

TRIBAL AND STATE RELATIONS COMMITTEE

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

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

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

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

The Legislative Management assigned the committee the responsibility to receive a report from the Governor describing the terms and negotiations of any oil and gas agreements entered under Chapter 57-51.2 and a biennial report thereafter describing the agreement's implementation and any difficulties in its implementation, pursuant to Section 57-51.2-04.

Committee members were Representatives Zachary Ista (Chairman), Lisa Finley-DeVille, Jim Grueneich, and Dennis Johnson and Senators Tim Mathern, Dale Patten, and Shawn Vedaa.

FEDERAL INDIAN LAW AND POLICY

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

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

With the enactment of the federal General Allotment Act of 1887, or Dawes Act, United States Indian relations entered a new era known as the allotment era. The Act authorized the President to allot portions of reservation land to individual Indians. Allotments of 160 acres were made to each head of a family and 80 acres to others, with double those amounts to be allotted if the land was suitable only for grazing. Title to the allotted land was to remain in the United States in trust for 25 years, after which it was to be conveyed to the Indian allotted free of all encumbrances. The Act also authorized the Secretary of the Interior to negotiate with tribes for the disposition of all excess lands remaining after allotment for the purpose of non-Indian settlement. The Act resulted in a decline in the amount of Indian-held land from 138 million to 48 million acres between 1887 and 1934.

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

The policy of termination and relocation was regarded as a failure and the modern tribal self-determination era began with the federal Indian Civil Rights Act of 1968. The effect of this Act was to impose upon the tribes most of the requirements of the Bill of Rights. The Indian Civil Rights Act of 1968 also amended Public Law 280 so states could no longer assume civil and criminal jurisdiction over Indian country unless the affected tribes consented at special elections called for this purpose. There have been several acts since 1968 designed to enhance tribal self-determination. These include the Indian Financing Act of 1974, which established a revolving loan fund to aid in the development of Indian resources; the Indian Self-Determination and Education Assistance Act of 1975, which authorized the secretaries of the interior and of health, education, and welfare to enter contracts under which the tribes would assume responsibility for the administration of federal Indian programs; the Indian Tribal Government Tax Status Act of 1982, which accorded the tribes many of the federal tax advantages enjoyed by states, including that of issuing tax-exempt bonds to finance governmental projects; the Tribally Controlled Schools Act of 1988, which provided grants for tribes to operate their own tribal schools; the Indian Child Welfare Act (ICWA) of 1978; the American Indian Religious Freedom Act of 1978; and the Indian Gaming Regulatory Act of 1988.

STATE-TRIBAL RELATIONS

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

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

STATE-TRIBAL COOPERATIVE AGREEMENTS

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

2023 LEGISLATION

The committee reviewed recent legislation including:

- House Bill No. 1018, which removed documented job placement rates at each eligible tribally controlled community college as a criteria for awarding workforce development grants and authorized colleges receiving workforce development grants to use the grants to develop or enhance career and technical education programs.
- House Bill No. 1223, which clarified the eligibility requirements to qualify for the motor vehicle excise tax exemption for enrolled tribal members. The bill provided the motor vehicle excise tax exemption is allowed for motor vehicles acquired in the state by an individual who is an enrolled tribal member and whose primary residence is within the boundaries of any reservation in this state.
- House Bill No. 1385, which added federally recognized Indian tribes to the list of political subdivisions and entities with which the State Water Commission (SWC) may enter contracts. The change allows a contracting tribe to be an eligible sponsor under the Department of Water Resources' cost-share program.
- House Bill No. 1536, which incorporated into the Century Code the placement preferences, court proceedings, procedures, and adoptee information requirements from the federal Indian Child Welfare Act.
- Senate Bill No. 2073, which authorized the Information Technology Department to provide information technology and cybersecurity services to education institutions under the control of a tribal government of this state after July 21, 2023.

- Senate Bill No. 2377, which removed the requirement for an agreement between the Governor and the governing body of any tribe in this state for the collection and administration of alcoholic beverage wholesale tax, alcoholic beverages gross receipts tax, or tobacco products wholesale tax to include an agreement for all three taxes. The bill replaced the method of allocating revenue under an agreement for the collection and administration of alcoholic beverages wholesale tax and alcoholic beverages gross receipts tax from one determined by multiplying the enrolled membership of the tribe by the tax revenue generated per capita for the respective tax type to a method which allocates 80 percent of the tax revenue to the tribe and 20 percent to the state. The bill also provided the venue for any controversy or claim between a tribe and the state arising out of or relating to an agreement for the collection and administration of alcoholic beverage wholesale tax, alcoholic beverages gross receipts tax, or tobacco products wholesale tax is the United States District Court for the District of North Dakota, Western Division.

EDUCATION

The committee received testimony from a representative of the Belcourt School District regarding the cost of education on the Turtle Mountain Reservation. According to the testimony, the cost of education on the Turtle Mountain Reservation is much higher than in other areas in the state. The committee was informed student activities are an important part of education and many students cannot afford activity fees. Testimony indicated the Turtle Mountain Reservation experienced difficulty in recruiting new teachers, especially in mathematics, science, special education, and English.

The committee received testimony from a representative of the Spirit Lake Tribal Council regarding the academic needs of the students on the Spirit Lake Reservation. According to the testimony, many teachers who teach at schools on the Spirit Lake Reservation do not live on the reservation.

The committee received testimony from a representative of the Department of Public Instruction regarding the department's recent developments and priorities for the 2025 legislative session. According to the testimony, the priorities include providing school board training, providing intervention to increase collaboration, building relationships, reducing barriers, and identifying resources for student success. Testimony indicated additional priorities include adult education, dyslexia identification training, a tribal history and culture textbook project, and encouraging participation in science, technology, engineering, and mathematics.

The committee received testimony from a representative of the North Dakota University System regarding the strategic efforts of the State Board of Higher Education. According to the testimony, the board is focused on preparing for the state's future by addressing student vitality, workforce, and the introduction of intelligent machines.

The committee received testimony from legislators regarding racism during high school sporting events. According to the testimony, there were three publicly reported incidents involving racial slurs, taunting, or mocking traditional powwow music and traditional dancing in 2023 and 2024. The committee discussed the impact of racism, including the emotional and psychological impact, the undermining of self-identity and pride, physical safety concerns, the impact on academic and professional success, the impact on interpersonal relationships and social isolation, and generational trauma.

The committee received testimony from a representative of the North Dakota High School Activities Association regarding the association's updated procedures to address racism in high school sports. According to the testimony, approximately 2,000 basketball games are played each season in North Dakota and approximately 80 percent of those games are livestreamed. The committee expressed interest in having victimized students and families be notified of investigations into racism; however, the committee was informed student disciplinary actions cannot be publicized.

The committee received testimony from a representative of Fort Totten Public School District regarding preventing racism in high school sports. The committee was informed when attendees are requested to leave a sporting event, criminal charges are not pursued against the attendee.

LAW ENFORCEMENT

The committee received testimony from a representative of the Bureau of Criminal Investigation (BCI) regarding an overview of BCI. The committee was informed BCI is an assistance agency specializing in crime scene, fire, and narcotics investigations. According to the testimony, BCI has 64 special agents stationed around North Dakota, 4 of whom have a Special Law Enforcement Commission designation and are stationed in Devils Lake, Rolla, and Rugby.

The committee received additional testimony from a representative of BCI regarding a cooperative agreement to provide assistance to the Bureau of Indian Affairs (BIA) to combat controlled substances trafficking on the Turtle Mountain Reservation. The committee discussed how special law enforcement commissions allow BCI agents to possess and enforce BIA jurisdiction over enrolled members and nonenrolled individuals as it relates to narcotics

investigations and related criminal offenses. According to the testimony, the Turtle Mountain Band of Chippewa Indians and the Three Affiliated Tribes have signed a memorandum of understanding to allow BCI to house a special agent in Rolla and Stanley to assist BIA with drug trafficking in the region. The committee was informed BCI has completed training at high schools on the Standing Rock Reservation and with casino staff. According to the testimony, there is not an agreement in place with the Standing Rock Sioux Tribe.

The committee received testimony from a representative of BCI regarding a new detention center designed to provide additional educational, trauma, and substance abuse services. The committee discussed implementing alternative justice systems to combat substance abuse and homelessness.

HEALTH CARE

The committee received testimony from the Chairman of the Three Affiliated Tribes of the Fort Berthold Reservation regarding the Good Road Recovery Center in Bismarck. According to the testimony, elders and other tribal members are concerned about substance abuse in the tribe. Testimony indicated the tribe's vision for treatment is modeled after Arizona's successful Native American Connections behavioral health program. The committee was informed the tribe requested the state grant an Institutions for Mental Diseases waiver to allow the tribe to treat more than 16 patients at its facility. Testimony indicated, without a waiver, Medicare and Medicaid will not reimburse the facility for treating more than 16 patients.

The committee received testimony from representatives of the Department of Health and Human Services (DHHS) regarding substance use prevention and treatment services for tribal communities. According to the testimony, DHHS is contracted with four tribal nations with the goal of preventing substance misuse. Testimony indicated, DHHS funds residential treatment services and licensed addiction counselors on the Fort Berthold Indian Reservation. The committee was informed DHHS awarded funding to the Spirit Lake, Standing Rock, and Three Affiliated Tribes for opioid response and is working toward suicide prevention among Native Americans by increasing awareness and through mental health training.

The committee received testimony from representatives of DHHS regarding care coordination agreements. The testimony explained care coordination agreements and indicated 80 percent of savings generated by care coordination agreements are directed to the tribal care coordination fund. The remaining 20 percent is returned to the general fund. According to the testimony, the tribes may use funding from the tribal care coordination fund for public health services listed as the 10 essential services of public health by the Centers for Disease Control and Prevention.

The committee received testimony from a representative of the Spirit Lake Tribal Health Administration, requesting support from the committee for changes to Medicaid's Institution for Mental Diseases Exclusion. According to the testimony, the tribe is seeking to expand its addiction treatment facility to approximately 25 beds.

FOSTER CARE

The committee received testimony from a representative of the North Dakota Supreme Court regarding an overview of the Court Improvement Program and Indian child welfare courts. According to the testimony, the Court Improvement Program provided resources to state courts for evaluation and enhancement of court processes in response to the needs of children in the child welfare system. In 2023, 28 percent of foster care cases and 31 percent of cases involving the termination of parental rights in this state were impacted by ICWA. Testimony indicated more positive outcomes were reached in Indian child welfare court cases as compared to state courts cases, including earlier placement preferences, increased tribal presence and parental involvement, and earlier reunification with the caregiver.

The committee received testimony from a representative of the Turtle Mountain Band of Chippewa Indians regarding the need for foster care services on the Turtle Mountain Reservation. The committee was informed the drug epidemic has increased the number of children in foster care, which totals nearly 500 children on the reservation. Testimony contended a 24-hour-a-day foster care facility is necessary; however, adequate funding has been difficult to acquire.

The committee received testimony from the ICWA Coordinator for the Spirit Lake Tribe regarding family services and foster care recruiting in Spirit Lake. The testimony indicated it would be helpful to allow ICWA hearings to be attended through electronic means as opposed to in person. According to the testimony, many state courts do not allow electronic attendance, and it is difficult to attend all hearings in person when there are multiple hearings in different locations on the same day.

ECONOMIC DEVELOPMENT

The committee received testimony from the Chairman of the Three Affiliated Tribes of the Fort Berthold Reservation regarding economic development. The testimony indicated the tribe is working to develop new infrastructure and expand tourism and trade opportunities. According to the testimony, the tribe recently completed a new administration building, kidney dialysis unit, interpretive center, casino renovation, hotel, and water park, and plans to continue development.

Testimony indicated other economic development strategies include enhancing oil and gas infrastructure for the tribe's energy program and adding infrastructure to transport oil to foreign markets. The committee was informed 3 percent of the nation's daily oil and gas production is derived from lands within the boundaries of the Fort Berthold Reservation.

The committee received testimony from the Chairman of the Three Affiliated Tribes of the Fort Berthold Reservation regarding workforce development. According to the testimony, the tribe is heavily reliant on outside experts and consultants in areas relating to kidney dialysis, energy development, and law enforcement. The committee was informed the need for training facilities, education, supplemental law enforcement, and continued partnerships will remain until tribal members can be trained to assist in these areas.

The committee received testimony from a representative of the Economic Development Administration Planning Department regarding economic development planning and grant management efforts for the Spirit Lake Tribe. According to the testimony, the level of funding available on the Spirit Lake Reservation only allows for maintenance of the roads and not large road projects.

The committee received testimony from a representative of the Indian Affairs Commission regarding an update on the commission. The committee was informed the commission is comprised of a small team that works on a variety of topics. Testimony indicated the commission is hosting legislative training for tribal members to provide information on the legislative process. The committee was informed there are liaisons working with each tribe to improve communication. Testimony indicated the commission is looking at an economic assessment to provide more tools to businesses that want to come to North Dakota.

The committee received testimony from a representative of George Mason University regarding the business climate and business incentive development on Indian reservations in the state. The information provided included the historical entrepreneurship in Native American societies, the barriers to economic growth faced by reservations, and potential economic reforms related to reservations. The testimony recommended collaboration with the federal government to streamline the process for leasing trust land, the provision of technical assistance for business development, support for tribal judicial systems, and clarification of overlapping jurisdictions.

INFRASTRUCTURE

The committee received testimony from a representative of the Department of Water Resources regarding an overview of the department, the SWC cost-share program, and water management in the state. The committee was informed the department is comprised of six divisions, which include the Administrative Services Division, Atmospheric Resource Division, Planning and Education Division, Regulatory Division, Water Appropriation Division, and Water Development Division. Testimony indicated tribal nations now are eligible to enter cost-share agreements with SWC.

The committee received testimony from the Chairwoman of the Standing Rock Sioux Tribe regarding a bridge over the Missouri River. The committee was informed the tribe applied for a grant from the federal government related to the bridge over the Missouri River and is waiting for a response from the federal government.

The committee received testimony from a member of the Spirit Lake Tribe regarding the road conditions and safety concerns on the Spirit Lake Reservation. Testimony indicated concerns regarding the condition of road infrastructure on the reservation. The committee discussed the different road conditions for the same road on and off the reservation.

WATER

The committee received testimony from a representative of the North Dakota Irrigation Association regarding irrigation development in the state. The testimony indicated about 300,000 of a potential 28 million farmland acres in North Dakota are irrigated. The committee was informed irrigation districts are political subdivisions governed by an elected board that may provide funding and resources to individual irrigators. Testimony indicated an irrigation district may request a 75 percent cost-share from SWC.

NATURAL RESOURCES

The committee received testimony from a representative of the Game and Fish Department regarding the introduction of bighorn sheep on the Fort Berthold Reservation. Committee members expressed appreciation for the program and the collaboration between the Game and Fish Department and the tribe. According to the testimony, the Game and Fish Department and the tribe released approximately 30 bighorn sheep in the Mandaree and Twin Buttes region in 2020. Testimony indicated the herd has increased to approximately 80 bighorn sheep.

The committee received testimony from a representative of the Spirit Lake Tribal Environmental Protection Administration regarding the Climate Pollution Reduction Grant and tribal programs aiming to reduce greenhouse gases. According to the testimony, the tribe, in cooperation with the Game and Fish Department, has implemented clean, drain, and dry stations on the Spirit Lake Reservation to protect against invasive aquatic species.

The committee received testimony from a representative of the Game and Fish Department regarding an update to the cooperative elk project with the Standing Rock Sioux Tribe Game and Fish. The committee was informed of the research project and the memorandum of understanding with the Standing Rock Tribe to allow hunting on tribal land. Testimony indicated the Game and Fish Department distributed 14 elk licenses and Standing Rock Game and Fish distributed 28 elk licenses.

The committee received testimony from the director of Standing Rock Game and Fish regarding the elk herd on the Standing Rock Reservation. According to the testimony, the tribe, working with the Game and Fish Department, has successfully increased the elk herd population allowing for additional elk tags each year. The committee was informed the tribe has been dealing with poachers due to the increase in elk population.

AGRICULTURE

The committee received testimony from a representative of the North Dakota Advanced Agriculture Technology Engine regarding the future of agriculture technologies. According to the testimony, food systems Adapted for Resiliency and Maximized Security is a cooperative agreement funded through the National Science Foundation in partnership with the North Dakota Tribal College System, North Dakota State University, the Greater Fargo Moorhead Economic Development Corporation, Grand Farm, and the Fargo Moorhead West Fargo Chamber Foundation. Testimony indicated the goal of the National Science Foundation is to catalyze and accelerate ecosystems across the United States to advance critical technologies, address societal and economic challenges, promote economic growth, and cultivate regional talent.

JUSTICE

The committee received testimony from a representative of the Commission on Legal Counsel for Indigents regarding the public defense in tribal jurisdictions. The committee was informed of the right to counsel in state and tribal court. Testimony indicated there are opportunities for collaboration between the state and tribal nations regarding indigent defense. According to the testimony, indigent defense across the state lacks resources. Testimony indicated the tribal nations have a separate public defense system and the council does not provide assistance in tribal court.

The committee received testimony from a representative of the Spirit Lake Tribal Court regarding proposed changes to extradition laws related to tribal court warrants. According to the testimony, state law requires the appearance of the defendant before a state court judge before the transfer of custody to another state or tribe. Testimony indicated the statute requires the defendant be seen within a reasonable time; however, it may take several days to appear before a state court judge. The committee was informed Spirit Lake tribal law allows a defendant to waive the right to a judicial hearing and consent to extradition without appearing before a tribal judge when being extradited to state court. The testimony requested support for legislation to allow the waiver of extradition from state to tribal court without obtaining appearance before a state court judge.

ELECTIONS

The committee received testimony from representatives of the Secretary of State's office regarding voting in the 2024 general election. According to the testimony, the office has been working with all counties on training for the general election. Testimony indicated grants up to \$5,000 are available to tribes for administering voter identification. The committee discussed information regarding set aside ballots along with forms of identification for tribal members.

REPATRIATION OF REMAINS

The committee received testimony from representatives of the University of North Dakota regarding compliance with the Native American Grave Protection and Repatriation Act. According to the testimony, in March 2022, remains of tribal ancestors were discovered on the university campus. In August 2022, the university notified tribal representatives and made a public statement regarding dozens of tribal ancestors and artifacts found on university property. Since June, the university has notified the federal government and two claims for ancestors have been made. The committee was informed the university plans to complete repatriations efforts by May 2025.

The committee received testimony from a representative of the Indian Affairs Commission regarding corporation with the repatriation efforts at the University of North Dakota. According to the testimony, the commission has been part of the repatriation discussions since the remains were discovered and is ensuring the tribes are involved in the process.

OIL AND GAS AGREEMENT REPORT

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

on trust properties outside reservation boundaries and thereafter biennial reports describing the agreement's implementation and any difficulties in its implementation.

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