

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

TRIBAL TAXATION ISSUES COMMITTEE

Tuesday, August 27, 2019
Brynhild Haugland Room, State Capitol
Bismarck, North Dakota

Governor Doug Burgum, Chairman, called the meeting to order at 9:10 a.m.

Members present: Governor Doug Burgum; Senators Dwight Cook, Joan Heckaman, Rich Wardner; Representatives Josh Boschee, Craig Headland, Chet Pollert; Citizen Members Scott J. Davis, Ryan Rauschenberger, Brent Sanford

Others present: See [Appendix A](#)

Governor Burgum welcomed committee members and tribal leaders and members. He said he was thankful for the Legislative Assembly's efforts in creating a committee that joins the executive and legislative branches. He said last interim the committee focused on fostering a stable tax and regulatory environment to improve the state's competitive position among states. He said the committee achieved historic things, including creating a framework for collecting and administering an alcohol and tobacco wholesale tax and a sales, use, and gross receipts tax. He said even though it is called a tax committee, other topics affecting tribes may be addressed. He said the focus of the first meeting will be listening to tribes' concerns to identify areas for collaboration and to further the relationship between the state and the tribes.

At the request of Governor Burgum, the Legislative Council staff presented a memorandum entitled [Supplementary Rules of Operation and Procedure of the North Dakota Legislative Management](#) and a memorandum entitled [Tribal Taxation Issues Committee - Background Memorandum](#), regarding tribal taxation issues.

Governor Burgum called on Mr. Ryan Rauchenberger, Tax Commissioner, for a presentation ([Appendix B](#)) on taxes subject to revenue-sharing agreements. Mr. Rauschenberger provided information ([Appendix C](#)) on revenue-sharing agreement collections for fiscal years 2012 through 2019. He said 45 wells, of which 87 percent were trust wells and 13 percent were fee wells, were spud within reservation boundaries from July 1 through August 16 of this year. He said Senate Bill Nos. 2257 and 2258 (2019) provide a framework for collecting and administering an alcohol wholesale tax and a sales and use tax, but no tribal agreements have been signed. He said there have been discussions with the Mandan, Hidatsa and Arikara Nation regarding such an agreement.

In response to a question from Senator Cook, Mr. Rauschenberger said there are 14 drilling rigs within the boundaries of the Fort Berthold Reservation. He said the number of rigs has remained fairly consistent.

In response to a question from Representative Boschee, Mr. Rauschenberger said the 1 percent administrative fee is deducted before the revenue split is calculated.

Governor Burgum called on Mr. Scott J. Davis, Executive Director, Indian Affairs Commission, for an update on tribal issues. Mr. S. Davis said state leaders recognize the importance of a government-to-government relationship with tribes. He said tribes and counties have been cooperating in the interest of public safety. He said the Safe Trails Task Force program, conducted by the Federal Bureau of Investigation, targets criminal activity on tribal lands and is close to implementation in the state. He said mutual aid agreements between tribes and the Highway Patrol can be beneficial. He said legislation enacted during the 2019 legislative session created a framework for care coordination agreements relating to health care for the tribes' benefit. He said the tribal-state health board held its first meeting and heard from tribes regarding issues they face. He said the Indian Affairs Commission will study sacred sites as outlined in Senate Concurrent Resolution No. 4017 (2019). He said the Governor's office issued a letter to each tribe seeking delegates to serve on a tribal subcommittee formed to address census concerns. He said a northern campus of the National Law Enforcement Training Center is being considered and likely will be located in North Dakota.

Governor Burgum said reservations that border multiple counties are complex due to their geography, and more cooperation is required when dealing with multiple jurisdictions. He said the National Law Enforcement Training Center is in New Mexico and plains tribes are underrepresented. He said if the state had a training center, it would increase the likelihood of individuals from North Dakota and South Dakota being represented and would promote a positive economic and career path opportunity.

STANDING ROCK SIOUX TRIBE

Governor Burgum called on Mr. Mike Faith, Chairman, Standing Rock Sioux Tribe. Chairman Faith introduced the other tribal representatives in attendance--Mr. John Pretty Bear, Councilman; Mr. Frank White Bull, Councilman; Ms. Shauna Long, Internal Affairs Director; and Mr. Marshall Kelly, External Affairs Director.

Chairman Faith thanked Senator Cook for opening doors regarding tribal taxation issues and wished him the best in his retirement. He said drug addiction is prevalent on the reservation and, due to the reservation's unique geography, the tribe has to work with multiple jurisdictions to combat the issue. He said working with two states is challenging, but working together is the best way to tackle the issue. He said his administration believes mutual aid agreements and partnerships are beneficial. He said road conditions are a big issue, particularly in rural areas. He said the state should form a technical assistance team to help rural areas address road conditions.

Governor Burgum said some tribes face challenges in dealing with multiple jurisdictions. He said he invited the Governor of South Dakota to a conference in Fargo to allow both states to be represented when discussing tribal matters.

Mr. Pretty Bear said one area of concern in Cannonball is that the area would be the first to be affected in the event of an oil spill. He said the tribe has contingency plans in place, but the main concern is an oil spill affecting the community's water source. He said the tribe would like the state's help in creating an emergency hazard mitigation plan.

Governor Burgum said he recognized oil spills are a concern for tribes, and it would be beneficial to conduct a tabletop exercise or natural planning exercise to help coordinate resources in the event of an oil spill.

In response to a question from Governor Burgum, Mr. Pretty Bear said the new school in Solen has encountered construction issues, but likely will open in the spring of 2020.

Mr. White Bull said the road washout that occurred on the reservation highlighted the necessity for a continued partnership between the tribe and the state. He said the Governor's administration has been an open administration for tribes.

Mr. Kelly said law enforcement memorandums of understanding can be helpful, but should be considered carefully by the tribal council and voted on by the people.

In response to a question from Representative Boschee, Chairman Faith said the tribe is in danger of losing a group home located 10 miles north of Fort Yates due to changes in federal regulation.

TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS

Governor Burgum said Mr. Jamie Azure, Chairman, Turtle Mountain Band of Chippewa Indians, was unable to attend the meeting. Governor Burgum called on Mr. Nathan Davis, Councilman, for testimony ([Appendix D](#)). Mr. N. Davis introduced the other tribal representatives in attendance--Ms. LoAnn Jerome, Councilwoman; Ms. Bernice Poitra, Councilwoman; and Ms. Alysia LaCounte, tribal legal counsel.

Mr. N. Davis said Turtle Mountain's reservation is a 6- by 12-mile area located in north central North Dakota, and 18,500 individuals live on or near the reservation. He said the population is continuing to grow with over 33,000 enrolled members. He said the tribe may be interested in a state-tribal agreement for the collection and administration of a wholesale alcohol tax and a cigarette and tobacco tax.

In response to a question from Mr. N. Davis, Mr. Rauschenberger said a wholesale alcohol tax is collected and assessed by the state at the wholesale level off the reservation. He said unless there is an agreement in place, the state does not collect a cigarette tax for any cigarette or tobacco product going to the reservation.

In response to a question from Senator Wardner, Ms. LaCounte said the tribe services county roads located on the reservation. She said law enforcement is not reporting accident statistics from the reservation appropriately to the state.

Representative Boschee requested the Legislative Council staff research whether the Upper Great Plains Transportation Institute included tribal roads in its study of road maintenance and costs.

Governor Burgum said a road funding update would be added to the next meeting's agenda. He said when the Department of Transportation's new director begins employment at the end of September, he will ask him to visit with the tribes' transportation leaders.

Mr. N. Davis said House Bill No. 1194 (2019) addressed coordination care agreements, but prohibited tribes from using funds received under an agreement for capitol construction projects or for services covered by Indian Health Services (IHS). He said IHS is the tribe's primary health care provider, and restricting the use of the funds in that manner is burdensome for the tribes.

Ms. LaCounte said IHS has a lower standard pay scale for medical professionals, and the ability to use those funds more freely would assist in attracting medical professionals to the area.

Governor Burgum said 41 percent of IHS's funding goes toward administrative costs before it comes to the state.

Mr. N. Davis said IHS is underfunded and funding often is exhausted in the 3rd or 4th quarter. He said the tribe's intent is to take stress off IHS, which is why the tribe has chosen not to pursue the coordination care agreements.

In response to a question from Senator Cook, Ms. LaCounte said the tribe collects a cigarette tax of 5 cents per pack, and approximately \$120,000 is collected per year. She said an increase in the tribe's cigarette tax failed on a tribal council vote.

In response to a question from Senator Cook, Mr. N. Davis said the tribal council would be interested in meeting with the Tax Department to discuss how the state might assist in collecting a cigarette and sales tax for the tribe.

Mr. Rauschenberger said the state could help collect taxes for the tribe if the tribe enters an agreement. He said implementing those taxes potentially could result in \$1 million of revenue for the tribe. He said he understands the political hurdles surrounding the issue.

Mr. N. Davis said the tribe could benefit from the additional tax revenue. He said the tribal council needs to discuss the issue now that a framework for collection is in place.

Lieutenant Governor Sanford said revenue is available to tribal cities that incorporate, including funding for certain infrastructure projects due to legislation passed during the 2019 legislative session.

Senator Wardner said incorporated cities share in the state aid distribution fund and the highway tax distribution fund.

Mr. N. Davis said incorporating is a sensitive subject for the tribe, and education on the process and effect of incorporating would be required.

Mr. S. Davis said a team could be formed to analyze the process of incorporating a tribal city.

Governor Burgum said there have been discussions regarding water delivery in the state, namely transporting water from the Missouri River to Minot and connecting with rural water systems in the area, which could help the tribe by providing a second water source.

Ms. LaCounte said there have been discussions regarding forming a drug task force. She said legislation should be proposed to form and fund a tribal-state drug task force.

Governor Burgum called on Dr. Lana DeCoteau, Superintendent, Turtle Mountain Community School, and Duane Poitra, Business Manager, Belcourt School District, Turtle Mountain Band of Chippewa Indians, to discuss school governance issues. Mr. Poitra said there have been issues regarding the language of Senate Bill Nos. 2230 and 2265 (2019) relating to school board membership and eligibility. He said an issue has been raised on whether the law applies to candidates or sitting board members. He said a question also was raised on whether the school board has the authority to require members to submit to a background check.

Representative Boschee said the appropriate step is to request a formal opinion from the Attorney General since the laws are in effect.

In response to a question from Senator Heckaman, Mr. Poitra said the North Dakota School Boards Association gave verbal advisement on the matter, but did not provide anything in writing.

In response to a question from Senator Heckaman, the Legislative Council staff said the Legislative Council can provide the bill's legislative history, but not a formal legal opinion regarding the application or interpretation of the bill. She said assistance could be provided in helping draft a formal request for an opinion from the Attorney General.

SPIRIT LAKE TRIBE

Governor Burgum said Ms. Peggy Cavanaugh, Chairwoman, Spirit Lake Tribe, was unable to attend the meeting. Governor Burgum called on Mr. Joel Redfox, Councilman, Spirit Lake Tribe, for testimony ([Appendix E](#)). Mr. J. Redfox introduced the other tribal representatives in attendance--Mr. Mardell Redfox, Tax Director, Spirit Lake Tribe, and Ms. Collette Brown, Executive Director, Gaming Commission, Spirit Lake Casino & Resort.

Mr. J. Redfox said Chairwoman Cavanaugh appreciated the invitation to participate and would like to present at the next committee meeting.

Senator Heckaman said she received calls regarding bus drivers not being certified in the Oberon School District and a recall of certain school board members. She said it is unclear who is in charge of enforcement regarding these issues. She said when legislation is passed, the legislation needs to identify who is in charge of enforcement.

THREE AFFILIATED TRIBES OF THE FORT BERTHOLD RESERVATION

Governor Burgum said Mr. Mark Fox, Chairman, Three Affiliated Tribes of the Fort Berthold Reservation, was unable to attend the meeting. Governor Burgum called on Mr. John Fredericks, legal counsel, Mandan, Hidatsa and Arikara Nation, for testimony. Mr. Fredericks said the allocation formula for the alcohol and tobacco tax needs to be revisited. He said the formula takes the total quarterly revenue and allocates it across the state based on the state's census. He said the formula does not allocate the tax revenue fairly to the tribe because the formula does not take into account the impact of alcohol and tobacco use on the reservation. He said the tribe is impacted heavily by alcohol addiction and domestic violence, and the tribal court is overwhelmed by criminal cases that often involve alcohol.

In response to a question from Governor Burgum, Mr. Fredericks said the allocation formula is not workable for the tribe, but a percentage split may be an option for a proposed reallocation. He said the tribe previously focused on the oil and gas tax agreement, but can refocus its attention on alcohol, tobacco, and sales tax agreements. He said the tribe views the state's proposition of being the exclusive regulatory authority over the alcohol and tobacco tax as requiring the tribe to cede its regulatory authority. He said there is an opportunity for dual regulatory authority, such as the tribe having the ability to revoke a retailer's license if the retailer violates licensing requirements. He said online sales complicate the sales tax issue, and allocation of revenue from online sales requires further discussion.

Mr. Rauschenberger said additional legislation would be required to allow the state to enter an alcohol tax agreement allowing for dual regulation or requiring the state to cede its regulatory authority.

Senator Cook said allocating revenue from online sales is a delicate issue and the committee would benefit from gaining a better understanding of the state's current tax policy regarding online sales.

Governor Burgum requested the Tax Department to present information regarding the taxation of online sales at the committee's next meeting.

Mr. Fredericks said approximately 267 wells were completed on the reservation in 2019, and additional well completions are anticipated.

Governor Burgum said the state's production reached 1.4 million barrels of oil per day in June, with a rig count of 68. He said production is at its peak despite the number of rigs being a quarter of the highest rig count in the past. He said the new wells drilled this year are averaging at a higher point of production.

Mr. Fredericks said technology continues to improve and producers are becoming more efficient. He said large amounts of gas are produced and flaring is an issue. He said the biggest challenge is transporting the gas. He said the tribe is interested in looking for ways to partner with the state to get a pipeline to the West Coast to reach markets in Asia. He said a task force could be created due to the interest in the issue.

Governor Burgum said there is an unlimited demand for gas in Asia. He said oil production could reach 2.2 million barrels per day if a solution is found for gas capture and transportation. He said both the state and the tribe would benefit from tax revenue on additional production.

Mr. Fredericks said the tribe has concerns with well pads located outside reservation boundaries which use horizontal drilling but laterally penetrate trust minerals within the boundaries of the reservation. He said the legislation did not contemplate horizontal drilling, and production from those wells is not subject to the agreement, which results in a huge loss of revenue for the tribe. He said the legislation is ambiguous because it refers to production "on the reservation" as well as production "attributable" to the reservation.

Governor Burgum said the issue of horizontal drilling near reservation boundaries will be added to the next meeting's agenda.

In response to a question from Lieutenant Governor Sanford, Mr. Fredericks said the tribal council has not provided a specific recommendation regarding a sales tax revenue split, but it would be easiest to have a set percentage allocated to the tribe.

SISSETON-WAHPETON OYATE OF THE LAKE TRAVERSE RESERVATION

Governor Burgum called on Ms. Brenda J. Bellonger, Tax Director, Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, for testimony. Ms. Bellonger said the tribe did not have a prepared statement, but was thankful for the discussion and invitation to participate.

Mr. Rauschenberger encouraged Ms. Bellonger to contact the Tax Department regarding any taxation issues and to use the department as a resource.

COMMENTS BY INTERESTED PERSONS

Ms. Brown said Spirit Lake Casino & Resort is being affected by the introduction of electronic pull tab devices in the state. She said the lack of adequate staffing by the state has resulted in little regulatory oversight over the devices located in bars across the state. She said after the devices were implemented in August 2018, the tribal casino's revenue decreased by 40 percent. She said the unregulated use of these devices in bars can result in money laundering and tax evasion issues. She said the tribal casino has procedures in place to identify and deter such activities.

Senator Cook said he received updated statistics from the Gaming Division of the Attorney General's office, and as of July 31, 2019, there were 1,914 electronic pull tab devices being conducted by 180 organizations at 503 sites throughout the state. He said for fiscal year 2020, 290 organizations have active licenses for 825 licensed sites. He said the number of devices is continuing to increase. He said the tribes are planning to implement sports betting. He said it may be necessary to review tribal-state gaming compacts to determine whether the tribes have the authority to conduct sports betting and whether the compact prohibits the state from conducting sports betting.

Ms. Tracey L. Wilkie said she is an enrolled member of the Turtle Mountain Band of Chippewa Indians. She said she recently moved back to the reservation and noted two areas of concern--namely the need for more resources for children with special needs, and poor road conditions.

No further business appearing, Governor Burgum adjourned the meeting at 3:18 p.m.

Jill Grossman
Counsel

Emily L. Thompson
Code Revisor

ATTACH:5