information to LSO staff to distribute to the council members.

Chairman Guthrie requested feedback from the council members regarding the meeting's agenda and time length. Mr. Allen stated his approval of the agenda and the meeting time length and felt that it demonstrated the council's dedication. After some discussion, the council tentatively scheduled their next meeting for the first week of December, 2017. Chairman Guthrie expressed his thanks to the council and LSO staff for their work.

The meeting adjourned at 2:29 p.m.