

2011 HOUSE FINANCE AND TAXATION

HB 1198

# 2011 HOUSE STANDING COMMITTEE MINUTES

## House Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1198  
January 18, 2011  
#13049

☐ Conference Committee

Committee Clerk Signature

*Mary Bruckner*

### Explanation or reason for introduction of bill/resolution:

A Bill relating to allocation to counties of a portion of the state's share of oil and gas gross production tax revenues from production within the Fort Berthold Reservation; to provide for retroactive application; and to provide an effective date.

### Minutes:

*Attached testimony #1*

**Representative Kenton Onstad:** Sponsor. Support. HB 1198 is a big technical corrections bill. It goes back to 2007 legislation that we passed that dealt with SB 2419. That was a legislative that set up a state entering an oil and gas agreement with Three Affiliated Tribes. I want to address how it was going to be funded in 2419. HB 1198 corrects that revenue source to Three Affiliated Tribes. The intent in SB419 it was to come from the state's share of the production tax and not the counties. The oil and gas counties were to be held harmless for many of those financial implications. I've enclosed some documents from that particular hearing that are on page 2 and 3 of the bill. If you take Representative Meyer's statements it talks about all the monies for the counties, cities, and schools are going to be held harmless. Then you look on page 3 from Representative Porter's statements after that first paragraph it talks about allocation of revenue was agreed upon, state's share. The political subdivisions and schools are held harmless. We thought the final agreement said it was supposed to come out of the state's share and it was not. Legislative Council agreed that legislation states it should have come out of the state's share and not from the counties. Current bill addresses that change and section 2 makes it retroactive. Although you passed the agreement in 2007 the Governor of ND and Three Affiliated Tribes did not sign into this agreement until 2009. The action that takes place is only in the bold section, so it starts in July 2009 when the payments were finally being made. If you go to the far right in bold on the bottom county revenue is \$1.85 million. That would be \$1.85 million fiscal note as a loss to the state and it would be made up back to the counties if this bill is passed. If we move forward, estimate of payment to the counties for the next biennium, that amount is \$2.8 million. The fiscal impact of HB 1198 is \$4.732 million; this would be a positive to the counties and a negative to the state. The bill in no way shape or form has anything to do with the current agreement between the Governor and Three Affiliated Tribes that still stays intact. This is just to correct an error made in 2007 for those particular counties that have part of Three Affiliated Tribes within their counties. That would be to Montreal County, McKenzie County, Dunn County, and McLean County. I ask for a do pass on HB 1198.

**Mark Fox testifying for Tex G. Hall, Chairman of Mandan Hidatsa and Arikara Nation Tribal Business Council of Fort Berthold Indian Reservation:** Support. Please refer to testimony #1.

**Chairman Wesley R. Belter:** The original intent of the bill is to correct an oversight. I guess from your testimony your Chairman has asked to change the formula. Has there been any discussion between the tribes and the Governor's Office over this issue?

**Mark Fox:** Yes, there has been, amongst other items some brief discussions. We would like to see a more equitable sharing of that allocation.

**Representative Shirley Meyer:** You indicated there are abandoned BIA roads. Once a BIA road becomes abandoned does that become the counties responsibility? Of the 664 miles of the county roads does the reservation help pay the county for upkeep on those roads?

**Mark Fox:** When it comes out of the BIA system then it's not automatically picked up by the county system. That's why they are considered to be abandoned. We have to figure out ways to deal with it in our tribe. The answer to the second question would be in some cases we have shared with the county and our own resources as well in trying to maintain the roads. Definitely there is a sharing of it right now but it's just not enough. The end result is a large number of roads that are substandard.

**Representative Shirley Meyer:** Is Fort Berthold eligible for the impact grants? Can you as a nation submit a grant request from the impact dollars?

**Mark Fox:** I don't want to misspeak. My staff indicates they don't believe so. It's definitely something we would look at but we don't believe so at this time.

**Terry Traynor, ND Association of Counties:** Support. We feel this bill corrects as Representative Onstad stated, an oversight from the last session. It restores the original intent of the bill and we think that section 2 is very important, retroactive provision.

**Representative Shirley Meyer:** could you possibly answer the question on the BIA roads that become abandoned on Fort Berthold. Is there a process where these roads are given to somebody or do they become the counties responsibility or do they remain with the BIA?

**Terry Traynor:** I wish I could answer that but I really don't know. It's a section line road or a road that is on a congressional section line. There are issues there that the county has to deal with but when it deviates from the section line and it's built by another authority I'm really not sure. We'll have to do some research to answer that question better.

**Representative Glen Froseth:** Question for the Tax Department. Of this \$4.7 million that will be paid out in retrospect of this bill where will that money come from? Will it come from the oil and gas trust fund? It's not in the general fund appropriation so where does the money come from?

**Kevin Schatz, Tax Department:** I believe that would be a question better answered by the Treasurer's Office.

**Carlee McLeod, Deputy State Treasurer:** The state's share goes into both the general fund and the permanent oil trust fund so we would need direction from you on where you want us to take that money.

**Representative Glen Froseth:** This technical problem will be corrected from 2011 and forward?

**Carlee McLeod:** I believe that 1198 goes back to the taxable event starting July 1 of 2009 moving forward.

**Chairman Wesley R. Belter:** We would need to specify on where this money would come from if we pass this bill?

**Carlee McLeod:** I believe that would be helpful to us. We don't just like to reach into processed money and pass it out.

**Representative Glen Froseth:** Would that be this committee's obligation or appropriations?

**Chairman Wesley R. Belter:** It can be either place. We can make a recommendation to appropriations. No further testimony in support. No testimony in opposition or neutral testimony. Closed hearing on HB 1198.

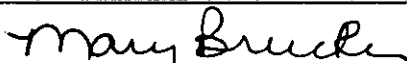
# 2011 HOUSE STANDING COMMITTEE MINUTES

## House Finance and Taxation Committee Fort Totten Room, State Capitol

HB 1198  
February 1, 2011  
#13817

☐ Conference Committee

Committee Clerk Signature



### Explanation or reason for introduction of bill/resolution:

A Bill relating to allocation to counties of a portion of the state's share of oil and gas gross production tax revenues from productions within the Fort Berthold Reservation; and to provide for retroactive application; and to provide an effective date.

### Minutes:

**Vice Chairman Craig Headland:** I move we reconsider our action on HB 1198.

**Representative Roscoe Streyle:** Seconded.

**Vice Chairman Craig Headland:** There's a cost associated with this and I believe the counties lost revenue and they maybe should have been watching a little closer and picked up what was happening with it. I think in moving forward we will correct the problem but I don't see the need to go back. That is why I asked for this reconsideration.

**Representative Shirley Meyer:** I thought we made the case pretty clear and Legislative Counsel agreed with us. The counties were to be held harmless, that was legislative intent. That's what we voted on and that's what we passed. Legislative Counsel has come in and weighed in on this issue and said we were correct. They accepted the agreement from the tribes that they had failed to implement the compact correctly. This was presented for the budget section and they were in agreement with it. When we're looking at what we passed and what we promised the counties and then say they didn't watch closely enough that's not the case. They made the case from day one that that was in there and that's what we agreed to with the legislative assembly. Legislative Counsel has admitted it was their error. Now to say "No harm no foul", there is to the counties and they deserve to be compensated on the legislation that was passed in the forum that is was passed.

**Representative Steven L. Zaiser:** I would like to echo Representative Meyer's comments. I'm not as familiar with the issue as she is. It was my understanding that the counties were to be held harmless and Legislative Counsel did come down here and point out that is wasn't really a shortcoming from the counties not watching the ball so I am opposed for reconsideration.

**Voice Vote taken: MOTION CARRIES.**

**Vice Chairman Craig Headland: Made a motion for DO NOT PASS.**

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**Representative Bette Grande: Seconded.**

**A roll call vote was taken: YES 10 NO 4 ABSENT 0**

**Vice Chairman Craig Headland will carry HB 1198.**

# FISCAL NOTE

Requested by Legislative Council  
01/21/2011

Bill/Resolution No.: HB 1198

**1A. 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.*

	2009-2011 Biennium		2011-2013 Biennium		2013-2015 Biennium	
	General Fund	Other Funds	General Fund	Other Funds	General Fund	Other Funds
Revenues				(\$4,732,000)		
Expenditures						
Appropriations						

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

2009-2011 Biennium			2011-2013 Biennium			2013-2015 Biennium		
Counties	Cities	School Districts	Counties	Cities	School Districts	Counties	Cities	School Districts
			\$4,732,000					

**2A. 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 1198 allows oil-producing counties within the Fort Berthold Reservation to receive the full amount of oil and gas gross production tax revenue they would receive without the oil and gas tax revenue sharing agreement between the Tribal government and the State.

**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, Section 1 of HB 1198 is expected to reduce permanent oil tax trust fund revenues and increase county revenues by an estimated \$2.88 million from new production during the 2011-13 biennium.

Section 2 of HB 1198 allows a retroactive application of these "hold harmless" provisions for the amount the counties would have received in the current 2009-11 biennium had this bill been in place. This section is expected to reduce permanent oil tax trust fund revenues and increase county revenues by an additional \$1.852 million.

**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.*

HB 1198 will require substantial modifications to computer systems within the Office of State Treasurer. The expected costs of system changes are currently not known.

**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 is also included in the executive budget or relates to a continuing appropriation.*

Name:	Kathryn L. Strombeck	Agency:	Office of Tax Commissioner
Phone Number:	328-3402	Date Prepared:	01/31/2011



Date: 2-1-11  
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1198

House Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken: ☐ Do Pass ☐ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☒ Reconsider

Motion Made By Rep. Headland Seconded By Rep. Streyle

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter			Scot Kelsh		
Vice Chair. Craig Headland			Shirley Meyer		
Glen Froseth			Lonny B. Winrich		
Bette Grande			Steven L. Zaiser		
Patrick Hatlestad					
Mark S. Owens					
Roscoe Streyle					
Wayne Trotter					
Dave Weiler					
Dwight Wrangham					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

A4E

NAY

MOTION CARRIES

Date: 2-1-11  
Roll Call Vote # 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 1198

House Finance and Taxation Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken: ☐ Do Pass ☒ Do Not Pass ☐ Amended ☐ Adopt Amendment

☐ Rerefer to Appropriations ☐ Reconsider

Motion Made By Rep. Headland Seconded By Rep. Grande

Representatives	Yes	No	Representatives	Yes	No
Chairman Wesley R. Belter	✓		Scot Kelsh		✓
Vice Chair. Craig Headland	✓		Shirley Meyer		✓
Glen Froseth	✓		Lonny B. Winrich		✓
Bette Grande	✓		Steven L. Zaiser		✓
Patrick Hatlestad	✓				
Mark S. Owens	✓				
Roscoe Streyle	✓				
Wayne Trottier	✓				
Dave Weiler	✓				
Dwight Wrangham	✓				

Total (Yes) 10 No 4

Absent 0

Floor Assignment Rep. Headland

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

**REPORT OF STANDING COMMITTEE**

**HB 1198: Finance and Taxation Committee (Rep. Belter, Chairman) recommends DO NOT PASS** (10 YEAS, 4 NAYS, 0 ABSENT AND NOT VOTING). HB 1198 was placed on the Eleventh order on the calendar.

2011 TESTIMONY

HB 1198

#1198  
Testimony  
#1

**TESTIMONY ON HB 1198**  
**HOUSE FINANCE AND TAXATION COMMITTEE**  
**January 18, 2010**  
**Tex G. Hall "Red Tipped Arrow", Chairman,**  
**Mandan Hidatsa and Arikara Nation Tribal Business Council**  
**Fort Berthold Indian Reservation**

Mr. Chairman and Members of the Committee, My name is Tex Hall, my traditional name is Ihbudah Hishi, "Red Tipped Arrow". I am honored to present this testimony as the Chairman of the Mandan Hidatsa and Arikara Nation Tribal Business Committee. I generally support any legislation that allocates additional tax revenue to areas impacted by the oil and gas boom in western North Dakota. However, I oppose HB 1198 in its current form, because it does not ensure that the MHA Nation, whose lands lie in the heart of the Bakken Formation, receives its fair share of tax revenue from production on the Fort Berthold Indian Reservation, to help mitigate the massive toll that the oil and gas industry is taking on reservation trust lands, infrastructure and resources.

The tax revenue that the MHA Nation receives under the current oil and gas tax sharing agreement, while appreciated, is not nearly enough to catch up to and maintain the costs incurred from the enormous burden that the oil and gas boom is putting on reservation roads, infrastructure and the MHA Nation's natural and human resources. In my address to the Joint Session of the 62<sup>nd</sup> Legislative Assembly on January 6, 2011, I asked the Legislature to revisit the current tax agreement as set forth in NDCC Chapter 57-51.2. The current agreement provides that the state administers and pays the MHA Nation 50% of oil and gas production tax proceeds from trust mineral acres and 20% from non-trust mineral acres on the Fort Berthold Indian Reservation. According to a recent article in the Bismarck

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Tribune, state Tax Department records show that since July of 2008, the state has collected \$43.7 million from the agreement and the MHA Nation has received \$19.1 million. The majority of the revenue from the Tax Agreement comes from the oil and gas production tax. As I discuss in more detail below, the percentage received by the MHA Nation under the tax agreement is simply not sufficient to keep up with the serious financial impacts that the oil and gas boom has brought upon our infrastructure and resources, particularly the reservation roads under the jurisdiction of the Bureau of Indian Affairs (BIA) and the MHA Nation and our emergency response and law enforcement.

As I understand it, the Bill's intent is to reallocate a portion of the state's share of the tax from reservation production to the counties on the reservation where production occurs. HB 1198 preserves the Tribe's share of the production tax pursuant to the existing Tax Agreement. Only the state's share from reservation production under the tax agreement is reallocated to the counties. The revenue that would come back to the counties from Fort Berthold production if HB 1198 becomes law will be very significant. I would support the Bill with an amendment stating that the additional revenue to the counties from oil and gas produced on the reservation must be used as follows:

(1). Each County must allocate a minimum percentage of the additional revenue it receives from the State's share directly to the MHA Nation based upon the ratio representing the total miles of county versus BIA/Tribal reservation roads in each county, and the ratio between Indian and non-Indian land in each county on the reservation, to be used to improve and maintain Tribal/BIA roads, bridges and infrastructure and to otherwise mitigate the impacts of oil and gas activity on tribal and allotted lands within the reservation; and

(2). Each county must enter into an agreement with the MHA Nation which provides an equitable mechanism under which the additional revenue allocated to the Counties from reservation production is allocated among the County and the MHA Nation consistent with the purposes described in subparagraph 1.

I want to emphasize here that a preferable and acceptable alternative to subparagraphs (1) and (2) above would be an amendment to Chapter 57-51.2 to provide that the MHA Nation receives 80% of the tax revenue derived from production from trust mineral acres on the reservation. Such an amendment would level the playing field by equalizing the percentages shared by the State and Tribe from production on reservation trust and non trust lands.

Mr. Chairman, in considering the proposed amendments, I ask that the Committee consider the following facts. While the oil and gas industry has brought increased economic opportunities to every resident of Western North Dakota, including the MHA Nation, those increased opportunities have not come without costs. The two most visible of those costs are the virtual destruction of many of our on reservation roads, and the advent of new law enforcement and public safety needs.

The Fort Berthold reservation encompasses approximately 1 million acres, approximately 1,544 square miles, and 1520 miles of roads. The Reservation encompasses parts of six North Dakota Counties: Mountrail, McKenzie, Ward, McLean, Dunn and Mercer. Approximately half of the reservation consists of tribal and allotted trust land. Of the 1520 miles of roads, 1,097.7 miles are in the BIA inventory system, broken down as follows:

Rural minor arterial roads- 141.2 miles

Community streets 28.7 miles

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Rural major collector roads 191.5 miles

Rural local roads 729.5 miles

City minor arterial streets 6.8 miles

In addition to the 1,097.7 miles of BIA Indian reservation roads described above, there are also approximately 664.4 miles of county roads and 150 miles of state Highways within the reservation. There also an undetermined amount of private roads and abandoned BIA roads that will need to be rebuilt or improved to support the oil and gas industry on the reservation.

The current road system was not constructed to withstand the weight and volume of heavy truck traffic that accompanies the oil boom. The damage being done daily is enormous, and the MHA Nation does not have the resources, even with its share of oil and gas tax revenue, to keep up with the burden. For example, The MHA Nation recently had to mill up and gravel a paved road south of Sanish and New Town because the oil traffic literally destroyed the road faster than any paving contract could repair it. At a minimum, 56.2 miles of BIA roads need to be reconstructed immediately, with more reconstruction becoming necessary in the future. The estimated cost for adequate design and reconstruction of the inferior roads is approximately \$1.1 million per mile. The current roads on the reservation are also beyond their life span. The highways were built with 2 inches of bituminous asphalt in the 1970s-80s, not enough to withstand the heavy traffic that comes with oil boom traffic.

According to our tribal records 57.7% of the reservation roads are gravel, 26.6 % are paved and 16% are primitive dirt. Much of the current system remains inaccessible to drilling and is in need of immediate upgrade to allow access to well sites. In addition to the immediate repairs and upgrades needed, we estimate that it will cost millions of dollars per year to maintain the reservation



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roads as long as the oil boom lasts. The current BIA budget to maintain our road system is a paltry \$456,000.

Travel is hazardous even in good weather as a result of the damage being inflicted on the tribal, county and state road system. Presently, there are so many potholes and ruts on our tribal roads that the Tribe simply cannot keep up with them. In fact, many of our roads are so deteriorated, that when we can find the money to repair a small stretch, the patch does not hold and the next section of road just falls away. For all of these reasons, our roads currently present a very real danger to our school busses, emergency vehicles, the general public and even the vehicles operated by the oil and gas industry itself. Those roads are also costing our citizens, our governments and the oil and gas industry itself thousands of dollars a year in vehicle repairs and replacements, and this situation is and will continue to stifle economic growth.

Let me make it clear, however, that the Tribe is already doing its part. It is spending its BIA provided dollars as carefully as possible, and it is constantly petitioning the BIA and other federal agencies for additional funds. Unfortunately, the funds that we need simply are not available from the federal system, and given our current national budget crisis, I honestly fear that our federal funding problems are only going to get worse. Thus, we need your help in the form of a practical and equitable adjustment of the allocation of oil and gas related tax dollars. The Tribe is not looking for a windfall; it is simply looking for the funds necessary to allow this economic boom to continue in a safe and responsible manner.

Mr. Chairman, nothing is more important to any of us than the safety of our citizens and to put it bluntly - on these roads, our citizens are not safe.

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Finally, the MHA Nation also has some very serious and very pressing law enforcement and public safety problems that have to be addressed immediately, and those problems can only be addressed with increased dollars. The influx of new oil and gas workers has created a great deal of strain on our already severely underfunded tribal law enforcement and highway law enforcement systems. At present, the Tribe can only afford to employ thirteen (13) law enforcement officers- and this is after the Tribe supplements the federal law enforcement dollars that we receive by approximately \$1 million a year.

These thirteen officers are, according to testimony presented to the Congress by the Bureau of Indian Affairs in 2010, only 1/3 of the minimum number of officers that we require just to service our on reservation population of approximately 12,500 (approximately 10,000 of whom are Indian). This does not include the thousands who are on the reservation on a temporary basis just to work. Add to this the number of officers that we now require in order to serve the increasing population from new oil and gas workers in our communities, the increased traffic, the large land base our officers must cover, the increased number of automobile accidents and increased fatalities created by our ever deteriorating roads and the heavy traffic, and you can begin to see just how serious our situation really is. Because of the distances our officers have to travel, and the substantial increase in calls for police assistance, our police response time has now risen to up to 1 hour in some cases, which is unacceptable. This coupled with the significantly increased costs of repairing police vehicles which are traveling 1,500 miles or more a day on our deteriorated roads, has left our small tribal police department and its budget stretched to the breaking point. For all of these reasons, we need more law enforcement resources in order to protect the public and without those resources, people will continue to suffer unnecessarily.

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Mr. Chairman, and members of the Committee, let me emphasize again that the Tribe is already doing its part, we are also supplementing our roads, infrastructure and law enforcement budgets as much as possible and we are already petitioning both the federal agencies and the Congress for increased funds, but that is simply not enough. The additional tax revenue that would come to the counties from oil and gas production on the Fort Berthold Indian reservation if HB 1198 becomes law can and should be shared with the MHA Nation, because its roads, infrastructure and resources are impacted as much, if not more, than the counties within the reservation, and because the MHA Nation's share of tax revenue under the current tax agreement is not sufficient to keep up with these very serious impacts.