

## NORTH DAKOTA LEGISLATIVE MANAGEMENT

## Minutes of the

**TRIBAL TAXATION ISSUES COMMITTEE**

Monday, December 16, 2019  
Roughrider Room, State Capitol  
Bismarck, North Dakota

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

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

**Member absent:** Representative Chet Pollert

**Others present:** See [Appendix A](#)

**It was moved by Senator Cook, seconded by Senator Wardner, and carried on a voice vote that the minutes of the August 27, 2019, meeting be approved as distributed.**

Governor Burgum called on Mr. Ryan Rauschenberger, Tax Commissioner, for a presentation ([Appendix B](#)) on the taxation of online sales. Mr. Rauschenberger said the United States Supreme Court in *South Dakota v. Wayfair* (2018) held states can require businesses, that do not have a physical presence in the state and that meet certain requirements, to collect and remit sales taxes on transactions in the state. He said online sales is the largest sector of retail sales in terms of year-over-year growth. He said as of December 3, 2019, over \$27 million in sales tax has been collected from remote sellers and over 5,700 remote sellers are registered to collect sales tax. He said marketplace sites are now required to collect sales tax as well. He said Senate Bill No. 2258 (2019) provides the framework for state-tribal sales tax agreements.

In response to a question from Senator Cook, Mr. Rauschenberger said Senate Bill No. 2258 eliminates the need to track individual sales on the reservation because allocation of sales tax revenue is based on a formula. He said the formula was derived from formulas used in other states.

In response to a question from Governor Burgum, Mr. Rauschenberger said if a tribe had entered a state-tribal sales tax agreement, the tribe would have received a portion of the \$27 million collected from online sales tax.

In response to a question from Mr. Davis, Mr. Rauschenberger said the Tax Department could use last year's data to provide an estimate of what a tribe might receive if the tribe entered a state-tribal sales tax agreement under Senate Bill No. 2258.

Mr. Rauschenberger distributed a handout ([Appendix C](#)) to committee members regarding state-tribal agreements for the administration and collection of alcoholic beverage wholesale tax, tobacco products wholesale tax, and alcoholic beverages gross receipts tax. He reviewed the requirements of a state-tribal tax agreement under Senate Bill No. 2257 (2019), the tax revenue formula, and a snapshot of what tribes could potentially receive based on the formula.

In response to a question from Governor Burgum, Mr. Rauschenberger said the tribal population figures depicted on the handout were derived from enrollment numbers published on tribal websites, figures received from the Indian Affairs Commission, and the North Dakota State Data Center using census numbers. He said the population figures only account for North Dakota residents and are used for illustrative purposes. He said the estimated tax revenues can be updated if higher numbers are reflected in the 2020 census.

**THREE AFFILIATED TRIBES OF THE FORT BERTHOLD RESERVATION**

Governor Burgum called on Mr. Mark Fox, Chairman, Three Affiliated Tribes of the Fort Berthold Reservation. Chairman Fox said tribes have a right to the proceeds from online sales tax collected from enrolled members on the reservation, and the tribes are missing out on tax revenues. He said a state-tribal alcohol tax agreement has yet to be signed due to a number of issues with the 2019 legislation. He said his tribe's primary concern with the

state-tribal alcohol tax agreement framework is the manner in which revenue is split between the tribe and the state. He said the tribe also is concerned with the legislation's requirement for state collection of the alcohol tax and views the requirement as an erosion of the tribe's sovereign right to regulate alcohol sales within reservation boundaries.

In response to a question from Governor Burgum, Chairman Fox said other states apply formulas based on the total state sales tax collected because a majority of the purchases made by tribal members occur off the reservation.

Governor Burgum said discussion of alternative tax formulas and the manner in which tax revenue is shared in other states will be added to the next meeting's agenda.

Chairman Fox said the tribe has two primary concerns regarding oil and gas tax. He said the tribe's first concern pertains to ownership of the riverbed and the production derived from the riverbed. He said the tribe will seek a revenue-sharing agreement regarding riverbed production if royalty disagreements cannot be resolved. He said the tribe's second concern pertains to revenue sharing from spacing units that straddle the exterior boundaries of the reservation and have a well that is padded and drilled on the portion of the spacing unit located outside the exterior boundary of the reservation. He said if a well is padded and drilled within the exterior boundaries of the reservation and a horizontal lateral from the well extends to lands situated outside the exterior boundaries of the reservation, the tribe receives 80 percent of the tax revenue attributable to production from trust lands within the spacing unit and 20 percent of the tax revenue attributable to nontrust land within the spacing unit. He said if a well is padded and drilled outside the exterior boundaries of the reservation, and a horizontal lateral from the well extends to land situated within the exterior boundaries of the reservation, the tribe does not receive any tax revenue attributable to the production derived from the spacing unit.

Governor Burgum said the Western Governors' Association is trying to introduce more tribal topics. He said Mr. Davis presented during a panel on missing and murdered indigenous women. A copy of the presentation will be provided to tribal leaders and committee members.

Chairman Fox said he encourages the state to consider assisting the tribes in establishing a surveillance grid that could be used to help locate missing persons and investigate drug crimes.

Governor Burgum called on Mr. Lynn Helms, Director, Department of Mineral Resources, for a presentation regarding horizontal drilling near the boundaries of the Fort Berthold reservation. Mr. Helms performed a live computer demonstration to depict the size and complexity of the issue. He said 211 wells traverse the boundary between state lands and the exterior boundaries of the Fort Berthold Reservation. He said 80 of those wells begin with a surface location inside the external boundaries of the reservation and traverse to a location outside the reservation boundaries, and 131 wells begin outside the external boundaries of the reservation and traverse to a location within the reservation boundaries. He said since the most recent state-tribal oil and gas tax agreement was signed the statewide rig count has decreased by 10 to 12 rigs, but the number of rigs located within the external boundaries of the Fort Berthold reservation has increased by 4 to 5 rigs. He said the rig increase on the reservation is likely attributed to the stable tax environment as well as the geology.

In response to a question from Governor Burgum, Mr. Helms said there are 16,124 wells in the state.

In response to a question from Senator Wardner, Governor Burgum said the Mandan, Hidasta, and Arikara Nation does not receive any tax revenue from the production derived from the 131 wells situated outside the exterior boundaries of the reservation which have horizontal laterals extending to a location within the exterior boundaries of the reservation.

Mr. Helms said three wells have been drilled within the external boundaries of the reservation with horizontal laterals extending to land situated outside the external boundaries of the reservation and nine wells have been drilled outside of the external boundaries of the reservation with horizontal laterals extending to land situated within the external boundaries of the reservation since the new state-tribal tax agreement was signed. He said the Department of Mineral Resources does not dictate the surface location of a well within a spacing unit. He said operators choose where to place the wells and base their decisions on a number of factors including the ease of permitting.

Governor Burgum said it would be beneficial to continue looking at the data regarding the different types of wells to help develop potential solutions. He said the oil and gas tax revenue should not be viewed from the perspective of the state versus the tribe; rather, it should be viewed as a competition against other states for drilling activity. He

said the intent of the oil and gas tax legislation was to create a more stable regulatory environment to incentivize companies to drill in North Dakota and bring talent and capital to the state.

In response to a question from Senator Cook, Mr. Helms said the state permitting fee is \$100 and the Bureau of Land Management permitting fee is \$1,250 so it is less expensive for operators to drill outside the exterior boundaries of the reservation.

In response to a question from Representative Headland, Mr. Helms said there is no available technology to determine on a foot-by-foot basis which part of the horizontal lateral is contributing to the oil produced at the well.

Governor Burgum said he will meet with Mr. Rauschenberger, Lieutenant Governor Sanford, and Mr. Helms to discuss a proposed data collection framework and then review that framework with Chairman Fox to determine whether the data proposed for collection would benefit the tribe and the committee in its policymaking decisions.

In response to a question from Mr. Mike Faith, Chairman, Standing Rock Sioux Tribe, Mr. Helms said he could provide the committee with information regarding the duration of a right-of-way easement onto tribal lands at a future date.

In response to a question from Representative Boschee, Mr. Helms said he could provide additional information regarding the manner in which disputed revenue from riverbed production is being held.

Chairman Fox said clarification regarding ownership of the riverbed was not as pressing of a concern when the tax-sharing agreement called for a fifty-fifty revenue split. He said the issue of ownership is more pronounced under the new agreement as 80 percent of the revenue from new wells will be allocated to the tribe if the lands are trust lands and 80 percent will be allocated to the state if the lands are nontrust lands. He said it is important for revenue from disputed lands to be properly held in escrow until ownership can be determined. He said the tribe favors holding the revenue in a neutral, interest-bearing federal account to ensure an accurate accounting of the funds, the accrual of interest, and protection from fund depletion due to operator bankruptcies. He said failing to capture 3 to 4 percent interest on an estimated \$100 million in funds is detrimental to the interests of both the state and the tribe.

Governor Burgum said while the state and the tribe have yet to come to an agreement on a neutral account, the state shares the tribe's concerns regarding the risk of companies improperly withholding escrowed funds or using funds for operating costs in the event of an economic downturn.

## STANDING ROCK SIOUX TRIBE

Chairman Faith said this is an important committee because it allows the state and the tribes to address one another on a government-to-government basis. He said substance and alcohol abuse issues continue to be a concern on the reservation. He said his administration believes mutual aid agreements and partnerships are beneficial. He said it is important the 2020 census numbers are counted accurately.

Mr. Marshall Kelly, External Affairs Director, Standing Rock Sioux Tribe, distributed a memorandum of support ([Appendix D](#)) from the Sioux County Commission noting the commission's support of the Standing Rock Sioux Tribe's requested proposal for the return of Army Corps of Engineers land from the United States to the tribe that was taken for flood control in 1944. He said the tribe is looking to renew talks with the corps regarding the issue. He said there is a methamphetamine problem on the reservation which led to instances of human trafficking. He said the tribe is in the beginning stage of forming a task force to address the issue. He said the task force will include cooperation from counties and townships, and Carson County, South Dakota will be the host agency for the task force.

Mr. Joseph McNeil, President, Standing Rock Development Corporation, said there are various development projects in progress on the reservation, including water recycling, a tribal gas station and convenience store, towing services, air medical services, and hemp production.

In response to a question from Senator Heckaman, Mr. McNeil said child care services are needed on the reservation. He said many individuals rely on extended family to fill child care needs. He said the tribe would benefit from cost-effective child care services.

Chairman Faith said the tribe is working with other agencies to try to provide locally necessary home care services for elders.

In response to a question from Governor Burgum, Chairman Faith said the unemployment rate varies depending on the source of the data, but generally ranges from 65 to 75 percent. He said the unemployment rate is decreasing. He said agribusiness opportunities such as an ethanol plant could be beneficial to the tribe as a way to provide more employment opportunities.

Governor Burgum said the issue of opportunity zones in tribal areas would be added to the next meeting's agenda.

Governor Burgum called on Mr. Cody Schulz, Homeland Security Director, Department of Emergency Services, for a presentation ([Appendix E](#)) regarding tabletop or natural planning exercises to help coordinate resources with the Standing Rock Sioux Tribe in the event of an oil spill. Mr. Schulz said the department would be happy to facilitate or partner with the Standing Rock Sioux Tribe for a hazardous chemical or crude oil spill exercise. He said there already are some planning scenarios that exist which can be modified. He said the tribes can apply for grant funding opportunities.

In response to a question from Mr. Davis, Mr. Schulz said there may be grant funding opportunities for tribes involving emergency situations. He said there also is the possibility of state assets being prepositioned to help assist in the event of an emergency.

Governor Burgum said it might be effective to conduct a multi-hazard exercise on the water in the summer of 2020 to simulate an oil spill.

Mr. Schulz said there is a large-scale exercise scheduled for August 2020 called vigilant guard which will involve the National Guard and civilian authorities responding to a number of different scenarios. He said his department will contact the tribe regarding whether the tribe wants to participate and, if so, what types of scenarios the tribe would like to test.

### **SPIRIT LAKE TRIBE**

Governor Burgum called on Ms. Lonna Jackson-Street, Secretary/Treasurer, Spirit Lake Tribe. Ms. Jackson-Street said Ms. Peggy Cavanaugh, Chairwoman, Spirit Lake Tribe, was unable to attend the meeting. She said the Spirit Lake Tribal Council, the Governor, and the Tax Department have discussed the imposition of property tax on land situated within the boundaries of the reservation which is held in fee simple by enrolled tribal members. She said the Tax Department and the tribe agree state property taxes should not be imposed on fee lands owned by a tribal member which are situated within the boundaries of the reservation, but the issue has not been fully resolved. She said the tribe requests the Tax Department conduct an audit to identify and reimburse any tribal member who improperly paid state property tax on land owned within the reservation. She said the tribe and the state have collaborated for many years to share tax revenue from motor fuels and special fuels sales on the reservation, and the tribe is interested in discussing state-tribal tax agreements related to tobacco and alcohol sales on the reservation. She said the revenue obtained from such taxes are needed to fund infrastructure and social programming investments. She said the tribe is interested in finding ways to improve the cross-certification process of licensing teachers and addiction counselors. She said it is difficult to attract those professionals to the reservation, and the tribe wants to remove some of the barriers individuals might face regarding obtaining licensing. She said the tribe has a limited number of law enforcement officers, and the tribe would like the state to help expedite background checks to improve the officer hiring process. She said there is a road maintenance issue on Highway 57 involving an exposed culvert that has caused safety concerns. She said the tribe requests the state place bars over the ends of the culvert to help prevent an accident or injury. She said the tribe requests ample notice of any changes to voter qualifications.

Mr. Davis said he will follow up with the Spirit Lake Tribe to make sure the 911 street address mapping is completed correctly before the next election.

In response to a question from Lieutenant Governor Sanford, Mr. Rauschenberger said if a tribal member owns fee land within the boundaries of the reservation, the county may levy property tax on the land. He said the land loses its taxable status if it is converted to trust land.

Ms. Collette Brown, Executive Director, Gaming Commission, Spirit Lake Tribe, said the tribe has been negatively affected by the introduction of electronic pull tab devices in the state. She said after the devices were introduced, the tribal casino's revenue decreased by 43 percent. She said the casino has money laundering detection procedures in place to identify and deter such activities. She said bars that host electronic pull tab devices do not provide the same protections against money laundering. She said the Attorney General's office does not have sufficient manpower to regulate the large amount of electronic pull tab devices operating in the state.

Chairman Faith said his tribe is also negatively affected by electronic pull tab devices.

Mr. Donovan White, Chairman, Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, said his tribe is reporting incidences of potential money laundering, but the reports are not being investigated. He said case backlogs can lead to years passing before indictments are filed.

Mr. Jamie Azure, Chairman, Turtle Mountain Band of Chippewa Indians, said one of the largest hurdles faced by his tribe is the tribe's inability to prosecute non-Indians in the tribal court system.

Representative Headland said the interim Taxation Committee is studying charitable gaming taxation issues, including whether the Attorney General has adequate funding to regulate charitable gaming.

Governor Burgum said a presentation from a representative of the Attorney General's Gaming Division and a representative from the Gaming Commission will be added to the next meeting's agenda. He said the committee also would benefit from hearing from a representative of federal law enforcement regarding the scope of any money laundering activities that might be occurring.

### **TURTLE MOUNTAIN BAND OF CHIPPEWA INDIANS**

Governor Burgum called on Chairman Azure for testimony. Chairman Azure said the tribe needs additional law enforcement officers. He said four tribal officers and nine Bureau of Indian Affairs officers patrol a 6- by 12-mile area with over 18,000 members. He said the tribe is concerned with a potentially inaccurate census count. He said the tribe is working to create its own tax code, and the tribe has raised its cigarette tax from 5 cents to 10 cents. He said drug use is prevalent on the reservation. He said the tribe is concerned with the protection of water.

In response to a question from Governor Burgum, Chairman Azure said the Turtle Mountain Band of Chippewa Indians has entered fewer state-tribal tax agreements than other tribes, but have benefited from observing how other state-tribal agreements are operating.

### **SISSETON-WAHPETON OYATE OF THE LAKE TRAVERSE RESERVATION**

Governor Burgum called on Chairman White for testimony. Chairman White said his tribe is unique because the tribe does not have a large population in North Dakota. He said the tribe has concerns regarding law enforcement, alcohol and substance abuse and overdoses, and money laundering. He said law enforcement officers have a large area to cover with little funding. He said the services and funding the tribe receives is insufficient and must be subsidized with casino and gaming revenue. He said poor weather conditions have had a negative impact on gaming revenue. He said the tribe has insufficient housing, and some housing is no longer habitable due to methamphetamine use.

Mr. Michael Roberts, Director of Planning, Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, said the tribe has planted 40 acres of hemp. He said hemp can be used for building supplies such as insulation for housing.

### **MISCELLANEOUS DISCUSSION**

Governor Burgum called on Mr. William T. Panos, Director, Department of Transportation. Mr. Panos said tribal roads were included in the Upper Great Plains Transportation Institute's (UGPTI) study of road maintenance and costs. He said the UGPTI study separates most of the tribal road information from the county roads section.

In response to a question from Chairman Faith, Mr. Panos said he would like to meet with each tribe's transportation director so he can better understand the issues facing the tribes.

In response to a question from Chairman Fox, Mr. Panos said he will notify staff regarding a bridge maintenance situation on the reservation.

Governor Burgum called on Mr. Jay Almlie, Principal Engineer, Energy and Environmental Research Center, for a presentation ([Appendix F](#)) regarding the Intelligent Pipeline Integrity Program (iPipe program) and the program's value for preventing spills and monitoring environmental quality. Mr. Almlie said the iPipe program helps develop emerging commercial technologies to assist pipeline operators in detecting leaks and identifying pipeline flaws.

Governor Burgum called on Ms. Linda Svihovec and Ms. Louise Dardis, Co-Chairs, Tribal State Census Accurate Count Committee. Ms. Svihovec said the census will be eye-opening, and the Department of Commerce is helping support the organization.

Mr. Kevin Iverson, Census Office Manager, Department of Commerce, presented information ([Appendix G](#)) on the 2020 Census. Mr. Iverson said the state has a vested interest in collecting accurate census data for purposes of political power and representation in government as well as the receipt of federal funding. He said there are many

reasons for lack of participation in the census, including language barriers and individuals being suspicious of the government. He said smaller, more rural communities tend to have a lower census participation rate compared to larger, more urban areas in the state. He said it is important for tribal members to serve as enumerators.

In response to a question from Mr. Davis, Mr. Iverson said additional census workers are needed and positions are being posted online.

No further business appearing, Governor Burgum adjourned the meeting at 4:50 p.m.

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Jill Grossman  
Counsel

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Jennifer S. N. Clark  
Counsel

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