



---

## **TRIBAL AND STATE RELATIONS COMMITTEE**

Wednesday, Thursday, and Friday, April 6-8, 2022  
Roughrider Room, State Capitol  
Bismarck, North Dakota

Senator Rich Wardner, Chairman, called the meeting to order at 9:00 a.m.

**Members present:** Senators Rich Wardner, Jessica Bell, Joan Heckaman, Dave Oehlke; Representatives Joshua A. Boschee, Terry B. Jones, Chet Pollert

**Members absent:** None

**Others present:** Representative Jim Schmidt, Huff, member of the Legislative Management Nathan Davis, Executive Director, Indian Affairs Commission; Mark Fox, Chairman, Three Affiliated Tribes of the Fort Berthold Reservation; Douglas Yankton, Sr., Chairman, Spirit Lake Tribe; Jamie Azure, Chairman, Turtle Mountain Band of Chippewa Indians; Janet Alkire, Chairwoman, Standing Rock Sioux Tribe; Delbert Hopkins, Jr., Chairman, Sisseton-Wahpeton Oyate of the Lake Traverse Reservation\*; Reice Haase, Senior Policy Advisor, Governor's office

See [Appendix A](#) for additional persons present.

*\*Attended remotely*

**It was moved by Representative Boschee, seconded by Representative Pollert, and carried on a voice vote that the minutes of the February 8, 2022, meeting be approved as distributed.**

### **EDUCATION**

Mr. Kenneth Hall, member of the Three Affiliated Tribes of the Fort Berthold Reservation, provided an update on the implementation of Senate Bill No. 2304 (2021), which requires elementary and secondary schools in the state to provide curriculum on Native American history. He noted:

- The legislation received global attention at a United Nations forum on indigenous issues.
- A working group, including tribal leaders and historians, state entities, and interested parties, has been established to provide teachers with resources to incorporate Native American history into their curriculum.

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

#### **Taxation Issues**

Chairman Fox noted the tribe is interested in jointly regulating and taxing alcohol sales on the reservation. He noted:

- The tribe needs the tax revenue to address the negative impacts of alcohol use on the reservation.
- Past negotiations regarding a tribal-state alcohol tax agreement failed for two main reasons:

The tribe is reluctant to give sole regulatory control to the state due to tribal sovereignty and the tribe's legal authority to tax alcohol sales within reservation boundaries; and

The proposed revenue split is not equitable to the tribe.

Mr. John Ward, a representative for the North Dakota Wine and Liquor Wholesalers Association, noted the association is supportive of a tribal-state alcohol taxation agreement, but is opposed to dual regulation and dual taxation.

Chairman Fox noted there is a misunderstanding between the tribe and alcohol wholesalers regarding the interpretation of a tribal ordinance that the alcohol wholesalers believe creates a risk of being subject to tribal court

jurisdiction. He noted the tribe has interpreted the ordinance does not apply to alcohol, but the wholesalers continue to express concern.

Chairman Fox noted oil and gas activity on the reservation has decreased due to supply issues, the war in Ukraine, and the administration change at the federal level. He noted issues relating to straddle wells have been addressed and are no longer a concern for the tribe.

### Human Services

Mr. Christopher D. Jones, Executive Director, Department of Human Services, provided testimony regarding tribal health care coordination agreements. He noted:

- The impetus of care coordination agreements came from the federal Centers for Medicare and Medicaid Services as a way to incentivize states to work with tribes to improve health care coordination and access for tribal members.
- Care coordination agreements are between a tribe and a health care provider, and both the state and tribes can benefit if tribes enter the agreements.
- If care coordination agreements are in place, the federal government will reimburse the state for 100 percent of the cost of care of tribal members enrolled in Medicaid. A portion of the reimbursement will go to the tribe that entered the agreement, and a portion will go to the state's general fund.

Mr. Nathan Davis noted the law on care coordination agreements was amended by House Bill No. 1407 (2021). He noted:

- The legislation contains stipulations on how a tribe may use the funding it receives as a result of entering care coordination agreements.
- The funding a tribe receives must be used to increase access to health care, and there is a cap on the amount of funding that may be used for capital construction.

### Drug Enforcement

Chairman Fox noted the tribe has flourished economically, but has fallen victim to crime and drug use. He noted the tribe has created a drug enforcement agency and increased the number of law enforcement officers and resources to combat the issue; however, the tribe needs additional resources.

Colonel Brandon Solberg, Superintendent, Highway Patrol, provided testimony regarding law enforcement and tribal partnerships. He noted:

- The Highway Patrol entered a mutual aid agreement with the tribe, and the agency is working with other tribal nations to enter similar agreements.
- The number of drug overdose deaths in the state exceeds traffic fatalities.

In response to a question from a committee member, Colonel Solberg noted implementation of the aid agreement has not resulted in issues or complaints involving jurisdiction.

Mr. Lonnie Grabowska, Director, Bureau of Criminal Investigation, provided testimony ([Appendix B](#)) regarding drug use and enforcement on tribal lands. He noted:

- At the Spirit Lake Tribe's request, the Bureau of Criminal Investigation (BCI) partnered with the tribe to combat drug use on the reservation.
- After the passage of a tribal resolution and training of agents on Indian country, a memorandum of understanding that provides the Lake Region Narcotics Task Force with the authority to enter the reservation to enforce drug laws under the special law enforcement commission designation was signed.
- BCI is seeking to hire three full-time employees with the goal of assigning an agent to offices in Stanley, Rolla, and Carson.
- The cost of the agents will be included in BCI's budget under the Attorney General's office's appropriation request for the 2023-25 biennium.

## **SPIRIT LAKE TRIBE Game and Fish Issues**

Chairman Yankton noted the tribe's concern with jurisdiction issues relating to hunting and fishing. He noted although the tribe has a fishing licensing system, many individuals purchase a license through the state rather than through the tribe, and the tribe does not receive a percentage of the revenue collected from the state licenses.

Mr. Jeb Williams, Director, Game and Fish Department, noted he met with Chairman Yankton in February 2022 regarding the tribe's concerns and the department is committed to continuing to work with the tribe to find a solution.

In response to a question from a committee member, Mr. Williams noted a memorandum of understanding could resolve a longstanding disagreement between the state and the tribe on the location of reservation boundary lines.

### **Taxation Issues**

Chairman Yankton noted the tribe is interested in renegotiating the revenue split for the motor and special fuels tax. He noted the tribe would like a higher percentage of the tax revenue in order to make improvements to roads and the establishments that sell fuel.

Mr. Brian Kroshus, Tax Commissioner, noted the revenue split for the motor and special fuels tax is based on census information.

Chairman Yankton expressed concerns regarding the imposition of property tax assessed by the county on land owned by enrolled tribal members and located within the reservation boundaries.

Ms. Donnita Wald, General Counsel, Tax Department, noted property taxes are imposed by each respective county, and there is pending litigation in other jurisdictions regarding the imposition of property tax on trust land versus fee land.

### **Human Services**

Mr. Jones provided testimony ([Appendix C](#)) regarding care coordination agreements and explained the hypothetical benefits the state and tribes could receive if tribes entered the agreements. He noted:

- If a tribe enters care coordination agreements, health care services would not change.
- The department is willing to work with tribes and provide more information regarding the process of entering a care coordination agreement.

Mr. Kevin Dauphinais, Director, Tribal Health Administration, Spirit Lake Tribe, noted concerns with the provision in the care coordination agreement legislation which restricts the manner in which a tribe may use funds provided under an agreement.

### **Drug Enforcement**

Chairman Yankton noted drug trafficking on the reservation is a serious concern. He noted:

- It is difficult for law enforcement to patrol entry points to the reservation because the tribe is situated on a large, land-based reservation.
- The tribe is working to create a drug enforcement unit and is hopeful other tribes will take similar actions.
- The tribe is interested in working with other tribal nations and state agencies to address drug trafficking.

Colonel Solberg noted Chairman Yankton has been a champion for drug enforcement, and the tribe recently passed a resolution regarding a state mutual aid agreement.

Mr. Grabowska noted the Turtle Mountain Band of Chippewa Indians is looking to create a task force based on the Spirit Lake Tribe's model, and BCI is sharing the model with the Standing Rock Sioux Tribe.

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

Chairman Azure noted the tribe may be interested in entering a tribal-state tax agreement, but will need to weigh the merits of the proposal.

Ms. Alysia LaCounte, General Counsel, Turtle Mountain Band of Chippewa Indians, noted obtaining community support for a tribal-state tax agreement may be difficult due to a general distrust of state and tribal politics among the tribal population. She noted progress could be made if more education is provided.

Ms. Wald noted the legislation involving tribal-state tax agreements requires a tribe enter three tax agreements with the state addressing alcoholic beverages wholesale, tobacco products wholesale, and alcoholic beverages gross receipts. She noted the Three Affiliated Tribes of the Fort Berthold Reservation brought forth amendments to the legislation to change that requirement, but the amendments failed.

A committee member expressed concern if the state is seeking to enter a tax agreement with a tribe, the state needs to treat each tribal nation uniquely.

### **Human Services**

Mr. Jones provided testimony regarding care coordination agreements and noted as part of the integration of the Department of Human Services and the State Department of Health, the agencies have determined more communication and outreach to tribal nations is necessary.

Mr. Scott J. Davis, Native American Community Outreach, Sanford Health, provided testimony ([Appendix D](#)) regarding care coordination agreements and reviewed a hypothetical scenario to illustrate the potential funds the state and tribe could receive if a tribe entered the agreement.

### **Drug Enforcement**

Chairman Azure noted although drug use is prevalent on the reservation and the jurisdictional barriers are challenging, the tribe will continue to pursue law enforcement partnerships.

Colonel Solberg noted the tribe has been willing to discuss entering a mutual aid agreement with the Highway Patrol, but more discussions need to occur.

Mr. Grabowska noted Nate Gustafson, Sheriff, Rolette County, is willing to allow BCI to rent office space for one of BCI's agents in the sheriff's office for \$100 per month and to share some equipment.

Mr. Brock Baker, Juvenile Probation Officer, Turtle Mountain Reservation, noted assigning a BCI agent to Rolette County would be instrumental to combat the drug epidemic because there are only 6 to 12 law enforcement officers to patrol the entire reservation.

## **STANDING ROCK SIOUX TRIBE**

### **Tribal Tax Agreements**

Chairwoman Alkire noted one issue of concern for the tribe is the collection of online sales tax from tribal members on the reservation and expressed a desire to learn more about the state's collection of the tax.

Ms. Shannon Fleischer, Associate Director, Tax Department, noted items generally are taxed where the item is delivered or where the customer takes possession. She noted there is a 5 percent state sales tax, but there are no tribal-state tax agreements for sales tax.

In response to a question from a committee member, Ms. Fleischer noted if an enrolled tribal member has not gone through the exemption process, the tax is collected and deposited in the state fund. She noted the Tax Department offers a refund program that can be accessed online.

### **Human Services**

Chairwoman Alkire noted one tribal priority is to build a new medical campus. She noted she is unfamiliar with House Bill No. 1407, but will review the bill and will discuss care coordination agreements with stakeholders.

Mr. S. Davis noted he can provide the tribe information on how much money the tribe would have received if the tribe had entered a care coordination agreement with Sanford Health.

Mr. Jones noted although a large portion of the meeting focused on the economic benefits the state and tribes could receive if tribes enter care coordination agreements, the primary benefit is tribal members receive coordinated care and broader access to health care.

### **Drug Enforcement**

Chairwoman Alkire noted drugs are rampant not only on the reservation, but nationwide. She noted:

- The reservation's 2.3 million acres spans two states, and law enforcement response times are long.
- Although the tribal council is open to discussing the possibility of entering a mutual aid agreement with the Highway Patrol and would appreciate learning more about these agreements, it would require educating the tribal community regarding the authority of these agreements.

Mr. Grabowska noted BCI's goal is to allow tribal drug enforcement officers, the Bureau of Indian Affairs, and the state task force to work together if a tribe needs assistance, and it is not BCI's intention to enter tribal lands without permission or a request from the tribe.

Ms. Patti Kelly, a member of the Standing Rock Sioux Tribe, requested funding for a drug task force due to the impact of drugs on tribal children and the elderly.

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

Chairman Hopkins noted a pressing concern for the tribe is the lack of an adequate law enforcement building.

Ms. Myrna Thompson, Tribal Secretary, Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, noted drug trafficking is an issue, and there is a shortage of law enforcement officers.

Mr. Gary Gaikowski, Chief of Police, Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, noted:

- The lack of an adequate building and space to hold criminal offenders has been a frustration for law enforcement officials, but the tribe hopes to build a law enforcement building in the next few months.
- Law enforcement is aware of the drug activity on the reservation and is working to battle the issue.

Ms. Dionne Crawford, Lake Traverse Representative, Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, noted substance abuse treatment is a tribal priority due to the rise in opioid overdoses. She noted:

- The tribe needs a treatment and detox center and a feasibility study is in the final stages of completion.
- Although the tribe would like to bolster the treatment services it provides to members, adequate funding for facility, maintenance, and operating costs is an issue.

Mr. N. Davis noted it may be beneficial if he meets with the tribal council to discuss the agreements other tribes in the state are entering with law enforcement entities.

Representative Tamara St. John, District 1 South Dakota Legislature and Archivist, Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, provided testimony regarding historic preservation and tribal tourism.

In response to a question from a committee member, Representative St. John noted she is willing to work with the committee and tribal chairmen to discuss how to work together to combat drugs because cooperation is required on all levels.

Mr. Dallas Owen, Enemy Swim Representative, Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, expressed a desire to learn more regarding land easements for clean energy incineration.

Mr. N. Davis noted he and representatives of the Governor's office will follow up with the tribal council to discuss the easement issue in more detail.

### **OTHER BUSINESS**

Ms. Mary Louise Defender Wilson, a member of the Standing Rock Sioux Tribe, expressed concern regarding violence on the reservation and other issues facing tribal elders, including access to food.

Chairman Wardner noted the next committee meeting likely will be held in June 2022.

No further business appearing, Chairman Wardner adjourned the meeting at 12:27 p.m.

---

Jill Grossman  
Counsel

ATTACH:4