



CANDIDATE EDUCATION SESSION:

INDIAN COUNTRY POLICY BASICS

JUNE 12, 2024

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MONTANA BUDGET & POLICY CENTER

AGENDA

1. Tribal Nations and Peoples in Montana (Census, Tribes, Reservation areas)
2. Foundational Concepts of
 1. Sovereignty
 2. Federal Trust Responsibility
 3. Citizenship
 4. Tribal Lands/Jurisdiction
 5. Taxation Authority/Revenue
3. State-Funded Programs for Indian Country
 1. ICED, IEFA, MILP
4. Next Steps for Candidates
5. Q&A



TRIBAL NATIONS AND PEOPLES IN MONTANA

BY THE NUMBERS



~**67,612** (6.2 percent)
AI/AN alone population
~**100,578** (9.3 percent)
AI/AN in combo population



8 Tribal governments
(**12** Tribes)

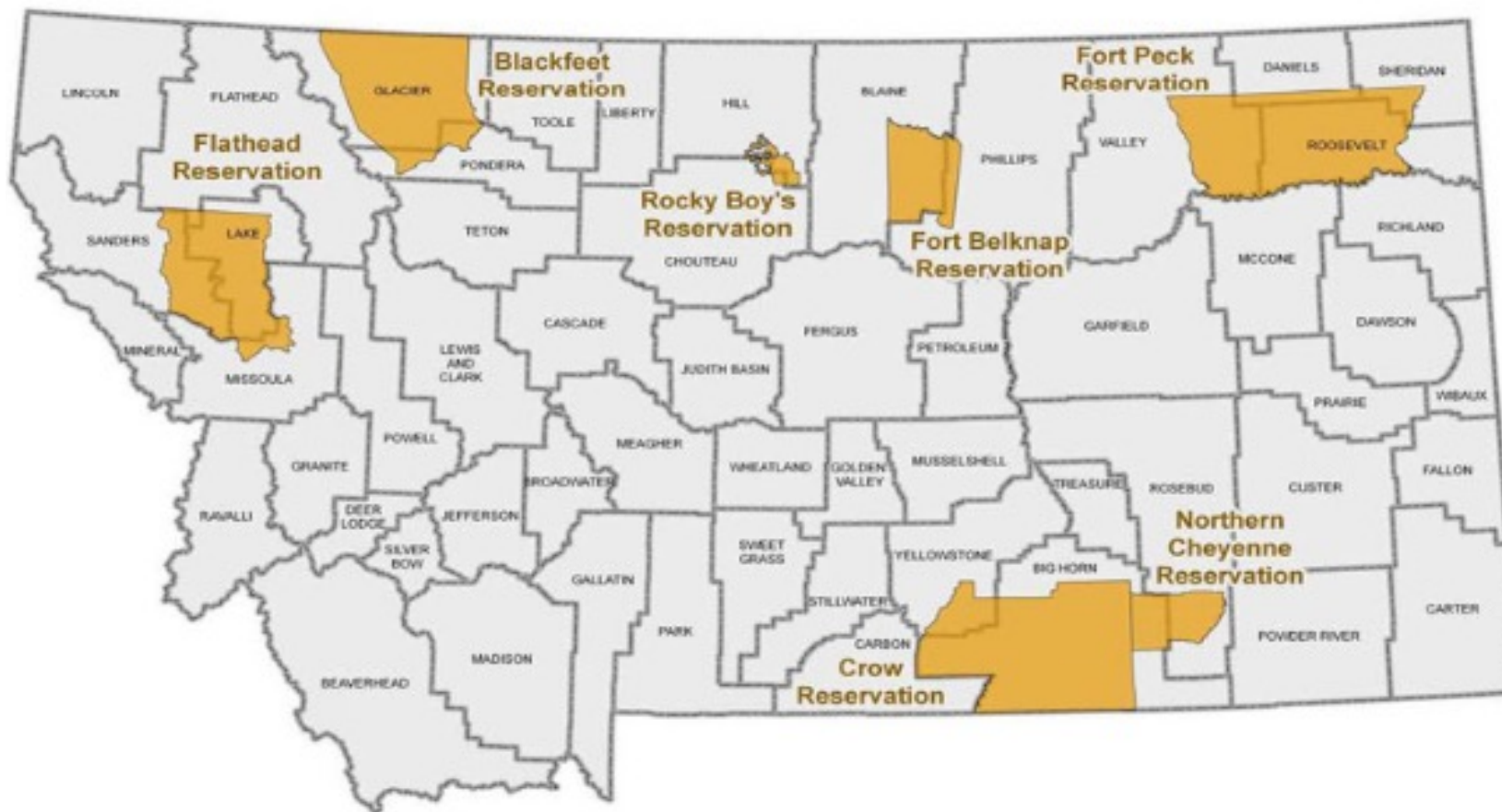


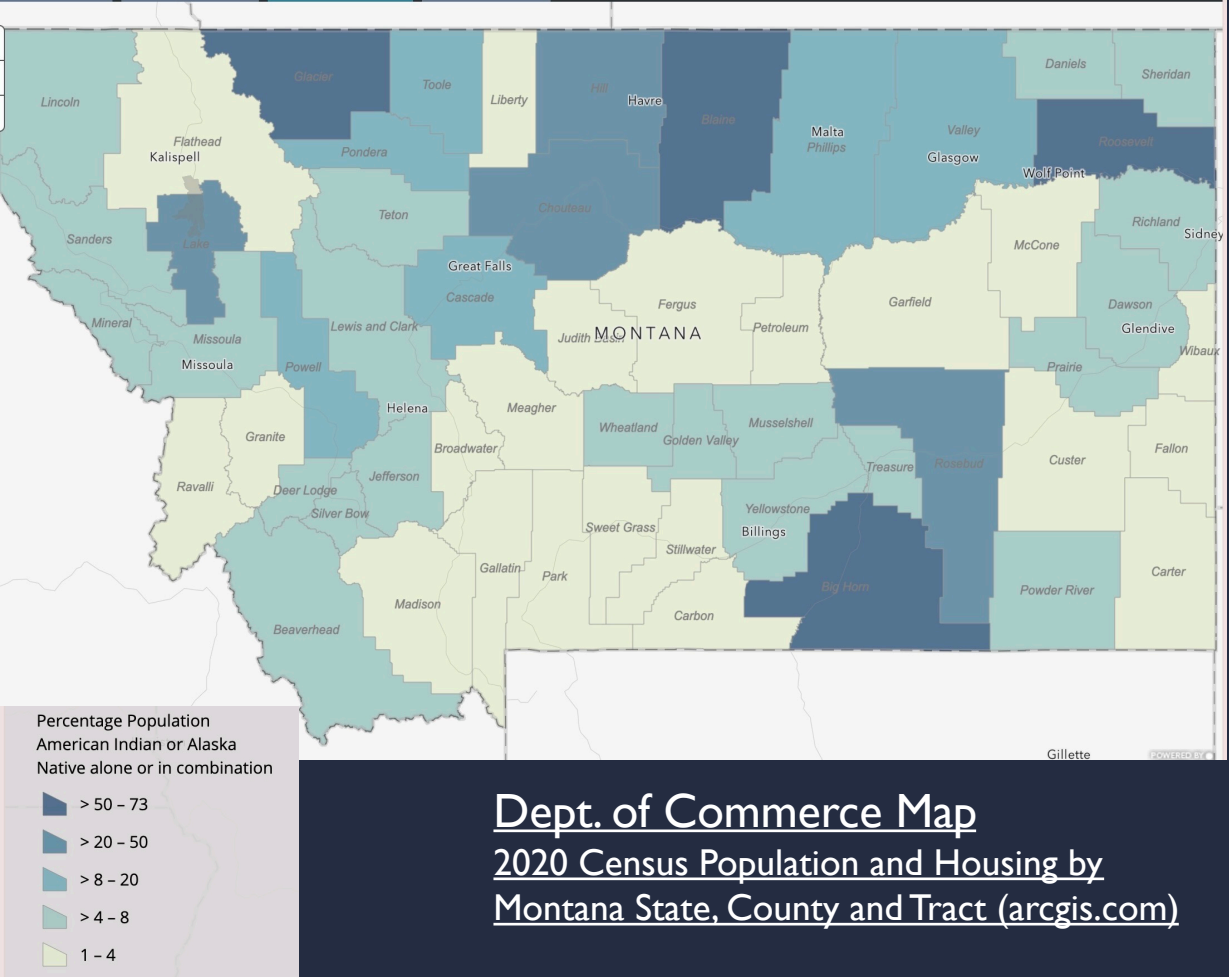
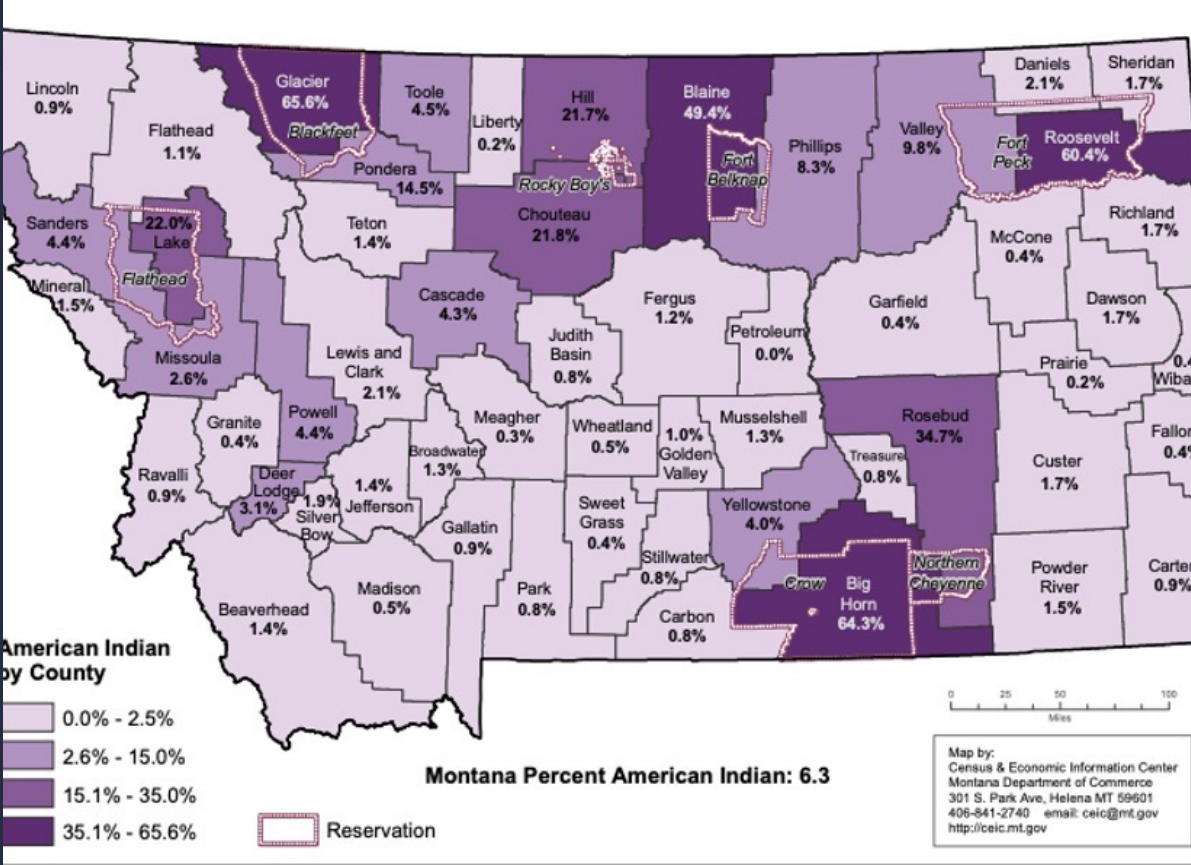
7 reservations

TRIBAL NATIONS IN MONTANA

Reservation	Tribal Government	Tribes
Blackfeet Reservation	Blackfeet Nation	Blackfeet
Crow Reservation	Crow Tribe of Indians	Crow
Flathead Reservation	Confederated Salish and Kootenai Tribes	Salish, Kootenai, Pend d'Oreille
Fort Belknap Reservation	Fort Belknap Indian Community	Gros Ventre, Assiniboiné
Fort Peck Reservation	Fort Peck Tribes	Assiniboiné, Sioux
Northern Cheyenne Reservation	Northern Cheyenne Tribe	Northern Cheyenne
Rocky Boy's Reservation	Chippewa Cree Tribe	Chippewa, Plains Cree
Headquartered in Great Falls	Little Shell Tribe of Chippewa Indians	Little Shell Chippewa

RESERVATIONS IN MONTANA







FOUNDATIONAL CONCEPTS

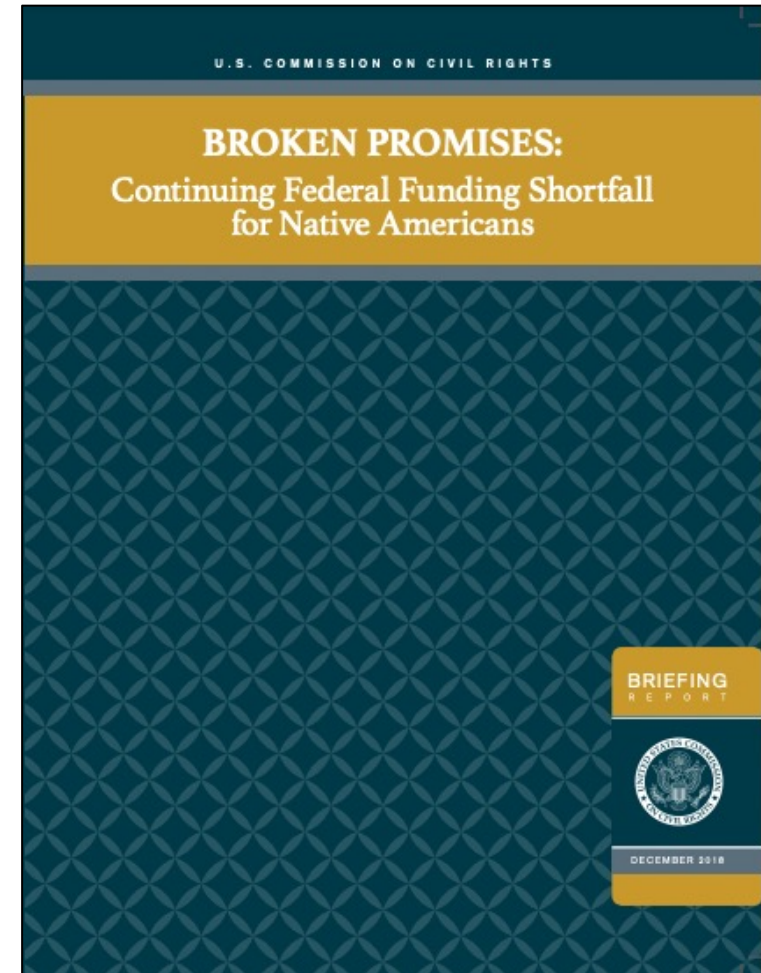
SOVEREIGNTY. CITIZENSHIP. LAND. JURISDICTION. TAXATION AUTHORITY

SOVEREIGNTY: INHERENT TO TRIBAL NATIONS

- **Sovereignty:** The **inherent** right of Tribal Nations to self-govern their people and territory.
- **Tribal sovereignty** includes the rights for Tribal Nations to:
 - Establish their own form of government,
 - Determine citizenship requirements,
 - Enact legislation, and
 - Establish law enforcement and court systems.

FEDERAL TRUST RESPONSIBILITY

- Treaties established the principles of the **federal trust responsibility**:
 - Protects Tribal lands and self-governance and
 - Provides federal assistance to Tribal nations.
- Unfulfilled **legal obligation** of the federal government.



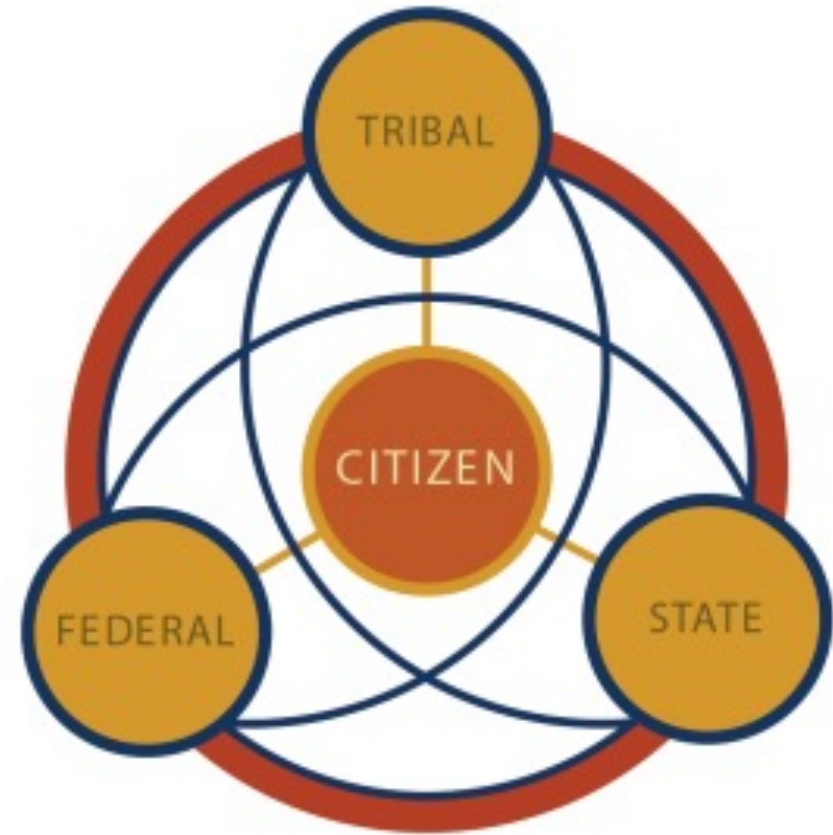
THE TRIBAL-STATE RELATIONSHIP HIGHLIGHTS

Long History and Broad Scope in Advancements

- 1951 – Legislature creates Coordinator of Indian Affairs position. (now Dir. Of Gov. Office of Indian Affairs)
- 1981 – Legislature enacts the State-Tribal Cooperative Agreements Act. (1993 allowed for Revenue Sharing)
- 1989 – Legislature establishes the Committee on Indian Affairs (now called STRC).
- 1995 – Legislature appropriates reimbursement to Tribal Colleges for nonbeneficiaries.
- 1999 – Legislature creates Indian Education for All to implement Article X Sec. 1 Part 2.
- 2003 – Legislature creates mechanisms for Tribal consultation with state agencies.
- 2005 – Legislature approves Gov. Brian Schweitzer's request to fund Indian Country economic development.
- 2011 – Legislature creates a five-year property tax exemption for Tribal fee land.
- 2013 – Legislature funds MT Indian Language Preservation Pilot Program.
- 2017 – Legislature to allow for wearing traditional regalia at graduation ceremonies.
- 2019 – Legislature passes Hannah's Act to help address MMIP crisis.
- 2023 – Legislature enhances protections for Indian Child Welfare.

TRIBAL CITIZENSHIP

- Determined by Tribal Nations.
- Does **not** derive from race or ethnicity, derives from political status.
- "Indians are state citizens and **are entitled to the full rights and privileges** as a result of that citizenship."
– Tribal Nations in Montana: A Handbook for Legislators



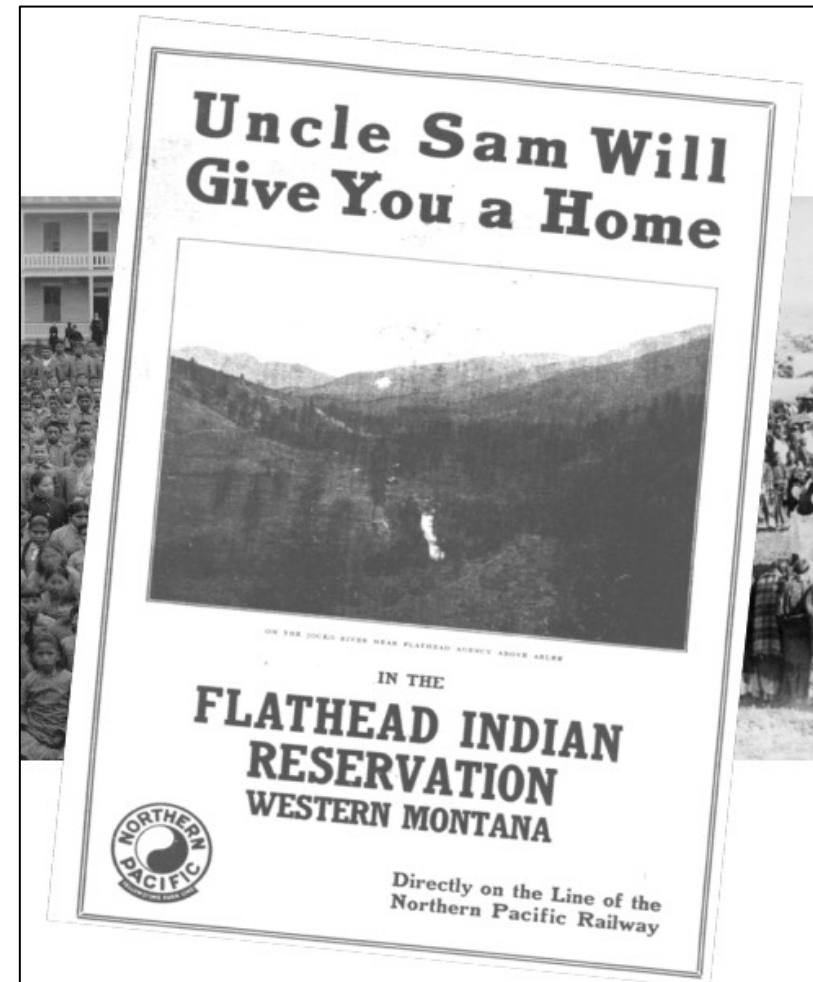
Source: National Congress of American Indians, "Tribal Nations and the United States."

TRIBAL LANDS

- **Indian Country:** Area over which the federal government and Tribal Nations exercise primary jurisdiction.
 - Includes land owned by non-Indians and towns incorporated by non-Indians.
 - Where Tribal sovereignty is strongest and where state authority is most limited.
- Tribal Nations have the right and authority to regulate activities on their lands independently from the state.

TRIBAL LANDS: ALLOTMENT

- **General Allotment Act of 1887:** Opened reservation lands to non-Indian settlers.
- Part of federal government's efforts to eliminate Tribal sovereignty, abolish reservations, and assimilate American Indians.



TRUST LAND VS. FEE LAND

TRUST LAND

- Held in trust by the federal government for Tribal Nations and citizens
- Exempt from property taxes

FEE LAND

- Generally private property
- Can be owned by American Indians and non-Indians
- Subject to property taxes

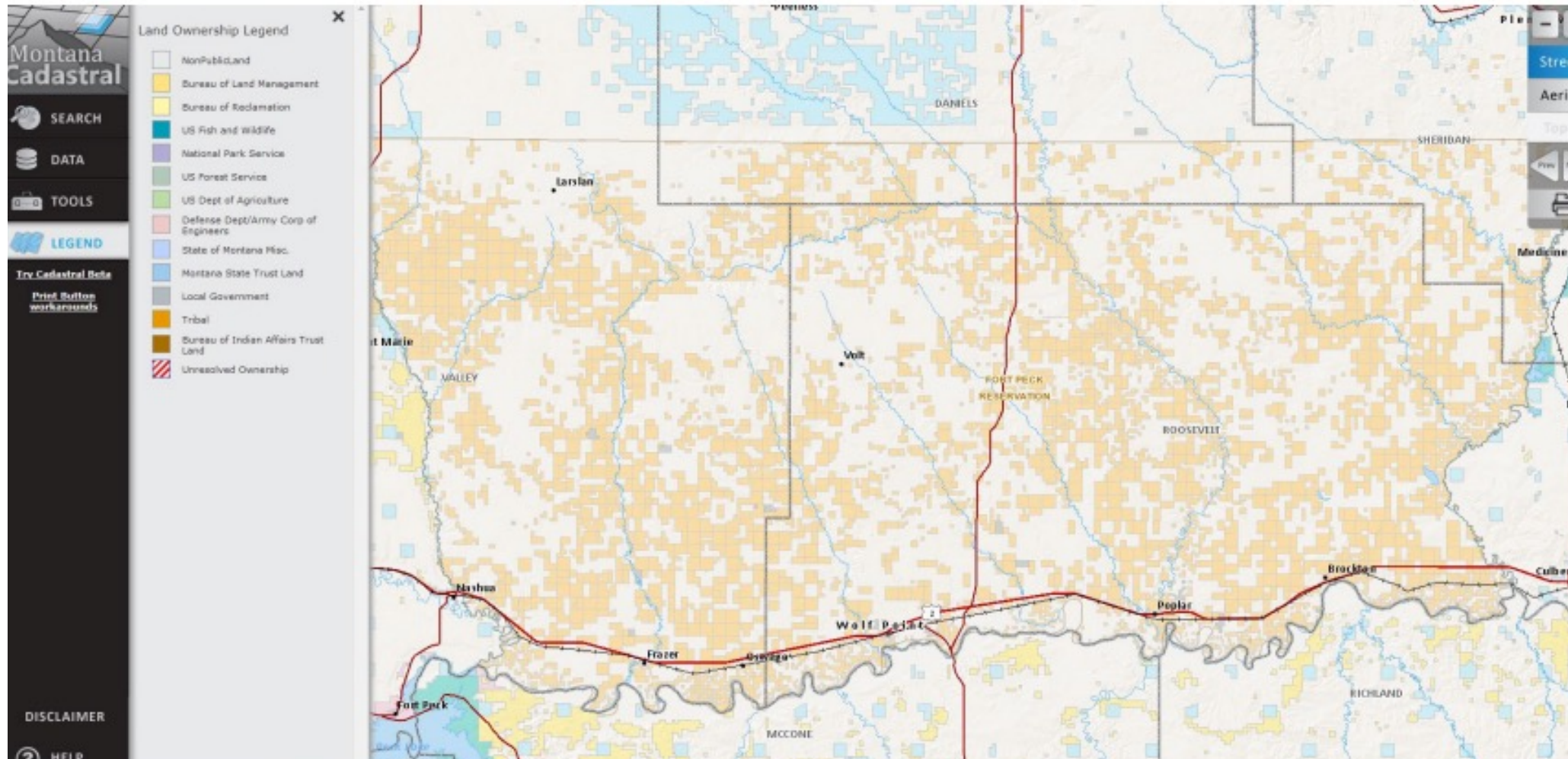
Flathead Reservation 56% Trust



All Montana Cadastral screenshots taken Sept 2021

Source: McCracken, P., "Fee-to-Trust: Big Picture Background," State-Tribal Relations Committee

Fort Peck Reservation 46% Trust



Source: McCracken, P., "Fee-to-Trust: Big Picture Background," State-Tribal Relations Committee

TRIBAL LANDS TODAY

Land Status of Reservations in Montana

Reservation	Total Acreage	% Trust Land	% Fee Land
Blackfeet	1.94 Million	71	29
Crow	2.57 Million	73	27
Flathead	1.3 Million	56	33
Fort Belknap	964,122	98	2
Fort Peck	2.37 Million	52	48
Northern Cheyenne	472,317	99	1
Rocky Boy's	122,259	100	0

Sources: Montana Office of Public Instruction Division of Indian Education, Montana Indians: Their History and Location and U.S. Department of Interior Land Buy-Back Program for Tribal Nations Cumulative Sales through September 25, 2020.

JURISDICTION IN INDIAN COUNTRY

- **Indian Country:** Tribal sovereignty is strongest here. State authority is most limited.
- Tribal governments have both civil and criminal jurisdiction.
- Tribal, federal, state, and local governments all share some level of jurisdiction in Indian Country.

At A Glance: Criminal Jurisdiction in Indian Country
 updated from the Nov 2020 edition of [Tribal Nations in Montana: A Handbook for Legislators](#)

Identity of Perpetrator	Identity of Victim	Major Crimes as defined by the Major Crimes Act*	All Other Crimes
Indian	Indian	Federal** and Tribal	Tribal
Indian	Non-Indian	Federal** and Tribal	Federal*** and Tribal
Non-Indian	Indian	Federal*** and State*****	Federal and State (and sometimes Tribal****)
Non-Indian	Non-Indian	State	State
Indian	Victimless or Consensual	Not applicable	Federal and Tribal
Non-Indian	Victimless or Consensual	Not applicable	State

* Major crimes include: murder, manslaughter, kidnapping, maiming, felony sexual abuse, incest, assault with intent to commit murder, assault with a dangerous weapon, assault against a person under 16, felony child abuse or neglect, arson, burglary, robbery, larceny

** Under Public Law 83-280, in Montana, the state has concurrent jurisdiction with the CSKT over felony crimes committed by Indians and the CSKT has reassumed exclusive jurisdiction over misdemeanor crimes committed by Indians

*** The federal government has jurisdiction for other crimes under the General Crimes Act

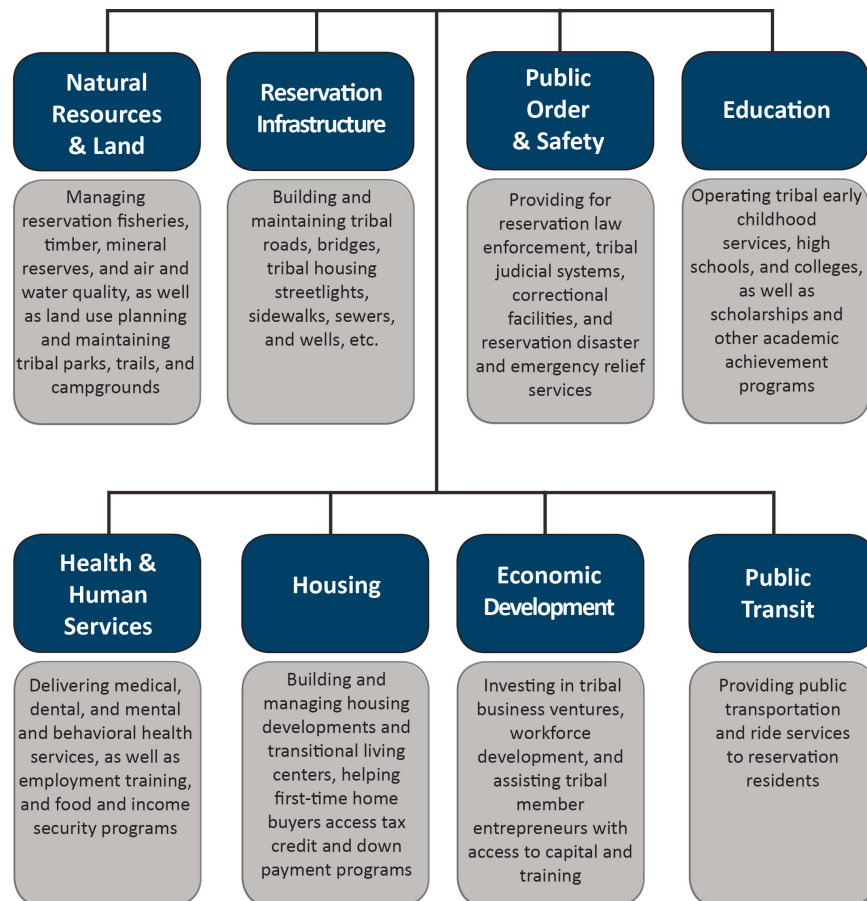
**** A tribe may opt into assuming jurisdiction for domestic violence, dating violence, and criminal violations of protective orders under the Violence Against Women Act if the tribe agrees to provide certain procedural guarantees

***** The US Supreme Court recently held in *Oklahoma v. Castro-Huerta*, 597 U.S. ____ (2022) that the state has concurrent jurisdiction with the federal government to prosecute crimes committed by Non-Indians against Indians in Indian country.

Overview of Criminal Jurisdiction in Indian Country

TRIBAL TAXATION AUTHORITY

Tribal Government Services



- The power to tax is inherent to sovereignty.
- Like any government, Tribal governments need revenue.
- Tribal governments must provide many of the same services as other governments, **except without the usual tax revenue on which those governments rely.**

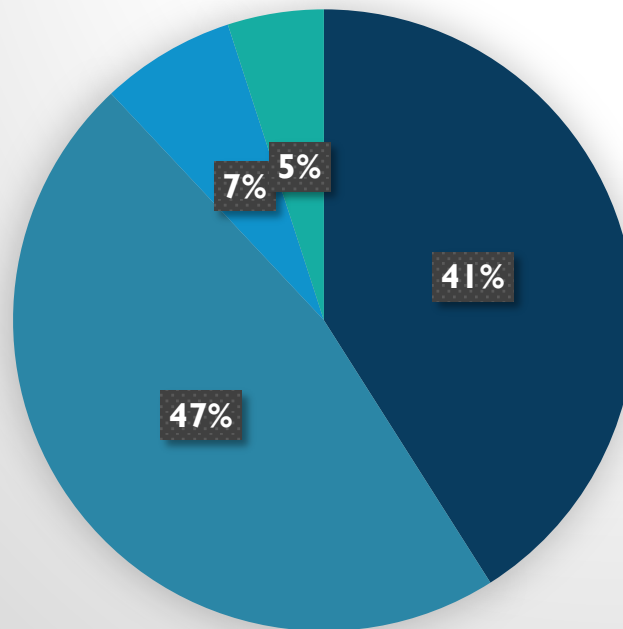
FEDERAL GOVERNMENT REVENUE

Federal Tax Revenue (FY 2020)



MONTANA STATE REVENUE

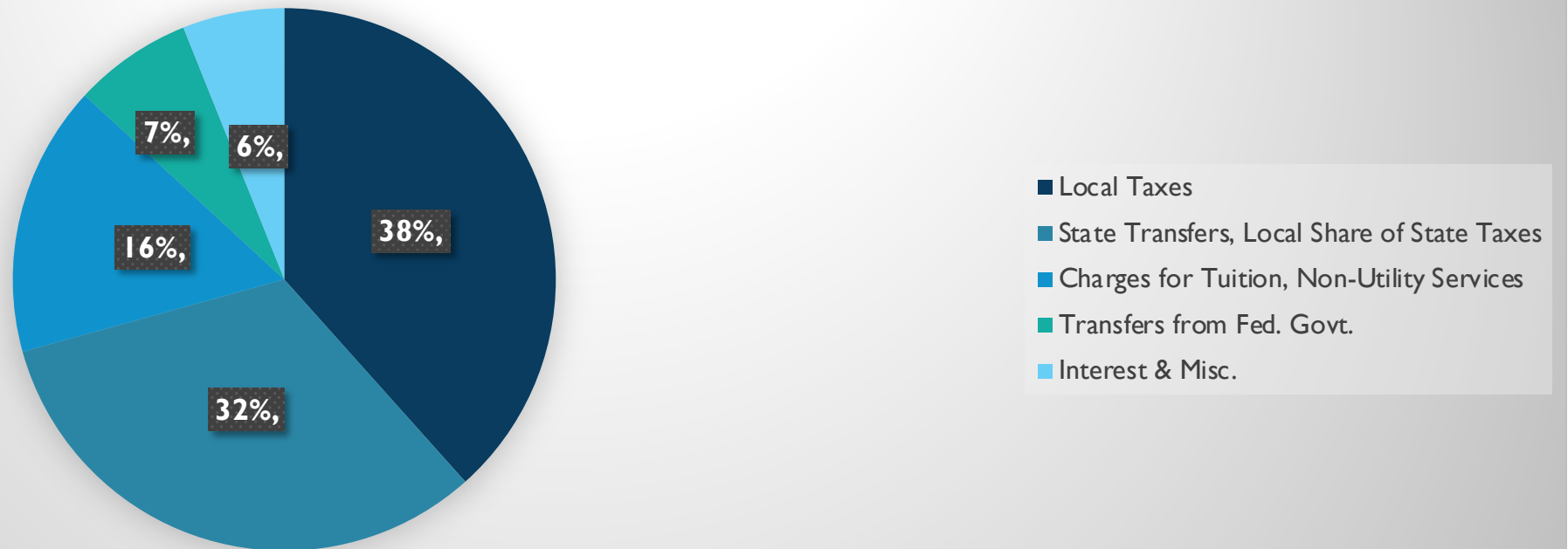
State Revenue (FY 2020)



- State-Collected Taxes
- Transfers from Fed. Govt.
- Charges for Tuition, Non-Utility Services
- Interest & Misc.

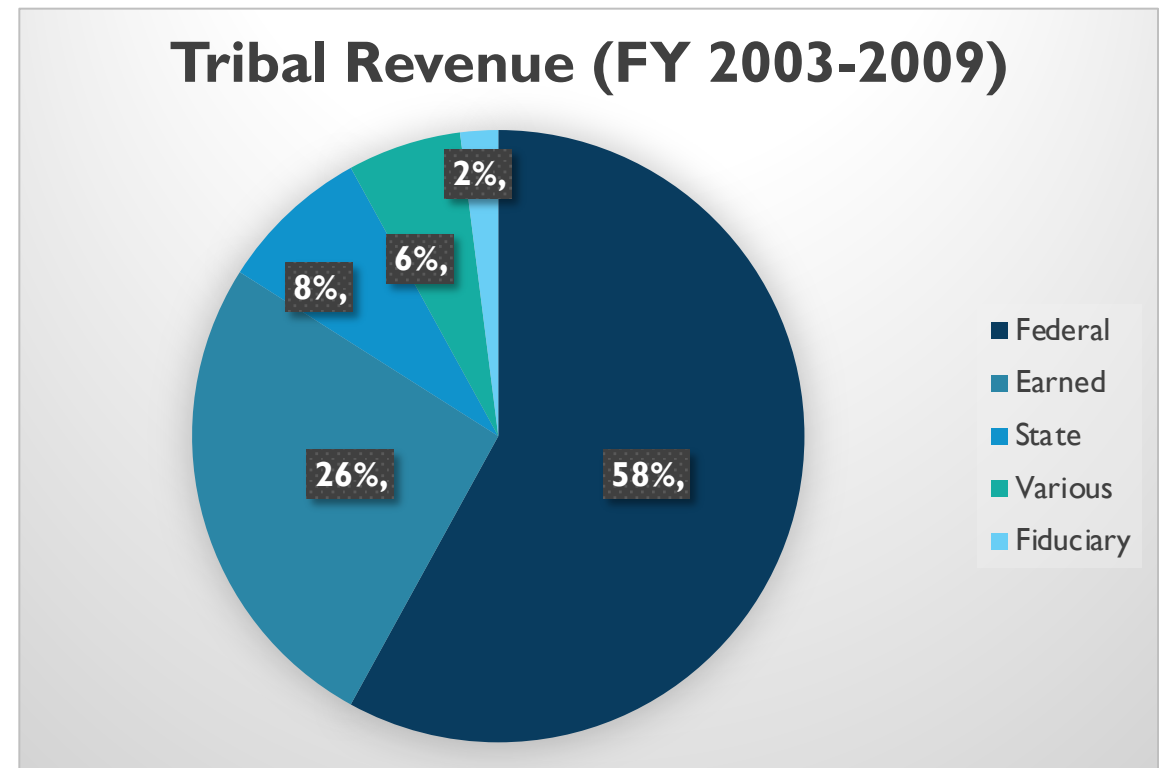
MONTANA LOCAL GOVERNMENT REVENUE

Local Revenue (FY 2020)



MONTANA TRIBAL GOVERNMENT REVENUE

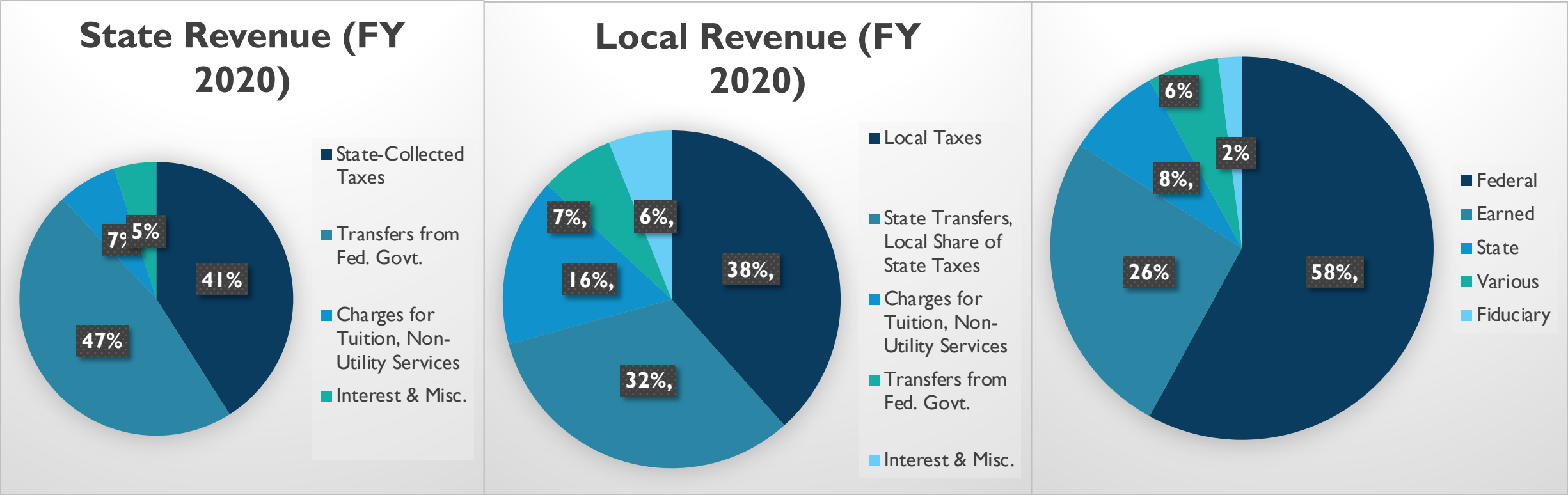
- Federal funding is the largest revenue source for Tribal governments. **Most of this funding to Tribal Nations stems from the federal government's trust responsibility.**



State Revenue (FY 2020)

Local Revenue (FY 2020)

Tribal Revenue (FY 2003-2009)



TAXES AND TRIBAL GOVERNMENTS

- Taxes Tribal governments **assess**:
 - Alcohol
 - Tobacco
 - Fuel and severance taxes on natural resource development
- Taxes Tribal governments **pay**:
 - Federal income taxes
 - Property taxes
 - Federal payroll taxes
 - Some federal excise taxes



**Tribal
Governments
Retain Their
Sovereign
Power to
Tax**

REVENUE-SHARING AGREEMENTS IN MONTANA

- Agreements between the state and respective Tribal governments to split revenue on certain excise taxes (alcohol, tobacco, oil & natural gas).
- **Purpose:** To avoid legal controversy, possible litigation, and dual taxation.

BLACKFEET NATION - MONTANA ALCOHOLIC BEVERAGES TAX AGREEMENT

The Blackfeet Nation - Montana Alcoholic beverages Tax Agreement ("Agreement") is entered into this 29th day of July, 2005, by and between the State of Montana ("State"), and the Blackfeet Nation of the Blackfeet Reservation ("Nation").

The Blackfeet Tribal Business Council ("Council") is the governing body of the Nation and is authorized by Article VI, Section 1(a) of the Constitution and By-Laws for the Blackfeet Nation of the Blackfeet Indian Reservation of Montana to enter into this Agreement.

The State is authorized pursuant to the State-Tribal Cooperative Agreements Act, Title 18, chapter 11, MCA, to enter into this Agreement.

The State and the Nation agree as follows:

1. General Purposes of Agreement. The purposes of this Agreement are to minimize legal controversy and possible litigation over the taxation of alcoholic beverages within the exterior boundaries of the Blackfeet Reservation ("Reservation"), to mitigate the effects of dual taxation on the sale of alcoholic beverages by both the Nation and the State, and to provide an effective means by which revenues generated by the state and tribal taxes on the sale of alcoholic beverages may be shared and distributed. In order to accomplish these purposes, the State and the Nation agree that the same level of taxation shall be imposed on the sale of alcoholic beverages both within and outside the boundaries of the Reservation. For purposes of this Agreement, the term "alcoholic beverages" shall mean alcoholic beverages and alcoholic beverage products as those terms are defined by state law. This section shall be interpreted consistently with the terms and conditions set forth in Section 13 of this Agreement.

TRIBAL TAXATION AUTHORITY: WHO IS SUBJECT?

- Tribal citizens
- Non-Indians
 - Commercial transactions (on **trust land**)
 - Commercial transactions (on **fee land**) when:
 - A contractual agreement is in place.
 - The taxed activity threatens or affects the political integrity, economic security, or health or welfare of the Tribal Nation.

STATE TAXATION AUTHORITY IN INDIAN COUNTRY

- The state **cannot** tax Tribal Nations or citizens on their own reservations.
 - Exception: property taxes, income taxes in some cases
- The state **can** levy certain taxes on non-Indians in Indian Country when:
 - Federal law does not explicitly prohibit the tax, and
 - The tax does not interfere with the tribal nation's ability to perform governmental functions.

INDIGENOUS PEOPLE PAY TAXES

Tax	Als living and working on their reservation	Als living off and working on their reservation	Als living on and working off their reservation
Federal Income Taxes	Yes	Yes	Yes
State Income Taxes	No	Yes	Yes
FICA	Yes	Yes	Yes
Property Taxes	Yes, on Fee Lands	Yes	Yes, on Fee Lands
Hotel Occupancy Taxes	Yes, if off their reservation	Yes, if off their reservation	Yes, if off their reservation
Motor Vehicle Taxes	Yes, some	Yes	Yes, some
Alcohol, Tobacco, Fuel Taxes	Yes	Yes	Yes

PROPERTY TAX LEGISLATION IN 2021

Two Examples of Undermining Tribal Sovereignty:

SB 138

- **Bill Title:** Repeal temporary Tribal property tax exemption
- **Bill Summary:** In 2011, the Legislature passed SB 412 to create a temporary (5-year) property tax exemption that Tribal Nations use to facilitate fee-to-trust transfers. SB 138 would have repealed the exemption.
- **Outcome:** Tabled in committee

SB 214

- **Bill Title:** Revise laws related to temporary Tribal property tax exemption
- **Bill Summary:** SB 214 allows counties to capture back taxes on Tribal property should 1) the federal govt. deny the trust application or 2) the exemption expire.
- **Outcome:** Enacted

RECAP OF FOUNDATIONAL CONCEPTS

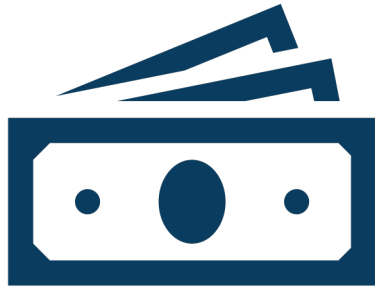
1. **Sovereignty**: Inherent to Tribal Nations. Not subordinate to the state.
2. **Citizenship**: Tribal citizens are citizens of Montana.
3. **Tribal Lands**: Indian Country is where Tribal sovereignty is strongest.
4. **Jurisdiction**. Complicated. Jurisdictional authorities overlap.
5. **Taxation Authority**: Inherent power of Tribal Nations. State and local governments challenge Tribal taxation authority.



THE STATE-FUNDED PROGRAMS FOR INDIAN COUNTRY

INDIAN ECONOMIC DEVELOPMENT PROGRAM. INDIAN EDUCATION FOR ALL. MONTANA LANGUAGE PRESERVATION PROGRAM. TRIBAL COLLEGE ASSISTANCE PROGRAM.

TRIBAL NATIONS CONTRIBUTE TO STATE FISCAL HEALTH



Each year, Tribal Nations infuse ~\$1
BILLION into the state economy.



Tribal colleges infused **\$76.2 MILLION**
into the state economy in 2009.

INDIAN COUNTRY ECONOMIC DEVELOPMENT PROGRAM

- **Purpose:** Since its inception in 2005, the ICED program has aimed to increase economic opportunity in Tribal communities by providing Tribal governments, organizations, and citizens with funding and technical assistance to carry out economic development activities.
- 2025 biennium: **\$1.75 M (On-Going appropriation)**

According to a 2018 report, 84 percent of IEF grant recipients remain in operation after five years, whereas just 20 percent of small businesses nationally succeed.

INDIAN EDUCATION FOR ALL (IEFA)

- **Purpose:** Indian Education for All Act or (IEFA) was created to encourage every Montanan whether American Indian or non-Native to learn about the distinct and unique heritage of American Indians in a culturally responsive manner
- **Article X, Section 1, Part 2:** *"The state recognizes the distinct and unique cultural heritage of the American Indians and is committed in its educational goals to the preservation of their cultural integrity"*
- **Funding:** IEFA is a part of the BASE budget for public schools- meaning it maintains a consistent amount of funding and does not have to be renewed every biennium. It is funded at just \$23.91 per ANB or per student.

1972

Article X was ratified

1999

Legislature enacted IEFA which required state agencies to implement the constitutional mandate

2005

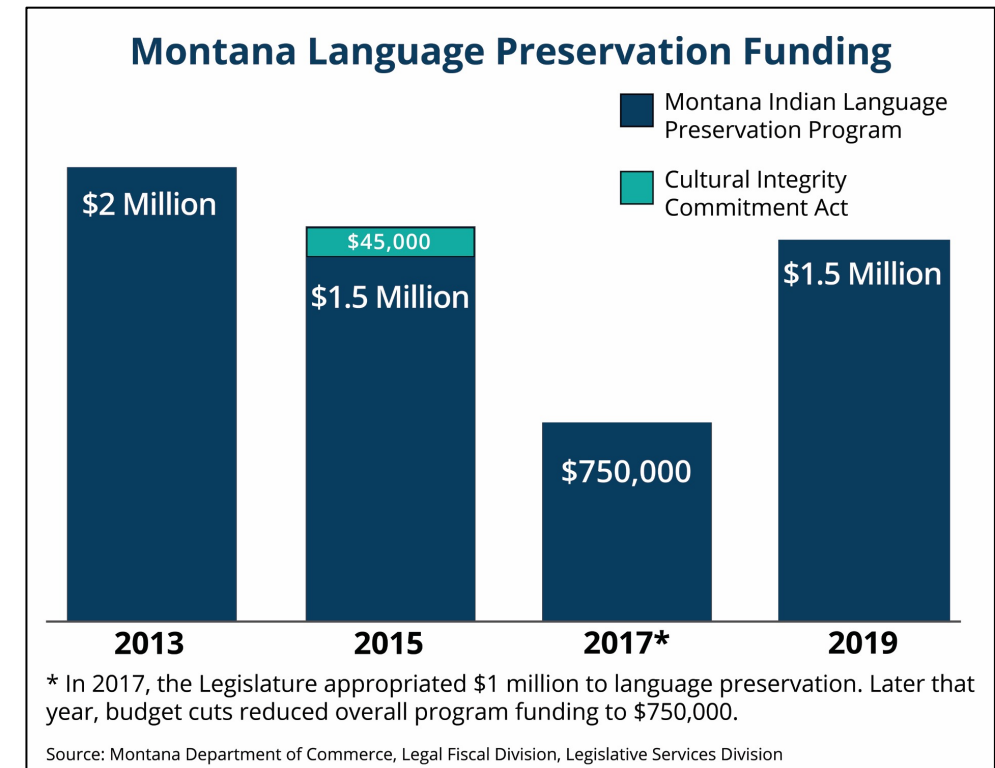
Montana Supreme Court ruled funding was unconstitutional

2024

Yellow kidney v. OPI

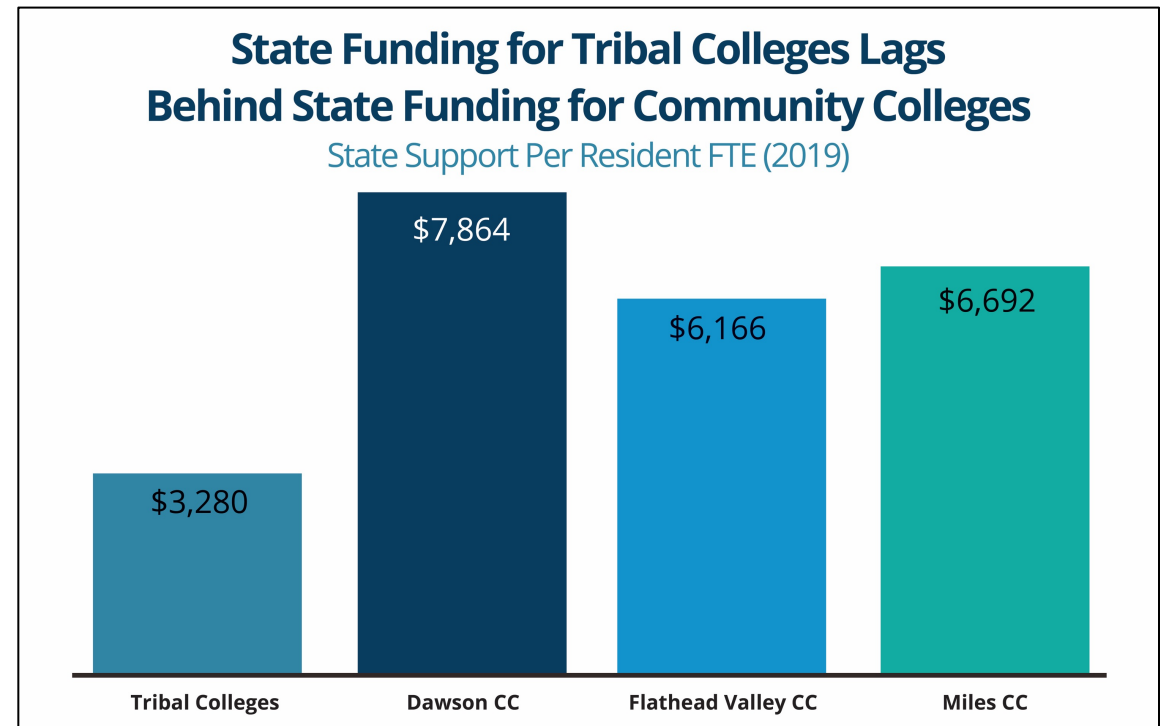
MONTANA INDIAN LANGUAGE PRESERVATION PROGRAM (MILP)

- **Purpose:** Since its inception in 2013, the MILP program supports language preservation efforts by Tribal governments.
- 2025 biennium: **\$1.5 M (now an on-going appropriation in HB 2)**



TRIBAL COLLEGE ASSISTANCE PROGRAM (TCAP)

- **Purpose:** The TCAP provides financial support for Tribal colleges to educate resident nonbeneficiary students and to administer the High School Equivalency Test (HiSET).
- 2025 biennium: ~\$2 M, which includes on-going funding of \$1.8M for non-beneficiary students and an OTO funding of \$200,000 for Tribal colleges to administer the HiSET.



NEXT STEPS FOR CANDIDATES...

- **Recognize Tribal Sovereignty & Respect Tribal Communities**

1. Listen to American Indian Caucus members and the public testimonies from American Indian citizens who are closest to their community's needs.
2. Recognize when their voice may be absent from the conversation and work to include it.

- **Make Connections**

1. The Montana American Indian Caucus (MAIC) meets usually during the noon hour once a week as a committee and will hear any bill proposals from other legislators or members of the public.
2. The State-Tribal Relations Interim Committee consists of Indian and non-Indian legislators who represent districts with higher American Indian population. They meet w/ each Tribal govt before the next session.
3. Reach out to Tribal liaisons for each state agency/department (FWP, MDT, DOJ, DPHHS, Dept. Commerce)
4. Rocky Mountain Tribal Leaders Council is an entity consisting of representatives from Tribes in MT, WY, ID, and the Gov. is required to consult with them to decide on a member for the Transportation Commission.
5. Governors Office of Indian Affairs Director– Misty Kuhl

- **Vote Against State-Level Challenges to Tribal Sovereignty**

- **Promote Legislation that Enhances Tribal Sovereignty and Protections for Indian Country**

RESOURCES

- **Montana Budget & Policy Center**

- [Policy Basics: What Is Tribal Sovereignty?](#)
- [Policy Basics: What Is Tribal Citizenship?](#)
- [Policy Basics: Land Status of Indian Country](#)
- [Policy Basics: Jurisdiction in Indian Country](#)
- [Policy Basics: Taxation Authority in Indian Country](#)
- [Economic Development in Indian Country: A State Investment with Continued Returns](#)
- [Indian Education for All](#)
- [Tribal Language Preservation Strengthens Communities But Needs Consistent Funding](#)
- [An Outstanding Return on Investment: Tribal Colleges and Their Contributions to Montana](#)
- [2023 State-Tribal Legislative Impacts](#)
- [MBPC Tribal-State Budget Handbook](#)

- **Legislative Services Division**

- Tribal Nations in Montana: A Handbook for Legislators – Keep an eye out for updated version 2024

MORE RESOURCES

■ Other Shared Links

- YellowRobe 2003 Report - [Monetary Contributions of Reservations to the State of Montana](#)
- Dept. of Commerce Report 2003 - 2009 - [Economic Contributions of Reservations to the State of Montana](#)
- [Tribal Colleges in Montana 2016 - Funding and Economic Impacts](#)
- [The Capitalization of 'Tribal Nations' and the Decolonization of Citation, Nomenclature, and Terminology in the United States](#)
- Federal Trust Responsibility - [Broken Promises: Continuing Federal Funding Shortfall for Native Americans](#)
- Revenue Sharing Agreements - [State and Tribal Tax Agreements - Montana Department of Revenue \(mtrevenue.gov\)](#)



QUESTIONS?

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