

FISCAL NOTE
Requested by Legislative Council
01/19/2015

Amendment to: HB 1406

- 1 A. **State fiscal effect:** *Identify the state fiscal effect and the fiscal effect on agency appropriations compared to funding levels and appropriations anticipated under current law.*

	2013-2015 Biennium		2015-2017 Biennium		2017-2019 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues						
Expenditures						
Appropriations						

- 1 B. **County, city, school district and township fiscal effect:** *Identify the fiscal effect on the appropriate political subdivision.*

	2013-2015 Biennium	2015-2017 Biennium	2017-2019 Biennium
Counties			
Cities			
School Districts			
Townships			

- 2 A. **Bill and fiscal impact summary:** *Provide a brief summary of the measure, including description of the provisions having fiscal impact (limited to 300 characters).*

HB 1406 authorizes the Governor to enter into a state-tribal sales, use, gross receipts, and/or motor vehicle excise tax agreement with the governing members of the Standing Rock Sioux Tribe.

- B. **Fiscal impact sections:** *Identify and provide a brief description of the sections of the measure which have fiscal impact. Include any assumptions and comments relevant to the analysis.*

If enacted, HB 1406 enables the Governor and the Tribal Government to begin negotiating the parameters of a potential sales, use, gross receipts, and/or motor vehicle excise tax agreement. This is enabling legislation only and does not have a fiscal impact on its own.

3. **State fiscal effect detail:** *For information shown under state fiscal effect in 1A, please:*

- A. **Revenues:** *Explain the revenue amounts. Provide detail, when appropriate, for each revenue type and fund affected and any amounts included in the executive budget.*
- B. **Expenditures:** *Explain the expenditure amounts. Provide detail, when appropriate, for each agency, line item, and fund affected and the number of FTE positions affected.*
- C. **Appropriations:** *Explain the appropriation amounts. Provide detail, when appropriate, for each agency and fund affected. Explain the relationship between the amounts shown for expenditures and appropriations. Indicate whether the appropriation or a part of the appropriation is included in the executive budget or relates to a continuing appropriation.*

Name: Kathryn L. Strombeck

Agency: Office of Tax Commissioner

Telephone: 328-3402

Date Prepared: 02/01/2015

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2015 HOUSE FINANCE AND TAXATION

HB 1406

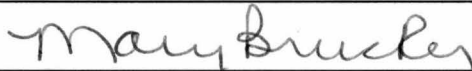
2015 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1406
2/3/2015
23092

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A Bill relating to authorizing entry of state tribal agreements for administration and collection of state and tribal sales, use, gross receipts, and motor vehicle excise taxes imposed and collected within the exterior boundaries of the Standing Rock Reservation within this state.

Minutes:

Attachment #1

Chairman Headland: Opened hearing.

Representative Schmidt: Introduced bill. This bill originated because of a need and a desire of the Standing Rock Tribe to start to initiate sales tax. This is enabling legislation; it gives the governor the authority to enter into an agreement with Standing Rock Sioux Tribe to collect taxes both state and tribal. We already have existing agreements between the state of North Dakota and Standing Rock Sioux Tribe to collect tobacco and motor fuels tax. The legislature has to give authority to the governor to enter into these agreements with them.

Chairman Headland: Are there any questions?

Representative Steiner: Do you have a percentage that the state of North Dakota would receive?

Representative Schmidt: Yes we did discuss that. The tribal folks will discuss that.

Representative Froseth: This is drafted to only one reservation, the Standing Rock Tribe, so I assume if this passes the other reservations would be in looking for the same right.

Representative Schmidt: That was discussed when we got into this. We felt we wished to go forward only with Standing Rock Sioux Tribe. Some of those tribes have agreements with the state tax commissioner through the governor to collect motor fuels and tobacco tax but I'm not going to speculate whether they are going to come back and ask to be part of it as well.

Chairman Headland: Is there any testimony in support?

Karol Two Bears-Kelly, Standing Rock Sioux Tribe Tax Director: Answered Representative Steiner's question first. Currently we have agreements in place for motor fuels, special fuels, cigarette and tobacco with the state of North Dakota. At this time we are sharing 75-25 but we're updating those now based upon the census and our agreements are moving up to 87-13.

Representative Steiner: Thirteen percent is the state's share for doing the tax collecting.

Karol Two Bears-Kelly: They also keep a one percent administrative fee for doing the collections. Provided testimony in support. See attachment #1. (Ended testimony at 10:37)

Representative Klein: Have the percentages been worked out as to how much each entity would receive?

Karol Two Bears-Kelly: In the future or the existing ones that are in place?

Representative Klein: The future.

Karol Two Bears-Kelly: When we came in to our discussions with the state a couple years ago I guess we were under the assumption that we were going to follow the other tax collection agreements and do it based on the census data.

Representative Klein: How is the percentage split in South Dakota?

Karol Two Bears-Kelly: We have the same percentage in South Dakota; it's based on the United States census. We just negotiated new tax collection agreements with the state of South Dakota last year and we are sharing 63-27 and the state keeps one percent for administrative but they gave us a two percent bounce in the census.

Representative Froseth: Have you surveyed your enrolled membership to see what the consensus is for the sales tax?

Karol Two Bears-Kelly: Prior to 2013 we didn't know this bill was going to be in place entering into these agreements. I'm out in the communities at least once or twice a year making reports. We've had hearings in the districts and have gotten motions from the different districts in support of this. We've had financial benefits from the tax agreements in place with South Dakota so North Dakota wants this.

Chairman Headland: Currently the practice is that a business located in the boundaries of the reservation would collect the sales and use tax from non-Indian purchasers?

Karol Two Bears-Kelly: For North Dakota are you talking about an Indian retailer or a non-Indian retailer?

Chairman Headland: Any retailer.

Karol Two Bears-Kelly: There is a difference because if it's an Indian retailer they don't have to collect it such as Prairie Knights Casino. If you're going to the Farmers Union Cenex in Selfridge and you're purchasing something then they do have to because they are a non-Indian.

Chairman Headland: If we were to pass this bill then that would change?

Karol Two Bears-Kelly: That would change everything straight across the board everybody would have to charge sales and use tax.

Chairman Headland: And every purchaser whether they are Indian or non-Indian would pay the tax?

Karol Two Bears-Kelly: Yes.

Representative Froseth: You're rate would be the same at five percent?

Karol Two Bears-Kelly: Yes.

Representative Froseth: How about your local tax? Would you have to go to the members and have a vote?

Karol Two Bears-Kelly: Similar to what we do with cigarette, tobacco and motor fuels we enact a tax code that is substantially similar to the state's tax code so we can then have those in place for our enrolled members.

Chairman Headland: The state is going to receive five percent sales tax or the tribe is going to keep that and just mirror it?

Karol Two Bears-Kelly: No. The state collects all of it.

Chairman Headland: Collects it but who gets to keep it?

Karol Two Bears-Kelly: That's where the tax agreements come into place. The pot that is collected is shared between the tribe and the state.

Chairman Headland: And that is yet to be negotiated between the governor's office and the tribe if this bill were to pass.

Karol Two Bears-Kelly: Yes.

Representative Froseth: The state would share in the five percent and that would be distributed 87% to the tribe and 13% to the state. You could still put on your one percent or two percent of your own tribal sales tax on top of this and that would all be returned to your reservation, correct?

Karol Two Bears-Kelly: I'd have to take a look at the legislation but I thought it prohibited that.

Chairman Headland: I'm confused on whether the 87-13% split is yet to be determined. That doesn't necessarily mean that is what the agreement is going to be between the governor and the tribe.

Representative Mitskog: Can you explain why you're unable to add an additional tax in addition to the state tax?

Karol Two Bears-Kelly: That was put in to legislation. It is my guess that adding the additional two percent to the sales tax is collected by the state and the state would then share in the extra two percent. In order for the collections to be accountable it's just one flat rate. I think an extra two percent on there would just muddy the waters as far as what our share is.

Chairman Headland: Representative Mitskog, I'm assuming the tribe doesn't want to chase the business off the reservation as well. Adding additional tax would likely push some of that business to other areas in the state. Is there any further support? Is there any opposition? Does anyone have questions for the tax department?

Representative Dockter: Myles, can I get a clarification on why they can't collect more than the five percent?

Myles Vosberg, Tax Commissioner's Office: There is a provision in this bill on page 2 line 20. Part of the whole reason for the agreement is it's difficult to determine whose tax applies to what and to whom. The idea is to make everything the same and just share the revenue.

Representative Steiner: There was an agreement with MHA Nation that the oil tax was going to be a certain rate and the governor negotiated certain percentage splits. The actual oil tax charged was higher than was agreed to in the MOU. Because they are a sovereign nation they were able to go around the MOU. I don't think it's fair to say they wouldn't be able to go around this line 20 because they are a sovereign nation.

Myles Vosberg: This is only enabling legislation. This is part of the terms of any agreement.

Representative Klein: The present agreement on the fuels and tobacco tax is 87% to the tribe and 13% to the state?

Myles Vosberg: The existing ones are slightly different than that but we're in the process of updating those agreements based on the census.

Vice Chairman Owens: On page 2 line 3-5 anything we currently exempt in state from sales tax they are free to tax on the reservation, correct?

Myles Vosberg: No, that portion on line 3 refers to the exemption now that applies to enrolled members on the reservation. Now we cannot impose tax on the enrolled members. This is trying to say those now will be subject to tax under an agreement.

House Finance and Taxation Committee

HB 1406

February 3, 2015

Page 5

Chairman Headland: Closed hearing on HB 1406.

2015 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1406
2/10/2015
23578

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Mary Brucher

Explanation or reason for introduction of bill/resolution:

A bill relating to authorizing entry of state tribal agreements for administration and collection of state and tribal sales, use, gross receipts, and motor vehicle excise taxes imposed and collected within the exterior boundaries of the Standing Rock Reservation within this state.

Minutes:

Attachments 1, 2

Chairman Headland: Distributed amendment and Christmas tree version 15.0455.03001 and explained. See attachments 1 and 2. I've had some discussions with representatives from the tribe and others. This amendment if passed would essentially put into code what the agreement is and not have to negotiate. The way it is written it's 20% to the state and 80% to the tribe which is not all that different than what they proposed. In negotiations sometimes things happen and we might as well take that out of the bill in my opinion. We changed having the governor signing the agreement to allow for the tax commissioner to do it.

Representative Klein: This is in accordance with some other agreements?

Vice Chairman Owens: Someone recently showed me all the different agreements and percentages. It's not consistent throughout all their agreements.

Representative Dockter: It was also brought to my attention from the group at Standing Rock on page 3 section 9 it requires Standing Rock to come every year to legislative management to give a report. As long as we're getting our cut it doesn't matter how they're spending their sales tax revenue. I don't think they should have to come to the legislature and report; nobody else has to come and report.

Chairman Headland: Actually we do. Three Affiliated needs to do that as well.

Representative Steiner: The hub cities; Williston, Minot and Dickinson also have to.

Representative Dockter: I just don't think it's necessary.

Representative Steiner: I have concern on page 1 line 10 in removing the governor because Standing Rock is a sovereign nation and their chief and our governor work out the MOUs. You could have the tax commission enter the agreement with final approval by the governor because that is our highest official with their highest official.

Chairman Headland: That was at the suggestion of Mr. Walstad because the tax commissioner has the ability to sign the sales tax agreements with all other political subdivisions.

Representative Steiner: The other thing is on page 3; I think we should require line 9 that the infrastructure 10% of tribal receipts that we see the investments. One of the problems with MHA Nation is we don't see where if they are getting \$22 million a month where are they investing that money. We don't get reports on that and we're sharing 50-50. We are linked together as governments but we don't have any reports.

Representative Haak: This puts in code what the agreement is going to be so does this mean the other tribes have the ability to negotiate? Are we just putting this in code for this tribe?

Chairman Headland: This bill was specific for Standing Rock so it would put it in code for that particular tribe.

Representative Dockter: We get an administrative fee and we're getting 20% but right now we are getting 0% so whatever we get will be more than what we have currently. That's why I don't think section 9 is necessary.

Chairman Headland: Does anyone recall during testimony did they ask for us to remove that portion?

Representative Hatlestad: On item 9 they will tell you they are a sovereign nation so they don't have to do it if they don't want. When they talked about percentages she talked about census, Indian and white, so if we're dictating that won't be acceptable.

Chairman Headland: This takes it all out. I had a conversation with one of the lobbyist and she seemed to think it was acceptable.

Vice Chairman Owens: MADE A MOTION TO ADOPT THE AMENDMENT.

Representative Dockter: SECONDED.

Representative Steiner: I feel strongly that because they are a sovereign nation and we're a sovereign state I don't like the idea of a tax commissioner entering into agreements. I think it's a bad precedent so I can't support the amendment.

Representative Froseth: I agree with Representative Steiner, I think there should be at least two people from the state that take a look at that agreement. Maybe the governor can give the okay for the tax commissioner to take a look at the agreement.

Vice Chairman Owens: I have no problem amending my motion to include in the amendment minus the change on line 10 because it is a sovereign nation. The legislature is still putting in the requirements of the distribution and how it will be run. I don't agree with Representative Steiner about the heads of state issue because that's always been a big deal with the tribes and this is enabling legislation for only Standing Rock so the other tribes would have to come and do the same thing.

Representative Froseth: I think all you'd have to do is reword it so the tax commissioner is in consultation with the governor.

Representative Hatlestad: I think the governor needs to be the lead negotiator. He's the chief executive so it should be chief to chief.

Vice Chairman Owens: I am amending my motion to include the amendment as stated with the exception on page 1 line 10 where we remove the overstrike.

Representative Dockter: Agrees with the motion from Vice Chairman Owens.

VOICE VOTE: MOTION CARRIED TO ADOPT THE AMENDMENT AND REMOVE THE OVERSTRIKE ON PAGE 1 LINE 10.

Representative Dockter: MADE A MOTION TO FURTHER AMEND BY STRIKING OUT SECTION 9 ON PAGE 3 LINES 1-4 AND RENUMBER ACCORDINGLY.

Vice Chairman Owens: SECONDED.

Representative Steiner: I think we should be really cautious about striking this because the other tribes are ready to come in and this will be the clone of all other agreements so if you want a report from another tribe you are giving it away now on Standing Rock. I will resist this amendment strongly.

Chairman Headland: I agree with you.

VOICE VOTE: MOTION FAILS TO FURTHER AMEND.

Representative Klein: MADE A MOTION FOR A DO PASS AS AMENDED.

Representative Dockter: SECONDED.

**ROLL CALL VOTE: 14 YES 0 NO 0 ABSENT
MOTION CARRIES FOR A DO PASS AS AMENDED.**

Representative Mitskog will carry this bill.

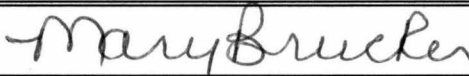
2015 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1406
2/10/2015
23613

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature



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Minutes:

Attachment #1

Reconvened in the afternoon.

Chairman Headland: Mr. Rouse from the tax department is going to give us a possible amendment to consider.

Representative Mitskog: MADE A MOTION TO RECONSIDER OUR ACTIONS OF A DO PASS AS AMENDED.

Vice Chairman Owens: SECONDED.

VOICE VOTE TO RECONSIDER OUR ACTIONS OF THE DO PASS WITH AMENDMENTS: MOTION CARRIED.

Dan Rouse, Legal Counsel with the Office of State Tax Commissioner: Distributed proposed amendment dated February 10, 2015. See attachment #1. This morning you amended the bill to allocate the sales and use tax that are collected from sales activity occurring within the exterior boundaries of the North Dakota portion of the Standing Rock Reservation to be 80% allocated to the tribe and 20% allocated to the state. At present we have agreements with Turtle Mountain, Spirit Lake, Three Affiliated, and Standing Rock and all of those agreements allocate the funds that are collected from the various taxes associated with those agreements based upon the latest decennial census figures from the United States Census Bureau. That number reflects a non-negotiable number at some point. There is a number the United States Census Bureau publishes every 10 years and it says that based upon our canvassing activity these are the number of enrolled members of the various tribes within the exterior boundaries of that reservation. Throughout the years we have insisted entering into those collection and administration agreements with the various tribes across the state. We have said that whatever the money is, whether its fuel

taxes, tobacco taxes, or potentially sales and use taxes, the allocation would be based upon the census distribution. Currently at Standing Rock its 87-13 which means for the reservation the USCB reports that 87% of the people living within the exterior boundaries of that reservation are enrolled members and 13% are not. In testimony you heard that the state and the Standing Rock Tribe are in the final stages of re-negotiating two existing agreements; tobacco and fuels tax agreements. One of the conditions of those agreements is that the revenue collected is distributed back based upon the census data. We are suggesting for you to consider today instead of an 80-20 split for Standing Rock that you modify that portion of the bill to reflect the language I handed out to you which would base the distribution of the revenue that's collected for that particular tax type on the census data. The advantage of that is that it's essentially a non-negotiable point and it's a point at which the parties can ultimately agree. The number is the number and there's really no escaping it. We are asking you to adopt these amendments that would make the proportion of the revenue that's collected and distributed reflective of the enrolled versus non-enrolled membership and non-membership on the reservation.

Chairman Headland: In the other language what we didn't want was a negotiation to occur. If we're assured that the number is what the census says it is and that's non-negotiable, is that the way you would read the bill if we put the amendment on?

Dan Rouse: Yes.

Representative Haak: Is there a way for the tribe to conduct their own census or is this the final word?

Dan Rouse: There's nothing in the bill or this amendment that would allow for that. In agreements across the state we've allowed for that if there is a significant challenge to that number they can approach us to potentially re-negotiate it.

Representative Froseth: Can tribes assess their own sales tax on top of the state tax much like a home rule charter cities and counties can?

Dan Rouse: Yes. Case in point is Turtle Mountain; they are imposing a tobacco tax on top of the state tax.

Chairman Headland: In this bill on page 2 line 20 section 5 it says governing body at Standing Rock must agree not to impose additional tribal taxes.

Dan Rouse: If this bill is enacted and if Standing Rock enters into an agreement with the state then they agree not to impose that other tax on top of the state's tax.

Chairman Headland: I still have concern because we didn't change any of the language on the first page after we removed the overstrike in the original amendment so that negotiation is the same as it was in the original bill?

Dan Rouse: Can you restate your question please?

Chairman Headland: In the amendment we put on with the 80-20 split but originally we had taken away the negotiation completely and just had the agreement to be signed. The committee was concerned that when you're dealing with a sovereign nation you should have your head of state signing the agreements so we removed the overstrike. Now section 1 reads exactly like the original bill which was a negotiation.

Dan Rouse: Section 1 gives the state through the tax commissioner's office in consultation with the governor the authority to enter into the agreements.

Chairman Headland: So that's only as far as entering so we want to approve that?

Dan Rouse: Yes sir.

Representative Hatlestad: Does the state get a fee in addition to the 13% for collecting the taxes and making the distribution?

Dan Rouse: It's on page 2 line 13; historically with all the other agreements we have entered into we've collected a nominal fee for our administration and collection. In prior agreements with Standing Rock it was as high as 3% but consistently with all the new agreements that we've entered into because of the greater efficiencies that we have in the tax department we are able to assess a 1% fee for those services.

Representative Steiner: Is that one percent coming off their 87 percent so they actually get 86%?

Dan Rouse: Yes.

Representative Klein: MADE A MOTION TO ADOPT THE AMENDMENTS OF FEBRUARY 10, 2015.

Representative Dockter: SECONDED.

VOICE VOTE: MOTION CARRIED.

Vice Chairman Owens: MADE A MOTION FOR A DO PASS AS AMENDED.

Representative Steiner: SECONDED.

Representative Haak: Did we have these amendments on or do we need to pull them off?

Chairman Headland: You're amendment fits the amended version, right?

Dan Rouse: These are substitute amendments for just that part of the bill.

Chairman Headland: All we're changing is just that one section so can't we further amend rather than having to pull the amendment off and then the other language change stays?

Dan Rouse: That's what these are offered as is a further amendment. This is language to the second amendment.

**ROLL CALL VOTE FOR DO PASS AS AMENDED: 14 YES 0 NO 0 ABSENT
MOTION CARRIES.**

Representative Mitskog will carry this bill.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1406

Page 1, line 10, remove "governor, in consultation with the"

Page 1, line 10, remove the second underscored comma

Page 2, line 10, remove "or"

Page 2, line 11, after the first underscored comma insert "and allocation and deposit of the state share of revenues."

Page 2, line 17, remove "allocation of"

Page 2, line 17, remove "between the tribe and the state"

Page 2, line 19, replace "subject to determination by the terms of the agreement" with "to be allocated eighty percent to the Standing Rock Sioux Tribe and twenty percent to the state"

Renumber accordingly

Prepared by the
Office of State Tax Commissioner
February 10, 2015

PROPOSED AMENDMENT TO HOUSE BILL 1406 (as amended by
February 10, 2015 Amendments 15.0455.03001)

Page 2, replace line 21 with "between the Standing Rock Sioux Tribe and state, in proportion to the percentage of enrolled members of the Standing Rock Sioux Tribe and non-enrolled persons living within the exterior boundaries of the Standing Rock Reservation, as reported in the most recent decennial census by the United States census bureau"

Renumber accordingly

February 10, 2015

2/10/15

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1406

Page 2, line 10, remove "or"

Page 2, line 11, after the first underscored comma insert "and allocation and deposit of the state share of revenues."

Page 2, line 17, remove "allocation of"

Page 2, line 17, remove "between the tribe and the state"

Page 2, line 19, replace "subject to determination by the terms of the agreement" with "to be allocated between the Standing Rock Sioux Tribe and this state, in proportion to the percentage of enrolled members of the Standing Rock Sioux Tribe and nonenrolled persons living within the exterior boundaries of the Standing Rock Reservation, as reported in the most recent decennial census by the United States census bureau"

Renumber accordingly

Date: 2-10-15
Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1406

House Finance and Taxation Committee

☐ Subcommittee

Amendment LC# or Description: 15.0455.03001 Feb. 10, 2015
and add p. 1 line 10 remove overstrike

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. Owens Seconded By Rep. Dockter

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN HEADLAND			REP HAAK		
VICE CHAIRMAN OWENS			REP STRINDEN		
REP DOCKTER			REP MITSKOG		
REP TOMAN			REP SCHNEIDER		
REP FROSETH					
REP STEINER					
REP HATLESTAD					
REP KLEIN					
REP KADING					
REP TROTTIER					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Voice vote - Motion carried.

Date: 2-10-15
Roll Call Vote #: 2

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1406

House Finance and Taxation Committee

☐ Subcommittee

Amendment LC# or Description: 15.0455.03001
further amend - strike out section 9 on p.3
+ renumber accordingly

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. Dockter Seconded By Rep. Owens

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN HEADLAND			REP HAAK		
VICE CHAIRMAN OWENS			REP STRINDEN		
REP DOCKTER			REP MITSKOG		
REP TOMAN			REP SCHNEIDER		
REP FROSETH					
REP STEINER					
REP HATLESTAD					
REP KLEIN					
REP KADING					
REP TROTTIER					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Voice vote = Motion fails.

Date: 2-10-15
Roll Call Vote #: 3

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1406

House Finance and Taxation Committee

☐ Subcommittee

Amendment LC# or Description: 15.0455.03001

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. Klein Seconded By Rep. Dockter

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN HEADLAND	✓		REP HAAK	✓	
VICE CHAIRMAN OWENS	✓		REP STRINDEN	✓	
REP DOCKTER	✓		REP MITSKOG	✓	
REP TOMAN	✓		REP SCHNEIDER	✓	
REP FROSETH	✓				
REP STEINER	✓				
REP HATLESTAD	✓				
REP KLEIN	✓				
REP KADING	✓				
REP TROTTIER	✓				

Total (Yes) 14 No 0

Absent —

Floor Assignment Rep. Mitskog

If the vote is on an amendment, briefly indicate intent:

Date: 2-10-15
Roll Call Vote #: 1

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1406

House Finance and Taxation Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☒ Reconsider ☐ _____
Do Pass As Amended 2-10-15 am

Motion Made By Rep. Mitskog Seconded By Rep. Owens

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN HEADLAND			REP HAAK		
VICE CHAIRMAN OWENS			REP STRINDEN		
REP DOCKTER			REP MITSKOG		
REP TOMAN			REP SCHNEIDER		
REP FROSETH					
REP STEINER					
REP HATLESTAD					
REP KLEIN					
REP KADING					
REP TROTTIER					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Voice Vote = Motion carried.

Date: 2-10-15
Roll Call Vote #: 2

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1406

House Finance and Taxation Committee

☐ Subcommittee

Amendment LC# or Description: Tax Commissioner - attachment #1
Amendment dated 2-10-15

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. Klein Seconded By Rep. Darter

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN HEADLAND			REP HAAK		
VICE CHAIRMAN OWENS			REP STRINDEN		
REP DOCKTER			REP MITSKOG		
REP TOMAN			REP SCHNEIDER		
REP FROSETH					
REP STEINER					
REP HATLESTAD					
REP KLEIN					
REP KADING					
REP TROTTIER					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Voice vote - Motion carries.

Date: 2-10-15
Roll Call Vote #: 3

2015 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 1406

House Finance and Taxation Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep Owens Seconded By Rep. Steiner

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN HEADLAND	✓		REP HAAK	✓	
VICE CHAIRMAN OWENS	✓		REP STRINDEN	✓	
REP DOCKTER	✓		REP MITSKOG	✓	
REP TOMAN	✓		REP SCHNEIDER	✓	
REP FROSETH	✓				
REP STEINER	✓				
REP HATLESTAD	✓				
REP KLEIN	✓				
REP KADING	✓				
REP TROTTIER	✓				

Total (Yes) 14 No 0

Absent 0

Floor Assignment Rep. Mitskog

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1406: Finance and Taxation Committee (Rep. Headland, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (14 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1406 was placed on the Sixth order on the calendar.

Page 2, line 10, remove "or"

Page 2, line 11, after the first underscored comma insert "and allocation and deposit of the state share of revenues."

Page 2, line 17, remove "allocation of"

Page 2, line 17, remove "between the tribe and the state"

Page 2, line 19, replace "subject to determination by the terms of the agreement" with "to be allocated between the Standing Rock Sioux Tribe and this state, in proportion to the percentage of enrolled members of the Standing Rock Sioux Tribe and nonenrolled persons living within the exterior boundaries of the Standing Rock Reservation, as reported in the most recent decennial census by the United States census bureau"

Renumber accordingly

2015 SENATE FINANCE AND TAXATION

HB 1406

2015 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Lewis and Clark Room, State Capitol

HB1406

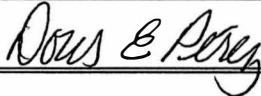
3/10/2015

Recording job number 24558

☐ Subcommittee

☐ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to authorizing entry of state-tribal agreements for administration and collection of state and tribal sales, use, gross receipts, and motor vehicle excise taxes imposed and collected within the exterior boundaries of the Standing Rock Reservation within this state.

Minutes:

Attachment #1

Chairman Cook opened the hearing on HB1406.

Rep. Schmidt presented the bill. This bill gives the governor the authority to enter into an agreement with Standing Rock to collect sales tax. It's the governor's choice how to enter into that agreement. Initially there was no fiscal note. In some circumstances the governor has the authority not to enter into that agreement. It's totally at the discretion of the governor. Presently that authority does not exist.

Chairman Cook -- Collecting the sales tax is going to cost money. The bill would allow the governor to negotiate who will cover that cost and split of the revenue, how much goes to the state and how much goes to the tribe. Why just Standing Rock?

Rep. Schmidt -- because they already have 2 agreements going on.

Sen. Laffen -- Do the tribes pay our state sales tax?

Karol Two-Bears-Kelly, Standing Rock Sioux Tribe Tax Director (Attachment #1)
Urges support. (4:30 - 9:20)

Chairman Cook -- I would like nothing more than see the sales tax the same on and off the reservation. How accurate is the estimate?

Karol Two-Bears-Kelly -- The \$250,000 is a rough estimate. I am conservative. The 1.4 is what we collected in sales and use in South Dakota, it taxes everything. I pulled out stuff we wouldn't be taxing in ND which reduced the numbers more.

Chairman Cook -- I don't know what portion of sales is done in SD vs ND

Karol Two-Bears-Kelly -- SD has the big elevator in Corson County which generates a lot of revenue.

Sen. Triplett -- why not has this agreement with all the tribes?

Karol Two-Bears-Kelly -- There have been discussions. We've done a lot of leg work within our own tribes, worked on the code. Tribal-state relations are the issue.

Sen. Triplett -- It was a problem for you not knowing the governor had the authority to work with you. Would it be an issue if we changed the language that the governor may enter into an agreement with any of the tribal governments?

Karol Two-Bears-Kelly -- It would have helped us.

Nor further testimony.

Chairman Cook -- Myles, you have been negotiating with Standing Rock?

Myles Vosberg, State Tax Commissioner's Office , neutral -- We have discussed it quite some time ago, hoping we would be able to administer the tax. As we went through it, the question of legislative authority came up, which delayed it.

Chairman Cook -- This will be all streamlined sales tax compliant?

Myles Vosberg -- Yes. Standing Rock will impose a tax just like ours. Any transaction on the reservation would be subject to tax. Right now the enrolled members are not subject to tax, nonmembers are subject to tax. Standing Rock would impose their own tax which would be identical to ours as far as rate exemptions, administrative things. Our authority to operate, administer on the reservation would be different.

Chairman Cook -- All taxes would be paid to ND and ND would remit to Standing Rock their share

Myles Vosberg -- We would need to adapt our system so the transactions on the reservation for all retailer would all be treated the same. They would have to distinguish all sales that take place on the reservation, so we can track all transactions. The point of delivery is where the tax is incurred.

Chairman Cook -- Would there be a difference between a tribe that implemented the sales tax and a county outside the tribe that imposed a sales tax?

Myles Vosberg -- It is different, local taxes for county or city is on top of the state taxes. The reservation will need to separately report sales in reservation, so we can calculate tax and share the revenue.

Chairman Cook -- Will new tax forms or software changes be needed?

Myles Vosberg -- It will be both. We have estimate of \$1.5M to make the changes. We dint put anything in the appropriation. If you want to make changes from how it came out of the House, we can do that. There is no way of knowing which sales occur on the reservation without those changes.

Sen. Oehlke -- Gas sales tax on the reservation, we do it now, and how is it different?

Myles Vosberg -- It is different it is wholesale only, they file a separate report, on reservation and off, we share the revenue.

Sen. Triplett -- If this becomes law, software is changed and another tribe wants to do the same thing, would it cost the same to upgrade the software?

Myles Vosberg -- We took that into consideration. The program would be set up so it would be easier to add more tribes.

Sen. Dotzenrod -- Have you worked with SD to know if this is how they work?

Myles Vosberg -- We looked at how SD reports the sales, we didn't talk about what their systems costs were. They use a different system.

Chairman Cook -- Any idea how many tribes in the country impose sales tax under the SSTP agreement?

Myles Vosberg -- I don't know. I can find out.

Chairman Cook -- you need an appropriation on the bill?

Myles Vosberg -- I think so.

Chairman Cook -- any idea on what the split of the revenue would look like?

Myles Vosberg -- it would be based on the population, on enrolled tribal member, 87% for the tribe and the state would get 13%. The city contracts are the lesser of \$35/ permit or 3%.

Sen. Laffen -- There is no fiscal note, just enabling language. Is this revenue neutral for the state? How does this shift revenue

Myles Vosberg - Standing Rock sales are probably going untaxed, there would be an increase in the share for ND. A construction project, not tribal owned, now ND is getting 100% and we would share that revenue.

Sen Oehlke-- Have you thought of looking at a different split, for the first five years for instance, to help cover the cost of implementation? Why not change the bill to address all 5 tribes right away?

Myles Vosberg -- The original bill came in with the tax split. We could look at other possibilities. I'm not sure why it changed to only one tribe.

Sen. Triplett -- the \$1.5M is mostly a onetime expense? Are we missing out on taxes right now? Using conservative estimates we could figure out what we are missing and what this tribe's share on a population basis might be relative to the other tribes.

Myles Vosberg -- That would be a one-time. I would guess we are missing out on some. Commercial activity is subject to audit.

Chairman Cook -- The tax commissioner would agree with me to have a mechanism for any tribe that wants to impose a sales tax on their tribal folks, do you think he agrees?

Myles Vosberg -- Yes I think he would agree.

Chairman Cook closed the hearing on HB1406.

2015 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Lewis and Clark Room, State Capitol

HB1406
3/31/2015
Job #25652

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Alice Grove

Explanation or reason for introduction of bill/resolution:

Committee work

Minutes:

Attachment #1

Chairman Cook opened committee work on HB1406.

Sen. Cook -- Amendments have been handed out to everybody. We will take a few minutes to read them. **(Attachment #1)** Myles is this the first that you have seen the drafted amendments? Are they looking alright from what our conversations have been?

Sen. Bekkedahl -- I don't fill out the paperwork. I understand other merchants do, so I'm going to ask the question: on page 2, line 21, agreement must provide for an amount equal to three percent of the total amount collected, that's for the collection administration fees to the tax commissioner, is that the same everywhere in the state or is that a different number for merchants to remit?

Sen. Cook -- That is the existing rate that we have today for local governments, hotel and lodging tax, I believe. It's a little bit different than the agreement we have for local sales tax. I think they also have a \$35 fee per tax collector, whichever is less. The local tax, that eliminated the appropriation.

Sen. Cook -- Let's set this aside and allow Myles to continue to study it.

2015 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Lewis and Clark Room, State Capitol

HB1406
3/31/2015
Job #25654

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Alice Grove

Explanation or reason for introduction of bill/resolution:

Committee work

Minutes:

Chairman Cook opened the committee work on HB1406.

Sen. Cook -- Myles Vosberg.

Myles Vosberg, Tax Commissioners Office -- A minor thing: on page 1, in the heading on line 8 & 9, it didn't remove the reference to the motor vehicle excise tax, which is a small thing. When we get to page 2, starting on line 6, there is a new subsection b that adds a quarter percent tribal tax. When we discussed this, we thought it should be somehow referenced difference so that it is a separate and distinct tax, because really what the tribe is doing here is two different taxes. One that would be on the equal basis with the state tax and then additional on top of everything.

Sen. Cook -- Like a local tax.

Myles Vosberg -- Yes, like a local tax and I think as we were drafting, we called it a local tribal sales tax or something to that effect. There should be some distinction there. I think that makes it a little more separate and distinct from sub a there. That is the tax of the equal rate, etc. Then I think we were also suggesting that there should be a provision in here that indicates that all the revenues transferred to the treasurer's office for distribution to the tribe but it doesn't really say how it gets there. That was another thing.

Sen. Cook -- We are going to set this aside. Will you or Dee or somebody communicate with Mr. Walstad these 3 changes and we will have another set of amendments down here tomorrow morning.

2015 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee
Lewis and Clark Room, State Capitol

HB1406
4/6/2015
Job #25809

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Alice Grove

Explanation or reason for introduction of bill/resolution:

Committee work

Minutes:

Attachment #1

Chairman Cook opened the committee work on HB1406. All committee members present.

Sen. Cook -- You have copies of the amendments (**Attachment #1**) but I was waiting for the Christmas tree version. We will wait until we have those copies to proceed.

2015 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Lewis and Clark Room, State Capitol

HB1406
4/6/2015
Job #25814

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Alice Grove

Explanation or reason for introduction of bill/resolution:

Committee work

Minutes:

Attachment #1

Chairman Cook opened the hearing on HB1406.

Sen. Cook -- Reviewed the Christmas tree version of the amendment (**Attachment #1**).

Sen. Triplett -- Can you explain what the idea is in terms of putting a cap on it? Even if it is far above the current projections; if there happened to be similar economic development of some sort on that reservation as has happened on the Three Affiliated Tribes. When never knows what the future holds and I'm just wondering what the motivation for the split with the cap was.

Sen. Cook -- I think the cap is irrelevant as far as how it affects the Standing Rock Sioux Tribe. I think it is very important as far as how this type of agreement might be in place or how it might affect other agreements in the future with other tribes. And I think it is very important.

Sen. Dotzenrod -- On page 2, lines starting line 10, it says however taxable transactions and activities exempt from state taxes because they occur within the tribe's jurisdiction must also be subject to the tax, the entire tax revenue from the tax imposed under this subdivision must be transferred to the state treasurer and paid to the Standing Rock Sioux Tribe. If I understand that, those items that are not taxable in North Dakota but are taxed on the reservation, they got 100% of that revenue. Is that what that says?

Sen. Cook -- They get 100% of the quarter of 1% local tribe tax. Their tax base will be the same as the state's tax base.

Sen. Dotzenrod -- When it says, must be subject to the tax under this subdivision...

Sen. Cook -- Start up at the top on line 7, must also impose a separate and additional tribal sales of $\frac{1}{4}$ of 1% which conforms in all respects with regard to the taxable or exempt status

of transactions and activities. In other words, the tax base is the same for that $\frac{1}{4}$ of 1% as it is for the 5%. However, taxable transactions and activities exempt from state taxes because they occur within the tribe's jurisdiction, those are sales to tribal members. The only ones that are exempt from state taxes, must also be subject to the tax under this subdivision by the tribe. They will also be subject to the $\frac{1}{4}$ of 1%.

Sen. Dotzenrod -- On line 12, the tax under this subdivision is the $\frac{1}{4}$ of 1%?

Sen. Cook -- Yes. So whether you are an enrolled member of the tribe or not, you will be subject to a $\frac{1}{4}$ of 1% tax.

Sen. Dotzenrod -- And those items that the state exempts?

Sen. Cook -- Are also exempt on the tribe.

Sen. Dotzenrod -- But it says that they are subject to the tax under the subdivision, so they are going to pay $\frac{1}{4}$ of 1% on items that are tax exempt? No?

Sen. Unruh -- The tax exemption listed in that section just simply applies to the current exemption for tribal members. It is not referring to specific exemptions for food. It's just for the tribal members.

Sen. Dotzenrod -- If they are exempt because they occur within the tribes jurisdiction and not normally taxable.

Sen. Bekkedahl -- There are no agreements with any other tribes, currently. This is the first legislation that deals with this taxation issue with any tribes in the state and it could become the template for more, is what you are saying?

Sen. Cook -- Could be the template for more.

Sen. Cook -- Myles, did you get a chance to look at the amendments on 1406? Please take a look at them before we vote on them.

Sen. Triplett -- You have been reporting, Mr. Chairman, for the last while that there were discussions going on above our pay grade regarding this one. Can we talk about why the, in consultation with the tax commissioner, was cut out of this one when it has consistently been in the royalty tax agreements that we've had with the Three Affiliated Tribes?

Sen. Cook -- There's no consultation left. The bill, pretty much, defines the policy and there is no negotiating left. We've got it clear in law that the legislature sets the policy. The governor signs the agreement.

Sen. Triplett -- Okay. So if we were to go back, in another setting, another tax, another place, another time, to a notion of authorizing negotiations, then it seems reasonable that we might again, at some point, include the tax commissioner just in the sense of having that expertise, or not?

Sen. Cook -- The tax commissioner was certainly involved in the draft of this legislation, and certainly involved in the negotiations with the tribe going on. When sitting down with the tribal members, the tax commissioner was at the table. I don't know if you have seen what the House did with SB2226. That is the other bill that came through here dealing with tribal oil compacts. There is a House amendment on there and I tend to like it. We are going to be in a conference committee on it. I believe you are in the conference committee but you will see language in there where all tribal agreements, existing agreements and future agreements, have to expire during the period of time every odd number year in which we will be in session for the sole purpose of having legislative approval over whether they should be rewritten or continued. I think the policy that seems to be coming out of this legislature, this session, is that we are open for all agreements with the tribes and there's going to be legislative involvement in it.

Sen. Triplett -- And that seems not unreasonable to me. But then it might seem not unreasonable to me that we would have members of both parties involved in the negotiations, if it's really to be a legislative policy and this one did not have them, to my understanding. It was reported to our committee that it was being handled above our pay grade, which is to say the governor's office, or does that just mean you?

Sen. Cook -- No, that doesn't just mean me but I don't think it in any way insinuated that it was just one party. The negotiation is going on right now and there are all legislators involved with all of these. This is where, as in many cases, you do something to get approval mainly in negotiating with the tribe to make sure that they were happy and we've kept that so far. It wasn't to be excluding to anybody. The only thing the tribe hasn't seen yet, because we came to that conclusion on Thursday, is the \$2 million cap.

Sen. Triplett -- So they aren't aware of that. Don't you think we ought to hold that until...

Sen. Cook -- I think this bill will go to a conference committee and a lot of that will get flushed better. What we don't do, we will be doing at 8a.m. in the morning for the rest of the week.

Sen. Triplett -- That's fine. It does seem kind of delicate because there is that notion that the tribes have about the idea of government to government negotiation. They seem to be more of the notion that that means the governor's office than us and so that's sticking point. Then the other piece is, the notion that they sometimes feel like we, as a legislature, sort of dictate terms without actually consulting with them. I was pleased to at least know that there was consultation going on during this session but if we are going to add things like this, it seems only respectful that we would consult with them before we pass the bill out of the committee and not leave it to the last minute of a conference committee.

Sen. Cook -- I have reached out to them. If not to Karol Two-Bears-Kelly, certainly to their lobbyist up here. They have a tendency to negotiate with all parties that are willing to negotiate and then they get closer to the one they like the best; I think as this bill moved along they were more happier to negotiate with the legislature.

Sen. Triplett -- The only thing, I think, is that we need to do a little better in terms of our making a record about the \$2 million in terms of a cap as to a reason for it.

Sen. Cook -- As Sen. Bekkedahl said, this becomes the template for future negotiating.

Sen. Triplett -- I'm thinking that, obviously, the tribal governments don't exist in a vacuum. They are a particular geographic space and they have a particular relationship with the federal government but they clearly benefit from being citizens of the state of North Dakota and the state of North Dakota provides an enormous amount of services to all of its citizens, including the members of the tribe who live on reservations which they don't provide for themselves, including roads and institutions of higher education, social services that they are eligible for in addition to the services that are available to them from the federal government. I think there is an argument to be made for a cap because of the fact that there is that overarching level of services provided to all citizens. I can agree to the idea of a cap. I think we should at least have some conversation in this committee about what the appropriate level is so that it is not, oh we picked it out of a hat. Can you tell me where the \$2 million came from?

Sen. Cook -- We wanted to make sure that the cap was considerably larger, at this point, than what would ever affect Standing Rock tribe. I think we started out with 20% and we even set it higher than that.

Sen. Triplett -- 20% of what?

Sen. Cook -- Myles, what's the amount of sales tax they project they are going to collect right now with this? \$300,000, was it?

Myles Vosberg, Tax Commissioners Office -- The tribe was testifying \$250,000 to \$300,000 a year was their projection of what the revenue would be.

Sen. Cook - So we wanted to reach a number that gave them considerable growth yet.

Sen. Triplett -- So their estimate is 20% of what the cap is?

Sen. Cook -- We went higher than 20% but we wanted to make sure it was above what they would reach in a number of years.

Sen. Triplett -- Okay.

Sen. Cook -- Now, what do you think of the bill?

Myles Vosberg -- I think it is fine. There was one thing that we had talked about that is not in here and that is on page 2, line 16, the bill now requires a 180 days notice and we talked about, now that we are not going to be doing considerable programming changes in order to be able to do this, that the ¼% tax would allow us to track the transactions on the reservation we could reduce that to 90 days, like we have for the local jurisdictions so that this could go into place quicker, if approved. But other than that, it looks like everything is fine. The 180-vs-90 days doesn't matter to us. We were just thinking that we could get it going a little faster if that was your desire.

Sen. Cook -- It stills begins on the 1st day of a calendar quarter.

Myles Vosberg -- Correct.

Sen. Cook -- So this could begin the 1st of October.

Myles Vosberg -- That would work.

Sen. Cook -- That would be the earliest?

Myles Vosberg -- In order for that to happen, they would have to have all their ordinances, their laws, in place, etc., and provide us the notice. They would have to do that by July 1st in order for us to put it into place by October 1st.

Sen. Cook -- Maybe 180 is better.

Myles Vosberg -- I'm okay either way.

Sen. Bekkedahl -- My history with this, dealing at the local level, and I agree with Mr. Vosberg that the 90 days makes sense to me because that is statute that we all deal with but by the time you go through all the processes in your local community to put the tax in place, all the resolutions necessary, get the notification to the tax department, it seems to take longer to do all that so I think if you put 90 days in here, in effect you are talking about October 1st being a very aggressive schedule. I would say it is going to be January 1st.

Myles Vosberg -- I know the tribe has worked on the first part of this where they have a 5% tax equal to ours. They have yet to do a ¼% tax so how long it will take them to get that done is really the factor.

Sen. Cook -- Do you want to change it to 90 or leave it?

Sen. Bekkedahl -- I would move the change to 90 there.

Sen. Triplett -- Seconded.

Sen. Cook -- Otherwise it looks fine from the tax department?

Myles Vosberg -- I think so. I think it is all the things that we talked about.

Sen. Dotzenrod -- If something happened at the state level where the state sales tax changed to 5 1/2% or 6%, or was reduced or modified, that wouldn't affect the 80/20? We haven't cast in concrete here 5%, have we?

Myles Vosberg -- That is correct and if you look on the top of page 2, the subdivision a is the portion of the tax that is equal to the state and it just talks about an equal rate, equal exemptions, etc., as we make changes, they would need to make those changes in their law.

Sen. Dotzenrod -- And the provisions that we have in our state law that allow cities to put on a city sales tax or a county, those provisions do not apply to the tribes, as I understand it.

Myles Vosberg -- That is correct.

Sen. Cook -- This bill is basically mandating that the tribe, though, have a ¼% local tax, right?

Myles Vosberg -- That is correct. It is fixed in the law but as far as all the exemptions and everything that it applies to that, whatever we do, they do.

Sen. Cook -- Do you want to just let this sit here till 8a.m.? Okay that is what we will do. In the meantime we will have some communications with the tribe about the \$2 million cap.

2015 SENATE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Lewis and Clark Room, State Capitol

HB1406
4/6/2015
Job #25819

☐ Subcommittee
☐ Conference Committee

Committee Clerk Signature

Alice Grone

Explanation or reason for introduction of bill/resolution:

Committee work

Minutes:

Chairman Cook opened the committee work on HB1406.

Sen. Cook -- Mr. Stenehjem, would you come to the podium and identify yourself.

Al Stenehjem, Standing Rock Sioux Tribe

Sen. Cook -- You've looked at the amendments on 1406? The cap. Are we okay?

Al Stenehjem -- I have. We are okay.

Sen. Cook -- We have before us, HB1406. Would there be a notion to amend?

Sen. Bekkedahl -- I move acceptance of the amendments 15.0455.04004 with the change in line 16, page 2, to 90, crossing out 180, and placing the word 90.

Sen. Triplett -- Seconded.

Sen. Triplett -- Wanted to say thank you for taking a break while we had that checked out.

Voice vote on the amendments. Carried.

Sen. Cook -- We have before us HB1406, as amended.

Sen. Unruh -- I move a do pass on engrossed HB1406, as further amended.

Sen. Triplett -- Seconded.

Roll call vote on do pass, as amended, HB1406. 6-0-1. Carried.

Senate Finance and Taxation Committee

HB1406

April 6, 2015

Page 2

Carrier: Sen. Cook.

April 3, 2015

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1406

Page 1, line 3, after the second comma insert "and"

Page 1, line 3, remove ", and motor vehicle excise"

Page 1, line 8, after the second underscored comma insert "and"

Page 1, line 8, remove ", or motor vehicle "

Page 1, line 9, remove "excise"

Page 1, line 10, remove ", in consultation with the tax commissioner."

Page 1, line 10, after "agreement" insert "on behalf of the state"

Page 1, line 11, after "Tribe" insert "which complies with the provisions of this chapter"

Page 1, line 12, remove "or motor vehicle excise"

Page 1, line 12, remove ", or all of those"

Page 1, line 13, remove "taxes."

Page 1, line 18, remove "or motor vehicle excise"

Page 1, line 18, remove ", or all of those taxes."

Page 1, line 22, remove "or motor vehicle excise taxes, or all of those"

Page 2, line 1, after "a" insert "tribal"

Page 2, line 1, after "rate" insert ", except as provided in subdivision b."

Page 2, line 3, after the second underscored comma insert "and"

Page 2, line 3, replace ", and 57-40.3. However." with "but must be applied to only those"

Page 2, line 4, after "activities" insert "that are"

Page 2, line 5, remove "are taxable by the tribe"

Page 2, line 6, after "b." insert "Must also impose a separate and additional tribal sales, use, and gross receipts tax at a rate of one-fourth of one percent which conforms in all respects with regard to the taxable or exempt status of transactions and activities under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2. However, taxable transactions and activities exempt from state taxes because they occur within the tribe's jurisdiction must also be subject to the tax under this subdivision by the tribe. The entire tax revenue from the tax imposed under this subdivision must be transferred to the state treasurer and paid to the Standing Rock Sioux Tribe."

c."

Page 2, line 9, replace "c." with "d."

Page 2, line 14, remove "agreed"

Page 2, line 14, after "amount" insert "equal to three percent of the total amount collected, from the tribal taxes imposed under subdivisions a and b of subsection 2,"

Page 2, line 19, after "state" insert "and subject to taxes imposed by the state or the tax imposed under subdivision a of subsection 2"

Page 2, line 19, replace "between" with "eighty percent to"

Page 2, line 20, after "and" insert "twenty percent to"

Page 2, line 20, remove ", in proportion to the percentage of enrolled"

Page 2, remove lines 21 and 22

Page 2, line 23, remove "decennial census by the United States census bureau"

Page 2, line 23, after the underscored period insert "The tribal share of the tax allocated under this subdivision must be transferred to the state treasurer and paid to the Standing Rock Sioux Tribe. However, the tribal share paid to the Standing Rock Sioux Tribe under the agreement is limited to two million dollars during a state biennium and any amount exceeding that limitation must be deposited by the state treasurer in the state general fund."

Page 2, line 25, replace "additional tribal" with "any other"

Page 2, line 26, remove "or motor vehicle excise tax, or all of those taxes,"

Page 2, line 30, after "enforce" insert "within the exterior boundaries of the Standing Rock Reservation"

Renumber accordingly

JD
4/6/15

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1406

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c."

Page 2, line 7, replace "one hundred eight" with "ninety"

Page 2, line 9, replace "c." with "d."

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Page 2, line 30, after "enforce" insert "within the exterior boundaries of the Standing Rock Reservation"

Renumber accordingly

Date: 4-6-15Roll Call Vote #: 1

**2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1406**

Senate Finance and Taxation Committee☐ SubcommitteeAmendment LC# or Description: 15.0455.04004 with change on
line 16, pg 2, to 90, crossing
out 180 & placing the word 90

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____Motion Made By Sen. Bekkedahl Seconded By Sen. Triplettvoice vote Carried

Senators	Yes	No	Senators	Yes	No
Chairman Dwight Cook			Senator Jim Dotzenrod		
Vice Chairman Lonnie Laffen			Senator Connie Triplett		
Senator Brad Bekkedahl					
Senator Dave Oehlke					
Senator Jessica Unruh					

Total (Yes) _____ No _____

Absent _____

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 4-6-15Roll Call Vote #: 2

**2015 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO HB 1406**

Senate Finance and Taxation Committee☐ SubcommitteeAmendment LC# or Description: 15.0455.04005 Title .05000

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
 Other Actions: ☐ Reconsider ☐ _____

Motion Made By Sen. Unruh Seconded By Sen. Triplett

Senators	Yes	No	Senators	Yes	No
Chairman Dwight Cook	✓		Senator Jim Dotzenrod	✓	
Vice Chairman Lonnie Laffen	AB		Senator Connie Triplett	✓	
Senator Brad Bekkedahl	✓				
Senator Dave Oehlke	✓				
Senator Jessica Unruh	✓				

Total (Yes) 6 No 0Absent 1Floor Assignment Sen. Cook

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1406, as engrossed: Finance and Taxation Committee (Sen. Cook, Chairman)
recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends
DO PASS (6 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). Engrossed HB 1406
was placed on the Sixth order on the calendar.

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Page 2, line 30, after "enforce" insert "within the exterior boundaries of the Standing Rock Reservation"

Renumber accordingly

2015 CONFERENCE COMMITTEE

HB 1406

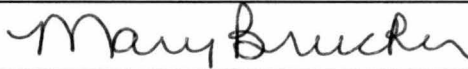
2015 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1406
4/14/2015
26092

☐ Subcommittee
☒ Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

A bill relating to authorizing entry of state tribal agreements for administration and collection of state and tribal sales, use, gross receipts, and motor vehicle excise taxes imposed and collected within the exterior boundaries of the Standing Rock Reservation within this state.

Minutes:

No attachments

Chairman Toman: Could the senate please explain the purpose of the amendments?

Senator Cook: We communicated with the representatives from the tribe and the tribal members and there was agreement all the way across. We took out motor vehicle excise taxes throughout the bill. In section one we didn't feel there was any need for the governor to consult with the tax commissioner anymore because the way this bill is now there is nothing left to negotiate. It's all in code and all the governor has to do is enter into the agreement on behalf of the state. Whenever the tribe wants to impose sales tax they follow this agreement as the bill is and the governor can sign it. Besides sales tax we have the farm machinery excise tax and the alcohol excise tax still in the bill. On page two subsection d 180 days was moved to 90 days to allow them to get this tax imposed and collected as soon as possible. In section three line 23 of the Christmas tree version of the bill they determine that the amount of compensation that the state should receive for collecting the tax is three percent of the total tax. In subsection four we get into the split. You sent it over to us based on a percentage of enrolled members which is 87% tribal members and 13% non-enrolled members. We went to an 80-20 split; 80% to the tribe and 20% to the state. We further capped it at \$2 million which is well over what they ever expect to generate. I think they are looking at \$250,000-300,000 in sales tax collected but it is capped at \$2 million. The tax director is given the authority to administer and enforce within the exterior boundaries. On page two subsection a and b, the way it was written it would have imposed a 10% tax on non-tribal members and a five percent tax on tribal members. Non-tribal members already have to pay the state share of five percent so as the way it was written they would have been taxed twice. The real problem was that it appeared there would be a \$1.5 million appropriation for this bill for software to make it work because this would be the first time we had to split up the five percent share of state collection. As the bill came to us in subsection b it said they could not impose a local tax. We mandate now that they must impose a quarter of one percent local tax for the purpose

of calculating how much tax is generated by the five percent tax. It removes the \$1.5 million fiscal note. They are happy to impose the quarter percent and that is 100% theirs.

Representative Mitskog: It's my understanding that the previous split was based on the census and precedence has been set on determining those splits based on census numbers. Can you explain the 80-20 split?

Senator Cook: This will be the first sales tax agreement with the tribes. I would hope the day comes when all of the tribes impose sales tax. I think the precedence we're worried about setting here deals with sales tax agreements. The split is negotiated and not really necessary to enrolled members versus non-enrolled members as well as the cap. Each one is unique to each tribe.

Representative Mitskog: In testimony before your committee did the tribe accept the 80-20 split?

Senator Cook: When they testified in our committee they were testifying to the bill as it came over than in support of it. I visited with the tribe about the quarter percent and they were happy with that. If you talk to the tribe they are comfortable with the 80-20 split.

Representative Froseth: In committee we didn't have a cost to the state in our fiscal note. I believe that was supposed to be taken out of the state's share, the cost to the state to administer this. There was supposed to be a fee charged by the tax department or it was supposed to come out of the state's share.

Senator Cook: That is correct; you did not have a fiscal note. Sometimes once a bill passes the first chamber those who may have to administer or make the bill work take a second look at it. The tax department probably realized there was going to be a need for software. When they testified they indicated that they needed to purchase software to make this work and thought they would need about \$1.5 million. We sat down and found a way to eliminate that.

Representative Froseth: I'm not opposed to that. I just see that this is a better deal for the state than as it came from the house. I just wonder if Standing Rock understands this and is satisfied with it.

Senator Cook: I think the issue is who negotiates the split; the legislature or the governor. I think we are setting precedence that the legislature should deal with it. I think they were a lot happier dealing with the legislature rather than the governor.

Representative Mitskog: It was explained to me in other agreements with the tribes the governor was the lead negotiator. Now on this we want to take that role?

Senator Cook: Correct.

Representative Mitskog: I think when it left the house there was an administrative fee percentage that was allocated in the split to take care of the costs for collecting that tax.

Senator Cook: I don't believe there was. I believe there was language that it was part of the negotiation. We made it clear that the fee was three percent. That is in section three on page two.

Representative Froseth: Is there a sunset on the one fourth of one percent or will it continue forever?

Senator Cook: That would have to be part of the agreement.

Representative Froseth: I wouldn't think software would have to be updated that often.

Senator Cook: At first we started with a tenth of a percent. You could look at what a tenth of a percent raised and take that number times fifty then you know what the five percent tax rate generated. By being able to do that mathematical equation eliminated the need of the software. If we didn't do it that way we would have had to change the report and create another line where sellers would have to record on a separate line where they sell into the reservation. Now by doing this we just have another local tax at the bottom which is easy and it doesn't require a form to be created.

Chairman Toman: What happens with that tax when we use up that \$1.5 million? Do we just keep collecting it?

Senator Triplett: Maybe we should have Myles explain how this changes the mechanism.

Myles Vosberg, Tax Commissioner's Office: Under the original proposal we had no way, without changing our forms and our system, to determine the amount of transactions that occur in the reservation. Any transaction that occurred on the reservation the tax from those activities would be subject to the split of revenue. We needed a way to determine all of the sales and goods that were delivered on to the reservation. We followed up with our vendor, our software provider, to see what it would require to do that and that's where the \$1.5 million came from. We didn't have an appropriation or a proposed number at that point in time. In order to avoid having to make those changes to our system we came up with the idea that if the tribe imposes a one quarter percent tax based on that tax that is reported we can determine the amount of sales activity that occur on the reservation and the amount of five percent tax that we need to split from those transactions. That avoids us making changes to our system at all other than just adding on another special tax like we do all the time for cities and counties. That tax will be permanent because we will always need that quarter percent tax to determine the amount of five percent revenue that is being generated on the reservation so we can split that. The quarter percent doesn't really tie to the \$1.5 million; that was just the estimate we got from our vendor in order to make the changes if we went that route.

Representative Froseth: Will you also be taking in an administrative fee from the tribe's share?

Myles Vosberg: The current version calls for a three percent administrative fee. The version that came over from the house just said there will be a fee to be determined. The

senate amended the bill to say there will be a three percent fee collected by the tax commissioner that goes into the general fund.

Representative Froseth: If other tribes want to charge sales tax and follow this same policy would you have to charge the one quarter percent if they make the same agreement?

Myles Vosberg: This bill only deals with Standing Rock so any additional tribes would need to come back for that authorization. I'm assuming we would take that same method to avoid any system changes or complications.

Representative Froseth: If the other tribes decide next legislative session to ask for the same opportunity they'd probably use this template legislation to follow.

Myles Vosberg: I assume that is where it would begin and that would be your decision to make.

Senator Triplett: When you talk about the one quarter being the identifying mechanism for getting to the five percent if there were a second tribe that came on and we used the same one quarter would you still be able to distinguish it or would we have to use a different number?

Myles Vosberg: We could use the same quarter percent; it would just be recorded as a separate tax type on the schedule of local and special taxes. We have a number that identifies each county and city and now we'll have a number that identifies each tribe.

Senator Triplett: There's nothing magical about the one quarter except that it's in that category of local collections so if we wanted to make it more or less and the tribes agreed with it we could do that?

Myles Vosberg: There is nothing magical about that number.

Senator Cook: I wish I would have brought a tax remittance form along. I think then you would understand why we had to go to a quarter percent and the software technicality.

Myles Vosberg: I didn't bring one but it would require an additional line of information that would separately report transactions on the reservation.

Representative Froseth: In reality will the sales tax on the reservation be five and one fourth percent or will the quarter percent come out of the five percent?

Myles Vosberg: It will be a total of five and one quarter percent so there will be two separate taxes; a five percent identical to the state and an additional quarter percent that's identical as far as the transactions that it applies to but separate and distinct from the five percent.

Chairman Toman: Are there any further questions? We will adjourn the conference committee on HB 1406.

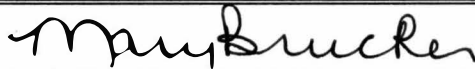
2015 HOUSE STANDING COMMITTEE MINUTES

Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1406
4/15/2015
26138

☐ Subcommittee
☒ Conference Committee

Committee Clerk Signature



Minutes:

Attachment #1

Chairman Toman: Distributed proposed amendments 15.0455.04007 and reviewed; see attachment #1. This amendment deals with streamlined sales tax best practices, definitions of prepared food, membership of the governing board, and removes the advisory council since that's not being used.

Senator Cook: There are also the amendments we have on the bill.

Chairman Toman: This does not include the motion to accede to those amendments as it should have.

Senator Cook: We would have to recede from our amendments and further amend? We see here the streamlined sales tax compliance and one of the issues we've had for the past three or four sessions on streamline is we've kept it to change our membership on the governing board. Every state has allowed four members on the governing board. We are the only state that mandates that all four members are legislators. I've always tried to get at least one person from the tax commissioner's office. I've discussed this with leadership this session and got the okay to go with that. When the bill got onto the floor there was an argument over changing the membership from four legislators to allow somebody who is not a legislator to represent us but they killed the bill and the leadership who said it was okay slept through it so he said to take it out and we'll find another place for it to fix it. All the rest of the bill really does is affects tax policy that has to do with Papa Murphy's and that it continues to be taxed as groceries and not prepared food. It would really change nothing. Since it was failed by the house we needed to find another place to fix it and this is the vehicle we're fixing it on.

Senator Triplett: Is this identical to the bill we passed in the senate?

Senator Cook: No. We take out the membership and we're back to four legislators.

Senator Triplett: They wouldn't agree with you on that?

Senator Cook: I don't want to fight the fight again. I believe that if leadership was to stand up we'd get it through but I'm not going to take the risk. That is the only change. Made a motion that the senate recede from their amendments HB 1406 and further amend as amended in 15.0455.04007.

Representative Froseth: Second.

Senator Cook: I guess the motion should be that the house accede to the senate amendments and further amend. We will need different amendments drafted.

Representative Toman: Does page five of the amendment take care of your amendments?

Senator Cook: We could further amend sections one, two, three, and four and not including page one line eight. I'd rather see a decent set of amendments though.

Representative Toman: Isn't page five of the amendment what you had in the senate?

Senator Cook: On page four starting with page one line eight, that is already in the bill before us. Everything after that is in the bill before us. **Made a corrected motion that the house accede to those amendments that are already in the bill and then we further amend the streamline agreement.**

Representative Froseth: Second.

Chairman Toman: Is there any discussion?

Senator Triplett: Just to be clear then we are not further amending by including the whole 4007 because that would be duplication so we are just further amending up through the middle of page four of 4007.

Senator Cook: Yes. It will come with a different number, 4008.

Roll call vote: 6 yes 0 no 0 absent

Motion carried.

Senator Cook: We need to be very careful when we sign off on that to make sure it is what we want.

Chairman Toman: Yes. If there is nothing else we will adjourn.

SK
4/15/15
1/5

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1406

That the House accede to the Senate amendments as printed on pages 1532 and 1533 of the House Journal and pages 1326 and 1327 of the Senate Journal and that Engrossed House Bill No. 1406 be further amended as follows:

Page 1, line 1, after "enact" insert "section 57-39.4-33.4 and"

Page 1, line 2, after "to" insert "administration of the streamlined sales and use tax agreement and to"

Page 1, line 4, after "state" insert "; and to amend and reenact subsection 2 of section 57-39.2-04.1, sections 57-39.4-29 and 57-39.4-31, and subsection 2 of section 57-40.2-04.1 of the North Dakota Century Code, relating to the definition of prepared food for sales tax purposes, the taxability matrix to be used for administration of the sales and use tax agreement, the streamlined sales tax governing board and advisory council and the definition of prepared food for use tax purposes"

Page 1, after line 5, insert:

"SECTION 1. AMENDMENT. Subsection 2 of section 57-39.2-04.1 of the North Dakota Century Code is amended and reenacted as follows:

2. For purposes of this section:

- a. "Alcoholic beverages" means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume.
- b. "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavoring in the form of bars, drops, or pieces. Candy does not include any preparation containing flour and does not require refrigeration.
- c. "Dietary supplement" means any product, other than tobacco, intended to supplement the diet which contains one or more of the following dietary ingredients: a vitamin; a mineral; an herb or other botanical; an amino acid; a dietary substance for use by humans to supplement the diet by increasing the total dietary intake; an oral concentrate, metabolite, constitute, extract, or combination of any dietary ingredients described in this sentence and which is intended for ingestion in tablet, capsule, powder, soft gel, gel cap, or liquid form, or if not represented for use as a sole item of a meal or of a diet; and is required to be labeled as a dietary supplement, identifiable by the supplemental facts box found on the label and as required pursuant to 21 CFR section 101.36.
- d. "Prepared food" means:
 - (1) Food sold in a heated state or heated by the seller;

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- (2) Two or more food ingredients mixed or combined by the seller for sale as a single item; or
 - (3) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food.
- e. "Prepared food" does not mean:
- (1) Food that is only cut, repackaged, or pasteurized by the seller.
 - (2) Eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the food and drug administration in chapter 3, part 401.11, of its food code so as to prevent foodborne illness.
 - (3) If sold without eating utensils provided by the seller:
 - (a) Food sold by a seller whose proper primary North American industry classification system classification is manufacturing in sector 311, except subsector 3118, bakeries.
 - (b) Food sold in an unheated state by weight or volume as a single item.
 - (c) Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas.
 - (d) Food sold that ordinarily requires additional cooking, as opposed to just reheating, by the consumer prior to consumption.
- f. "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. "Soft drinks" does not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or greater than fifty percent of vegetable or fruit juice by volume.
- g. "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

SECTION 2. AMENDMENT. Section 57-39.4-29 of the North Dakota Century Code is amended and reenacted as follows:

57-39.4-29. (328) Taxability matrix.

- 1. a. To ensure uniform application of terms defined in part II and part III(B) of the library of definitions as adopted by the governing board under section 57-39.4-28, each member state shall complete a, to the best of its ability, section 1 of the taxability matrix adopted by the governing board.
- b. To inform the general public of its practices regarding certain products, procedures, services, or transactions adopted by the governing board under section 57-39.4-33.4, each member state shall complete, to the best of its ability, section 2 of the taxability matrix.

2. The member state's entries in the matrix shall be provided and maintained in a database that is in a downloadable format approved by the governing board. A member state shall provide notice of changes in the taxability of the products or services listed in the taxability matrix as required by the governing board.
- 2.3. A member state shall relieve sellers and certified service providers from liability to the member state and its local jurisdictions for having charged and collected the incorrect amount of sales or use tax resulting from the seller or certified service provider relying on erroneous data provided by the member state in the taxability matrix. If a member state amends an existing provision of its taxability matrix, the member state shall, to the extent possible, relieve sellers and certified service providers from liability to the member state and its local jurisdictions until the first day of the calendar month that is at least thirty days after notice of change to a member state's taxability matrix is submitted to the governing board, provided the seller or certified service provider relied on the prior version of the taxability matrix.
- 3.4. If a state levies sales and use tax on a specified digital product and provides an exemption for an item within the definition of such specified digital product under subsection 8 of section 57-39.4-33.1, such exemption must be noted in the taxability matrix.
- 4.5. Each state that provides for a sales tax holiday under section 57-39.4-23 shall, in a format approved by the governing board, give notice in the taxability matrix of the products for which a tax exemption is provided.

SECTION 3. AMENDMENT. Section 57-39.4-31 of the North Dakota Century Code is amended and reenacted as follows:

57-39.4-31. Membership of streamlined sales tax governing board and ~~state and local advisory council.~~

1. Two members of the house of representatives and two members of the senate, to be appointed by the chairman of the legislative management, shall represent ~~the~~this state of North Dakota on the streamlined sales tax governing board.
2. ~~One member of the house of representatives and one member of the senate, to be appointed by the chairman of the legislative management, shall represent the state of North Dakota on the streamlined sales tax state and local advisory council.~~
3. The tax commissioner shall designate a member of the tax commissioner's staff to accompany and advise the members appointed under this section with regard to multistate discussions to review or revise the agreement or to conduct such other business as comes before the board ~~or council.~~

SECTION 4. Section 57-39.4-33.4 of the North Dakota Century Code is created and enacted as follows:

57-39.4-33.4. Best practices.

1. For purpose of this section, "best practices" means those practices adopted by the governing board as the best practices in administration of the sales and use taxes in the member states regarding certain identified products, procedures, services, or transactions.
2. A majority vote of the entire governing board is required to approve a motion to adopt a best practices standard. The governing board shall provide public notice and opportunity for comment prior to voting on a motion to adopt a best practice.
3. Best practices adopted by the governing board must be maintained in an appendix to the agreement.
4. Conformance by a member state to best practices adopted by the governing board is voluntary and a state may not be found to be out of compliance with the agreement because the effect of the state's laws, rules, regulations, and policies do not follow each of the best practices adopted by the governing board.
5. A state shall complete the best practice matrix by the first day of the calendar month that is at least thirty days after the date the governing board approves a best practice and submits it to the executive director for posting on the governing board's website. For subsequent best practices approved by the governing board, a state shall update its best practice matrix by the first day of the calendar month that is at least thirty days after the date the governing board approves a new best practice and submits it to the executive director for posting on the governing board's website."

Page 3, after line 10, insert:

"SECTION 6. AMENDMENT. Subsection 2 of section 57-40.2-04.1 of the North Dakota Century Code is amended and reenacted as follows:

2. For purposes of this section:
 - a. "Alcoholic beverages" means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume.
 - b. "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavoring in the form of bars, drops, or pieces. Candy does not include any preparation containing flour and that does not require refrigeration.
 - c. "Dietary supplement" means any product, other than tobacco, intended to supplement the diet which contains one or more of the following dietary ingredients: a vitamin; a mineral; an herb or other botanical; an amino acid; a dietary substance for use by humans to supplement the diet by increasing the total dietary intake; an oral concentrate, metabolite, constitute, extract, or combination of any dietary ingredients described in this subdivision and which is intended for ingestion in tablet, capsule, powder, soft gel cap, or liquid form, or

if not represented for use as a sole item of a meal or of a diet; and is required to be labeled as a dietary supplement, identifiable by the supplemental facts box found on the label and as required pursuant to 21 CFR 101.36.

d. "Prepared food" means:

- (1) Food sold in a heated state or heated by the seller;
- (2) Two or more food ingredients mixed or combined by the seller for sale as a single item; or
- (3) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food.

e. "Prepared food" does not mean:

- (1) Food that is only cut, repackaged, or pasteurized by the seller.
- (2) Eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the food and drug administration in chapter 3, part 401.11, of its food code so as to prevent foodborne illness.
- (3) If sold without eating utensils provided by the seller:
 - (a) Food sold by a seller whose proper primary North American industry classification system classification is manufacturing in sector 311, except subsector 3118, bakeries.
 - (b) Food sold in an unheated state by weight or volume as a single item.
 - (c) Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas.
 - (d) Food sold that ordinarily requires additional cooking, as opposed to just reheating, by the consumer prior to consumption.

f. "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. "Soft drinks" does not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or greater than fifty percent of vegetable or fruit juice by volume.

g. "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco."

Renumber accordingly

Date: April 15, 2015
Roll Call Vote #: 1

2015 HOUSE CONFERENCE COMMITTEE
ROLL CALL VOTES

BILL/RESOLUTION NO. 1406 as (re) engrossed

House Finance and Taxation Committee

- Action Taken ☐ HOUSE accede to Senate Amendments
☒ HOUSE accede to Senate Amendments and further amend
☐ SENATE recede from Senate amendments
☐ SENATE recede from Senate amendments and amend as follows

☐ Unable to agree, recommends that the committee be discharged and a new committee be appointed

Motion Made by: Sen. Cook Seconded by: Rep. Froseth

Representatives	4/14	4/15	Yes	No	Senators	4/14	4/15	Yes	No
Chairman Toman	✓	✓	✓		Senator Cook	✓	✓	✓	
Representative Froseth	✓	✓	✓		Senator Oehlke	✓	✓	✓	
Representative Mitskog	✓	✓	✓		Senator Triplett	✓	✓	✓	
Total Rep. Vote					Total Senate Vote				

Vote Count Yes: 6 No: 0 Absent: 0

House Carrier No carrier Senate Carrier No carrier

LC Number 15.0455 . 04007 of amendment

LC Number 06000 of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

REPORT OF CONFERENCE COMMITTEE

HB 1406, as engrossed: Your conference committee (Sens. Cook, Oehlke, Triplett and Reps. Toman, Froseth, Mitskog) recommends that the **HOUSE ACCEDE** to the Senate amendments as printed on HJ pages 1532-1533, adopt further amendments as follows, and place HB 1406 on the Seventh order:

That the House accede to the Senate amendments as printed on pages 1532 and 1533 of the House Journal and pages 1326 and 1327 of the Senate Journal and that Engrossed House Bill No. 1406 be further amended as follows:

Page 1, line 1, after "enact" insert "section 57-39.4-33.4 and"

Page 1, line 2, after "to" insert "administration of the streamlined sales and use tax agreement and to"

Page 1, line 4, after "state" insert "; and to amend and reenact subsection 2 of section 57-39.2-04.1, sections 57-39.4-29 and 57-39.4-31, and subsection 2 of section 57-40.2-04.1 of the North Dakota Century Code, relating to the definition of prepared food for sales tax purposes, the taxability matrix to be used for administration of the sales and use tax agreement, the streamlined sales tax governing board and advisory council and the definition of prepared food for use tax purposes"

Page 1, after line 5, insert:

"SECTION 1. AMENDMENT. Subsection 2 of section 57-39.2-04.1 of the North Dakota Century Code is amended and reenacted as follows:

2. For purposes of this section:
 - a. "Alcoholic beverages" means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume.
 - b. "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavoring in the form of bars, drops, or pieces. Candy does not include any preparation containing flour and does not require refrigeration.
 - c. "Dietary supplement" means any product, other than tobacco, intended to supplement the diet which contains one or more of the following dietary ingredients: a vitamin; a mineral; an herb or other botanical; an amino acid; a dietary substance for use by humans to supplement the diet by increasing the total dietary intake; an oral concentrate, metabolite, constitute, extract, or combination of any dietary ingredients described in this sentence and which is intended for ingestion in tablet, capsule, powder, soft gel, gel cap, or liquid form, or if not represented for use as a sole item of a meal or of a diet; and is required to be labeled as a dietary supplement, identifiable by the supplemental facts box found on the label and as required pursuant to 21 CFR section 101.36.
 - d. "Prepared food" means:
 - (1) Food sold in a heated state or heated by the seller;
 - (2) Two or more food ingredients mixed or combined by the seller for sale as a single item; or
 - (3) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws.

A plate does not include a container or packaging used to transport the food.

- e. "Prepared food" does not mean:
- (1) Food that is only cut, repackaged, or pasteurized by the seller.
 - (2) Eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the food and drug administration in chapter 3, part 401.11, of its food code so as to prevent foodborne illness.
 - (3) If sold without eating utensils provided by the seller:
 - (a) Food sold by a seller whose proper primary North American industry classification system classification is manufacturing in sector 311, except subsector 3118, bakeries.
 - (b) Food sold in an unheated state by weight or volume as a single item.
 - (c) Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas.
 - (d) Food sold that ordinarily requires additional cooking, as opposed to just reheating, by the consumer prior to consumption.
- f. "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. "Soft drinks" does not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or greater than fifty percent of vegetable or fruit juice by volume.
- g. "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

SECTION 2. AMENDMENT. Section 57-39.4-29 of the North Dakota Century Code is amended and reenacted as follows:

57-39.4-29. (328) Taxability matrix.

1.
 - a. To ensure uniform application of terms defined in part II and part III(B) of the library of definitions as adopted by the governing board under section 57-39.4-28, each member state shall complete a, to the best of its ability, section 1 of the taxability matrix adopted by the governing board.
 - b. To inform the general public of its practices regarding certain products, procedures, services, or transactions adopted by the governing board under section 57-39.4-33.4, each member state shall complete, to the best of its ability, section 2 of the taxability matrix.
2. The member state's entries in the matrix shall be provided and maintained in a database that is in a downloadable format approved by the governing board. A member state shall provide notice of changes in the taxability of the products or services listed in the taxability matrix as required by the governing board.

- ~~2-3.~~ A member state shall relieve sellers and certified service providers from liability to the member state and its local jurisdictions for having charged and collected the incorrect amount of sales or use tax resulting from the seller or certified service provider relying on erroneous data provided by the member state in the taxability matrix. If a member state amends an existing provision of its taxability matrix, the member state shall, to the extent possible, relieve sellers and certified service providers from liability to the member state and its local jurisdictions until the first day of the calendar month that is at least thirty days after notice of change to a member state's taxability matrix is submitted to the governing board, provided the seller or certified service provider relied on the prior version of the taxability matrix.
- ~~3-4.~~ If a state levies sales and use tax on a specified digital product and provides an exemption for an item within the definition of such specified digital product under subsection 8 of section 57-39.4-33.1, such exemption must be noted in the taxability matrix.
- ~~4-5.~~ Each state that provides for a sales tax holiday under section 57-39.4-23 shall, in a format approved by the governing board, give notice in the taxability matrix of the products for which a tax exemption is provided.

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1. Two members of the house of representatives and two members of the senate, to be appointed by the chairman of the legislative management, shall represent ~~the~~this state of North Dakota on the streamlined sales tax governing board.
2. ~~One member of the house of representatives and one member of the senate, to be appointed by the chairman of the legislative management, shall represent the state of North Dakota on the streamlined sales tax state and local advisory council.~~
- ~~3.~~ The tax commissioner shall designate a member of the tax commissioner's staff to accompany and advise the members appointed under this section with regard to multistate discussions to review or revise the agreement or to conduct such other business as comes before the board ~~or council~~.

SECTION 4. Section 57-39.4-33.4 of the North Dakota Century Code is created and enacted as follows:

57-39.4-33.4. Best practices.

1. For purpose of this section, "best practices" means those practices adopted by the governing board as the best practices in administration of the sales and use taxes in the member states regarding certain identified products, procedures, services, or transactions.
2. A majority vote of the entire governing board is required to approve a motion to adopt a best practices standard. The governing board shall provide public notice and opportunity for comment prior to voting on a motion to adopt a best practice.
3. Best practices adopted by the governing board must be maintained in an appendix to the agreement.

4. Conformance by a member state to best practices adopted by the governing board is voluntary and a state may not be found to be out of compliance with the agreement because the effect of the state's laws, rules, regulations, and policies do not follow each of the best practices adopted by the governing board.
5. A state shall complete the best practice matrix by the first day of the calendar month that is at least thirty days after the date the governing board approves a best practice and submits it to the executive director for posting on the governing board's website. For subsequent best practices approved by the governing board, a state shall update its best practice matrix by the first day of the calendar month that is at least thirty days after the date the governing board approves a new best practice and submits it to the executive director for posting on the governing board's website."

Page 3, after line 10, insert:

"SECTION 6. AMENDMENT. Subsection 2 of section 57-40.2-04.1 of the North Dakota Century Code is amended and reenacted as follows:

2. For purposes of this section:
 - a. "Alcoholic beverages" means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume.
 - b. "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavoring in the form of bars, drops, or pieces. Candy does not include any preparation containing flour and that does not require refrigeration.
 - c. "Dietary supplement" means any product, other than tobacco, intended to supplement the diet which contains one or more of the following dietary ingredients: a vitamin; a mineral; an herb or other botanical; an amino acid; a dietary substance for use by humans to supplement the diet by increasing the total dietary intake; an oral concentrate, metabolite, constitute, extract, or combination of any dietary ingredients described in this subdivision and which is intended for ingestion in tablet, capsule, powder, soft gel cap, or liquid form, or if not represented for use as a sole item of a meal or of a diet; and is required to be labeled as a dietary supplement, identifiable by the supplemental facts box found on the label and as required pursuant to 21 CFR 101.36.
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 - (1) Food that is only cut, repackaged, or pasteurized by the seller.

- (2) Eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the food and drug administration in chapter 3, part 401.11, of its food code so as to prevent foodborne illness.
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 - (c) Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas.
 - (d) Food sold that ordinarily requires additional cooking, as opposed to just reheating, by the consumer prior to consumption.
- f. "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. "Soft drinks" does not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or greater than fifty percent of vegetable or fruit juice by volume.
- g. "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco."

Renumber accordingly

Engrossed HB 1406 was placed on the Seventh order of business on the calendar.

2015 TESTIMONY

HB 1406

HB 1406
2-3-15
1 p. 1

**Working Together on the Collection of Sales and Use Taxes on the
Standing Rock Sioux Reservation**

**Submitted to the Honorable Craig Headland, Chairman
Finance and Taxation Committee
February 3, 2015**

Submitted by:

**Karol Two Bears-Kelly, Standing Rock Sioux Tribe Tax Director
Steve Sitting Bear – Standing Rock Sioux Tribe External Affairs**

Greetings to Chairman Headland and other esteemed members of the Committee.

Today I would like to discuss with you the issue of sales and use tax collection on the Standing Rock Sioux Reservation.

In order to avoid lengthy and expensive legal battles over which government has the right to tax which citizens the Standing Rock Sioux Tribe and the State of North Dakota have entered into tax collection agreements. The Standing Rock Sioux Tribe currently has agreements in place with the State of North Dakota for the collection and pro-rata distribution of taxes on motor fuels, special fuels, and tobacco products sold on the North Dakota portion of the Standing Rock Reservation.

The Standing Rock Sioux Tribe also has tax collection agreements with the State of South Dakota. As with North Dakota there exists motor fuels and tobacco but also includes sales & use. In FY14, the Standing Rock Sioux Tribe and the State of South Dakota shared over \$1.4 million dollars in sales and use taxes collected on the South Dakota portion of the reservation. The tax structures of North and South Dakota vary greatly. A conservative estimate of revenue from a sales and use tax agreement for the Standing Rock Sioux Tribe would be in the range of \$250,000 to \$300,000.

The Standing Rock Sioux Tribe approached the North Dakota Tax Department in 2013 with the intentions of negotiating new tax collection agreements and updating current agreements. The Standing Rock Sioux Tribe prior to this had held several hearings throughout the reservation regarding the implementation of sales and use tax. A representative from the North Dakota Tax Department also participated along with the Tribal Representatives for the hearing held for business entities on the reservation. It is anticipated that should a process be established for the Standing Rock Sioux Tribe to enter into new tax collection agreements with the State of North Dakota that additional hearings and educational seminars would be held for consumers and businesses alike.

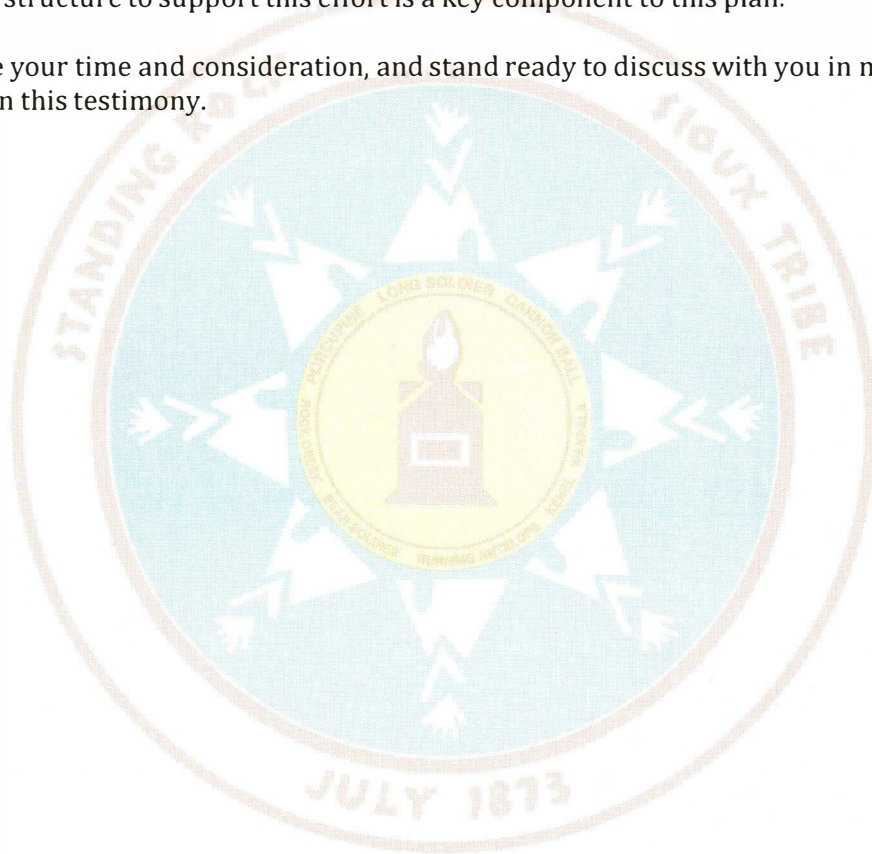
There are several burdens on the reservation without a sales & use tax collection agreement in place between the Standing Rock Sioux Tribe and the State of North Dakota. A Native American residing on Standing Rock has hurdles to go through to have taxes removed from certain types of purchases and many times it is almost impossible to remove these taxes. Non-Indians purchasing goods or services on the reservation from a Native American Retailer have the responsibility to file their use tax on their purchases. The Non-Indian retailers on the reservation have to be able to differentiate their customers and charge taxes as applicable depending upon the customer in front of them; Indian vs Non-Indian.

The legislation presented today seeks to reduce or eliminate some of the inequalities in the tax structure for the Standing Rock Sioux Tribe and provide a source of additional revenue for the Tribe. First of all, the Standing Rock Sioux Tribe would see a general equality of taxation between the North Dakota portion and South Dakota portion of the reservation. Secondly, some of the burdens placed on consumers and retailers within the reservation would be reduced. All consumers within the reservation would be treated equally. Lastly new tax collection agreements with the State of North Dakota would result in additional revenue for the Tribe and would help in providing desperately needed services and infrastructure for the Standing Rock Sioux Tribe.

The Standing Rock Sioux Tribe urges the North Dakota Legislature to consider this legislation and allow for the Governor and the Tribe to enter into additional tax collection agreements. Chairman Archambault is pursuing an aggressive agenda for economic development on the reservation and having the tax structure to support this effort is a key component to this plan.

We appreciate your time and consideration, and stand ready to discuss with you in more details any issues raised in this testimony.

Thank You.



15.0455.03001
Title.

HB 1406
2-10-15 # 1
Prepared by the Legislative Council staff for
House Finance and Taxation Committee
February 10, 2015

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1406

Page 1, line 10, remove "governor, in consultation with the"

Page 1, line 10, remove the second underscored comma

Page 2, line 10, remove "or"

Page 2, line 11, after the first underscored comma insert "and allocation and deposit of the state share of revenues."

Page 2, line 17, remove "allocation of"

Page 2, line 17, remove "between the tribe and the state"

Page 2, line 19, replace "subject to determination by the terms of the agreement" with "to be allocated eighty percent to the Standing Rock Sioux Tribe and twenty percent to the state"

Renumber accordingly

Introduced by

Representatives Schmidt, Boe, Brandenburg, D. Johnson, Onstad

Senators Heckaman, Oehlke, Schaible

1 A BILL for an Act to create and enact chapter 57-39.8 of the North Dakota Century Code,
2 relating to authorizing entry of state-tribal agreements for administration and collection of state
3 and tribal sales, use, gross receipts, and motor vehicle excise taxes imposed and collected
4 within the exterior boundaries of the Standing Rock Reservation within this state.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1.** Chapter 57-39.8 of the North Dakota Century Code is created and enacted as
7 follows:

8 **57-39.8-01. Authority to enter state-tribal sales, use, gross receipts, or motor vehicle**
9 **excise tax agreements.**

10 The ~~governor, in consultation with the~~ tax commissioner, may enter an agreement with the
11 governing body of the Standing Rock Sioux Tribe relating to administration and allocation of
12 state and tribal sales, use, and gross receipts or motor vehicle excise taxes, or all of those
13 taxes, imposed and collected within the exterior boundaries of the Standing Rock Reservation
14 within this state.

15 **57-39.8-02. Agreement requirements.**

16 Any agreement under this chapter is subject to the following:

- 17 1. The only taxes subject to agreement are state and tribal sales, use, and gross receipts
18 or motor vehicle excise taxes, or all of those taxes, for taxable transactions and
19 activities within the exterior boundaries of the Standing Rock Reservation within this
20 state.
- 21 2. If the Standing Rock Sioux Tribe governing body chooses to impose sales, use, and
22 gross receipts or motor vehicle excise taxes, or all of those taxes, on persons subject
23 to the tribe's taxing powers and enter an agreement under this chapter, the tribal tax
24 code provisions:

#2 p. 2

- 1 a. Must impose a tax of equal rate and conform in all respects with regard to the
2 taxable or exempt status of transactions and activities under chapters 57-39.2,
3 57-39.5, 57-39.6, 57-40.2, and 57-40.3. However, taxable transactions and
4 activities exempt from state taxes because they occur within the tribe's
5 jurisdiction are taxable by the tribe.
- 6 b. May not be newly imposed except to be effective on the first day of a calendar
7 quarter beginning at least one hundred eighty days after the imposition is
8 approved by the governing body and notice is provided to the tax commissioner.
- 9 c. The provisions of chapter 57-39.2 pertaining to administration of the retail sales
10 tax, including provisions for refunds, credits, retailer compensation, ~~or~~ adoption of
11 rules, and allocation and deposit of the state share of revenues, not in conflict
12 with this chapter or federal law, must govern the administration of any tax subject
13 to an agreement under this chapter.
- 14 3. The agreement must provide for an agreed amount to be allowed to the tax
15 commissioner for collection and administration services to the Standing Rock Sioux
16 Tribe government under this chapter. Any sums collected for services must be paid to
17 the state treasurer for deposit in the general fund.
- 18 4. The ~~allocation of~~ tax revenue ~~between the tribe and the state~~ from taxable transactions
19 and activities within the exterior boundaries of the Standing Rock Reservation within
20 this state is ~~subject to determination by the terms of the agreement~~ to be allocated
21 eighty percent to the Standing Rock Sioux Tribe and twenty percent to the state.
- 22 5. The governing body of the Standing Rock Sioux Tribe must agree not to impose
23 additional tribal taxes or any fee on transactions and activities subject to a sales, use,
24 and gross receipts tax or motor vehicle excise tax, or all of those taxes, administered
25 by the tax commissioner.
- 26 6. The agreement must allow the tax commissioner to offset future distributions to the
27 tribe if there was a previous overpayment of the tax distributed to the tribe.
- 28 7. The tax commissioner must be given authority to administer and enforce state and
29 tribal taxes that are subject to an agreement authorized by this chapter.
- 30 8. The federal district court for the western division of North Dakota is the venue for any
31 dispute arising from an agreement under this chapter.

- 1 9. The agreement must require that the governing body of the Standing Rock Sioux Tribe
- 2 report annually to the budget section of the legislative management and that the report
- 3 identify projects totaling investment in essential infrastructure of at least ten percent of
- 4 tribal receipts under the agreement for that year.
- 5 10. Taxes imposed under chapters 11-09.1 and 40-05.1 are not subject to allocation under
- 6 any agreement entered under the provisions of this chapter.
- 7 **57-39.8-03. Inapplicability of chapter 54-40.2.**
- 8 Chapter 54-40.2 does not apply to any agreement entered under this chapter.

HB 1406
2-10-15
#1

Prepared by the
Office of State Tax Commissioner
February 10, 2015

PROPOSED AMENDMENT TO HOUSE BILL 1406 (as amended by
February 10, 2015 Amendments 15.0455.03001)

Page 2, replace line 21 with "between the Standing Rock Sioux Tribe and state, in proportion to the percentage of enrolled members of the Standing Rock Sioux Tribe and non-enrolled persons living within the exterior boundaries of the Standing Rock Reservation, as reported in the most recent decennial census by the United States census bureau"

Renumber accordingly

1.
HB 1406

**Working Together on the Collection of Sales and Use Taxes on the
Standing Rock Sioux Reservation**

**Submitted to the Honorable Dwight Cook, Chairman
Finance and Taxation Committee
March 10, 2015**

Submitted by:

**Karol Two Bears-Kelly, Standing Rock Sioux Tribe Tax Director
Steve Sitting Bear – Standing Rock Sioux Tribe External Affairs**

Greetings to Chairman Cook and other esteemed members of the Committee.

Today we would like to discuss with you the issue of sales and use tax collection on the Standing Rock Sioux Reservation.

As a sovereign nation, the Standing Rock Sioux Tribe has the legal authority to impose its own tribal taxes on tribal citizens who live on its reservation. The State of North Dakota, however, has legal authority to impose states taxes on non-tribal citizens who live on the reservation. In order to avoid lengthy and expensive legal battles over which government has the right to tax which citizens the Standing Rock Sioux Tribe and the State of North Dakota have entered into tax collection agreements. The Standing Rock Sioux Tribe currently has agreements in place with the State of North Dakota for the collection and pro-rata distribution of taxes on motor fuels, special fuels, and tobacco products sold on the North Dakota portion of the Standing Rock Reservation, but there is not an agreement in place for sales and use taxes.

There are several burdens on the reservation without a sales & use tax collection agreement in place between the Standing Rock Sioux Tribe and the State of North Dakota. An Indian residing on Standing Rock has hurdles to go through to have taxes removed from certain types of purchases and many times it is almost impossible to remove these taxes. Non-Indians purchasing goods or services on the reservation from a Native American Retailer have the responsibility to file their use tax on their purchases. The Non-Indian retailers on the reservation have to be able to differentiate their customers and charge taxes as applicable depending upon the customer in front of them; Indian vs Non-Indian. It becomes an issue of "taxation by race", which is something that, we believe, neither the State nor the Tribe want to get into. All of these issues could be eliminated if the State and the Tribe were to enter into a sales and use tax collection agreement.

The Standing Rock Sioux Tribe approached the North Dakota Tax Department in 2013 with the intentions of negotiating new tax collection agreements and updating current agreements. The Standing Rock Sioux Tribe prior to this had held several hearings throughout the reservation regarding the implementation of sales and use tax. A representative from the North Dakota Tax Department also participated along with the

Tribal Representatives for the hearing held for business entities on the reservation. It was during this past year that we were informed by the Legislative Counsel's office that a new law would need to be enacted that authorizes the State to enter into a sales and use tax collection agreement with the Tribe.

1.2
HB 1406
3.10.15

The Standing Rock Sioux Tribe also has tax collection agreements with the State of South Dakota. As with North Dakota there exists motor fuels and tobacco but also includes sales & use. In FY14, the Standing Rock Sioux Tribe and the State of South Dakota shared over \$1.4 million dollars in sales and use taxes collected on the South Dakota portion of the reservation. The tax structures of North and South Dakota do vary greatly. A conservative estimate of revenue from a sales and use tax agreement for the Standing Rock Sioux Tribe would be in the range of \$250,000 to \$300,000 annually.

The legislation presented today seeks to reduce or eliminate some of the inequalities in the tax structure for the Standing Rock Sioux Tribe and provide a source of additional revenue for the Tribe. First of all, the Standing Rock Sioux Tribe would see a general equality of taxation between the North Dakota portion and South Dakota portion of the reservation. Secondly, some of the burdens placed on consumers and retailers within the reservation would be reduced. All consumers within the reservation would be treated equally. Lastly new tax collection agreements with the State of North Dakota would result in additional revenue for the Tribe as well as the State and would help in providing desperately needed services and infrastructure for the Standing Rock Sioux Tribe.

The Standing Rock Sioux Tribe urges the North Dakota Legislature to consider this legislation and allow for the Governor and the Tribe to enter into additional tax collection agreements. Chairman Archambault is pursuing an aggressive agenda for economic development on the reservation and having the tax structure to support this effort is a key component to this plan.

We appreciate your time and consideration, and stand ready to discuss with you in more details any issues raised in this testimony.

Thank You.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1406

Page 1, line 3, after the second comma insert "and"

Page 1, line 3, remove ", and motor vehicle excise"

Page 1, line 10, remove ", in consultation with the tax commissioner."

Page 1, line 10, after "agreement" insert "negotiated by the tax commissioner"

Page 1, line 12, remove "or motor vehicle excise"

Page 1, line 12, remove ", or all of those"

Page 1, line 13, remove "taxes."

Page 1, line 18, remove "or motor vehicle excise"

Page 1, line 18, remove ", or all of those taxes."

Page 1, line 22, remove "or motor vehicle excise"

Page 2, line 1, after "rate" insert ", except as provided in subdivision b."

Page 2, line 3, after the third underscored comma insert "and"

Page 2, line 3, remove ", and 57-40.3"

Page 2, line 6, after "b." insert "Must also impose a tribal sales, use, and gross receipts tax at a rate of one-fourth of one percent which conforms in all respects with regard to the taxable or exempt status of transactions and activities under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2. However, taxable transactions and activities exempt from state taxes because they occur within the tribe's jurisdiction are taxable by the tribe. The entire tax revenue from the tax imposed under this subdivision is to be allocated to the Standing Rock Sioux Tribe."

c. "

Page 2, line 9, replace "c." with "d."

Page 2, line 14, remove "agreed"

Page 2, line 14, after "amount" insert "equal to three percent of the total amount collected, from the taxes imposed under subdivisions a and b of subsection 2."

Page 2, line 19, after "state" insert "and subject to the tax imposed under subdivision a of subsection 2"

Page 2, line 19, replace "between" with "eighty percent to"

Page 2, line 20, after "and" insert "twenty percent to"

Page 2, line 20, remove ", in proportion to the percentage of enrolled"

Page 2, remove lines 21 and 22

Page 2, line 23, remove "decennial census by the United States census bureau"

Page 2, line 30, after "enforce" insert "within the exterior boundaries of the Standing Rock Reservation"

Renumber accordingly

April 3, 2015

1.
4-6-15

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1406

Page 1, line 3, after the second comma insert "and"

Page 1, line 3, remove ", and motor vehicle excise"

Page 1, line 8, after the second underscored comma insert "and"

Page 1, line 8, remove ", or motor vehicle "

Page 1, line 9, remove "excise"

Page 1, line 10, remove ", in consultation with the tax commissioner."

Page 1, line 10, after "agreement" insert "on behalf of the state"

Page 1, line 11, after "Tribe" insert "which complies with the provisions of this chapter"

Page 1, line 12, remove "or motor vehicle excise"

Page 1, line 12, remove ", or all of those"

Page 1, line 13, remove "taxes."

Page 1, line 18, remove "or motor vehicle excise"

Page 1, line 18, remove ", or all of those taxes."

Page 1, line 22, remove "or motor vehicle excise taxes, or all of those"

Page 2, line 1, after "a" insert "tribal"

Page 2, line 1, after "rate" insert ", except as provided in subdivision b."

Page 2, line 3, after the second underscored comma insert "and"

Page 2, line 3, replace ", and 57-40.3. However." with "but must be applied to only those"

Page 2, line 4, after "activities" insert "that are"

Page 2, line 5, remove "are taxable by the tribe"

Page 2, line 6, after "b." insert "Must also impose a separate and additional tribal sales, use, and gross receipts tax at a rate of one-fourth of one percent which conforms in all respects with regard to the taxable or exempt status of transactions and activities under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2. However, taxable transactions and activities exempt from state taxes because they occur within the tribe's jurisdiction must also be subject to the tax under this subdivision by the tribe. The entire tax revenue from the tax imposed under this subdivision must be transferred to the state treasurer and paid to the Standing Rock Sioux Tribe."

c."

Page 2, line 9, replace "c." with "d."

Page 2, line 14, remove "agreed"

Page 2, line 14, after "amount" insert "equal to three percent of the total amount collected, from the tribal taxes imposed under subdivisions a and b of subsection 2,"

Page 2, line 19, after "state" insert "and subject to taxes imposed by the state or the tax imposed under subdivision a of subsection 2"

Page 2, line 19, replace "between" with "eighty percent to"

Page 2, line 20, after "and" insert "twenty percent to"

Page 2, line 20, remove ", in proportion to the percentage of enrolled"

Page 2, remove lines 21 and 22

Page 2, line 23, remove "decennial census by the United States census bureau"

Page 2, line 23, after the underscored period insert "The tribal share of the tax allocated under this subdivision must be transferred to the state treasurer and paid to the Standing Rock Sioux Tribe. However, the tribal share paid to the Standing Rock Sioux Tribe under the agreement is limited to two million dollars during a state biennium and any amount exceeding that limitation must be deposited by the state treasurer in the state general fund."

Page 2, line 25, replace "additional tribal" with "any other"

Page 2, line 26, remove "or motor vehicle excise tax, or all of those taxes,"

Page 2, line 30, after "enforce" insert "within the exterior boundaries of the Standing Rock Reservation"

Renumber accordingly

Sixty-fourth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1406

1.
4-6-15

Introduced by

Representatives Schmidt, Boe, Brandenburg, D. Johnson, Onstad

Senators Heckaman, Oehlke, Schaible

1 A BILL for an Act to create and enact chapter 57-39.8 of the North Dakota Century Code,
2 relating to authorizing entry of state-tribal agreements for administration and collection of state
3 and tribal sales, use, and gross receipts, ~~and motor vehicle excise~~ taxes imposed and collected
4 within the exterior boundaries of the Standing Rock Reservation within this state.

5 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

6 **SECTION 1.** Chapter 57-39.8 of the North Dakota Century Code is created and enacted as
7 follows:

8 **57-39.8-01. Authority to enter state-tribal sales, use, and gross receipts, ~~or motor~~**
9 **vehicle excise tax agreements.**

10 The governor, ~~in consultation with the tax commissioner~~, may enter an agreement on behalf
11 of the state with the governing body of the Standing Rock Sioux Tribe which complies with the
12 provisions of this chapter relating to administration and allocation of state and tribal sales, use,
13 and gross receipts ~~or motor vehicle excise~~ taxes, ~~or all of those taxes~~, imposed and collected
14 within the exterior boundaries of the Standing Rock Reservation within this state.

15 **57-39.8-02. Agreement requirements.**

16 Any agreement under this chapter is subject to the following:

- 17 1. The only taxes subject to agreement are state and tribal sales, use, and gross receipts
18 ~~or motor vehicle excise~~ taxes, ~~or all of those taxes~~, for taxable transactions and
19 activities within the exterior boundaries of the Standing Rock Reservation within this
20 state.
- 21 2. If the Standing Rock Sioux Tribe governing body chooses to impose sales, use, and
22 gross receipts ~~or motor vehicle excise~~ taxes, ~~or all of those~~ taxes, on persons subject
23 to the tribe's taxing powers and enter an agreement under this chapter, the tribal tax
24 code provisions:

- 1 a. Must impose a tribal tax of equal rate, except as provided in subdivision b, and
2 conform in all respects with regard to the taxable or exempt status of transactions
3 and activities under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2, and
4 57-40.3. However, but must be applied to only those taxable transactions and
5 activities that are exempt from state taxes because they occur within the tribe's
6 jurisdiction-are taxable by the tribe.
- 7 b. Must also impose a separate and additional tribal sales, use, and gross receipts
8 tax at a rate of one-fourth of one percent which conforms in all respects with
9 regard to the taxable or exempt status of transactions and activities under
10 chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2. However, taxable transactions
11 and activities exempt from state taxes because they occur within the tribe's
12 jurisdiction must also be subject to the tax under this subdivision by the tribe. The
13 entire tax revenue from the tax imposed under this subdivision must be
14 transferred to the state treasurer and paid to the Standing Rock Sioux Tribe.
- 15 c. May not be newly imposed except to be effective on the first day of a calendar
16 quarter beginning at least one hundred eighty days after the imposition is
17 approved by the governing body and notice is provided to the tax commissioner.
- 18 e-d. The provisions of chapter 57-39.2 pertaining to administration of the retail sales
19 tax, including provisions for refunds, credits, retailer compensation, adoption of
20 rules, and allocation and deposit of the state share of revenues, not in conflict
21 with this chapter or federal law, must govern the administration of any tax subject
22 to an agreement under this chapter.
- 23 3. The agreement must provide for an ~~agreed~~ amount equal to three percent of the total
24 amount collected, from the tribal taxes imposed under subdivisions a and b of
25 subsection 2, to be allowed to the tax commissioner for collection and administration
26 services to the Standing Rock Sioux Tribe government under this chapter. Any sums
27 collected for services must be paid to the state treasurer for deposit in the general
28 fund.
- 29 4. The tax revenue from taxable transactions and activities within the exterior boundaries
30 of the Standing Rock Reservation within this state and subject to taxes imposed by the
31 state or the tax imposed under subdivision a of subsection 2 is to be allocated

- 1 between eighty percent to the Standing Rock Sioux Tribe and twenty percent to this
2 state, in proportion to the percentage of enrolled members of the Standing Rock Sioux
3 Tribe and nonenrolled persons living within the exterior boundaries of the Standing
4 Rock Reservation, as reported in the most recent decennial census by the United
5 States census bureau. The tribal share of the tax allocated under this subdivision must
6 be transferred to the state treasurer and paid to the Standing Rock Sioux Tribe.
7 However, the tribal share paid to the Standing Rock Sioux Tribe under the agreement
8 is limited to two million dollars during a state biennium and any amount exceeding that
9 limitation must be deposited by the state treasurer in the state general fund.
- 10 5. The governing body of the Standing Rock Sioux Tribe must agree not to impose
11 additional tribal any other taxes or any fee on transactions and activities subject to a
12 sales, use, and gross receipts tax or motor vehicle excise tax, or all of those taxes,
13 administered by the tax commissioner.
- 14 6. The agreement must allow the tax commissioner to offset future distributions to the
15 tribe if there was a previous overpayment of the tax distributed to the tribe.
- 16 7. The tax commissioner must be given authority to administer and enforce within the
17 exterior boundaries of the Standing Rock Reservation state and tribal taxes that are
18 subject to an agreement authorized by this chapter.
- 19 8. The federal district court for the western division of North Dakota is the venue for any
20 dispute arising from an agreement under this chapter.
- 21 9. The agreement must require that the governing body of the Standing Rock Sioux Tribe
22 report annually to the budget section of the legislative management and that the report
23 identify projects totaling investment in essential infrastructure of at least ten percent of
24 tribal receipts under the agreement for that year.
- 25 10. Taxes imposed under chapters 11-09.1 and 40-05.1 are not subject to allocation under
26 any agreement entered under the provisions of this chapter.
- 27 **57-39.8-03. Inapplicability of chapter 54-40.2.**
28 Chapter 54-40.2 does not apply to any agreement entered under this chapter.

PROPOSED AMENDMENTS TO ENGROSSED HOUSE BILL NO. 1406

Page 1, line 1, after "enact" insert "section 57-39.4-33.4 and"

Page 1, line 2, after "to" insert "administration of the streamlined sales and use tax agreement and to"

Page 1, line 3, after the second comma insert "and"

Page 1, line 3, remove ", and motor vehicle excise"

Page 1, line 4, after "state" insert "; and to amend and reenact subsection 2 of section 57-39.2-04.1, sections 57-39.4-29 and 57-39.4-31, and subsection 2 of section 57-40.2-04.1 of the North Dakota Century Code, relating to the definition of prepared food for sales tax purposes, the taxability matrix to be used for administration of the sales and use tax agreement, the streamlined sales tax governing board and advisory council and the definition of prepared food for use tax purposes"

Page 1, after line 5, insert:

"SECTION 1. AMENDMENT. Subsection 2 of section 57-39.2-04.1 of the North Dakota Century Code is amended and reenacted as follows:

2. For purposes of this section:

- a. "Alcoholic beverages" means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume.
- b. "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavoring in the form of bars, drops, or pieces. Candy does not include any preparation containing flour and does not require refrigeration.
- c. "Dietary supplement" means any product, other than tobacco, intended to supplement the diet which contains one or more of the following dietary ingredients: a vitamin; a mineral; an herb or other botanical; an amino acid; a dietary substance for use by humans to supplement the diet by increasing the total dietary intake; an oral concentrate, metabolite, constitute, extract, or combination of any dietary ingredients described in this sentence and which is intended for ingestion in tablet, capsule, powder, soft gel, gel cap, or liquid form, or if not represented for use as a sole item of a meal or of a diet; and is required to be labeled as a dietary supplement, identifiable by the supplemental facts box found on the label and as required pursuant to 21 CFR section 101.36.
- d. "Prepared food" means:
 - (1) Food sold in a heated state or heated by the seller;

- (2) Two or more food ingredients mixed or combined by the seller for sale as a single item; or
 - (3) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food.
- e. "Prepared food" does not mean:
- (1) Food that is only cut, repackaged, or pasteurized by the seller.
 - (2) Eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the food and drug administration in chapter 3, part 401.11, of its food code so as to prevent foodborne illness.
 - (3) If sold without eating utensils provided by the seller:
 - (a) Food sold by a seller whose proper primary North American industry classification system classification is manufacturing in sector 311, except subsector 3118, bakeries.
 - (b) Food sold in an unheated state by weight or volume as a single item.
 - (c) Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas.
 - (d) Food sold that ordinarily requires additional cooking, as opposed to just reheating, by the consumer prior to consumption.
- f. "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. "Soft drinks" does not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or greater than fifty percent of vegetable or fruit juice by volume.
- g. "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

SECTION 2. AMENDMENT. Section 57-39.4-29 of the North Dakota Century Code is amended and reenacted as follows:

57-39.4-29. (328) Taxability matrix.

1. a. To ensure uniform application of terms defined in part II and part III(B) of the library of definitions as adopted by the governing board under section 57-39.4-28, each member state shall complete a, to the best of its ability, section 1 of the taxability matrix adopted by the governing board.
- b. To inform the general public of its practices regarding certain products, procedures, services, or transactions adopted by the governing board under section 57-39.4-33.4, each member state shall complete, to the best of its ability, section 2 of the taxability matrix.

2. The member state's entries in the matrix shall be provided and maintained in a database that is in a downloadable format approved by the governing board. A member state shall provide notice of changes in the taxability of the products or services listed in the taxability matrix as required by the governing board.
- 2.3. A member state shall relieve sellers and certified service providers from liability to the member state and its local jurisdictions for having charged and collected the incorrect amount of sales or use tax resulting from the seller or certified service provider relying on erroneous data provided by the member state in the taxability matrix. If a member state amends an existing provision of its taxability matrix, the member state shall, to the extent possible, relieve sellers and certified service providers from liability to the member state and its local jurisdictions until the first day of the calendar month that is at least thirty days after notice of change to a member state's taxability matrix is submitted to the governing board, provided the seller or certified service provider relied on the prior version of the taxability matrix.
- 3.4. If a state levies sales and use tax on a specified digital product and provides an exemption for an item within the definition of such specified digital product under subsection 8 of section 57-39.4-33.1, such exemption must be noted in the taxability matrix.
- 4.5. Each state that provides for a sales tax holiday under section 57-39.4-23 shall, in a format approved by the governing board, give notice in the taxability matrix of the products for which a tax exemption is provided.

SECTION 3. AMENDMENT. Section 57-39.4-31 of the North Dakota Century Code is amended and reenacted as follows:

57-39.4-31. Membership of streamlined sales tax governing board and ~~state and local advisory council.~~

1. Two members of the house of representatives and two members of the senate, to be appointed by the chairman of the legislative management, shall represent ~~the~~this state of North Dakota on the streamlined sales tax governing board.
2. ~~One member of the house of representatives and one member of the senate, to be appointed by the chairman of the legislative management, shall represent the state of North Dakota on the streamlined sales tax state and local advisory council.~~
3. The tax commissioner shall designate a member of the tax commissioner's staff to accompany and advise the members appointed under this section with regard to multistate discussions to review or revise the agreement or to conduct such other business as comes before the board ~~or council.~~

SECTION 4. Section 57-39.4-33.4 of the North Dakota Century Code is created and enacted as follows:

57-39.4-33.4. Best practices.

1. For purpose of this section, "best practices" means those practices adopted by the governing board as the best practices in administration of the sales and use taxes in the member states regarding certain identified products, procedures, services, or transactions.
2. A majority vote of the entire governing board is required to approve a motion to adopt a best practices standard. The governing board shall provide public notice and opportunity for comment prior to voting on a motion to adopt a best practice.
3. Best practices adopted by the governing board must be maintained in an appendix to the agreement.
4. Conformance by a member state to best practices adopted by the governing board is voluntary and a state may not be found to be out of compliance with the agreement because the effect of the state's laws, rules, regulations, and policies do not follow each of the best practices adopted by the governing board.
5. A state shall complete the best practice matrix by the first day of the calendar month that is at least thirty days after the date the governing board approves a best practice and submits it to the executive director for posting on the governing board's website. For subsequent best practices approved by the governing board, a state shall update its best practice matrix by the first day of the calendar month that is at least thirty days after the date the governing board approves a new best practice and submits it to the executive director for posting on the governing board's website."

Page 1, line 8, after "use," insert "and"

Page 1, line 8, remove ", or motor vehicle "

Page 1, line 9, remove "excise"

Page 1, line 10, remove ", in consultation with the tax commissioner,"

Page 1, line 10, after "agreement" insert "on behalf of the state"

Page 1, line 11, after "Tribes" insert "which complies with the provisions of this chapter"

Page 1, line 12, remove "or motor vehicle excise"

Page 1, line 12, remove ", or all of those"

Page 1, line 13, remove "taxes,"

Page 1, line 18, remove "or motor vehicle excise"

Page 1, line 18, remove ", or all of those taxes,"

Page 1, line 22, remove "or motor vehicle excise taxes, or all of those"

Page 1, line 22, remove the second the comma

Page 2, line 1, after "a" insert "tribal"

Page 2, line 1, after "rate" insert ", except as provided in subdivision b,"

Page 2, line 3, after the second underscored comma insert "and"

Page 2, line 3, replace ", and 57-40.3. However," with "but must be applied to only those"

Page 2, line 4, after "activities" insert "that are"

Page 2, line 5, remove "are taxable by the tribe"

Page 2, line 6, after the underscored period insert "Must also impose a separate and additional tribal sales, use, and gross receipts tax at a rate of one-fourth of one percent which conforms in all respects with regard to the taxable or exempt status of transactions and activities under chapters 57-39.2, 57-39.5, 57-39.6, and 57-40.2. However, taxable transactions and activities exempt from state taxes because they occur within the tribe's jurisdiction must also be subject to the tax under this subdivision by the tribe. The entire tax revenue from the tax imposed under this subdivision must be transferred to the state treasurer and paid to the Standing Rock Sioux Tribe."

c. "

Page 2, line 7, replace "one hundred eighty" with "ninety"

Page 2, line 9, replace "c." with "d."

Page 2, line 14, remove "agreed"

Page 2, line 14, after "amount" insert "equal to three percent of the total amount collected, from the tribal taxes imposed under subdivisions a and b of subsection 2,"

Page 2, line 19, after "state" insert "and subject to taxes imposed by the state or the tax imposed under subdivision a of subsection 2"

Page 2, line 19, replace "between" with "eighty percent to"

Page 2, line 20, after "and" insert "twenty percent to"

Page 2, line 20, remove ", in proportion to the percentage of enrolled"

Page 2, remove lines 21 and 22

Page 2, line 23, remove "decennial census by the United States census bureau"

Page 2, line 23, after the underscored period insert "The tribal share of the tax allocated under this subdivision must be transferred to the state treasurer and paid to the Standing Rock Sioux Tribe. However, the tribal share paid to the Standing Rock Sioux Tribe under the agreement is limited to two million dollars during a state biennium and any amount exceeding that limitation must be deposited by the state treasurer in the state general fund."

Page 2, line 25, replace "additional tribal" with "any other"

Page 2, line 26, remove "or motor vehicle excise tax, or all of those taxes,"

Page 2, line 30, after "enforce" insert "within the exterior boundaries of the Standing Rock Reservation"

Page 3, after line 10, insert:

"SECTION 6. AMENDMENT. Subsection 2 of section 57-40.2-04.1 of the North Dakota Century Code is amended and reenacted as follows:

2. For purposes of this section:

- a. "Alcoholic beverages" means beverages that are suitable for human consumption and contain one-half of one percent or more of alcohol by volume.
- b. "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts, or other ingredients or flavoring in the form of bars, drops, or pieces. Candy does not include any preparation containing flour and that does not require refrigeration.
- c. "Dietary supplement" means any product, other than tobacco, intended to supplement the diet which contains one or more of the following dietary ingredients: a vitamin; a mineral; an herb or other botanical; an amino acid; a dietary substance for use by humans to supplement the diet by increasing the total dietary intake; an oral concentrate, metabolite, constitute, extract, or combination of any dietary ingredients described in this subdivision and which is intended for ingestion in tablet, capsule, powder, soft gel cap, or liquid form, or if not represented for use as a sole item of a meal or of a diet; and is required to be labeled as a dietary supplement, identifiable by the supplemental facts box found on the label and as required pursuant to 21 CFR 101.36.
- d. "Prepared food" means:
 - (1) Food sold in a heated state or heated by the seller;
 - (2) Two or more food ingredients mixed or combined by the seller for sale as a single item; or
 - (3) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food.
- e. "Prepared food" does not mean:
 - (1) Food that is only cut, repackaged, or pasteurized by the seller.
 - (2) Eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the food and drug administration in chapter 3, part 401.11, of its food code so as to prevent foodborne illness.
 - (3) If sold without eating utensils provided by the seller:
 - (a) Food sold by a seller whose proper primary North American industry classification system classification is manufacturing in sector 311, except subsector 3118, bakeries.
 - (b) Food sold in an unheated state by weight or volume as a single item.

- (c) Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas.
- (d) Food sold that ordinarily requires additional cooking, as opposed to just reheating, by the consumer prior to consumption.
- f. "Soft drinks" means nonalcoholic beverages that contain natural or artificial sweeteners. "Soft drinks" does not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes, or greater than fifty percent of vegetable or fruit juice by volume.
- g. "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco."

Renumber accordingly