North Dakota Century Code Section 54-35-23 established the Tribal and State Relations Committee. The committee is composed of a chairman designated by the Chairman of the Legislative Management; three members of the House of Representatives, two of whom must be selected by the leader representing the majority faction of the House of Representatives and one of whom must be selected by the leader representing the minority faction of the House of Representatives; and three members of the Senate, two of whom must be selected by the leader representing the majority faction of the Senate and one of whom must be selected by the leader representing the minority faction of the Senate. 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 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--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.

In addition to the committee's statutory responsibilities, the Legislative Management assigned to the committee responsibility:

- Under Section 57-51.2-04 to receive a report from the Governor describing the negotiations and terms of any agreement between the Governor and the Three Affiliated Tribes of the Fort Berthold Reservation relating to taxation and regulation of oil and gas exploration and production within the boundaries of the Fort Berthold Reservation and thereafter receive biennial reports describing the agreement's implementation and any difficulties in its implementation; and
- Under Section 12 of 2013 Senate Bill No. 2013 to receive a report from the State Department of Health on the status of the tribal public health united project.

Members of the North Dakota Tribal Governments' Task Force were Scott J. Davis, Executive Director, Indian Affairs Commission; Tex G. Hall, Chairman, Three Affiliated Tribes of the Fort Berthold Reservation; Dave Archambault II, Chairman, Standing Rock Sioux Tribe; Richard McCloud, Chairman, Turtle Mountain Band of Chippewa Indians; Robert Shepherd, Chairman, Sisseton-Wahpeton Oyate of the Lake Traverse Reservation; and Russell McDonald, Chairman, Spirit Lake Tribe. Myra Pearson was elected chairperson of the Spirit Lake Sioux Tribe in September 2014 and, at that time, replaced Russell McDonald as a member of the North Dakota Tribal Governments’ Task Force.

Committee members were Dennis Johnson (Chairman), Marvin E. Nelson, and Wayne Trottier and Senators Oley Larsen, Dave Oehlke, and John M. Warner.

FEDERAL INDIAN LAW AND POLICY

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

During the initial era of federal-tribal relations, 1789 to approximately 1820--known as the nonintercourse era--the federal government sought to minimize friction between non-Indians and Indians by limiting the contacts between these groups. This era 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 open land in the Oklahoma Territory. This era 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 ceded much of the land it occupied to the United States and reserved a smaller portion to it. This is the origin of the term reservation.

With the enactment of the General Allotment Act of 1887, or Dawes Act, United States-Indian relations entered a new era. This era is known as the allotment era because the General Allotment Act authorized the President to allot portions of reservation land to individual Indians. Under this system, 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 General Allotment Act resulted in a decline in the total amount of Indian-held land from 138 million acres in 1887 to 48 million acres in 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 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 that 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 a number of federal 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 of 1978; the American Indian Religious Freedom Act of 1978; and the Indian Gaming Regulatory Act of 1988.

STATE-TRIBAL RELATIONS

Probably the most important concept in state-tribal relations is the concept of sovereignty. The states and Indian tribes are sovereigns in the federal system. In Johnson v. McIntosh, 21 U.S. 543 (1823), the United States Supreme Court stated "[t]he rights of the original inhabitants were, in no instance, entirely disregarded; but were necessarily, to a considerable extent, impaired. They were admitted to be the rightful occupants of the soil . . . but their rights to complete sovereignty, as independent nations, were necessarily diminished, and their power to dispose of the soil at their own will, to whomsoever they pleased, was denied by the original fundamental principle, that discovery gave exclusive title to those who made it." In Cherokee Nation v. Georgia, 30 U.S. 1 (1831), the Supreme Court held that the Cherokees could not be regarded as a foreign state within the meaning of Article III of the Constitution, so as to bring them within the federal judicial power and permit them to maintain an action in the Supreme Court. However, Chief Justice John Marshall characterized Indian tribes as "domestic dependent nations." In Worcester v. Georgia, 31 U.S. 515 (1832), the Supreme Court further discussed the status of Indian tribes. The Court stated that "[t]he Indian nations had always been considered as distinct, independent political communities, retaining their original natural rights, as the undisputed possessors of the soil, from time immemorial, with the single exception of that imposed by irresistible power, which excluded them from intercourse with any other European potentate than the first discoverer of the coast of the particular region claimed . . . ." The Court concluded that the laws of Georgia have no force in Cherokee territory. Based upon these early cases, the tribes are sovereign and free from state intrusion on their sovereignty. Thus, state laws generally have been held inapplicable within the boundaries of reservations, 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. As used in this chapter, 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. Section 54-40.2-02 provides 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. Section 54-40.2-03.1 provides after the parties to an agreement have agreed to its contents, the public agency involved is required to publish a notice containing a summary of the agreement in the official newspaper of each county of the state reasonably expected to be affected by the agreement.

Section 54-40.2-03.2 provides if the public agency involved receives a request pursuant to Section 54-40.2-03.1, the public agency is required to hold a public hearing, before submitting the agreement to the Governor, at which any
person interested in the agreement may be heard. Section 54-40.2-04 provides as a condition precedent to an agreement made under Chapter 54-40.2 becoming effective, the agreement must have the approval of the Governor and the governing body of the tribes involved. If the agreement so provides, it may be submitted to the Secretary of the Interior for approval.

Section 54-40.2-05 provides within 10 days after a declaration of approval by the Governor and following approval of the agreement by the tribe or tribes affected by the agreement and before commencement of its performance, the agreement must be filed with the Secretary of the Interior, the clerk of court of each county where the principal office of one of the parties is located, the Secretary of State, and the affected tribal government.

Section 54-40.2-05.1 provides upon the request of a political subdivision or any tribe affected by an approved agreement, the Indian Affairs Commission must make findings concerning the utility and effectiveness of the agreement taking into account the original intent of the parties and may make findings as to whether the parties are in substantial compliance with all provisions of the agreement. In making its findings, the commission must provide an opportunity, after public notice, for the public to submit written comments concerning the execution of the agreement.

Section 54-40.2-06 provides an agreement made pursuant to Chapter 54-40.2 must include provisions for revocation. Section 54-40.2-08 enumerates specific limitations on agreements between public agencies and Indian tribes. Finally, Section 54-40.2-09 provides Chapter 54-40.2 does not affect the validity of any agreement entered between a tribe and a public agency before August 1, 1999.

2013 LEGISLATION AFFECTING TRIBES

House Bill No. 1005 amended a portion of the statutory authority governing the state-tribal oil and gas tax agreement to make clear the state's share of oil and gas gross production tax revenue is subject to distribution among political subdivisions as provided in the gross production tax law.

House Bill No. 1180 established a pilot program for the provision of independent case management services under the service payments for elderly and disabled program and a pilot program for the provision of independent case management services under the medical assistance home and community-based services program. Both of the pilot programs for the 2013-15 biennium were to be established within a county located entirely within an Indian reservation.

House Bill No. 1198 eliminated stripper well property status for wells drilled and completed or reentered and recompleted after June 30, 2013. The bill provided for a reduced oil extraction tax rate of 2 percent for the first 75,000 barrels of oil produced during the first 18 months after completion of a well drilled and completed outside the Bakken and Three Forks Formations after June 30, 2013.

The bill revised the statutory framework for the state-tribal oil and gas tax agreement. The bill eliminated the five-year exemption for wells drilled on an Indian reservation after June 30, 2013. The bill increased the tribal share of revenue allowable under the agreement for production on nontrust lands from 20 percent of oil and gas gross production taxes to 50 percent of total oil and gas gross production and oil extraction taxes. The bill provided the state-tribal agreement must require the Three Affiliated Tribes report annually to the Budget Section of the Legislative Management to identify investment of at least 10 percent of tribal oil and gas gross production and oil extraction tax receipts in essential infrastructure and inform the Budget Section of fees, expenses, and charges the tribe imposes on the oil industry.

The bill also provided for income tax withholding for oil and gas royalty payments to nonresidents. Any person who distributes royalty payments to oil and gas royalty owners is required to deduct and withhold from the net amount of royalty payment to each nonresident individual or business entity. If the royalty payment to a royalty owner is less than $600 for the current withholding period or less than $1,000 per year, the Tax Commissioner may grant a request to forgo withholding and a remitter is exempt from the withholding requirement if the remitter produced less than 350,000 barrels of oil or less than 500 million cubic feet of gas in the preceding calendar year.

House Bill No. 1278 established a North Dakota outdoor heritage fund into which up to $30 million per biennium of oil and gas gross production tax revenues must be deposited. The bill provided the fund must be used to provide grants to state agencies, tribal governments, political subdivisions, and nonprofit organizations to provide access to private and public lands for sportsmen, support stewardship practices, develop and conserve wildlife and fish habitat, and conserve natural areas for recreation. The bill required the Industrial Commission to manage the fund and provide staffing for meetings of the North Dakota Outdoor Heritage Advisory Board. The bill provided the board consists of 12 members appointed by the Governor.

Senate Bill No. 2030 authorized an Indian Nation that occupies a reservation the external boundaries of which border more than four counties to form a health district or public health department, provides the terms of such public
health unit, revises the definition of "regional public health network" as that term applies to the regional public health networks law, and revises the requirements a group of public health units must meet in order to be designated as a regional public health network and to qualify for state funding, including codifying core public health activities.

**Senate Bill No. 2119** authorized the Director of the Office of Management and Budget to coordinate with the Director of the Department of Transportation to establish or participate in contracts which may be made available to entities that have been determined by the department to be transportation providers eligible to receive state funds or federal funds for public transportation. The bill also defined a transportation provider, for the purposes of public transportation funding, to include a tribal agency.

**Senate Bill No. 2218** established within the Division of Workforce Development of the Department of Commerce a program to provide workforce development grants to tribally controlled community colleges. The bill provided a college may use a grant to develop programs that assist in providing certificates or degrees to North Dakota students attending the college that qualify the student to obtain jobs for which applicants are being sought within the state, as identified by the department, Job Service North Dakota, or any of the federally recognized Indian tribes within North Dakota or to assist any North Dakota student attending the college to establish, or to assist in establishing, a new business operating within North Dakota that will employ North Dakota citizens. The bill required tribal colleges receiving grants to report annually to the department regarding the expenditures under the grant and the results of the grant program.

### TAXATION IN INDIAN COUNTRY

#### Tribal-State Tax Agreements

**Tax Collection Agreements with Tribal Governments**

The committee received information throughout the interim regarding state and tribal tax agreements. The agreements must comply with the following three requirements:

- To ensure uniformity between state law and tribal code, the tribal code or ordinance must be substantially similar to the state law;
- The Tax Department must administer the tax for the tribes; and
- The state must retain a small administration fee.

The committee received information regarding the cigarette and other tobacco products tax collection agreement with the Standing Rock Sioux Tribe. The agreement, which was negotiated in 1993, was reported to be in the final stages of renegotiation to change the revenue distribution from 75 percent to the tribe and 25 percent to the state to an 87/13 percent split and to reduce the administration fee from 3 percent to 1 percent.

The Tax Commissioner's office also reported on the status of the motor fuel and special fuel tax collection agreements with the tribal governments. These agreements provide for the single administration of the collection and distribution of motor fuel taxes on behalf of the state and tribes for fuel sales within the boundaries of the reservation. The tax rates for motor fuel sales are consistent both on and off the reservation. The distribution of the tax is based on the official United States census of Native Americans who are enrolled tribal members. The state also has had motor fuel and special fuel tax collection agreements with the Standing Rock Sioux Tribe since 1999, the Spirit Lake Sioux Tribe since 2006, the Three Affiliated Tribes of the Fort Berthold Reservation since 2007, and the Turtle Mountain Band of Chippewa Indians since 2010. The report indicated the motor fuel and special fuel tax collection agreement with the Standing Rock Sioux Tribe also is in the final stages of renegotiation.

**Sales and Use Tax Collection Agreement**

The committee learned officials of the Standing Rock Sioux Tribe had discussed with the Tax Commissioner the possibility of a tax collection agreement between the Tax Commissioner and the Standing Rock Sioux Tribe for collection and allocation of revenues under the state sales tax for sales within the reservation. The testimony indicated it was the opinion of the Tax Commissioner's office, the Governor's office, and the Legislative Council that legislative approval is needed for the tribe and state to enter an agreement for the collection and sharing of sales and use taxes on the reservation. Testimony from tribal officials indicated the Standing Rock Sioux Tribe would like to engage the Legislative Assembly in creating a law that would delegate the authority to enter such an agreement.

**Biennial Report on the Implementation of the Oil and Gas Tax Agreement with the Three Affiliated Tribes**

A representative of the Governor's office presented the biennial report on the implementation of the oil and gas tax agreement with the Three Affiliated Tribes. The representative reported the state's agreement with the Three Affiliated Tribes has been a great success in terms of providing a stable, predictable tax and regulatory environment in order to encourage development of oil and gas resources within the reservation.
In the year leading up to the 2013 legislative session, the tribe's council and other representatives continued to seek a revised tax agreement. The discussion resulted in inclusion of amendments to 2013 House Bill No. 1198, which revised the statutory authorization for the state's tax agreement with the Three Affiliated Tribes of the Fort Berthold Reservation. The most significant change was a substantial increase in the tribal share of oil and gas taxes under the requirement that the allocation of oil and gas production and extraction taxes on nontrust land under a revised agreement must be 50 percent for the state and 50 percent for the tribe. House Bill 1198 also added a requirement that any tax agreement must provide for an annual report from the Three Affiliated Tribes to the Budget Section informing the Budget Section about tribal investments in essential infrastructure; fees, expenses, and charges the tribe imposes on the oil industry; and specifically identifies essential infrastructure projects totaling at least 10 percent of oil and gas production and extraction tax receipts. The revised tax agreement that included the provisions of the new law was signed by the Governor and the tribal chairman on June 21, 2013, and went into effect on July 1, 2013.

The most importantly to the tribe, the division of revenue under the revised tax agreement was changed to reflect an equal division between the state and tribe for both gross production and extraction taxes on nontrust lands within the reservation. The tax agreement was also amended to acknowledge the $100,000 per well "spud fee" the tribe had been imposing under the previous agreement. The agreement continues to prohibit tribal taxes or fees that target or disproportionately impact the oil and gas industry while recognizing tribal authority to impose generally applicable taxes that do not affect the oil and gas industry differently than other similar business activities. A representative of the Tax Department reported the tribe was receiving approximately $20 million per month as a result of the revised agreement.

SUPREME COURT COMMITTEE UPDATES

The committee received updates throughout the interim from representatives of the Committee on Tribal and State Court Affairs. The committee was established in 1994 by North Dakota Supreme Court Administrative Rule 37 after a study group of state and tribal judges concluded the resolution of some issues was not occurring because of the lack of communication between tribal and state courts. Several examples of issues discussed by the committee include the handling of tribal court judgments in the state court system and the establishment of a court procedure for tribal arrest warrants. Other issues addressed by the committee include child support, drug crimes, game and fish, gaming, the Indian Child Welfare Act (ICWA), and the cross-deputizing of law enforcement officers. According to the testimony, the committee works to maintain a chain of communication between tribal and state officials.

The committee received information on the Commission to Study Racial and Ethnic Bias in the Courts. The commission is working on implementing the recommendations included in the 2012 final report of the commission. The discussion points of the commission include passport law, protection order law, tribal DUIs, legal assistance, and witness programs. According to the information, one of the recommendations of the final report of the North Dakota Commission to Study Racial and Ethnic Bias in the Court was to implement the Extending Project Passport through the state. The goal of Extending Project Passport is to build upon the success of the original Project Passport. Project Passport was designed to improve recognition and enforcement of protection orders within and between states and tribes by encouraging states and tribes to adopt a recognizable first page for orders of protection, which includes common elements and format. Extending Project Passport also encourages electronic data and information sharing using established national data standards to improve the comparability and accessibility of protection order data across jurisdictions. The Supreme Court's Committee on Tribal and State Court Affairs is working with the tribal courts and the Attorney General's office to initiate a process for tribal courts to use Project Passport, as well as enter their orders of protection in the state's system so any law enforcement officer, on or off the reservation, will be able to easily identify any valid domestic violence protection order.

The committee also received information from a representative of the Court Improvement Project Committee and the status of the ICWA audit of the North Dakota court system. The purpose of the Court Improvement Project Committee is to assess and implement improvements in the roles, responsibilities, and effectiveness of state courts in court-supervised foster care and adoption cases. One of the committee's subcommittees is the ICWA Audit Subcommittee. According to the information, in an effort to measure state court compliance with ICWA requirements, the Court Improvement Project Committee, at the suggestion of the ICWA Audit Subcommittee, undertook an ICWA audit project. The three-year project began with an initial audit the first year to set a baseline and target improvements. Audits were conducted in the second and third years to measure whether the targets were met. The results of the audit were submitted to the Court Improvement Project Committee in December 2013 for review. That committee will determine the next steps to take to address issues that are raised in the audit.

TRIBAL YOUTH

The committee received extensive testimony regarding tribal youth who are adjudicated in tribal court and the need for the establishment of a youth assessment center. The testimony indicated three tribal nations have housed delinquent juveniles in a regional jail where the youth were subject to 60 or more days of incarceration without having access to treatment, counseling, or educational services. The testimony stressed the disparity in the level of service
provided to youth who are convicted of delinquent acts in state courts and for those who are convicted in tribal courts in the state. The state has a two-tiered system with services provided by the juvenile court, which is a part of the court system, and by the Division of Juvenile Services (DJS), which is a division of the Department of Corrections and Rehabilitation. The Division of Juvenile Services operates eight regional offices in eight cities across the state providing services to all counties in the state. It was noted DJS does not provide direct services to juvenile tribal courts. The testimony indicated many areas in the state do not have adolescent psychiatric beds, substance abuse treatment beds, safe beds for “heightened but not imminent risk” adolescents, or detox services for adolescents, nor are detention facilities available for delinquency. The committee learned tribal courts do not have access to DJS nor to Youth Correctional Center placements. The testimony suggested the need for a regional adolescent assessment and treatment center that could hold juveniles for up to 60 days for assessment to determine what services a child and family needs and could provide a safe place for runaways, for juveniles who leave foster care, and for juveniles waiting for court hearings. It was suggested a second unit could be used to serve youth with severe behavioral and mental health needs, physical aggression, sexual behavior issues, or self-injury.

Committee Consideration

During the course of the discussion of the needs of tribal youth, the committee considered a concurrent resolution directing a study of need for collaboration between the tribes and the state in providing services for tribal youth who are adjudicated in the tribal courts. Testimony in support of the concurrent resolution indicated a study would be helpful in determining whether there is a way for tribal youth to qualify for state services. The testimony urged collaboration between tribal and state courts in formal and informal juvenile dispositions to ensure that assessments are completed and services are provided. It was suggested the concurrent resolution be amended to include the federal government in the parties involved in the study.

Recommendation

The committee recommends a concurrent resolution [15.3031.02000] to study the feasibility and desirability of state, federal, and tribal collaboration in providing services for tribal youth in the state who are adjudicated in tribal courts.

INDIAN EDUCATION ISSUES

The committee received reports from the Department of Public Instruction throughout the interim on the status of Indian education issues. The reports included information on planning, strategies, programs, and implementation of Indian education policy and program initiatives. The reports provided information on the development of North Dakota Native American essential understandings and standards. Each essential understanding will be tribe specific based on North Dakota Historical Society Indian studies literature. The department will seek input from elders to adjust and further develop the essential understanding. The understandings will represent what is determined essential about the culture, history, language, practice, and lifestyles of the Native Americans in the state. The essential understandings will be available for use by all teachers in the state.

The Department of Public Instruction reported on the status of the Succeed 2020 program. Succeed 2020 is a program that aims to improve North Dakota’s secondary education and workforce development systems and increase students’ achievement in middle grades and high school, access to and success in postsecondary education, and preparation for 21st century careers. North Dakota’s regional education associations are working collaboratively with multiple stakeholders, including state and local leaders, school districts, educational institutions, Native American groups, and business and industry to implement Succeed 2020.

TRIBAL COLLEGE GRANT PROGRAM UPDATE

The committee received reports throughout the interim regarding the status of the workforce development grants to tribally controlled community colleges in the state. Senate Bill No. 2218 (2013) appropriated $5 million to the state’s five tribal colleges for creation or enhancement of programs and course of study to prepare students for the state’s high-demand job opportunities. A report from the Workforce Development Division of the Department of Commerce indicated the guidance for grant applications, awards, and administration was developed quickly and with significant opportunity for input from tribal college representatives. Three rounds of grant applications were established to ensure full utilization of funds. The maximum grant amount for the biennium was set at $2 million per institution. Grant awards for the biennium were made August 1, 2013, December 1, 2013, and June 1, 2014.

The committee received regular reports from representatives of the tribal colleges regarding the activities, issues, and accomplishments as a result of the grants. The representatives reported the grant funds are being used to purchase additional training equipment, hire additional instructors, reduce the length of programs, and launch new programs. Some of the high-demand programs for which the grant funds are being used include welding, commercial driver's license, heavy equipment operator, electrical technology, oilfield operations, medical coding, entrepreneurship, and law enforcement training. The representatives reported increases in enrollment, faculty, graduates, recruitment, and placement as a result of the grant funds. The tribal colleges continue to experience shortages in housing for
students and have difficulty recruiting qualified instructors. Other challenges include the lack of student readiness for postsecondary education and the lack of upfront funds program graduates need to cover relocation expenses.

The testimony indicated, due to the success of the grant program, it is likely additional tribal college grant funding will be requested in the next legislative session. According to the testimony, the common goal of the grant program was to get tribal people to work, a goal that is being achieved.

TRIBAL HEALTH AND HUMAN SERVICES ISSUES

Medicaid Expansion

Under 2013 House Bill No. 1362, the Department of Human Services was directed to expand medical assistance coverage as authorized by the federal Patient Protection and Affordable Care Act to individuals under 65 years of age with income below 138 percent of the federal poverty level, based on modified adjusted gross income. The committee received testimony that an estimated 20,000 to 30,000 individuals may be eligible for the Medicaid coverage that began on January 1, 2014. Outreach materials were developed to get the word out about Medicaid Expansion and how to apply for coverage.

As of May 2014, approximately 7,800 individuals were enrolled for coverage in the state's Medicaid Expansion. Data indicated most enrollees were childless adults, 52 percent of the Medicaid Expansion enrollees were female, 56 percent were aged 19 to 44, and 69 percent lived in rural areas. It was noted the Department of Human Services initially was unable to report the ethnic and racial makeup of the Medicaid Expansion population because the contingency eligibility system did not capture that information but would be able to provide that data after the system was fully operational. The department, the Indian Affairs Commission, and the tribes actively collaborated to ensure eligible American Indians were aware of the expanded coverage and were being encouraged to apply.

Money Follows the Person Tribal Initiative

The committee received information regarding the Money Follows the Person Rebalancing Demonstration Grant: Tribal Initiative. The purpose of the grant is to enable tribes to design, manage, and provide culturally sensitive community-based long-term services and support to provide choice and to reduce the use of institutional services. The planning team of state and tribal officials prepared and submitted the grant application on October 15, 2013. The anticipated notice of award was November 14, 2013, with the anticipated grant period of November 19, 2013, through April 19, 2014, and with funding continuing through the end of the Money Follows the Person grant in 2016 with spending through 2019.

Tribal-State Dental Services

The committee received information regarding a dental health aide therapist program in Alaska and considered whether a similar program would be helpful in resolving oral health problems for North Dakota's tribal communities. According to the testimony, a comprehensive study of the implementation of dental health aides therapists found that these professionals were providing safe, appropriate, and competent care. According to the information, the cost-effectiveness studies of including dental health aide therapists in the dental team have shown that the dental health aide therapists can provide as many billable services as a dentist, yet they are paid about half the salary of a dentist. The available evaluations and evidence suggests that the mid-level dental providers like the Alaska dental health aide therapists deliver safe, competent, and appropriate oral health care.

The committee also received testimony from a representative of the North Dakota Dental Association regarding the need for dental health aide therapists in the state. In light of the surplus of licensed dentists in North Dakota, the relative proximity of tribal communities to larger North Dakota cities, and the dysfunction of the Indian Health Service dental services, the testimony indicated adding another provider with half the training in Indian country would do little to reduce barriers to dental care and is not necessary. According to the testimony, the solutions for oral health problems for North Dakota's tribal communities should be directed to culturally relevant community prevention, efforts to improve dental delivery efficiency and Indian Health Service reform, and engagement with local dentists for specialty referral and targeted treatment initiatives.

Foster Care

The committee received information from a representative of the Department of Human Services regarding foster care procedures. The information noted Chapter 50-11 and the related administrative rules provide that approved affidavit homes can be created with an affidavit that the home meets the requirements. For those areas where the state has jurisdiction, the state licenses the foster homes. The information was provided in response to a concern from a foster care provider who encouraged the state to allow affidavit foster care homes outside the reservation, a change that was suggested would allow for more flexible placement options and allow easier placement of sibling groups.
Fort Berthold Public Health Unit Pilot Project

As assigned by the Legislative Management, the committee received several reports during the interim from the State Department of Health on the status of the tribal public health unit pilot project under Section 12 of 2013 Senate Bill No. 2030.

In 2012 a health care workgroup composed of tribal health office leaders, the Elbowoods Memorial Health Center, the State Department of Health, and the Director of the public health master's program at North Dakota State University began working to establish a tribal public health unit on the Fort Berthold Reservation. The workgroup goals included building the tribal infrastructure to support the public health needs and to continue collaborating with the tribal programs and nontribal public health programs that support the development of an effective model of public health service delivery. It was reported the following public health programs operating within the boundaries of the reservation are providing services to the local communities--the special supplemental nutrition program for women, infants, and children; a tobacco prevention program; the Fort Berthold Coalition Against Domestic Violence; an immunization clinic; and Women's Way, a program that provides mammograms and pap test screenings to eligible women between the ages of 40 and 64 who live on the reservation. It was reported the Three Affiliated Tribes of the Fort Berthold Reservation continues its preparations to enter into collaboration with the State Department of Health that will allow for continued integration of primary and public health care based on the core principles of public health and its services, will also be seeking to establish networks with regional public health units so an effective and efficient model for delivering public health services to the reservation population will be met, and plans to continue management of its health through the Public Law 638 contracting of its health services from the Great Plains Indian Health Service.

Standing Rock Home and Community-Based Services Pilot Project

The committee also received an update from a representative of the Department of Human Services regarding a pilot project under 2013 House Bill No. 1180 to improve access to home and community-based services to the Standing Rock Sioux Tribe. The report indicated the department and the tribe are working to create a business model for billing the state for home health services.

CENTRAL INDEXING AND TRIBAL VOTING IDENTIFICATION

The committee received testimony from the Secretary of State's office regarding the central indexing system, the Uniform Commercial Code (UCC), and tribal voting identification.

Discussions between the Secretary of State's office and the Indian Affairs Commission have addressed economic development on tribal land and the benefits of tribal governments having regulations and a filing system for UCC-secured transactions. Upon completion of a new central indexing system for UCC and other business transactions, the Secretary of State's office will again extend an offer to the tribal governments to explore the possibility of executing a joint agreement to allow UCC filings to be effective on tribal lands.

The committee also received testimony from the Secretary of State's office regarding the tribal identification database of the Bureau of Indian Affairs and the state's central voter file to facilitate the use of tribal identification for voting purposes. With the passage of 2013 House Bill No. 1332, voters are required to provide an acceptable form of identification which includes the voter's name, residential address, and date of birth in order to receive a ballot and vote in an election. A tribal identification card that includes the required information and which is issued to a resident of the state from a tribal government within the state is one of the acceptable forms of identification for voting. Because not all tribal identification cards list all of the required information in order to vote, the Secretary of State's office reported it is in the process of meeting with each of the tribal councils in the state to discuss the possibility of receiving the names, residential addresses, birth dates, and tribal identification numbers of tribal members so the data could be included in the central voter file. With this information included in the voter's record, the process for receiving a ballot for voting would be expedited for those individuals providing tribal identification cards in the same manner as for those voters using their North Dakota driver's license or nondriver's identification card. A discussion with the Bureau of Indian Affairs revealed for the data to come to the Secretary of State's office directly from the Bureau of Indian Affairs, a resolution would be needed from each of the tribal councils in the state. The testimony indicated the Secretary of State's office was scheduling meetings with the tribal governments in the state for that purpose.

BOARD OF UNIVERSITY AND SCHOOL LANDS STUDY

The committee received reports from the Commissioner of the Department of Trust Lands throughout the interim on the status of a Board of University and School Lands study, directed by 2013 House Bill No. 1338, of options to address the concern of landowners adjacent to land surrounding Lake Sakakawea and Lake Oahe, which is under the control of the Army Corps of Engineers. The testimony indicated some of the concerns of the interested parties included grazing rights on corps land, control of noxious weeds, and protecting public access for hunting and fishing. The committee learned the study was conducted by surveying seven special interest groups listed as producer, conservation or wildlife, state or federal agency, tribal, county and city, recreation, and other. The surveys were tallied
according to each group to determine cohesiveness among and between the groups. The survey was sent to 520 individuals, organizations, counties, and agencies, of which 210 responses were completed and returned. In March 2014, public meetings were held in New Town, Garrison, Linton, Beulah, and Fort Yates with a final general public meeting held in Bismarck on June 11, 2014. After the June 11 meeting, the draft options were developed and presented to the Board Secretary of the Board of University and School Lands. A revised draft was presented to the Board of University and School Lands at its August meeting, and the final report was scheduled to be presented to the Legislative Management.

Testimony received from a representative of the Standing Rock Sioux Tribe discussed examples of legislation passed over the years which was intended to transfer lands back to the tribes. According to the testimony, although the tribes have an agreement for a transfer of corps land to the tribes which was entered 30 years ago, the corps has not cooperated. Concerns were expressed a state action could complicate long-standing efforts to return land. It was indicated the best way to proceed in efforts to reclaim the land from the corps would be for the state to support the tribes' efforts rather than risk complicating the efforts of the tribes in working with the corps and the federal government.

**TRIBAL ROADS**

The committee received reports throughout the interim regarding the conditions of the tribal road systems. The reports indicated while each of the state's tribes face unique obstacles to improve tribal road systems to adequate and acceptable conditions, all tribes share the common problem of insufficient federal funding to properly maintain and provide safe transportation conditions. According to the reports, most of the money from the federal government is used to cover maintenance with little opportunity to grow or improve the tribal road system. Much of the testimony on the condition of tribal roads focused on the greatly increased traffic and deterioration of tribal roads on the Fort Berthold Reservation due to oil industry-related traffic and the need for reconstruction of Jack Rabbit Road on the Turtle Mountain Band of Chippewa Indians Reservation. The testimony regarding Jack Rabbit Road focused on the deteriorating condition of the road, the usage, the nonconforming width and shoulders of the road, fatality and crash statistics, and the costs of reconstruction.

Representatives of the Department of Transportation briefed the committee on grant programs available for tribal transportation projects. The department noted state law provides state highway funds may be spent only on projects associated with state highways, but indicated the department planned to continue to work with tribal governments through federal programs. The department provided information on the Transportation Investment Generating Economic Recovery (TIGER) discretionary grant program, which is part of the federal American Recovery and Reinvestment Act. In 2014 the federal government announced $600 million in TIGER grant funds would be available to fund transportation project across the country. According to the information, a typical TIGER grant request is for 40 percent of the cost of the project with the requester providing 60 percent in matching funds.

Other testimony suggested the tribes may need to consider revenue derived through tribal-state tax agreements as a means of funding road projects.

**WATER ISSUES**

The committee received testimony from the State Water Commission regarding tribal water needs and tribal reservations' eligibility for water projects. The testimony recognized the needs on reservations for adequate supplies of drinking water, but indicated the tribes are not eligible to receive direct grant funding. Rather, the tribes must partner on the water project with a political subdivision, such as a city near a reservation. While cost-sharing agreements are possible between the state and the political subdivision for projects such as drinking water, irrigation, and flood protection, the state does not need to be involved in the agreement between the tribe and the political subdivision. According to the testimony, the State Water Commission is interested in a sustainable infrastructure and wants assurance the political subdivision will be able to collect the revenues to maintain and replace the facilities.

Testimony from tribal representatives indicated the water issues have been a concern of the tribes for decades. The testimony indicated cooperation between a political subdivision and a tribe is not always possible. It was noted that even though the state has financially benefited greatly from oil wells on tribal lands, the tribes cannot get money from the state for water projects. The need for constant communication about what the state is doing with water was emphasized. Tribal representatives indicated because some of the $515 million the State Water Commission is spending this biennium on water projects across the state will have an impact on tribal water, having a tribal voice is important in the process. Finally, it was noted because a tribe received an irrigation grant from the State Water Commission in the past, there is precedence for a tribe to receive grants directly from the state for a water project.

**TRIBAL HOUSING**

The committee received information regarding the housing needs and concerns of the tribes as well as efforts the tribes are making to improve housing for tribal members.
A representative of the Turtle Mountain Band of Chippewa Indians provided information the tribe has a shortage of 660 housing units and 1,408 homeless people. The federal government has not increased the housing assistance allocation through the Indian housing block grant program since 1996. The grant has been funded at a level of $650 million for the last 18 years. The testimony reviewed housing projects currently under construction on the reservation including a 25-unit apartment complex for family college students, a homeownership loan program, a new home construction plant, a new retirement home, and a rehabilitation grant for renovating two office buildings into homeless shelters.

Testimony from a representative of the Three Affiliated Tribes of the Fort Berthold Reservation indicated a need for 300 to 400 homes. With the reservation's population doubling in recent years, the testimony indicated providing affordable housing has become even more challenging. It was noted new housing being built in the area is being geared to oil industry needs and not the tribes. The testimony reported a 20-unit complex had been completed with another one in progress. It was emphasized the key to housing is affordability.

Representatives of the Standing Rock Sioux Tribe indicated at least 500 families were in need of housing. In addition, the large geographic area of the reservation makes it challenging to provide water, utilities, and other services to the homes. The difficulty in obtaining bank funding was discussed as a major obstacle to homeownership since banks do not loan money for structures built on trust property. It was noted the tribe's adoption of the first tribal UCC, which is similar to the commercial codes of North Dakota and South Dakota, will allow for more commercial and banking transactions.

Testimony from representatives of the Spirit Lake Sioux Tribe indicated the tribe's housing shortage is due in part to the high water table problems in the Devils Lake area. The water issues have led to black mold issues, making many homes uninhabitable. Maintenance and repair of existing housing is also an issue. It was emphasized the state and the tribes need to work together to resolve the tribal housing issues.

NORTH DAKOTA INDIAN BUSINESS ALLIANCE

The committee received a report from the North Dakota Indian Business Alliance regarding native-owned private businesses in the state. According to the report, the North Dakota Indian Business Alliance, which was incorporated as a nonprofit organization in April 2013, received a two-year grant of $50,000 per year through the Department of Commerce. It was reported the alliance provides advisory services and referrals to technical assistance providers, has an interactive website, a series of educational webinars under production, an email list serve with quarterly newsletters and regular news posts, a database of several hundred tribal-owned businesses in the state, micro-grants of $500 to $1,000 for startups and marketing support, and mentorships and internships through the University of Mary.

The significant outcomes of the alliance include the Turtle Mountain manufacturing plant contract to resume operation in producing modular buildings, a UCC passed by the Standing Rock Sioux tribal council in June 2014, the securing of a $100,000 grant to support the alliance's economic summit, micro-grants, and education offerings. Future considerations include the strengthening of connections with a national tribal college association and the transfer of Native American economic and community development oversight from the Department of Commerce to the Indian Affairs Commission.

TOURISM

Tribal representatives briefed the committee on efforts to expand tourism in the state and in Indian country. The testimony suggested a tribal tourism grant program, similar to the tribal college grant program, would be helpful as a way for the tribes to partner with the state to develop tourism in Indian country. The testimony indicated tribal tourism industry currently is very limited, but there is a market for expansion. It was noted many domestic and international visitors have an interest in Indian country.