

TRIBAL AND STATE RELATIONS COMMITTEE

North Dakota Century Code Section 54-35-23 established the Tribal and State Relations Committee. The committee consists of a chairman designated by the Chairman of the Legislative Management; three members of the House of Representatives, two of whom are selected by the House Majority Leader and one of whom is selected by the House Minority Leader; and three members of the Senate, two of whom are selected by the Senate Majority Leader and one of whom is selected by the Senate Minority Leader.

Section 54-35-23 directs the committee to conduct joint meetings with the North Dakota Tribal Governments' Task Force to study tribal-state issues, including government-to-government relations, human services, education, corrections, and issues related to the promotion of economic development. The committee must meet to prepare a report on its findings and recommendations, together with any legislation required to implement those recommendations, to the Legislative Management.

The North Dakota Tribal Governments' Task Force is composed of six members, including the Executive Director of the Indian Affairs Commission, or the Executive Director's designee; the Chairman of the Standing Rock Sioux Tribe, or the Chairman's designee; the Chairman of the Spirit Lake Tribe, or the Chairman's designee; the Chairman of the Three Affiliated Tribes of the Fort Berthold Reservation, or the Chairman's designee; the Chairman of the Turtle Mountain Band of Chippewa Indians, or the Chairman's designee; and the Chairman of the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, or the Chairman's designee.

House Bill No. 1015 (2017) suspended Section 54-35-23 through July 31, 2019, and established the Tribal Taxation Issues Committee. The Tribal Taxation Issues Committee consisted of 10 members--the Governor, who was designated by the Legislative Management to serve as Chairman, the Lieutenant Governor, the Tax Commissioner, the Executive Director of the Indian Affairs Commission, the Majority and Minority Leaders of the House and the Senate, and the Chairmen of the Finance and Taxation Standing Committees of the House and the Senate. The nonlegislative committee members served as nonvoting members, and the Chairman of the committee was required to invite tribal chairmen to each committee meeting. Senate Bill No. 2312 (2019) extended the suspension of Section 54-35-23 through July 31, 2021, and again established the Tribal Taxation Issues Committee with the same membership as the previous interim.

The Legislative Management delegated to the Tribal and State Relations Committee the responsibility to receive a report from:

- The Department of Corrections and Rehabilitation, the Juvenile Court, and the Indian Affairs Commission regarding recommendations on the status, effectiveness, performance, and sustainability of a memorandum of understanding to provide services to juveniles adjudicated in tribal court, pursuant to Section 27-20.4-27.
- The Governor describing the terms and negotiations of any oil and gas agreements entered under Chapter 57-51.2 and a biennial report thereafter describing the agreement's implementation and any difficulties in its implementation, pursuant to Section 57-51.2-04.

Committee members were Senators Rich Wardner (Chairman), Jessica Bell, Joan Heckaman, and Dave Oehlke and Representatives Joshua A. Boschee, Terry B. Jones, and Chet Pollert.

FEDERAL INDIAN LAW AND POLICY

Indian law is a complex area of law. Due to the sovereign nature of Indian tribes, most Indian law is federal in nature. There have been several distinct eras of federal-tribal relations.

From 1789 to approximately 1820, the federal government sought to minimize friction between non-Indians and Indians by limiting contact between the groups. This era was followed by the Indian removal era--approximately 1820 to 1850--when the federal government removed Indians from east of the Mississippi River to the Oklahoma Territory. This era was followed by the reservation era--1850 to 1887--when, as non-Indians continued to move west and friction developed between non-Indians and Indians, the federal government developed a policy of restricting Indian tribes to specified reservations. This policy was implemented by treaty in which each tribe ceded much of the land it occupied to the United States and reserved a small portion. This is the origin of the term reservation.

When the federal General Allotment Act of 1887, or Dawes Act, was enacted, United States-Indian relations entered a new era known as the allotment era because the Act authorized the President to allot portions of reservation land to individual Indians. Title to the allotted land was to remain in the United States in trust for 25 years, after which it was to be conveyed to the Indian allotted free of all encumbrances.

The allotment era was followed by the Indian reorganization era--1934 to 1953--during which the tribe's land base was protected by extending the trust period indefinitely for existing allotments still held in trust and encouraging tribes to establish legal structures for self-government. This era was followed by the termination and relocation era--1953 to 1968--when the federal government sought to terminate tribes believed to be prosperous enough to become part of the American mainstream, terminate the federal government's trust responsibility, and encourage the physical relocation of Indians from reservations to urban areas.

The termination and relocation policy was regarded as a failure, and the modern tribal self-determination era began with the federal Indian Civil Rights Act of 1968. The Act was to impose upon the tribes most of the requirements of the Bill of Rights. The Act also amended Public Law 280 so states could no longer assume civil and criminal jurisdiction over Indian country unless the affected tribes consented at special elections called for this purpose. Several federal acts have been enacted since 1968 to enhance tribal self-determination.

STATE-TRIBAL RELATIONS

One of the most important concepts in state-tribal relations is the concept of sovereignty. In the federal system, both the states and Indian tribes are sovereigns. Tribal sovereignty refers to the right of Indians to govern themselves. Sovereignty for tribes includes the right to establish a tribal government, determine membership requirements, enact legislation, and establish law enforcement and court systems.

Based on early United States Supreme Court cases, tribes are sovereign and free from state intrusion on their sovereignty. State laws generally have been held inapplicable within reservation boundaries, although exceptions have been made under the plenary power of Congress to limit tribal sovereignty.

STATE-TRIBAL COOPERATIVE AGREEMENTS

Chapter 54-40.2 provides for agreements between public agencies and tribal governments. A public agency means any political subdivision, including a municipality, county, school district, and any agency or department of North Dakota. Tribal government means the officially recognized government of an Indian tribe, nation, or other organized group or community located in North Dakota exercising self-government powers and recognized as eligible for services provided by the United States. Under this chapter, any one or more public agencies may enter an agreement with any one or more tribal governments to perform any administrative service, activity, or undertaking that any of the public agencies or tribal governments are authorized to perform by law and to resolve any dispute in accordance with Chapter 54-40.2 or any other law that authorizes a public agency to enter an agreement. The agreement must set forth fully the powers, rights, obligations, and responsibilities of the parties to the agreement.

STATE-TRIBAL TAX REVENUE SHARING AGREEMENTS

The committee received information from the Tax Department regarding revenue sharing agreements between the state and tribal nations within the state.

Tribe	Effective Date	Tax Type	Current Revenue Allocation		Administrative Fee
			Tribe	State	
Standing Rock Sioux Tribe	July 1, 1993	Cigarette and other tobacco products	87%	13%	1%
Standing Rock Sioux Tribe	January 1, 1999	Motor fuel and special fuel	87%	13%	1%
Spirit Lake Tribe	September 1, 2006	Motor fuel and special fuel	76%	24%	1%
Three Affiliated Tribes of the Fort Berthold Reservation	September 1, 2007	Motor fuel and special fuel	70%	30%	1%
Three Affiliated Tribes of the Fort Berthold Reservation	July 1, 2008	Oil and gas			None
		Produced from trust lands	80%	20%	
		All other production	20%	80%	
Turtle Mountain Band of Chippewa Indians	September 1, 2010	Motor fuel and special fuel	96%	4%	1%

2021 LEGISLATION

The committee reviewed recent legislation including:

- House Bill No. 1052, which authorized juvenile services agreements between the Department of Corrections and Rehabilitation, the Supreme Court, and the Indian Affairs Commission and tribal governments.

- House Bill No. 1101, which authorized the Director of the Department of Transportation to enter agreements with tribal governments regarding federally funded safety improvement projects on tribally owned highways, streets, roads, and bridges.
- House Bill No. 1126, which clarified tribal police officers may provide emergency services or mutual aid to a state or political subdivision law enforcement officer without being licensed in that jurisdiction.
- House Bill No. 1407, which revised the medical assistance tribal health care coordination agreement program, increasing from 60 to 80 percent the amount of excess federal medical assistance funding the Department of Human Services shall deposit in the tribal health care coordination fund, revising the authorized uses for which a tribe may use the tribal share of the excess funds, directing a tribe that receives funds under the program to report to the Legislative Management, and repealing the program if by December 31, 2022, no tribe has used the program.
- Senate Bill No. 2304, which required elementary and middle schools to provide instruction in North Dakota studies with an emphasis on the federally recognized Indian tribes in the state, requires high schools to provide instruction in Native American tribal history, and adds Native American tribal history to the high school graduation requirement effective August 1, 2025.
- Senate Bill No. 2319, which provided for the distribution of oil and gas tax revenue from straddle wells. For wells drilled before July 1, 2019, a tribe receives 50 percent of the straddle well tax revenue multiplied by the associated spacing unit acreage located within the reservation boundaries. For wells drilled on or after July 1, 2019, the tribe receives 80 percent of the straddle well tax revenue multiplied by the associated trust land spacing unit acreage located within the reservation boundaries and 20 percent of the straddle well tax revenue multiplied by the associated nontrust land spacing unit acreage located within the reservation boundaries. The bill applies to oil and gas tax revenue collections allocated by the State Treasurer after September 1, 2021.

GAMING CONCERNS

The committee received testimony from tribal representatives regarding the impact on tribal gaming due to the expansion of charitable gaming in the state and the lack of adequate state oversight and regulation. According to the testimony, tribal economies rely heavily on gaming revenue, and tribal casinos have been negatively impacted by the proliferation of electronic pull-tab devices. Tribal representatives noted tribal casinos are subjected to a high level of regulation compared to the state's limited regulatory oversight of electronic pull-tab devices.

The committee received testimony from a representative of the Attorney General's office indicating electronic pull-tab device activity accounts for 86 percent of the charitable gaming activity in the state and accounted for over \$1.7 billion in gross proceeds for fiscal year 2022. According to the testimony, over 250 charitable organizations operate over 4,200 electronic pull-tab devices at over 700 sites in over 275 cities across the state. Testimony indicated the federal government has imposed certain reporting requirements for tribal casinos, but those federal reporting requirements do not apply to charitable gaming. Testimony also indicated the Attorney General's office was allotted an additional seven full-time employees by the 2019 Legislative Assembly to assist with regulation and oversight, but workforce shortages have made filling the open positions difficult.

The committee received testimony from a representative of the Spirit Lake Tribe indicating tribal casino revenue decreased by 45 percent the first year after electronic pull-tab devices were implemented. According to the testimony, the lack of adequate auditing by the state has resulted in little regulatory oversight over the growing number of gaming devices, and the unregulated use of these devices can result in money laundering and criminal exploitation. Testimony also indicated tribal casinos are heavily regulated and have procedures to help identify and deter criminal activity.

Some committee members expressed concerns regarding the expansion of electronic pull-tab devices and the desire to impose more regulations and limitations.

EDUCATION

Kindergarten through Grade Twelve Education

The committee received testimony from a representative of the Department of Public Instruction regarding Native American educational programs, opportunities, and partnerships. According to the testimony, the Office of Indian/Multicultural Education was created within the department to address the needs of Native American students. Approximately 13,000 Native American, American Indian, or Alaskan Native students are enrolled in the state's kindergarten through grade twelve school system, equating to nearly 10 percent of student enrollment, and the high school graduation rate for Native American students has increased from 52 percent in 2012 to 78 percent in 2021.

The committee received testimony from a representative of the Three Affiliated Tribes regarding the implementation of Senate Bill No. 2304 (2021), which requires elementary and secondary schools in the state to provide curriculum on Native American history. According to the testimony, a working group, including tribal leaders and historians, state entities, and other interested parties, was established to provide teachers with resources to incorporate Native American history into the curriculum.

Tribal Community Colleges

The committee received testimony from representatives of each of the state's tribal community colleges. Testimony indicated the colleges have numerous degree programs and certificates available to students, and the majority of enrolled students are Native American. Testimony from representatives of the Turtle Mountain Community College and Sitting Bull College indicated the colleges are exploring working with the United States Department of Agriculture to obtain resources for capital construction projects.

North Dakota Indian Scholarship

The committee received testimony from a representative of the North Dakota University System regarding the North Dakota Indian Scholarship. According to the testimony, the scholarship provides funds to approximately 270 students each year, and the scholarship also is available for students enrolled in tribal colleges in the state. The scholarship fund has not been increased since state agencies were required to cut budgets after 2016. The scholarship amount is limited to \$2,000 per student, but the amount awarded per student has been reduced to accommodate a larger number of qualifying students.

TAXATION ISSUES

The committee received testimony from a representative of the Tax Department regarding other states' tax revenue sharing agreements with tribal nations. According to the testimony, the most common methods other states use for tax revenue sharing agreements include a fixed percentage revenue split, a per capita split, and a per capita plus a fixed percentage split. Revenue sharing agreements in Montana use a per capita method based on consumption for all tax types, including cigarette, alcohol, and motor fuels. The only exception is Montana's oil and gas tax revenue sharing agreement, which uses a fixed percentage split allocating 50 percent of the revenue to the state and 50 percent to the tribe. South Dakota uses a fixed percentage method for all tax types allocating 69 percent of the revenue to the tribe and 31 percent to the state. Minnesota uses a per capita plus a fixed percentage method for all tax types with the per capita formula creating the base and the base being shared equally between the state and the tribe. North Dakota uses a per capita plus a fixed percentage method for all tax types except the oil and gas tax, which uses a fixed percentage method.

Alcohol Tax

The committee received testimony from representatives of the Three Affiliated Tribes identifying the key reasons why the tribe has not entered a state-tribal alcohol tax agreement. According to the testimony, the tribe's primary concerns with the framework for a state-tribal alcohol tax agreement are the tax revenue allocation formula is not equitable to tribes and the regulation resides with the state rather than jointly between the state and the tribe. Tribal representatives asserted the tax revenue split should be more favorable to the tribe because the formula fails to account for the negative impact of alcohol use on the reservation. Representatives of the tribe also asserted the failure to allow joint regulation of alcohol sales within reservation boundaries is an erosion of the tribe's sovereignty and its authority under federal law to tax nontribal members within reservation boundaries.

The committee received testimony from representatives of the Turtle Mountain Band of Chippewa Indians and Spirit Lake Tribe indicating their respective tribes may be interested in entering a state-tribal tax agreement if more favorable terms are negotiated. According to the testimony, obtaining community support for the Turtle Mountain Band of Chippewa Indians to enter a state-tribal tax agreement may be difficult due to a general distrust of state and tribal politics among the tribal population.

The committee received testimony from representatives of the Three Affiliated Tribes noting there is a misunderstanding between the tribe and alcohol wholesalers regarding the interpretation of a tribal ordinance that the alcohol wholesalers believe creates a risk of being subject to tribal court jurisdiction. According to the testimony, the tribe has interpreted the ordinance does not apply to alcohol, but the wholesalers continue to express concern.

Motor Fuels and Bulk Sales

The committee received testimony from representatives of the Spirit Lake Tribe indicating the tribe is interested in renegotiating the tax revenue split for the motor and special fuels tax because the tribe needs additional revenue to make improvements to roads and the establishments that sell fuel.

The committee received testimony from representatives of the Three Affiliated Tribes noting the current motor vehicle fuel tax agreement does not contemplate bulk fuel sales, and the tribe would like those sales to be included because many vendors purchase fuel in bulk.

Online Sales Tax

The committee received testimony from representatives of the Standing Rock Sioux Tribe indicating the tribe may be interested in negotiating a state-tribal sales and use tax agreement to capture the tax revenue generated from online sales from tribal members on the reservation.

Testimony from a representative of the Tax Department indicated items generally are taxed where the item is delivered or where the customer takes possession, there is a 5 percent state sales tax, and there are no state-tribal tax agreements for sales tax. Testimony indicated although legislation was enacted in 2019 to allow for state-tribal sale and use tax agreements, if the tribe wants to make changes to the legislation, the changes could be addressed during the upcoming legislative session.

LAW ENFORCEMENT ISSUES

The committee received information regarding law enforcement issues facing the tribes. Tribal representatives indicated drug use is prevalent on the reservations, and there is a severe shortage of law enforcement officers. Testimony from a representative of the Turtle Mountain Band of Chippewa Indians indicated only 6 to 12 law enforcement officers patrol the entire reservation. Testimony from a representative of the Standing Rock Sioux Tribe indicated the tribe has only 15 police officers for approximately 10,000 tribal members, and the maximum capacity of tribal detention facilities is 48 inmates, which is inadequate and forces the tribe to contract with out-of-state or federal facilities straining the tribe's law enforcement budget. Testimony indicated tribes are seeking to deter criminal activity by entering mutual aid agreements and memorandums of understanding with different state law enforcement agencies, including the Highway Patrol. Testimony from a representative of the Bureau of Criminal Investigation indicated the appropriation request from the Attorney General's office for the upcoming biennium will include the cost of hiring three full-time employees to be assigned to offices in Stanley, Rolla, and Carson to help combat the drug activity near tribal communities.

Committee members acknowledged the drug problem crosses reservation boundaries and is rampant throughout the entire state and encouraged tribal representatives to continue forming partnerships with state law enforcement agencies.

HEALTH CARE ISSUES

The committee received information regarding tribal health care coordination agreements. Testimony from a representative of the Department of Human Services indicated care coordination agreements are between a tribe and a health care provider, and both the state and tribes can benefit if tribes enter the agreements. If a care coordination agreement is in place, the federal government will reimburse the state for 100 percent of the cost of care of tribal members enrolled in Medicaid. A portion of the reimbursement will go to the tribe that entered the agreement, and a portion will go to the state's general fund. The statute on care coordination agreements, Section 50-24.1-40, was amended by House Bill No. 1407 (2021) and there are stipulations on how a tribe may use the funding it receives as a result of entering a care coordination agreement. The funding a tribe receives must be used to increase access to health care, and there is a cap on the amount of funding that can be used for capital construction.

The committee received testimony from representatives of the Three Affiliated Tribes indicating the tribe pays over \$40 million per year to provide health insurance for qualifying tribal members, and 7,000 members are enrolled. Testimony indicated the tribe pays the health care insurance premiums for members who are otherwise eligible for Medicaid because tribal elders face barriers when attempting to enroll in Medicaid, such as poor customer service from county social services. Testimony indicated the federal government has failed to provide sufficient outreach to tribal members regarding Medicaid and Medicare eligibility and enrollment.

The committee received testimony from representatives of the Standing Rock Sioux Tribe indicating a new health care facility is necessary to meet the community's needs due to the impact of the pandemic which highlighted the chronic underfunding of the Indian Health Service and the health care disparities faced by tribal members.

The committee received testimony from representatives of the Turtle Mountain Band of Chippewa Indians indicating retaining professional medical staff on the reservation is difficult due to the remote nature of the reservation, and there is a severe shortage of licensed addiction counselors and dentists to serve the tribal community.

The committee received testimony from a representative of the State Department of Health, noting the department hired four tribal health liaisons to help transmit information from the department to the tribes and identify gaps in services. The positions initially were created as a pilot program funded by COVID-19 relief funding, but the department recently applied for a grant to fund the positions until 2027.

OTHER ISSUES AFFECTING TRIBES

Indian Boarding Schools and Burial Sites

The committee received testimony from representatives of the Turtle Mountain Band of Chippewa Indians noting concerns that tribal members may be buried on Indian boarding schools' land. Tribal representatives requested support for requesting pertinent records from the State Historical Society and to bring those individuals back to their families for appropriate ceremonies and proper burials.

The committee received testimony from representatives of the State Historical Society regarding available resources concerning Indian boarding schools. Testimony indicated the State Historical Society routinely works with well-known tribal historians and specialists on the reservations.

State-Tribal Relations Policy

The committee received testimony from representatives of the Three Affiliated Tribes proposing formalizing a state-tribal relations policy in statute to improve communication between the state and tribes and to ensure timely and meaningful consultation and tribal input occurs. Testimony indicated other states, including Montana, Nevada, and Washington, have enacted laws outlining formal state-tribal relations policies.

Legislative Redistricting and Tribal Census Data

The committee received testimony from tribal representatives on legislative redistricting and tribal census data. Testimony from representatives of the Turtle Mountain Band of Chippewa Indians indicated tribal membership data is more accurate than census data because the census collection was affected by the pandemic as well as tribal members' mistrust of the federal and state governments due to historical trauma. Testimony from representatives of the Three Affiliated Tribes indicated support for the reservation to be a single legislative district or to create legislative subdistricts to ensure tribal members are fairly represented. Testimony from representatives of the Spirit Lake Tribe indicated support for the reservation to be a single legislative district due to the reservation's small size and unique geography, and the majority of tribal land being located in one county.

Committee members indicated the committee would report the tribal feedback received relating to legislative redistricting to the Legislative Management's interim Redistricting Committee and encouraged tribal members to attend the Redistricting Committee's public hearings.

REPORTS

Memorandum of Understanding

The committee received a report from the Department of Corrections and Rehabilitation, the Juvenile Court, and the Indian Affairs Commission regarding recommendations on the status, effectiveness, performance, and sustainability of a memorandum of understanding to provide services to juveniles adjudicated in tribal court as required by Section 27-20.4-27. Section 27-20.4-27 allows the Department of Corrections and Rehabilitation, the Supreme Court, and the Indian Affairs Commission to enter a memorandum of understanding with tribal governments to provide services for the treatment and rehabilitation of tribal juveniles who have been adjudicated in tribal court under tribal or federal laws.

The report noted a memorandum of understanding initially was signed between the Spirit Lake Tribal Court and relevant state entities on January 15, 2020, and a second memorandum of understanding was signed by the Turtle Mountain Band of Chippewa Indians. The memorandums of understanding facilitate the sharing of information, data collection, and resources between the participating entities. Twenty-one juvenile cases in the Spirit Lake Tribal Court have received services.

Oil and Gas Agreements

Section 57-51.2-04 requires the Governor to file a report with the Legislative Management describing the negotiations and terms of any separate agreement between the Governor and the Three Affiliated Tribes of the Fort Berthold Reservation, Standing Rock Sioux Tribe, and Turtle Mountain Band of Chippewa Indians, relating to taxation and regulation of oil and gas exploration and production within the boundaries of the Fort Berthold Reservation, that portion of the Standing Rock Reservation located in this state, or Turtle Mountain Band of Chippewa Indians Reservation and on trust properties outside reservation boundaries and thereafter biennial reports describing the agreement's implementation and any difficulties in its implementation.

The committee did not receive a report on this topic because no new oil and gas agreements were entered or implemented under Chapter 57-51.2 during the reporting period.