



## **MANDAN, HIDATSA & ARIKARA NATION**

Three Affiliated Tribes \* Fort Berthold Indian Reservation  
404 Frontage Road New Town, ND 58763  
Tribal Business Council

Office of the Chairman  
Mark N. Fox

### **SENATE BILL 2318 SENATE FINANCE AND TAXATION COMMITTEE FEBRUARY 10, 2021**

#### **TESTIMONY OF MARK FOX, CHAIRMAN MANDAN, HIDATSA AND ARIKARA NATION**

Madam Chair and members of the Committee, my name is Mark Fox, I am the Chairman of the Mandan, Hidatsa and Arikara (MHA) Nation. The MHA Nation supports Senate Bill 2318, a bill that allows for a fair collection of a single alcoholic beverages wholesale tax and alcoholic beverages gross receipts tax under state-tribal agreements.

By federal statute, the sale and consumption of alcohol by any person is prohibited in Indian Country unless it is authorized by both state and tribal law. The tribal liquor law must be approved by the Secretary of Interior. Like other North Dakota tribes, the MHA Nation has a Liquor Ordinance approved by the Secretary which provides for the regulation and taxation of all liquor transactions on the Fort Berthold Indian Reservation.

Because federal law requires that the sale of alcohol conform to both state and tribal law, dual state and tribal taxation of alcohol is an ongoing issue. For over 70+ years of alcohol being sold on the Reservation the MHA Nation has not collected one dime in tax revenue, due in large part to the dual taxation issue.

In the 2017 Legislative Session and the following interim session, we worked together to come up with an agreement to share alcohol taxes. Unfortunately, legislation adopted in 2019 did not solve the problem because the tax sharing methodology was unworkable, it did not account for the tribes right to share taxes from all sales generated on the reservation. The problem was exacerbated by the fact that state officials demanded exclusive regulatory authority over alcohol sales, even though federal law requires alcohol sales to conform to both state and tribal law, and even though the 2019 legislation expressly recognized the sovereign rights of both the state and the tribes. As a result, not a single tax agreement was signed under the 2019 legislation. SB 2318 is intended to fix this problem.

The current state law allows the tribe entering into an agreement with the state to receive a portion of the tax revenue allocated based on multiplying the enrolled membership of the tribe by the state alcohol tax revenue per capita. Essentially, this means that we would only be collecting revenue from our own membership instead of all sales on our reservation. This makes no sense, which

is one reason no tribes have entered into such an agreement since this law was passed last session.

SB 2318 allows for 80% of the revenue collected from alcohol sales on the reservation to be distributed to the tribes and the remainder to the state. The 80/20 split recognizes that reservation alcohol sales place a disproportionate burden on tribal government and that the majority of services provided around the sale and consumption of alcohol on the reservation are provided by the tribal government.

The tribal share collected under SB 2318 will help relieve the tremendous amount of money that we spend to provide treatment and alcohol related services for our members addicted to alcohol. At any given time, we have approximately 50-60 members in treatment for an average of 60-90 days, with 5-10 inquiries for treatment each week. The cost is exponential. For example, in 2020, we were billed \$9.3 million from facilities providing treatment for alcohol dependency of our tribal members.

The sale and consumption of alcohol on the reservation also places a disproportionate burden on our judicial system. For example, 90% of all criminal cases in our Fort Berthold District Court are alcohol related. Our tribal police respond to countless calls that result from the sale and consumption of alcohol on the reservation. Domestic violence involving our members and nonmembers remains an ongoing problem, as does human trafficking, alcohol related injuries

and deaths from vehicle accidents, and overdoses. The notion that persons who benefit from the sale of alcohol must pay their fair share of taxes to the tribal government shouldering the burdens created by these alcohol sales should be self-evident.

Current law clearly recognizes our sovereign authority to regulate the sale of alcohol on Fort Berthold. The MHA Nation will not and should not be expected to waive our regulatory authority in order to enter into an agreement with the state to share tax revenue from the sale of alcohol on our reservation. The law as written allows for both the state and tribe to jointly regulate alcohol sales on our reservation should we decide to enter into a revenue sharing agreement. The expectation that tribes must rescind our regulatory authority within our boundaries before the state can administer the collection of taxes and distribute the revenue under a state-tribal agreement is simply a misinterpretation of plainly stated law.

SB 2318 provides a fair mechanism to share taxes generated from the sale and consumption of alcohol on the reservation, while recognizing the concurrent regulatory authority of both the state and tribes. Madam Chair, we urge a do pass of SB 2318. Thank you.