

TRIBAL AND STATE RELATIONS COMMITTEE

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:

- Pursuant to House Concurrent Resolution No. 3006, 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; and
- 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.

Members of the North Dakota Tribal Governments' Task Force were Scott J. Davis, Executive Director, Indian Affairs Commission; Mark Fox, 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; Bruce Renville, Chairman, Sisseton-Wahpeton Oyate of the Lake Traverse Reservation; and Myra Pearson, Chairman, Spirit Lake Tribe.

Committee members were Representatives Marvin E. Nelson (Chairman), Bill Amerman, Dennis Johnson, and Wayne Trottier and Senators Joan Heckaman, Oley Larsen, and Dave Oehlke.

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. 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 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 "[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 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 federal 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 federal 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.

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.

2015 LEGISLATION AFFECTING TRIBES

House Bill No. 1068 required the Industrial Commission to give due consideration to the effect of rules, orders, and policies on locations under federal or tribal jurisdiction and provide sufficient information to indicate the effect of including these locations. The bill required the Industrial Commission to allow access by the tribal government to the geographic information system database for pipelines located within the exterior boundary of the Fort Berthold Reservation.

House Bill No. 1129 expanded the allowable uses of grant funds awarded to tribally controlled community colleges. The bill provided funds may be used for the enhancement of existing programs that assist students in obtaining certificates or degrees in workforce areas high in demand.

House Bill No. 1406 authorized the Governor to enter a state-tribal sales, use, and gross receipts tax agreement with the Standing Rock Sioux Tribe. The bill outlines the parameters for an agreement including provisions relating to the rate of tax imposed, conforming tribal taxes to the state sales tax base, allocation of revenues, authority for the Tax Commissioner to administer and collect the tax and allowances for the provision of these services, authority for the Tax Commissioner to offset future distributions to the tribe in the case of an overpayment, and the proper venue for resolving any disputes arising from an agreement.

House Bill No. 1476 provided for a restructuring of oil extraction tax rates and exemptions. The bill provided current law regarding tax rates and the application of triggered incentives will remain in effect through December 31, 2015, subject to two exceptions:

- Beginning December 1, 2015, if triggered rate exemptions are in effect, a 24-month exemption from the oil extraction tax will no longer be available for wells drilled and completed a horizontal well; and
- Oil produced from new wells, drilled and completed after April 21, 1987, will no longer be eligible for a reduced tax rate of 4 percent, but will instead be taxed at the full rate of 6.5 percent. The remaining term of all other rate reductions or exemptions eliminated by the bill may not be carried forward past December 31, 2015.

Beginning on January 1, 2016, the rate of extraction tax on all oil was reduced from 6.5 to 5 percent. This rate is subject to change depending on the average price of a barrel of crude oil. If the average price of a barrel of crude oil exceeds the trigger price of \$90 for 3 consecutive months, the rate will increase to 6 percent on all oil extracted. The rate will remain at 6 percent until the average price of a barrel of crude oil falls below the trigger price of \$90 for 3 consecutive months, at which time the rate will revert to 5 percent on all oil extracted. The bill eliminated several oil extraction tax exemptions.

Production that will continue to be subject to a reduced oil extraction tax rate after December 31, 2015, includes production from wells drilled and completed outside the Bakken and Three Forks Formations and 10 miles or more outside an established field that includes either formation.

Senate Bill No. 2064 required an affidavit prepared by the administrative county, or an agency or tribal council of an Indian reservation, to be submitted along with the petition to request continuing foster care services for a child between the ages of 18 and 21. The bill also required a continued foster care agreement for a child between the ages of 18 and 21 be willfully entered between the child, the foster care provider, and the Department of Human Services or the tribal council of an Indian reservation.

Senate Bill No. 2226 required legislative confirmation of agreements approved by the Governor and the governing bodies of the tribes involved if the agreement is a tax collection agreement. The bill required agreements between the Tax Commissioner and one or more tribes also receive confirmation by a majority of the members of the House of Representatives and the Senate; provided the agreement does not become effective until its legislative confirmation date, or its effective date, whichever is later, and must expire not more than 16 years after its effective date; and provided the agreement must be filed with the specified parties after approval by the Governor, the tribe or tribes affected by the agreement, and if required, legislative confirmation.

TRIBAL YOUTH STUDY

Background

The federal criminal justice system in the United States for tribal youth has undergone few changes since the 1930s. The National Indian Child Welfare Association reports tribal youth are frequently placed in adult facilities because many of their communities lack dedicated juvenile facilities. Tribal youth also deal with an inconsistent law enforcement, court, and corrections system that is mostly the result of the evolution of tribal justice systems under the influence of treaties and federal laws. Culturally, most Native American tribes do not approach juvenile delinquency from the same perspective as America's Western European-based norms. This often creates issues for youth who move between the reservation and the community and do not fully understand the standards of conduct expected of them off the reservation. This increases the tribal youth's risk for run-ins with the juvenile justice system. Native American culture historically did not use confinement as a criminal punishment. Most tribal court systems rely on restitution, community service, mental health treatment and counseling, and probation to answer juvenile crimes, so confinement tends to be off the reservation.

In both the federal and tribal systems, there is a lack of facilities, programs, and services to address the needs of tribal youth. Facilities for housing juveniles sentenced to detention in the federal system are limited and are often located far from the juvenile's home and family. Community-based treatment programs available to these youths are also very limited and are rarely located on or near a juvenile's reservation. Furthermore, these programs may not take into account the beliefs and traditions of the youth's culture.

North Dakota Juvenile Justice System

North Dakota has a two-tiered system in which services are provided by the juvenile court, a division of the state's judicial system; and by the Division of Juvenile Services, a division of the Department of Corrections and Rehabilitation, an executive branch agency.

The North Dakota juvenile justice system is largely defined through the role of the juvenile court under Chapter 27-20, known as the Uniform Juvenile Court Act. The Uniform Juvenile Court Act established the juvenile court as a division of the district court. The juvenile court has exclusive and original jurisdiction over any child who is alleged to be deprived, delinquent, or unruly. In North Dakota, youth ages 7 up to age 18 who are alleged to have committed a delinquent or unruly act fall under the jurisdiction of the juvenile court.

Generally, the juvenile offenders who commit more serious crimes or who are chronically involved in delinquent behavior are placed with the Division of Juvenile Services. Juveniles with less serious offenses are supervised in juvenile court either formally before a judicial officer or informally with a juvenile court officer. Whether a juvenile is with the Division of Juvenile Services or the juvenile court the philosophy of case management is the same--a continuum of care with comprehensive case management.

The Division of Juvenile Services operates eight regional offices in eight cities across the state providing services to all counties in the state. The Division of Juvenile Services does not provide direct services to the juvenile tribal courts. The juvenile court essentially provides the same services for juveniles except the services are provided within the community.

Testimony and Committee Considerations

In its study of 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, the committee received testimony and information from a district judge, the Director of the Division of Juvenile Services, a tribal judge, a tribal prosecutor, tribal council members, and tribal members.

The committee learned from the testimony that a great disparity exists between the state courts and the tribal courts in the level of services available to youth who are adjudicated in each court. In the Human Services Region III--which includes Ramsey, Benson, Towner, Rolette, Cavalier, and Eddy Counties--along with the Turtle Mountain Band of Chippewa Indians and Spirit Lake Sioux Tribe Reservations, there are no adolescent psychiatric beds, no substance abuse treatment beds, no safe beds for heightened, but not imminent-risk adolescents, no detox units, and no detention for delinquency. It was noted Human Services Region III has none of these services even though:

- The region has 6 percent of the state's population, but has 38 percent of all temporary assistance to needy families (TANF) cases;
- The region has 7 percent of the state's youth population, but comprises 41 percent of all state youth who are on TANF;
- Thirty-six percent of children ages 0 through 17 in the region live in poverty and another 15 percent live near the poverty level;
- The only counties in the state which have more actual people living in poverty than Rolette County are Cass and Ward Counties; and
- Sixty-five percent of the total births in this region are to unmarried women compared to the statewide rate of 32 percent.

The information indicated when dealing with juveniles in the state system, the goal is to be able to offer the services necessary to keep the juveniles out of juvenile court. Juvenile supervisors and juvenile probation officers try to keep youth out of court by using diversion programs. For those juveniles who become involved in the juvenile court system, the North Dakota Youth Correctional Center is an option. At the center, a juvenile has access to treatment, counseling, and educational programming.

When a tribal youth commits delinquent acts, the tribal judge does not have the same options as the juvenile court judge. Tribal judges do not have access to the Division of Juvenile Services or the Youth Correctional Center. In the tribal system the infrastructure does not exist to provide options other than detention. In most cases, that detention is for a long period of time and is far from the tribal youth's home. In the state system the effort is always made to return the youth to the youth's family, an option not available to tribal youth.

Testimony from a tribal prosecutor indicated as a result of the lack of treatment, education, counseling, and other services, tribal youth adjudicated in tribal court have a much higher rate of recidivism than youth adjudicated in the state system.

The committee reviewed a tribal-state agreement from Utah under which a tribal youth who commits a delinquent act can be sent to a state youth correctional center for services. Under the Utah system, the state provides services to delinquent tribal youth without cost to the tribe.

Testimony from a representative of the Division of Juvenile Services indicated the Youth Correctional Center and several of the tribes have entered informal agreements for the provision of services, both detention and longer term correctional placement, at various times over the years. The agreements allowed for the case-by-case analysis and placement of tribal youth at the Youth Correctional Center. It was noted in Chapter 54-40.2, which outlines the process for creating agreements between public agencies and Indian tribes, gives the Department of Corrections and Rehabilitation the authority to enter a memorandum of understanding to provide state services to juvenile youth.

During the course of the discussion of the need to provide services to tribal youth, the committee considered a bill draft to establish a pilot program to provide state services to juveniles adjudicated in tribal court. The bill draft would direct the Department of Corrections and Rehabilitation to offer to negotiate a memorandum of understanding with the government of a federally recognized Indian tribe in the state for the purpose of accepting and providing for the custody, care, and treatment of tribal juveniles adjudicated in tribal court in accordance with tribal or federal laws. Testimony in support of the bill draft indicated although the option for the state and the tribes to collaborate is available without legislation, no action has been taken. The testimony suggested legislation is needed to get the process started.

Testimony from tribal representatives in support of the bill draft indicated the bill draft would formalize a process that would be in the best interest of tribal youth. The testimony noted a bill draft would be a positive step forward in repairing the relationship between the state and the tribes and would aid in a closer government-to-government understanding.

Recommendation

The committee [recommends a bill](#) to establish a pilot program for providing state services to juveniles adjudicated in tribal court. The bill directs the Department of Corrections and Rehabilitation to offer to negotiate a memorandum of understanding with the government of a federally recognized Indian tribe in the state for the purpose of accepting and providing for the custody, care, and treatment of tribal juveniles adjudicated in tribal court in accordance with tribal or federal laws.

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 was informed the cigarette and other tobacco products and the motor and special fuels tax collection agreements with the Standing Rock Sioux Tribe were renegotiated and became effective May 1, 2015. The renegotiated agreements changed 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 to 1 percent.

A representative of the Tax Department 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.

Tribal members of the committee expressed concerns regarding 2015 Senate Bill No. 2226, which requires legislative confirmation of agreements approved by the Governor and the governing bodies of the tribes involved if the agreement is a tax collection agreement. The bill requires agreements between the Tax Commissioner and one or more tribes to be confirmed by a majority of the members of the House of Representatives and the Senate. According to the tribal members, the legislation puts tribal-state tax collection agreements on a 2-year cycle with the tribes being required to wait until the next legislative session for agreements to become effective. It was noted the tribes need the ability to work with the executive branch and to be able to negotiate in the interim.

Sales and Use Tax Collection Agreement

The committee received information regarding the status of the tribal-state sales and use tax agreement with the Standing Rock Sioux Tribe, which was authorized by 2015 House Bill No. 1406. The agreement, which was scheduled to become effective July 2016, provides for an 80/20 tribal/state split. According to testimony; however, the Standing Rock Sioux Tribe opted to give a use tax exemption to the tribe's casino. It was noted the casino profits are used to fund elderly and nutrition programs and to pay tribal debt. Because the state gives use tax exemptions for institutions, such as the Bank of North Dakota, it was contended the Standing Rock Sioux Tribe is authorized to exempt the casino. Testimony from representatives of the Tax Department indicated state law requires, as a condition of entering a tribal-state tax collection agreement, both governments to have the same sales and use tax laws. According to the testimony, an exemption exists for tribal entities, but not for tribally owned businesses. For the tax agreement to become effective, both the state and the tribe would have to change their laws to allow for an exemption for a tribally owned business. Representatives of the Tax Department indicated support for moving forward with the implementation of the agreement; however, the use tax issue for the casino must be resolved before that can happen.

Oil and Gas Tax Agreement with the Three Affiliated Tribes of the Fort Berthold Reservation Report

A representative of the Tax Department presented a report on the status of the oil and gas tax agreement with the Three Affiliated Tribes of the Fort Berthold 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. 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 2015 Legislative Assembly enacted House Bill No. 1476, which removed some price-based incentives in exchange for a lower rate. It was reported the position of the Three Affiliated Tribes of the Fort Berthold Reservation was that no formal action would be taken on the oil and tax agreement while efforts with the Governor's office to renegotiate the agreement at the new rate continue. As of the writing of this report, an agreement on a renegotiated agreement had not been reached.

INDIAN EDUCATION ISSUES

Department of Public Instruction

The committee received reports from representatives of 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.

According to the reports, the North Dakota Native American Essential Understandings Project, a curriculum project regarding the culture, history, language, practice, and lifestyles of the Native Americans in the state was completed and has received approval from the Superintendent of Public Instruction. As of the writing of this report, the project had entered phase 2, which includes the creation of lesson plans and elder interviews. The report indicated phase 3, which is the implementation of 40 to 50 lesson plans, will include professional development and the use of trainers in the schools to implement the lesson plans. Upon completion, the essential understandings curriculum will be available for use by all teachers in the state.

Representatives of the Department of Public Instruction provided reports throughout the interim regarding the state plan for the federal Every Student Succeeds Act, an education plan that includes several provisions that target the educational needs of Native American students. The Act, which promotes tribal self-determination in the education of tribal students by authorizing coordination and collaboration of tribal stakeholders with state education agencies to meet the unique culturally related academic needs of the tribal students, requires each state to engage in meaningful consultation with tribes in the development of the state's plan to meet the needs of tribal students. According to the report, information gathered in the tribal consultations will be included in the state plan scheduled for submission in March 2017. The Act is scheduled to become effective on July 1, 2017.

The committee received testimony expressing concern over the difficulty of the General Education Development (GED) examination for Native American students. In January 2014 a new GED series was released. The new GED series of four exams is computer-based and tests on four content area competencies and critical thinking skills rather than the previous rote memorization. According to testimony from the Department of Public Instruction regarding the new GED results, the statewide pass rate is 83 percent compared to the national rate of 67 percent. Reservation GED programs have a pass rate of 81 percent, just 2 percent less than the statewide rate. Other information provided when comparing Native American students to non-Native American students in the state indicated:

- Native American students take approximately 28 percent more time to achieve the same educational gains;
- Native American students have a younger drop out age and preassessment testing shows Native American students to be almost 2.5 grade levels less their same-age peers;
- Issues that affect Native American more than non-Native American students are attendance and retention; and
- Most Native American students take longer to acquire the GED.

It was noted the adult learning centers have excellent and caring staff, strong professional development, and motivated students. It was concluded the department is generally pleased with the progress being made and will work to continue to improve the quality of adult instruction in the state.

Tribal College Grant Program and Research Activities

The committee received reports throughout the interim regarding the status of the workforce development grants to tribally controlled community colleges in the state. The tribal college grant program began in 2013 with the enactment of Senate Bill No. 2218, which is codified as Chapter 54-60.2. That legislation provided for the appropriation of \$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. Grant awards for the 2013-15 biennium were made August 1, 2013, December 1, 2013, and June 1, 2014.

The 2015 Legislative Assembly approved a \$3 million appropriation to continue the funding of the workforce development grants to tribally controlled community colleges program. In addition 2015 House Bill No. 1129 amended Section 54-60.2-02 to expand the allowable uses of grant funds awarded to tribally controlled community colleges. The bill provided funds could be used for the enhancement of existing programs that assist students in obtaining certificates or degrees in workforce areas high in demand.

The committee received regular reports from representatives of the tribal colleges regarding 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. One tribal college reported the grants allowed the college to hire six employees--a commercial driver's license instructor, a welding instructor, a machinist instructor, an oil field operations instructor, a career navigator, and a tribal college grant director. As of June 30, 2016, the tribal college reported 352 students had enrolled in seven different training programs, 122 had graduated, and 64 had been placed in positions that averaged \$20.12 per hour.

Tribal college representatives expressed concerns regarding the sustainability of the tribal college programs if the state does not continue to fund the grant program. The testimony noted if the tribal grant program would continue for at least 3 more years, it will give tribal colleges the time and funding needed to build programs.

The committee also received testimony from representatives of Sitting Bull College and United Tribes Technical College regarding research activities underway at each college. A representative of Sitting Bull College provided information and demonstrations on the college's master of science degree program through which two students are studying mercury and lead concentrations in river sediments. A representative of the United Tribes Technical College provided information and demonstrations regarding the college's research activities in the areas of ecological research, antimicrobial activities of cultivated versus wild purple coneflowers, breeding squash for sustainable food systems, retrospective ecological risk assessment of a 2015 brine spill, and behavioral health research.

TRIBAL HEALTH AND HUMAN SERVICES ISSUES

Medicaid and 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 20,500 individuals were eligible for the Medicaid coverage that began on January 1, 2014. As of July 2015 the Medicaid Expansion enrollment was approximately 18,833 individuals. The enrollment data indicated 77 percent of enrollees are childless adults with over half of this group aged 19 to 44. 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 the department would be able to provide that data after the system was fully operational. The department, the Indian Affairs Commission, and the tribes continue to actively collaborate to ensure eligible American Indians were aware of the expanded coverage and were being encouraged to apply.

The committee received a report from a representative of the Department of Human Services regarding the level of Medicaid funding for tribal members. According to the report, on February 26, 2016, the Centers for Medicare and Medicaid Services issued policy guidance on federal funding for services received through an Indian Health Service tribal facility and furnished to Medicaid-eligible American Indians and Alaska Natives. The policy guidance indicated Indian Health Service tribal facilities may enter care coordination agreements with non-Indian Health Service tribal providers to furnish certain services for patients who are American Indian or Alaskan Native Medicaid beneficiaries and the amounts paid by the state for services requested by facility practitioners in accordance with those agreements would be eligible for the enhanced federal matching at a rate of 100 percent. The representative of the department indicated the federal approval of South Dakota's agreement provides North Dakota with an approved agreement as a model for drafting our state's agreement.

Tribal Dental Services

The committee received information regarding a dental health aide therapist program in Alaska and whether a similar program would be helpful in resolving the shortage of dental professionals in North Dakota's tribal communities. According to the testimony, a comprehensive study of the implementation of dental health aide therapists found dental health aide therapists 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 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 suggest the mid-level dental providers like the Alaska dental health aide therapists deliver safe, competent, and appropriate oral health care. Alaska's dental health aide therapy program, which operates under a federal program, was opposed by the Alaska dental licensing board. It was noted a tribe can institute a dental health aide therapy program without approval from the state or the North Dakota Board of Dental Examiners; however, the tribe cannot access Indian Health Service funds unless the state and the state licensing authority approve the program.

Child Support

The committee received information from a representative of the Child Support Enforcement Division of the Department of Human Services regarding several child support issues affecting tribal families. Tribal families are a significant component of the caseload for the state's child support program. Tribal child support cases handled by the state child support enforcement unit are usually the result of a referral from TANF or an application from one of the parents. A child support case also may be opened by the state if the child is in foster care or at the request of another state or tribal child support enforcement program. For sovereignty reasons, the jurisdictional issues in child support cases involving tribal families can be very complicated. Some cases only can move forward in tribal court, such as paternity cases for tribal children who were conceived and born on a reservation. In other cases, it is less clear whether tribal or state court is most appropriate, particularly if one or both of the parents now lives off the reservation. It was reported the total caseload for the state's child support enforcement program as of November 2015 was 38,194, with 1,628 of those cases unable to move forward for jurisdictional reasons. It was noted this number is at a historically low level.

The Standing Rock Sioux Tribe and the Three Affiliated Tribes of the Fort Berthold Reservation operate federally funded child support programs and therefore do not use the services of the Child Support Enforcement Division. For North Dakota tribes that do not have a child support enforcement program, the Department of Human Services' attorneys appear in tribal court to establish and enforce tribal support orders according to tribal law.

Testimony from a representative of the Child Support Enforcement Division also addressed concerns regarding the suspension of a state-issued driver's license for failure to pay child support. According to the testimony, the state uses this tool carefully and selectively since making it more difficult for an obligor to get to work would be counterproductive. Under the law, a license may be suspended if the obligor is at least 2 months or \$2,000 in arrears, whichever is less. It was noted in practice; however, it would be highly unusual for the Child Support Enforcement Division to suspend a license if an obligor were making regular payments, even if the obligor owes past-due child support. According to the testimony, the goal of the license suspension process is to discourage obligors from missing a payment and to encourage obligors to avoid suspension by working and making regular payments to current and past-due child support.

Task Force on Substance Exposed Newborns

The committee received a report on the findings and recommendations of the Task Force on Substance Exposed Newborns. Pursuant to 2015 Senate Bill No. 2367, a Task Force on Substance Exposed Newborns was formed for the purpose of researching the impact of substance abuse and neonatal withdrawal syndrome, evaluating effective strategies for treatment and prevention, and providing policy recommendations. The task force included representatives from state agencies, the Legislative Assembly, medical providers, nonprofit entities focused on children's health and well-being, Indian tribes, law enforcement, and the foster care community.

Across the country, the number of babies born with prescription and illegal drugs in their systems has been growing. These babies are exposed to alcohol or drugs during gestation and become dependent on the drug or alcohol. When these babies are born and the exposure to those substances ends, the babies experience neonatal abstinence syndrome, also known as neonatal withdrawal syndrome, which causes a range of symptoms such as seizures, excessive crying, tremors, gastrointestinal distress, fever, irritability, poor feeding, and breathing and sleeping problems. In addition the babies often grow up with special long-term medical and educational needs.

The findings and recommendations of the task force were summarized as follows:

- Addiction and drug abuse during pregnancy should be treated as a health issue since research shows universal criminalization has been ineffective.
- Due to data gaps, the North Dakota state epidemiological outcomes workgroup should determine the best means and methods for developing short- and long-term data on the incidence and cost of neonatal withdrawal syndrome/neonatal abstinence syndrome.
- The State Department of Health should explore mechanisms for recording data on the number of newborns born exposed to substances, the substances to which they are exposed, and the number diagnosed with neonatal withdrawal syndrome/neonatal abstinence syndrome.
- Medical professionals should follow the current laws for testing, referring, followup, and reporting pregnant women who are abusing alcohol or using controlled substances and for reporting substance exposed newborns.
- State's attorneys and behavioral health professionals should evaluate the pros and cons of having an affirmative defense of periodic drug testing and consent to home visits in cases in which criminal child abuse and neglect stems from a parent or caregiver's substance abuse.

Tribal State Health Services Committee

The committee received testimony regarding the activities of the North Dakota Tribal State Health Services Committee. According to the testimony, the North Dakota Tribal State Health Services Committee was formed several years ago for the purpose of consultation on Medicaid program updates and changes. Since that time, the committee has evolved into participating in broader discussions covering all areas of human services. Those who attend the committee meetings include tribal health directors, tribal council members, representatives of Indian Health Service, members of the Great Plains Tribal Chairman's Health Board, representatives of the Indian Affairs Commission, representatives of the State Department of Health, representatives of tribal community health programs, and representatives of the North Dakota State University master of public health program. The testimony indicated group-identified priorities include Department of Human Services website information and updates, single point of entry and no wrong door, prevention, substance use disorder treatment, hands-on training for third-party billing, more communication between tribes, and engaging members of the group in other efforts. It was noted the committee emphasizes communication and planning as key and that all tribal members are invited to attend the meetings.

SUPREME COURT COMMITTEE UPDATE

The committee received updates from representatives of the Committee on Tribal and State Court Affairs. The Committee on Tribal and State Court Affairs 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 this court 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 recently addressed by the court committee include access to state juvenile services by tribal jurisdictions; access to state jury lists for tribal court proceedings; the Indian Child Welfare Act; and the compilation of tribal codes, ordinances, and rules.

The Committee on Tribal and State Court Affairs continues to work on the Indian Child Welfare Act audit. It was noted as a result of the Indian Child Welfare Act audit, efforts are being made to get qualified expert witnesses for foster care and adoptive proceedings that involve Native American children. According to the testimony, the Committee on Tribal and State Court Affairs has been effective at maintaining a chain of communication between tribal and state courts.

PALEONTOLOGY PROGRAM

A representative of the paleontology program of the Standing Rock Institute of Natural History provided the committee with information regarding the program. The Standing Rock Institute of Natural History began as the Standing Rock Paleontology Program in 2007. The Standing Rock Paleontology Program was the first among both federally recognized and nonfederally recognized tribes in the country to establish a paleontology program to regulate and manage its fossil resources by a written set of laws or code. Out of this program, the Standing Rock Institute of Natural History became recognized through a grant received by the Administration for Native Americans in October 2014. According to the representative, the Standing Rock Institute's Museum of Natural History was expected to open in June 2016. The museum will exhibit fossils from the region, including a juvenile Tyrannosaurus Rex, a dig site and interactive exhibits, as well as a working laboratory where visitors can watch fossil experts at work sandblasting fossils collected from the field.

According to the testimony, the Standing Rock Institute of Natural History also plans to develop an outreach program that will involve area schools, encourage outlying schools to visit the museum, and bring tourists and business to the area. The outreach program also plans to develop an accredited field camp program for undergraduate students around the region. The testimony noted the paleontology program has a number of dig sites in Sioux County, one of which contains a 27-foot dinosaur that was discovered in June 2015. The testimony indicated more funding is needed to provide security for the sites to prevent looting.

TRIBAL RECRUITING AND RETENTION

The committee received testimony from the Adjutant General regarding efforts to improve communication and collaboration with the tribal population in the state. According to the testimony, the North Dakota National Guard is not meeting its goals with respect to the percentage of the Native American population who are in the National Guard. Native Americans make up about 5.4 percent of the state's population, but only 2.8 percent of the National Guard membership. The National Guard is evaluating its recruiting process and looking internally to make sure it is providing an inclusive culture that allows the Native American members to reach their potential. Although a number of National Guard units exist near reservations, there are not any units on reservations. It was noted when an informal tribal leader joins the National Guard others tend to join too. The National Guard is reviewing its marketing materials to ensure the materials promote the National Guard to all populations in the state.

STATE FIRE MARSHAL

The state fire marshal provided information to the committee regarding state fire services. The services provided by the State Fire Marshal's office include conducting fire inspections of public buildings, approving plans for new or remodeled schools, conducting inspections of ground fuel storage tanks, conducting fire investigations, and collecting fire department fire reports and civilian and fire service fatality reports. According to the State Fire Marshal, efforts are underway to work together with local and tribal authorities to train personnel in fire prevention and investigation techniques and procedures and to develop a memorandum of understanding with tribal, state, and local authorities to form fire investigation task forces.

ANIMAL CRUELTY LAWS AND VETERINARY SERVICES

A representative of the Human Society of the United States testified before the committee on the topics of North Dakota's animal cruelty laws and the availability of veterinary care field clinics on Native American reservations. According to the testimony, the state's animal laws with respect to neglect, abuse, cruelty, and abandonment, which are contained in Chapter 36-21.1, are adequate but the public is not aware of the laws or how to report abuse. It was noted more education is needed to create that awareness. The testimony also included information on the availability of rural area veterinary services programs that provide high-quality preventative health care and spay/neuter services to approximately 8,000 animals in remote communities throughout the United States and in other countries. According to the testimony, the domestic-based teams work primarily on Native American reservations throughout the western United States. The rural veterinary program, which has four full-time veterinarians, brings 50 to 60 veterinary students to the state each summer to provide direct-care veterinary field clinics to the reservations. From 2005 through 2014, the program provided surgeries for 4,389 animals and medication and vaccinations for 7,890 animals on reservations in the state. It was noted the clinics were again scheduled at all reservations in 2016.

CLEAN POWER PLAN

The committee received information from a representative of the State Department of Health regarding the public outreach and state strategy for the federal Environmental Protection Agency's Clean Power Plan (40 CFR 60, Subpart UUUU). In accordance with the federal rule, the state is required to detail how reductions of carbon dioxide emissions from existing fossil fuel-fired power plants will be achieved. The rule includes both state and federally enforceable requirements on the power plant operators to reduce carbon dioxide emissions. It was noted the tribes are not required to reduce emissions because the state's tribes do not own any power plants; however, the tribes will be affected by the higher energy prices that may occur as a result of the cost of reducing carbon dioxide emissions. As of the writing of this report, the United States Supreme Court had stayed the federal rule pending the completion of court challenges. It also was noted a new Congress and President in 2017 may impact the status of the plan as well.

The State Department of Health reported an estimated 1,500 people attended public outreach meetings held in Williston, Beulah, Bismarck, and Fargo. The general issues raised by the public included regional and statewide economic impacts, the cost of implementation, the remaining useful life of facilities, legal remedies, the option to request a plan development time extension, and the needed involvement of the Public Service Commission.