

## NORTH DAKOTA LEGISLATIVE MANAGEMENT

## Minutes of the

**TRIBAL TAXATION ISSUES COMMITTEE**

Thursday, August 31, 2017  
Brynhild Haugland Room, State Capitol  
Bismarck, North Dakota

Governor Doug Burgum, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Governor Doug Burgum; Representatives Craig Headland, Corey Mock; Senators Dwight Cook, Joan Heckaman, Rich Wardner; Citizen Members Scott J. Davis, Ryan Rauschenberger, Brent Sanford

**Member absent:** Representative Al Carlson

**Others present:** Representative Marvin E. Nelson, Rolla  
See [Appendix A](#) for additional persons present.

Governor Burgum welcomed the committee members, tribal leaders, and tribal members. He said the Tribal Taxation Issues Committee is unique in that it is a combination of executive and legislative leaders. He said the state and the tribes have a common goal of growing the economy of each. To accomplish that growth, he said, a stable regulatory tax structure is necessary. He said the state and the tribes are not competing with each other, but rather both entities are competing against the rest of the United States and the world. He said in his visits to the reservations around the state, in addition to tax issues, many other issues facing tribal nations were discussed, including addiction, education, and health care. He said we are all human beings trying to do what is right for all citizens of the state.

Governor Burgum called on Mr. Duane Jackson, Sr., Mission District Representative, Spirit Lake Sioux Tribe, for a prayer.

At the request of Governor Burgum, the Legislative Council staff presented the [Supplementary Rules of Operation and Procedure of the North Dakota Legislative Management](#).

At the request of Governor Burgum, the Legislative Council staff presented a memorandum entitled [Tribal Taxation Issues Committee - Background Memorandum](#) regarding tribal taxation issues.

Governor Burgum called on Mr. Ryan Rauschenberger, Tax Commissioner, for a presentation ([Appendix B](#)) regarding revenue sharing agreements with tribal governments. Mr. Rauschenberger also provided information regarding taxes subject to existing tribal revenue sharing agreements ([Appendix C](#)) and revenue sharing agreement collections for fiscal years 2012 through 2017 ([Appendix D](#)).

**THREE AFFILIATED TRIBES OF THE FORT BERTHOLD RESERVATION**

Governor Burgum called on Mr. Mark N. Fox, Chairman, Three Affiliated Tribes of the Fort Berthold Reservation. Chairman Fox introduced tribal council members in attendance--Mr. Randy Phelan, Vice Chairman, Mandaree District; Mr. Fred Fox, Executive Secretary, White Shield District; and Dr. Monica Mayer, Councilwoman, New Town and Little Shell District.

Chairman Fox thanked Senator Cook for proposing the idea and the Legislative Assembly for passing the bill that provided for this committee. He thanked Governor Burgum and his staff for taking a lead role and for getting out to Indian country. He expressed his sympathy and condolences to the family and friends of Savanna Greywind. He thanked the state for allowing the vigil to be held on the Capitol grounds. He also acknowledged the veterans in the room.

Chairman Fox said the Three Affiliated Tribes consists of six districts. He said when the tribes lost lands, hunting, fishing, gaming, and regulation rights to those lands were reserved. He said the United States Supreme Court has held that rights not explicitly removed remain with the tribes. He said the power to tax, which includes the right to regulate and control land, is an inherent right. He said Mandan-Hidatsa-Arikara (MHA) members were the first farmers in the state and were self-sufficient until the tribal land was flooded as a result of the Garrison Dam. Before 1950, he said, the tribe had almost no dependency on the federal government.

Chairman Fox said the taxation issue under discussion is not about greed, it is about need. As a tribal chairman, he said, he must provide for the needs of the tribe just as any other state and local government must provide for the needs of its citizens. He provided a flowchart ([Appendix E](#)) on how taxable activity generates revenue for programs. He said oil and gas development has been positive in many ways, but has also brought negative impacts including increased crime, the destruction of roads, and high costs of living.

Chairman Fox said the tribe never has collected tax revenue on alcohol. He said tribal members were not able to purchase alcohol until the 1950s. He distributed a letter ([Appendix F](#)) that encourages the state to enter a revenue sharing agreement with the tribe for an alcohol gross receipts tax to avoid the imposition of double taxation by the tribe and the state.

Chairman Fox provided information related to oil and gas including a letter ([Appendix G](#)) from oil companies to state officials and a letter ([Appendix H](#)) to oil producers from Ms. Cynthia C. Monteau, Director, Tax Department, Three Affiliated Tribes. Chairman Fox said only 11 to 12 rigs are operating on the reservation compared to a previous high of 30 to 32 rigs. He said the tribal/state oil and gas agreement provided the tax rate applied to oil and gas production may be changed only if both parties agree to the rate change. He said the tribe is not trying to impose an additional tax, but rather is looking to collect the tax at the rate stated in the agreement for wells within the boundaries of the Fort Berthold Reservation. He said the tribe's legal position is that one-half of the 1.5 percent tax that was not collected when the rate was unilaterally lowered from 11.5 to 10 percent is due to the tribe. He said the tribe disagrees with the information sent by the Tax Commissioner to oil companies which states the oil companies do not have to pay the .75 percent tax. He said the tribe has discussed with the oil companies how the tribe can realize the tax it asserts is due under the agreement. He said the tribal business council passed a resolution ([Appendix I](#)) earlier this year stating the tribe intends to collect the tribe's portion of the 1.5 percent tax that was not collected by the state.

Chairman Fox said there are three possible outcomes for the oil and gas agreement:

- Remain in the agreement, but receive a commitment from the state regarding how the agreement will be modified in terms of revenue sharing, particularly in regard to allocation of revenues from trust land. He said the tribe needs more revenue to address problems related to oil and gas impacts on the Fort Berthold Reservation and the tribe would like to receive a commitment the Legislative Assembly will act on the agreement in the near future.
- Remain in the agreement, but negotiate with oil companies for the payment of one-half of the 1.5 percent tax that was not collected by the Tax Commissioner when the tax rate was unilaterally lowered.
- Submit a signed copy of the draft letter ([Appendix J](#)) providing notice to the state to terminate the agreement. If a resolution is not reached within the time specified in the agreement, he said, the tribe will send notice to oil companies that all future tax is due and payable directly to the tribe.

Chairman Fox said the first option can be accomplished through the work of this committee. He said another tribal concern is the 2015 legislative change that modified the Governor's authority to enter cooperative agreements with the tribes. Because of the 2015 legislation, he said, agreements estimated to have any fiscal impact require legislative approval. He said the tribe would like the restrictions on the Governor's ability to negotiate remedied in the very near future.

Chairman Fox said federal funds to support trust lands shrink every year. He said the cost to repair a 1.25-mile road is \$4 million. He said Fort Berthold has 160 to 200 miles of road which need paving to support oil and gas development. He said the federal government budgets only \$1 million per year for roads on the Fort Berthold Reservation. He said the tribe has spent \$50 million to \$60 million on roads in the past 2 years. He said the tribe needs oil and gas revenue to address these costs. He said the tribe should receive 100 percent of the oil and gas revenue derived from trust lands. He said the tribe needs taxable activity to generate tax revenue to fund its programs. He said trust lands are those lands titled by the federal government, but set aside for tribal members and the tribe itself. When one-half of the tax revenue is taken away, he said, the ability of the tribe to meet the tribe's needs is reduced. He said the tribe needs 100 percent of the tax revenue to support the activities that occur on trust lands.

Chairman Fox said a 1999-2000 study conducted by the Department of Commerce indicated the five tribal nations in the state had a \$2.2 billion impact on North Dakota's economy. He said in 2012-13, the MHA Nation conducted a followup study that showed Fort Berthold has nearly a \$3 billion impact on North Dakota's economy. He said if the tribe can collect 100 percent of the revenue on trust lands, the tribe will be able to address its needs and prosper, which in turn will result in the state prospering. He said the state should think of it as a return on investment. He said the tribe spends the majority of its personal income off the reservation. He said each time the tribe pushes out a \$1,000 distribution to each of its members, the distribution has a \$7 million to \$8 million impact

on the economies of Bismarck and Mandan. He said the economic benefit to Bismarck and Mandan is \$20 million to \$24 million annually.

Chairman Fox said in the last 3 years, the tribe has expended revenue for the following purposes:

- \$11.7 million - Education
- \$40 million - Health care
- \$31 million - Economic development
- \$32 million - Public safety
- \$35 million - Natural resources enforcement
- \$18 million - Public works
- \$131 million - Roads
- \$27.3 million - Regulation
- \$51.5 million - Housing
- \$17.5 million - Law enforcement/courthouse
- \$46 million - Community centers
- \$17 million - Schools
- \$25 million - Drug treatment
- \$5.8 million - Water (plus nearly \$20 million in total has been spent to get water to producers to drill)
- \$41 million - To move their refinery industry forward
- \$52 million - To develop their own company

Chairman Fox said the long-term needs of the MHA Nation are:

- \$1.18 billion for road maintenance and development
- \$1.17 billion for housing growth and replacement
- \$234 million for housing infrastructure
- \$234 million for regulatory enforcement for the next 10 years
- \$240 million for drug enforcement
- \$365 million for transportation improvements and safety
- \$3 billion for solid waste landfill expansion

Chairman Fox said the revenue generated under the oil and gas agreement is a little more than \$100 million per year, of which the tribe receives one-half. He said allocating more of the trust land revenue to the tribe would benefit the state because the tribe and state have a joint economy.

Governor Burgum said legislators are empathetic to tribal needs considering the state also is dealing with falling revenues. He said the Legislative Assembly had to cut \$1.7 billion out of a \$6 billion budget.

Mr. F. Fox said the tribe was not ready when oil came to the reservation in 2007-08. He said the tribe is still trying to catch up on paying for roads and addressing the increases in crime and drug problems. He said not everyone on the reservation receives revenue from oil wells.

Chairman Fox said 85 percent of tribal members receive less than \$500 per month. He said the only benefits these members receive are the services provided by the tribal government.

In response to a question from Governor Burgum, Chairman Fox said, regarding the tribe's dialogue with oil companies for the collection of the additional .75 percent of oil and gas tax, the tribe passed a resolution at the beginning of the year stating the revenue is owed and the tribe will seek to collect it. He said the tribe hired a new tax director and assessed oil companies the .75 percent amount owed since the January 2016 rate change. The initial outstanding balance estimate is \$17 million. He said notices have been sent to oil companies regarding the outstanding balance. He said the tribe has been waiting for feedback from oil companies regarding the stated balances. He said many companies have not responded or are taking the position the company does not have to pay the tax. He said the tribe has discussed the possibility of applying tax credits with some companies. He said

credits would be applied to offset the amount of tax owed by the company if the company were to expend funds for projects within the boundaries of the reservation.

In response to a question from Senator Wardner, Mr. Phelan said two-thirds of the royalties paid by the Bureau of Indian Affairs (BIA) go to individual tribal members. He said the remaining one-third of royalties are paid to the tribe collectively. He said royalty payments total approximately \$100 million per year.

In response to a question from Representative Mock, Chairman Fox said 88 percent of the funds that make up the tribe's budget are derived from oil and gas royalties and taxes. He said the remaining 10 to 12 percent are derived from a combination of leases, interest from federal judgments, interest from investments made with previous oil and gas funds, and gaming revenue. He said gaming revenue amounts to only a few million dollars per year because most of the revenue is being reinvested into the casino. He said the tribe also receives funds from the federal government under Public Law No. 93-638. He said this law allows the tribe to contract for services on behalf of the federal government. He said federal funds for these contracts are often insufficient which makes the tribe responsible for any indirect or additional costs. With volatile revenues, he said, the tribe, on a quarterly basis, must prioritize budget items to be funded and determine which items must be cut. He said a number of projects are funded over multiple fiscal cycles.

In response to a question from Senator Cook, Chairman Fox said, in addition to the oil and gas tax issues and alcohol tax issues, the tribe also would like the committee to address motor fuel tax agreements. He said current agreements are limited to retail sales only. He said bulk fuel sales also occur on the reservation. He said the tribe does not receive any revenue from bulk sales. Another issue, he said, pertains to indirect taxation of tribal members. He said many vendors charge tax if an individual does not have a tribal identification card, even though the law states sales made to a tribal member made within the boundaries of the reservation are not taxable by the state. He said the revenue from those sales are remitted to the state. He said the tribe also is looking at a water tax. He said nontribal entities are buying water within the boundaries of the reservation. He said there is potential for the tribe and state to enter a sales tax collection agreement.

In response to a question from Senator Cook, Chairman Fox said all tax agreements share the same concern that there is no authority to negotiate an agreement today. If the law had remained as it was before 2015, there already would be an agreement with the state regarding alcohol gross receipts tax. He said the tribe needs to make a decision soon on the draft oil and gas letter. He said forgoing revenue is hurting the tribe. He said the tribe is willing to negotiate down from its initial position of receiving a 100 percent allocation of oil and gas revenue from trust lands. He said the tribe would be willing to consider an 80 percent tribe, 20 percent state revenue split on trust lands and an 80 percent state, 20 percent tribe revenue split on fee land.

In response to a question from Representative Headland, Dr. Mayer said she was a physician for 22 years. She said Indian Health Services (IHS), which funds clinics and hospitals on the reservations, is chronically underfunded and understaffed. She said IHS is funding Indian nations only at about 50 to 51 percent of their need, leaving the tribe responsible for the remainder. She said some of the tribes have very high unemployment rates. She said tribal members are also citizens of North Dakota. She said the tribal nations are in dire need of health care and addiction treatment resources. In both the state and the MHA Nation, she said, law enforcement officers are trying to take care of addicted individuals in jails. She said the federal government has failed to take care of Indian issues.

In response to a question from Governor Burgum, Dr. Mayer said the tribe runs out of money for contracted health services by June of each year. She said the tribe has invested money into a self-funded health insurance plan. She said the tribe spends in excess of \$20 million per year in premiums for this insurance program for members living on and off the reservation.

In response to a question from Governor Burgum, Chairman Fox said the oil and gas agreement does not have to be resolved before the state and tribe can look at entering other taxation agreements. He said the main concern lies with not being able to institute agreements until the Legislative Assembly convenes.

In response to a question from Governor Burgum, Chairman Fox said any renegotiated revenue split would apply prospectively to newly drilled wells. He said even if the existing agreement is terminated, the tribe would abide by the terms of that agreement for wells drilled under the agreement, i.e. the existing 50/50 split on those wells would remain. He said if the state and the tribe could agree on an alcohol tax agreement for which a single tax would be imposed, the tribe would want a revenue split based on census. He said that split would be similar to that found in the motor fuels agreement. If a revenue split did not align according to the census, he said, the tribe would encourage the state to direct a portion of the state's revenue to the tribes in the form of services. Regarding a state/tribal sales tax agreement, he said, the tribe is interested, but it is not at the top of the list of tax agreements.

## TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS

Governor Burgum called on Chairman Wayne L. Keplin, Turtle Mountain Band of Chippewa Indians. Chairman Keplin introduced the other representatives in attendance--Mr. Roman F. Marcellais; Vice Chairman; Mr. Jamie Azure, Councilman; and Ms. Alysia E. LaCounte, tribal legal counsel.

Chairman Keplin said the Turtle Mountain Band of Chippewa Indians does not have oil money. He said there is some development in the Trenton area, but the development is held mostly by private individuals. He said unlike the Three Affiliates Tribes, Turtle Mountain does not have a tax structure in place. Because the tribal chairman and seven of the eight tribal council members were newly elected in November 2017, he said, establishment of a tax department has not been addressed. He said a need exists for a tribal tax department. He said the tribe would work with the state to establish an alcohol tax.

Chairman Keplin said the Turtle Mountain Band of Chippewa Indians includes 34,000 enrolled members, 18,500 of which live on or near the reservation. He said the tribe has a 70 percent unemployment rate. He said he is optimistic the unemployment rate will improve because several companies have expressed interest in occupying the tribe's manufacturing plant. He said Turtle Mountain's strength is its people and the tribe has a large number of members with higher degrees and many skilled individuals like mechanics, welders, and pipefitters. He said it has been difficult to entice professionals to live on the reservation due to a lack of recreational activities and services. The crime rate on the reservation is high and, he said, the federal government does not provide enough funds for a police force. Regarding health care, he said, Turtle Mountain does third-party billing for medical services. He said IHS funding typically is exhausted by June of each year and the next fiscal year funding does not become available until October 1. He said roads also are a big issue and it would cost a couple hundred million dollars to complete needed road repairs. He said the tribe has been trying to repair Jack Rabbit Road, which accommodates school busses, ambulances, border patrol staff, working professionals, and general traffic for many years.

Chairman Keplin said BIA manages about 41 oil and gas tax leases on behalf of the tribe and individual landowners. He said the tribal interest of these allotments is approximately 11 percent, or 4,715 acres. He said the tribe would like to negotiate an oil severance tax with the state. The existing royalty revenue to owners, he said, averages \$100,000 per quarter. He said if the same provisions of the Three Affiliated Tribes oil and gas agreement were applied to an agreement between Turtle Mountain and the state, revenues would be \$70,000 per year for the tribe.

Governor Burgum called on Mr. Marcellais for testimony. Mr. Marcellais said there is a large drug problem on the reservation. He said non-Indians have been coming to Belcourt to sell drugs. He said the states attorney in Rolette County has not been prosecuting individuals picked up for selling drugs on the reservation. He said the tribe has land off the reservation and the individuals living there are paying tax. He said he would like to know how tax revenue collected by the state for lands adjacent to or on the reservation is spent.

Mr. Marcellais said one of the top selling bars in the state is on the reservation; however, the tribe does not receive any of the gross receipts tax for alcohol. He said one of the tribal priorities is to get a tax department started on the reservation. He said most of the tribe's programs run at a deficit due to a lack of adequate funding from the federal government.

Chairman Keplin said the state is receiving a considerable amount of tax revenue from tribal members because the majority of those living on the reservation spend their money off the reservation.

Governor Burgum called on Mr. Azure for testimony. Mr. Azure said Turtle Mountain was a trailblazing tribe in terms of economic development in the 1990s, but that development has declined. He said two large issues facing the tribe are child welfare and housing. He said his wife is a child welfare social worker and she currently has 110 clients. He said the state caps caseloads at 25 clients per social worker. He said decreased funding has been further compounded by increased client loads. He said increased client loads are due in part to the opioid crisis. Of the 748 units in the tribe's housing authority, he said, 639 units are occupied and there is a waiting list of 112 families. He said 145 vacant units are unusable, due in part to the cleaning required from prior tenants with methamphetamine and opioid addictions. If a tenant is evicted for a methamphetamine addiction, he said, the unit must be scrubbed before it can be reoccupied. He said he faced his own housing difficulties when he wanted to build a home on the reservation. He said banks will not loan money for home construction on the reservation because of low valuations.

Mr. Azure said tax partnerships with the state need to occur for Turtle Mountain to be sustainable. He said the tribal council is working hard on economic development and self-sustainability. He said Turtle Mountain is a sovereign nation within a nation, but its residents also are North Dakota citizens. He said the tribe wants to move forward with a strong partnership with the state.

Governor Burgum thanked Turtle Mountain for previously hosting his cabinet and for their focus on economic development. He said housing is an issue on all of the reservations. He said the committee would try to get information on the drug arrests in Rolette County to see if further action can be taken by the state.

Mr. Marcellais said Turtle Mountain echoes Three Affiliated Tribe's concerns regarding the delay in implementing agreements due to legislative approval requirements.

Mr. Davis said he spent a lot of time with the previous administration at Turtle Mountain trying to get the manufacturing plant operating. He said it is important for Turtle Mountain to establish the rules of doing business on the reservation to attract businesses. He said it would be beneficial for the tribe to look at how it will give banks assurances that the bank's money can be recouped or is well invested. He said an appraisal system on the reservation is virtually nonexistent.

Chairman Keplin said the tribe does not have a lot of money to invest in attracting businesses. He said the tribe has human capital, its workforce. He said he agrees it may be beneficial to establish some type of formal process for businesses. He also said the establishment of a tribal tax department is critical.

Senator Wardner said he agreed the tribe's problems also are the state's problems. He said a common perception is that the federal government is taking care of the tribes. He said after listening to today's presentations, he is wondering if the federal government has left the tribes stranded. He requested the Legislative Council staff to compile information illustrating the amount of federal funds the reservations are receiving and the purposes for which the funds are allocated.

Chairman Keplin said that is public information and it should not be a problem to assemble. He said he reiterates Three Affiliated Tribe's comments pertaining to indirect costs related to Public Law No. 93-638. Even though the calculated indirect cost rate is a rate established by the government, he said, the tribe never receives the full cost of the projects. He said BIA and IHS often renege on their responsibility.

Governor Burgum called on Ms. LaCounte for testimony. Ms. LaCounte said she started working for the tribe in 1998 when the tribe was trying to receive a water supplement. Because the reservation is not situated on a large body of water, she said, the tribe's ability to attract industry and manufacturing is limited. She said another reason for the lack of industry and manufacturing on the reservation is the lack of access to railroads and highways. She said the tribe receives \$17 million a year in IHS contract funds for a service population of 14,000 people. She said the tribe has been able to third-party bill at the rate of \$7 million under the federal Affordable Care Act. She said the reservation has a 10 percent diabetes rate. She said there is limited access to healthy food and what is available is expensive. She said a gallon of milk costs \$7. She said there are 1,800 families on the low-income home energy assistance program (LIHEAP). She said LIHEAP is on the chopping block at the federal level. She said cutting LIHEAP would result in people freezing to death. She said her tribe's situation is grave.

In response to a question from Senator Wardner, Mr. Marcellais said he would provide information to the committee on tribe's federal funding.

Mr. Davis offered his staff's assistance in helping the tribe develop the legal framework for doing business on the reservation. He said adopting the Uniform Commercial Code is an important part of that legal framework.

Mr. Rauschenberger said the Tax Department is available to provide any administrative assistance in establishing a tribal tax department. He said he believed the tribe still has a 5 cent per pack tobacco tax and was not sure if the tribe was looking at entering a state/tribe tobacco tax agreement. He said he could provide assistance on how to provide tax structure certainty for businesses.

Mr. Davis recommended the committee receive a map of the Trenton area that identifies whether the 41 wells are on or off reservation tracts and whether there is horizontal drilling, which would affect the terms of an agreement.

Mr. Rauschenberger said the Department of Mineral Resources likely has a map of those wells.

Ms. LaCounte said she has the legal description for the 41 wells.

### **SPIRIT LAKE TRIBE**

Governor Burgum said Ms. Myra Pearson, Chairperson, Spirit Lake Tribe, could not attend due to health reasons. Governor Burgum called on Mr. Douglas Yankton, Sr., Vice-Chair, Spirit Lake Tribe, for testimony.

Mr. Yankton said the state motor fuel tax agreement is the only tax agreement his tribe has with the state. Under the agreement, he said, retailers do not receive reimbursement for reporting. He said four counties fall within the boundaries of Spirit Lake.

Mr. Yankton provided information ([Appendix K](#)) regarding a property tax issue within the boundaries of the reservation. He said Wood Lake is within the boundaries of the reservation and several acres around that lake are held in trust for the tribe. He said a number of lots are being leased to non-Indians. He said the individuals leasing the land have added improvements to the property and have been charged property tax by the county. He said he would like further clarification on this issue. He also said the tribe has a tax director.

Mr. Yankton said there is fee land within reservation boundaries which contains an RV campsite. He said the operators of the campsite obtain a tribal license. He said alcohol is being sold on the campsite. He said the reservation became a dry reservation in the 1950s through a majority vote of the people. He said the operators should not be able to sell alcohol on a dry reservation. He said the state is collecting tax on the sale of that alcohol.

Mr. Yankton said gaming revenue continues to decrease. He said the decrease is because the majority of gamblers are retired people and there is little interest in gambling among the 18 to 35 year old population. He said schools receive less funding from mill levies in areas where a large number of properties are held in trust.

Mr. Yankton said the tribe leases 190,000 acres to non-Native American farmers and ranchers. He said the federal government collects revenue generated from leases of trust land and places the revenue in the tribe's Individual Indian Money account. He said the account proceeds may be used only to buy back land. He said the tribe is considering imposing a \$0.25 per acre land tax.

In response to a question from Senator Wardner, Mr. Yankton said BIA sets the rules regarding the use of revenue from leases.

In response to a question from Governor Burgum, Mr. Yankton said Devils Lake, which the tribe considers sacred, generates a lot of revenue for the state. He said the reservation has been in the public eye in regard to issues relating to tribal youth and social services. He said the location of 80 children in the reservation's social service system is unknown. He said the tribe is negotiating with the government to take back control of social services on the reservation. He said the tribe operates the Spirit Lake Health Center pursuant to a Title 5 compact, which eliminates the regional office and allows the tribe to work directly with providers and other governments. He said the tribe has control over any revenue generated as long as it is used for health-related purposes. He said the lack of law enforcement is a concern with just six BIA officers to patrol roughly 400,000 square acres.

In response to a question from Mr. Davis, Mr. Yankton said the tribe does not issue alcohol licenses because it is a dry reservation. He said the tribe should enter a state/tribal alcohol tax agreement. He said the bar owners are non-Native American.

In response to a question from Senator Wardner, Mr. Yankton said individuals selling alcohol on the reservation likely were "grandfathered in" because they were selling alcohol prior to the date the reservation became a dry reservation.

Senator Heckaman said she recently discussed law enforcement issues with Chairperson Pearson. She said BIA has cut law enforcement staffing. She said the school system is excellent and the tribe just completed a new alternative high school. She said regarding workforce development, the tribe has some outstanding facilities. She said the reservation lacks main street businesses like grocery stores, theaters, bowling alleys, and pharmacies. When a community does not have those amenities, she said, it is difficult for the community to grow.

Mr. Davis discussed prior year mill levy buydowns and how an alternative school funding formula had to be created for Turtle Mountain. He said it might be beneficial to have further discussions regarding how Turtle Mountain's school funding formula operates. He said another issue that might be worth discussing is why some tribal cities are not incorporated under North Dakota law. He said he has asked tribal leaders why Mandaree and Trenton are not incorporated. He said incorporation can bring certain benefits such as establishing a tax base, a sheriff's office, and a fire department.

Governor Burgum said incorporation is a topic worth putting on a future agenda. He said the issue has been raised in Mandaree. He said if Mandaree were incorporated, it would be receiving oil impact funding.

In response to a question from Senator Cook, Mr. Rauschenberger said he would follow up on the Wood Lake property tax issue.

In response to a question from Senator Wardner, Mr. Yankton said the individuals leasing the Wood Lake trust land lots likely own the structures situated on the lots. If the lease was discontinued, he said, the owner would have the opportunity to remove the structure.

In response to a question from Governor Burgum, Mr. Rauschenberger said an alcohol gross receipts tax is collected on alcohol sales by licensed retailers that are not enrolled tribal members and are operating on fee land.

In response to a question from Governor Burgum, Mr. Yankton said more tribal feedback is needed before further discussing whether the tribe would be interested in entering a state/tribal alcohol tax collection agreement.

Mr. Yankton said the sign designating the reservation boundary continues to be moved back without explanation. He said he would be interested in moving boundary signs back to the original boundary lines noted in the treaty. He said tourists' understanding of boundary lines impacts the hunting and fishing licenses the tourists obtain. He said the tribe's game and fish department has been discussing this issue with the state Game and Fish Department.

### **STANDING ROCK SIOUX TRIBE**

Governor Burgum said Mr. Dave Archambault II, Chairman, Standing Rock Sioux Tribe, was unable to attend the meeting. Governor Burgum called on Mr. Chad Harrison, Councilman, Standing Rock Sioux Tribe, for testimony. Mr. Harrison introduced the other representatives of the tribe in attendance--Ms. Tracey Zephier, Attorney, Standing Rock Sioux Tribe Tax Commission; Ms. Karol Two Bears, Tax Director; Mr. Kory McLaughlin, Councilman, and Tax Board Vice Chairman.

Mr. Harrison said the tribal game and fish department has an agreement with the state Game and Fish Department regarding the management of the elk herd within tribal boundaries. He said the state and the tribe can benefit by working together. He said many obstacles are a result of simple misunderstandings. He said a census taker visited the tribe and reported only 300 people in the Fort Yates Township and the surrounding areas. He said the actual population was over 2,500. He said this highlights a misunderstanding that could arise when one side thinks funding is being requested for 300 individuals when actually it is being requested for a much larger population. He said another big misunderstanding is how casinos integrate into the tribe's purposes.

Mr. Harrison said taxes are not always popular, but he believes in what tax revenue can accomplish in terms of building roads and meeting basic needs. He said he prefers to refer to "treaty obligations" as "contractual obligations" because individuals tend to have a clearer understanding of the meaning of a contractual obligation. He said many contracts with the tribes have been broken. He said the tribe has the authority to manage its own affairs and that is what the tribe is trying to do by imposing taxes. He said the reservation consists of Sioux County in its entirety.

Governor Burgum called on Ms. Two Bears for testimony. Ms. Two Bears said she has been the Tax Director for the Standing Rock Sioux Tribe for almost 8 years, 6 of which she spent overseeing the tax agreements with both North Dakota and South Dakota. She said she supports Chairman Fox's comments regarding concerns about state/tribal tax agreements. She said it is a big obstacle to have to wait for legislative approval when working on tax collection agreements. She said Standing Rock spent 4 years going back and forth between the Governor, the Legislative Assembly, and the Tax Department trying to establish the sales and use tax agreement. She said the concept "substantially similar" was used in the agreement. She said there was disagreement on the application of use tax to tribal businesses. She said the tribe's tax commission elected to exempt tribal business from paying use tax. She said the decision was made because what had been a 100 percent tribal revenue on use tax collection was turned into an 80/20 revenue split with the state. When the agreement ended, she said, the tribe started administering and collecting its own sales and use tax. She said she would caution other tribes from entering an agreement with the state until the following items are addressed:

1. Reporting needs to be corrected. She said it is almost impossible to administer a tax department when you are given a check without any details associated with the amount. She said South Dakota provides detail on the source of tax revenue. She said reports also help indicate which types of businesses are tax-generating businesses. She said North Dakota simply deposited a check without any revenue source information claiming confidentiality provisions prevented disclosure.
2. Remove the \$2 million per biennium cap provisions from North Dakota Century Code Section 57-39.8-02(4).
3. Remove the reporting requirements from Section 57-39.8-02(9). She said the tribe's tax revenues are not a "grant" of money from the state; it is the tribe's money. She said how the tribe chooses to spend its revenues is not the state's concern.



4. Better reporting from the state on existing agreements for other tax types. She said she receives a motor fuels report that details vendors and gallons, but she does not receive any reporting for cigarette and tobacco tax.

Ms. Two Bears said an alcohol gross receipts tax and a telecommunications tax also has been discussed.

Mr. Harrison said sharing of information is key. He said tribal members often ask for information regarding how much money tribal members inject into the Bismarck/Mandan economy, but the tribe is unable to determine that amount. He would like to address how issues related to information sharing may be remedied.

Senator Cook said several tribal representatives have mentioned the need to get the opinion of the tribe or the tribal council before making a decision on agreements with the state. He said it is the same with state decisions; the people's opinion is valued and is voiced through the authority the people grant the Legislative Assembly. He said there is similarity between how the state and the tribe operate, except the Governor is not able to meet with the Legislative Assembly at will; he can only meet with the Legislative Assembly every 2 years.

In response to a question from Senator Cook, Mr. Harrison said the tribe's primary concern with the requirement of legislative approval for tax agreements is not that the agreements require legislative approval, but that there is a delay of up to 2 years before the agreement can become effective.

Senator Cook said the state has learned to work within the framework of a 2-year cycle and hopes the committee could find a solution so it does not become an obstacle for entering agreements.

Governor Burgum called on Ms. Zephier for testimony. Ms. Zephier said South Dakota solved the problem of balancing power between the executive and legislative branches by passing tax collection laws. She said South Dakota's laws set the general parameters for tax collection agreements and gives the Governor the authority to work out the finer details of the agreement. She said the process of negotiating state/tribal agreements is much simpler in South Dakota.

Senator Cook said it is possible several legislators could work with the Tax Department to develop a generic template for agreements for the various tax types. He said an agreement reached based upon that template then would require a signature from the Governor and the tribe. By 2019, he said, the agreements would be ready for approval by the Legislative Assembly. He said unless both sides agree in advance to split revenues on a set determinant like the census, legislative involvement would be needed to decide the state and tribal split of revenues.

Mr. Harrison said many of the provisions for tax agreements, including confidentiality and information sharing, could be worked out between legislative sessions.

Senator Cook said Ms. Two Bears did an excellent job explaining the tax agreement issues the tribe found challenging and said he agreed with the tribes' concerns on issues regarding reporting requirements and caps.

Mr. Davis said the caps may be needed by the Legislative Assembly to formulate its budget. He said one option would be to require legislative approval only if the agreement was anticipated to generate revenues greater than a set amount.

Mr. Harrison said if an argument is made that the state's budgeting process is hindered under certain circumstances, the same argument could be made regarding impacts on the tribe's budgeting process.

Mr. Rauschenberger said the discussion has been very productive. He said part of the challenge is looking at what other states are doing. He said the Tax Department has been doing a lot of work compiling information and looking at what other states are doing. He said the department could compare North Dakota's laws to South Dakota's laws to see if certain provisions can be modified to make the process easier going forward. He said the department has looked at New Mexico's laws and his general counsel has conducted a lot of research in preparation of moving these discussions forward and looking at best practices.

## OTHER TESTIMONY

Governor Burgum called on Mr. Steven A. Kelly, member of the MHA Nation, for testimony ([Appendix L](#)) regarding tax agreements between the state and the tribes.

Governor Burgum called on Representative Marvin E. Nelson for testimony regarding tax agreements between the state and the tribes. Representative Nelson said:

- Counties get caught between tribes and the state.
- Counties are in a tough position when there is a lot of reservation land in county because it creates a poor tax base. In Rolette County, he said, there is more trust land off the reservation than on the reservation. He said Rolette County has some of the highest social service caseloads and some of the lowest funding.
- Two-thirds of retail sales generated by people of Rolette County occur in other counties. Consequently, he said, the tax collected from these purchases is not funding services in Rolette County. He said the state is intentionally hurting Rolette County by funneling traffic away from the county due to road weight restrictions and closing rest areas.
- Reservations need an investment in infrastructure. He said there is no natural gas on the reservation and the manufacturing industry will not come to the reservation without basic infrastructure.
- The state has to invest in government and business infrastructure on the reservation if it wants to avoid perpetuating multigenerational poverty.
- Regarding the oil and gas agreement, everyone would benefit from getting an Attorney General's opinion on what the state should have been collecting.

### COMMITTEE DISCUSSION

Senator Cook requested the Legislative Council staff to research other state's policy regarding oil and gas tax agreements. He said the information should include how many states have an agreement, the details of the agreements, and whether any states refrain from imposing a state-level tax on tribal lands.

Mr. Rauschenberger said the Tax Department has collected tax agreement data and can assist in this request.

Chairman Fox said the deadline for the tribe's alcohol tax filings is September 1, 2017, but he would be willing to work with his tribal council to extend the deadline if discussions with the state appear promising. He said the tribe must move forward on its own tax issues. He said he needs insight on whether the tribe should be staying the collection of additional tax from oil producers or moving forward with collection.

Senator Cook said the creation of this committee should provide a strong indication to the tribes of state's willingness to work and provide a positive resolution to the issues raised during the meeting. He said the state and the tribes must continue to have a dialogue and find a resolution.

Chairman Fox said he is going to continue to sit at the table with the hope the state and tribe can come to a resolution.

Mr. Davis said another topic not addressed at this meeting is the issue of minerals under the lakebed.

Chairman Fox said the tribe has a meeting in about 3 weeks to talk with federal agencies regarding a pipeline tax. He said the tribe intends to move forward on pipeline taxes as soon as the tribe receives the change it is seeking at the federal level.

Governor Burgum said he understands the sense of urgency Chairman Fox feels with the drop in revenues. He said he agrees the committee represents a good faith effort to work together to reach a resolution. He said the state and the tribe share a number of common interests and we need to keep the dialogue going.

No further business appearing, Governor Burgum adjourned the meeting at 3:42 p.m.

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Vonette J. Richter  
Code Revisor

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Emily L. Thompson  
Counsel

ATTACH:12