

NORTH DAKOTA LEGISLATIVE MANAGEMENT

Minutes of the

TRIBAL TAXATION ISSUES COMMITTEE

Friday, December 15, 2017

MHA Rooms, 4 Bears Casino & Lodge, 202 Frontage Road
New Town, North Dakota

Governor Doug Burgum, Chairman, called the meeting to order at 9:00 a.m.

Members present: Governor Doug Burgum, Representatives Al Carlson, Craig Headland, Corey Mock; Senators Dwight Cook, Joan Heckaman, Rich Wardner; Citizen Members Scott J. Davis, Ryan Rauschenberger, Brent Sanford

Others present: Representative Terry B. Jones, New Town, and Senator Jordan Kannianen, Stanley
See [Appendix A](#) for additional persons present.

Governor Burgum called on VFW Post 9061, Mandaree, for the color guard presentation; the Oakdale Singer drum group for the flag song; and Ms. Susan Hall for the prayer.

It was moved by Representative Mock, seconded by Representative Carlson, and carried on a voice vote that the minutes of the August 31, 2017, meeting be approved as distributed.

Governor Burgum said this meeting with the tribe is historic. He said the state and the tribes have more in common than differences. He thanked Chairman Mark Fox, Three Affiliated Tribes of the Fort Berthold Reservation, and the Mandan, Hidatsa, and Arikara (MHA) Nation for their hospitality. He also thanked the other tribes for their presence at the meeting.

Chairman M. Fox said he was honored to host the committee and the guests in the audience. He said the tribe is proud of its lands and all the tribe has accomplished. He said his tribe, which has always lived along the river, has a deep connection to the Missouri River. He said the Four Bears Bridge was a collaborative effort of the tribal, state, and federal governments.

Chairman Fox introduced tribal council members in attendance--Mr. Randy Phelan, Vice Chairman, Mandaree Segment; Mr. Fred Fox, Executive Secretary, White Shield Segment; Mr. Mervin Packineau, Treasurer, Parshall/Lucky Mound Segment; Mr. Cory Spotted Bear, Councilman, Twin Buttes Segment; and Dr. Monica Mayer, Councilwoman, New Town and Little Shell Segment.

Governor Burgum called on Mr. Rauschenberger for information regarding tribal-state tax agreements of other states. Mr. Rauschenberger said his staff has conducted extensive research on tribal-state tax agreements. He introduced Mr. Joe Morrisette, Deputy Tax Commissioner, for the presentation ([Appendix B](#)) of information regarding tribal-state tax agreements in Minnesota and Montana. Mr. Morrisette said Minnesota has revenue sharing agreements with Minnesota tribes for the following taxes: cigarette wholesale, liquor wholesale, motor vehicle fuels, and sales and use. He said all revenue sharing with a tribe, regardless of the type, is done with a single agreement. He said for its sales and use tax agreements, Minnesota uses a per capita calculation that takes into account average income within a county, sales tax paid based on the average income, and the location of the tribe to urban areas. He said Minnesota uses a "blind till concept" when collecting sales tax. He said this means the tax is collected from every customer on tribal land, regardless of whether the customer is a tribal member or is nontribal.

Mr. Morrisette said Montana also uses a per capita calculation. He said that calculation includes an enrolled member annual adjustment that takes into account tribal enrollment records, voter records, and data from the tribal enrollment office. He said the tribal tax in Montana is submitted to the Montana Department of Revenue which in turn makes quarterly payments to the tribes. He said Montana does not charge administrative fees.

In response to a question from Lieutenant Governor Sanford, Mr. Morrisette said home rule authority gives a political subdivision the authority to impose a tax that is in addition to the state tax.

In response to a question from Governor Burgum, Mr. Rauschenberger said the state collects all local option taxes.

In response to a question from Senator Heckaman, Mr. Rauschenberger said the number of enrolled tribal members is determined by the tribe or the Bureau of Indian Affairs, not the census. He said other than the oil and gas agreement, all tribal-state tax agreements include an administrative fee. He said the administrative fee covers the state's costs in carrying out the terms of the agreement. He said it appears the formula-based method used in Minnesota and Montana is a best practice. He said some of the formulas were developed as the result of litigation.

In response to a question from Governor Burgum, Mr. Morrisette said more than 120 cities and 5 or 6 counties have passed local ordinances for additional sales taxes. He said the state collects and redistributes all of these taxes.

At the request of Governor Burgum, Mr. Miles Vosberg, Tax Department, reviewed a bill draft ([Appendix C](#)) prepared by the Tax Department. Mr. Vosberg said the bill draft establishes a framework for a tribal-state agreement for sales and use taxes.

In response to a question from Senator Warder, Mr. Vosberg said there are not any home rule cities on the reservation. He said New Town plans to impose a city sales tax beginning January 1, 2018.

In response to a question from Lieutenant Governor Sanford, Senator Cook said the bill draft could be modified to apply to all tax types.

In response to a question from Senator Heckaman, Mr. Vosberg said the bill draft gives the Tax Commissioner the authority to terminate the agreement.

Senator Cook said the bill draft contains the same language that was used in the sales and use tax agreement with the Standing Rock Sioux Tribe. He said either party may terminate the agreement with 90 days notice.

In response to a question from Governor Burgum, Mr. Vosberg said the bill draft gives the Tax Commissioner the authority to perform audits.

In response to a question from Senator Wardner, Mr. Vosberg said the bill draft would allow the tribe and the Governor to use a memorandum of understanding (MOU) for tax agreements. He said the bill draft provides the MOU must give both parties the right to terminate the agreement.

In response to a question from Governor Burgum, Chairman M. Fox said the tribe's concern is with the 2015 legislation that requires legislative ratification of tribal-state tax agreements. He said before 2015, the agreement could be made with an MOU between the tribe and the Governor. He said he would like to see a return to the MOU process for tax agreements. He said a compromise is to allow interim agreements to become effective without legislative ratification, but give the Legislative Assembly the authority to rescind the agreement during the next legislative session if the Legislative Assembly does not support the agreement.

Governor Burgum said the bill draft should be amended to give the Sisseton-Wahpeton Oyate Tribe the option to be included in possible tax agreements.

In response to a question from Senator Wardner, Mr. Rauschenberger said under the sales and use tax agreement with the Standing Rock Sioux Tribe, the Tax Commission had the sole authority to enforce the terms of the agreement. He said the Standing Rock Sioux Tribe was issuing exemption statements that were not in compliance with state law. He said because of the inconsistencies between the tribe's sales tax laws and the state's sales tax laws, the state was required to terminate the agreement.

Mr. Davis said he would like the bill draft to permit a tribe to set its own exemptions.

Senator Cook said the issue of exemptions will be discussed and addressed in the bill draft.

THREE AFFILIATED TRIBES OF THE FORT BERTHOLD RESERVATION

Governor Burgum called on Chairman M. Fox to discuss tribal issues. Chairman M. Fox provided copies of a resolution ([Appendix D](#)) of the Coalition of Large Tribes (COLT) in support of the MHA Nation and all tribal nations' implementation and enforcement of laws regulating and taxing alcohol sales, and a resolution ([Appendix E](#)) regarding the expenditure of alcohol tax revenue for drug and alcohol treatment programs.

Chairman M. Fox said taxes are necessary for a government to fund programs. He said the decrease in tax revenue makes it necessary to take from other revenue sources to make up the difference. He said alcohol has been sold on the tribal land for years, but the tribe has never collected an alcohol tax. He said the tribe has the right to tax. He said taxation is necessary for infrastructure and for taking care of people. He said improvements to infrastructure benefit both the state and the tribe.

Chairman M. Fox said a study conducted 17 years ago indicated the tribes in the state had a \$2 billion impact on the state's economy. He said a new study indicated the Three Affiliated Tribes of the Fort Berthold Reservation alone had a \$3 billion impact on the state's economy. He said the bill draft is a good starting point for agreements between the tribes and the state. He said the 2-year wait for legislative ratification causes a strain on tribal services. He said revenue not collected today is revenue lost. He said the federal government gives the tribe less than \$1 million per year for tribal road repair and construction. He said the cost of constructing a two-mile stretch of road is over \$3.5 million.

Chairman M. Fox said the Governor and members of the Legislative Assembly are invited to attend the June 2018 grand opening of the tribe's new Bismarck drug and alcohol treatment center.

Chairman M. Fox said his tribal council approved a resolution ([Appendix F](#)) to suspend its tribal alcohol licensure ordinance and regulatory requirements. He said the tribe went through a lengthy process to develop the alcohol tax ordinance. He said, however, as a result of meetings with wholesalers and retailers, the tribal council approved the resolution to suspend the ordinance. He said the resolution provides for a 60-day suspension of the alcohol tax ordinance with a possibility of an extension.

In response to a question from Senator Wardner, Chairman M. Fox said it was never the intent of the alcohol ordinance for dram shop liability to apply to wholesalers. He said the tribal council is working to amend tax laws to make the laws as identical to state rules and laws as possible. He said the tribal council is also considering a tax credit system that would provide tax credits for those businesses that contribute to community projects. He said some oil and gas companies currently are involved in joint ventures with community projects.

Chairman M. Fox said the tribe has inherent rights over the affairs of the reservation, including the right to tax. He said the imposition of a local sales tax requires tribal approval. He said many retailers are taxing enrolled tribal members who do not provide proof of being an enrolled tribal member. He said the burden of proof should not be placed on the enrolled member. He said that revenue, which amounts to millions of dollars, goes to the state.

In response to a question from Senator Cook, Chairman M. Fox said it is up to the person at the cash register to collect the tax. He said many of the issues could be resolved with a joint sales tax agreement with the state. He said the bill draft is a positive first step. He said he and the tribal council will review the bill draft. He said an MOU is the preferred method of agreement.

Chairman M. Fox provided an overview ([Appendix G](#)) of federal and tribal taxation law.

Chairman M. Fox said the decrease in oil prices has resulted in a revenue loss of 65 to 70 percent. He said the tribe needs a more equitable share of oil and gas taxes. He said the tribe's preference is to remain in an agreement with the state, but with a more equitable split. He said the agreement began with an 80/20 split on fee land. He said the tribe also wanted an 80/20 split on trust land, not a 50/50 split. He said the oil and gas industry wants a stabilized agreement when it comes to tax. He said there is a push at the federal level to provide the tribe 100 percent of the revenue from trust lands. He said that would provide stability for the tribe and the state.

Governor Burgum called on Mr. Phalen for testimony regarding tribal issues. Mr. Phalen said he would review the bill draft. He said the tribe needs tax revenue to address needs, especially roads. He said more regulation is needed for overweight trucks.

Governor Burgum called on Mr. F. Fox and Mr. Packineau for testimony regarding tribal issues. Mr. F. Fox said taxation is an important part of the tribe's ability to determine its political, economic, and social destiny. He said other areas to be addressed include jurisdictional issues and cross-jurisdiction for drug enforcement. He said the tribe needs ambulatory care. He said the tribe does not benefit from taxable expenditures on wells.

Mr. Packineau said New Town and Parshall are incorporated cities. He said other tribal towns could benefit from becoming incorporated cities.

Senator Wardner said the state is willing to assist the tribe in addressing its taxation issues. He said that is the reason this committee was created.

Governor Burgum called on Dr. Meyer for testimony regarding tribal issues. Dr. Meyer said the Montana and Minnesota comparison is helpful. She said it is important to reach an agreement on the alcohol tax. She said the federal government meets about half of the cost of the tribe's medical needs. She said the other half is the responsibility of the tribe. She said the tribe is facing serious drug and alcohol problems. She said tax revenue is vital to fund medical and treatment programs.

Governor Burgum called on Mr. Spotted Bear for testimony regarding tribal issues. Mr. Spotted Bear said he supports a strong tribal-state relationship. He said he, like many other tribal members, pay taxes to the state when spending money off the reservation.

Governor Burgum said he appreciated the comments of Chairman M. Fox and the tribal council members regarding their support for agreements on sales and alcohol taxes. He said the committee should move forward with those areas in which there is agreement. He said the Tax Department is encouraged to work with the tax departments of the tribes to work on tax agreements. He said the goal is to have a bill ready for the Legislative Assembly to consider in January 2019.

SPIRIT LAKE TRIBE

Governor Burgum called on Mr. Douglas Yankton, Sr., Vice-Chair, Spirit Lake Tribe, for testimony ([Appendix H](#)) regarding issues of the Spirit Lake Tribe. Mr. Yankton said tribal Chairperson Myra Pearson was unable to attend the meeting.

In response to a question from Senator Wardner, Mr. Rauschenberger addressed the property tax issue raised by Mr. Yankton. He said the county is assessing property tax appropriately. He said state law requires the county to assess leasehold interests.

In response to a question from Senator Cook, Mr. Yankton said the Spirit Lake Tribe is capable of assessing and collecting its own sales tax. He said he is unsure if there would be a benefit to the tribe if the state collected the tax.

In response to a question from Mr. Davis, Mr. Yankton said the collection of wholesale tax may be appropriate for a tax agreement.

Mr. Yankton said the Spirit Lake Tribe would benefit from entering an MOU with the county and state for law enforcement purposes to provide better border control to address the illegal immigrant issues.

In response to a question from Senator Wardner, Mr. Yankton said the tribe has twelve 3-year lease agreements at \$3,000 per year per lease. He said the tribe leases acreage for hay, pasture, and business use. He said the money collected from land leases must be used to buy back tribal land given away during the homestead era.

In response to a question from Mr. Davis, Mr. Yankton said roads leading to the lake homes are county owned but the driveways are tribal owned. He said the majority of roads are gravel and need a lot of maintenance. He said the tribe has agreements with the county for snow removal and minor maintenance.

In response to a question from Governor Burgum, Mr. Yankton said two bars were grandfathered in before Spirit Lake became a dry reservation. He said some alcohol retailers are within walking distance of the reservation.

STANDING ROCK SIOUX TRIBE

Governor Burgum called on Mr. Kory McLaughlin, Tribal Councilman-at-Large, Standing Rock Sioux Tribe, for testimony regarding tribal issues. Mr. McLaughlin said Standing Rock has not had a chance to review the bill draft. He said the tribe does not need the state's permission to tax. He said agreements are needed to create equality in the implementation of taxes. He said he agreed with the tribe's decision to exempt the casino from the collection of use taxes. He said the casino, which is owned by the tribe, is the equivalent of the Bank of North Dakota or the State Mill and Elevator to the state. He said he does not agree with the requirement that the tribe must have the same tax laws as the state. He said the tribe is sovereign and can adopt any laws it wishes to adopt. He said if the Standing Rock Sioux Tribe enters another tax agreement, the issues of revenue caps and better reporting and information sharing must be part of the discussion.

Senator Cook said the bill draft addresses Mr. McLaughlin's concerns about a revenue cap and reporting of information. He said he looks forward to hearing the tribe's comments and to working with the tribe.

Governor Burgum called on Mr. Charles Walker, Councilman-at-Large, Standing Rock Sioux Tribe, for testimony regarding tribal issues. He said he appreciated a meeting with Governor Burgum and Lieutenant Governor Sanford and he looks forward to working with the state. He said the lines of communication with the state must remain open.

He said the initial impression of the bill draft is that it was the state telling the tribes what they had to do. He said tribes are trying to adapt and survive in a foreign system.

Governor Burgum called on Mr. Archie Fool Bear, Standing Rock Sioux Tribe, for testimony regarding tribal issues. Mr. Fool Bear said the history of the tribe predates the state. He said as part of a forced fee pact, the United States recognized Indians as citizens. He said when Indians failed to pay the taxes, land was taken away. He said open communication between the tribe and state is important.

Senator Wardner said the Legislative Assembly is reaching out to tribal nations to work on issues. He said the state will not interfere if a tribe wants to handle its own taxes. He said he understands the pride of the tribal people. He said the bill draft is a work in progress. He said the state is willing to help if a tribe wants help. He said the goal of the bill draft is to set up guidelines and flexibility in the procedure.

Senator Cook said many of the issues raised by the tribe's tax commissioner at the August 2017 meeting have been addressed in the bill draft.

Mr. Davis said the tribes want consultation. He said the bill draft must contain language that the state recognizes tribal sovereignty and tribes' right to tax.

Mr. Rauschenberger said the media article about the committee consideration of "allowing" the tribes to tax was a misrepresentation. He said he contacted the reporter regarding the inaccuracy of the article.

Governor Burgum said the North Dakota Game and Fish Department and the Standing Rock Game and Fish Department were able to collaborate on an agreement in the midst of the oil pipeline protests. He said he appreciated the collaboration.

TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS

Governor Burgum called on Mr. Jamie Azure, Councilman, and Ms. Alysia E. LaCounte, tribal legal counsel, Turtle Mountain Band of Chippewa Indians, for testimony regarding tribal issues. Mr. Azure said Chairman Roman F. Marcellais sends his regrets for not being able to attend the meeting.

Mr. Azure said the Turtle Mountain reservation has over 18,500 members living on a 6 by 12 mile reservation. He said among the needs of the reservation are a sewer system and other public utility improvements and upgrades to the court system, including a third judge and courtroom. He said to be self-sufficient and to pay for these needs, the tribe would like to implement a sales and use tax and an alcohol tax. He said the tribe also would like to increase the tobacco tax. He said there are plans to enact a sales and use tax on food sold in plastic containers.

Ms. LaCounte said she would review the bill draft. She said adding language recognizing tribal sovereignty and the tribes' right to tax is important.

In response to a question from Senator Cook, Mr. Azure said the tribe's water project will require help from the state. He said the tribe expects to develop a plan for submission to the state. He said the tribe has a fee-based system, but with a 75 percent unemployment rate, collections are low.

Senator Wardner said the tribe may wish to apply for United States Department of Agriculture Rural Development grants.

Mr. Azure said regardless of whether the tribe seeks to enter agreements or seeks assistance from the state, in this era of healing, it is important the tribes and the state keep the lines of communication open.

Ms. LaCounte said the Trenton Indian Service Area is complex in that the community governs itself, but uses the Turtle Mountain court system. She said this unique situation causes complex jurisdictional issues.

In response to a question from Mr. Davis, Ms. LaCounte said the tribe has adopted the Uniform Commercial Code, but does not have a secretary of state-type office for filings.

Mr. Davis said for all tribes, access to banking is key to spurring economic activity.

Governor Burgum said the state also has basic infrastructure needs. He said there are many federal programs, of which no one is aware, which may be available.

Lieutenant Governor Sanford said during his years as mayor of Watford City, he was able to access federal programs, grants, and block grants. He said engineering firms often are aware of funding options.

In response to a question from Lieutenant Governor Sanford, Mr. Azure said he has scheduled a meeting with engineering companies. He said the tribal council is working on increased communication with tribal members. He said having Belcourt become an incorporated city is one issue to be considered.

UNMANNED AIRCRAFT SYSTEMS PILOT PROGRAM

Governor Burgum called on Mr. Nicholas Flom, Executive Director, Northern Plains Unmanned Aircraft Systems Test Site, University of North Dakota, for the presentation of information regarding regulations for the operation of unmanned aircraft systems (UAS). Mr. Flom said the UAS program is in need of assistance and input from state, local, and tribal governments in the development of UAS procedures and regulations. He said a state-level framework of regulations could bring many benefits to tribal and local governments. He said there is an application process for local and tribal governments to be involved in the regulation process.

Mr. Davis said tribal input is important in the development of UAS regulations. He said how the UAS regulations will affect tribal airspace is an unanswered question. He said if the tribal governments want to be involved in the development of UAS regulations over tribal airspace, it is important for the tribal governments to contact Mr. Flom and complete the application.

Chairman M. Fox said the use of airspace over tribal land is a big question. He said he wants to be involved in the development of UAS regulations. He said he is also very interested in the utility of drones.

Mr. Azure said the Turtle Mountain Band of Chippewa Indians has been using drone technology for youth and elder initiatives. He said the tribe has used drones to map buildings and tribal assets. He said the tribe also has used drones to find artifacts, land formations, and burial sites previously believed to have been lost. He said drone technology has so many uses and possibilities. He said he is interested in receiving an application for the program.

OTHER TESTIMONY

Governor Burgum said an event ([Appendix I](#)) will be hosted at the Ramada Inn in Bismarck on Tuesday-Wednesday, January 30-31, 2018, at which various tribal, state, and federal issues will be discussed.

Governor Burgum called on Mr. Ed Lone Fight, Three Affiliated Tribes, for testimony. Mr. Lone Fight said there is a lack of Native American representation in government jobs and leadership positions. He said the state should consider making the MHA Nation its own county so it could have a voice in the Legislative Assembly.

Governor Burgum called on Representative Terry B. Jones, District 4, for testimony. Representative Jones said taxation is important in his district. He said his primary concern about the creation of taxes is taxation without representation.

Chairman M. Fox said if a tribal member can vote for federal congressional delegation, there is representation.

Governor Burgum called on Ms. Theodora Bird Bear, Three Affiliated Tribes, for testimony. Ms. Bird Bear said she is concerned about oil and gas regulations not being followed. She said she is concerned about the public health implications of unreported oil spills. She said an oil spill on her land was never reported to her.

Governor Burgum called on Senator Jordan Kannianen, District 4, for testimony. Senator Kannianen said he is in support of working towards more state and tribal cooperation. He said regarding the oil and gas agreement, he supports an 80/20 split on trust land and an 80/20 split on fee land. He said his district is diverse. He said he supports the tribe's position on the right to tax alcohol, but also understands the retail position of not wanting to be double taxed.

Governor Burgum called on Mr. Caesar Alvarez, Three Affiliated Tribes, for testimony. Mr. Alvarez said to continue to provide necessary services, the tribe must impose taxes. He said the needs of the people of the reservation are the same as every other citizen of the state. He said parity is not happening. He said tribal members contribute to the state's economy, but are not getting their fair share in return.

Governor Burgum called on Ms. Joletta Bird Bear, Three Affiliated Tribes, for testimony. Ms. Bird Bear said she is concerned about the environmental impact of oil and gas on her land. She said she owns the mineral rights and airspace. She said she is concerned about double taxation.

COMMITTEE DISCUSSION

Senator Cook recommended the bill draft be amended to:

- Add the Sisseton-Wahpeton Oyate Tribe;
- Add language regarding the tribes' sovereignty and the right to tax;
- Address revenue splits;
- Address exemptions; and
- Clarify the Tax Commissioner's authority to cancel an agreement must be exercised in consultation with the Governor.

Governor Burgum said the bilateral authority to terminate an agreement is important.

In response to a question from Senator Cook, Mr. Rauschenberger said his office would gather comments from the tribes and other interested parties regarding changes and suggestions for the bill draft.

No further business appearing, Governor Burgum adjourned the meeting at 4:00 p.m.

Vonette J. Richter
Code Revisor

Emily L. Thompson
Counsel

ATTACH:9