

TRIBAL AND STATE RELATIONS COMMITTEE

House Bill No. 1524 (2005) established the Tribal and State Relations Committee. The Tribal and State Relations Committee is composed of the Legislative Council chairman or the chairman's designee; 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. The Legislative Council chairman, or the chairman's designee, serves as chairman of the committee.

House Bill No. 1524 directed the Tribal and State Relations Committee to conduct joint meetings with the Native American Tribal Citizens' Task Force to study tribal-state issues, including government-to-government relations, the delivery of services, case management services, child support enforcement, 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 Council. The Native American Tribal Citizens' Task Force is composed of six members, including 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 Nation, or the chairman's designee; the chairman of the Three Affiliated Tribes - Mandan, Hidatsa, and Arikara Nation, 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, or the chairman's designee. House Bill No. 1524 has an expiration date of July 31, 2007.

Committee members were Senators Bob Stenehjem (Chairman), Randel Christmann, Stanley W. Lyson, and David O'Connell and Representatives Rick Berg, Duane DeKrey, and Kenton Onstad.

Members of the Native American Tribal Citizens' Task Force were Ken W. Davis, Chairman, Turtle Mountain Band of Chippewa Indians; Gerald Flute, Chairman, Sisseton-Wahpeton Oyate; Tex G. Hall, Chairman, Three Affiliated Tribes - Mandan, Hidatsa, and Arikara Nation; Ron His-Horse-Is-Thunder, Chairman, Standing Rock Sioux Tribe; Cheryl Kulas, Executive Director, Indian Affairs Commission; and Myra Pearson, Chairman, Spirit Lake Nation. James "J. C." Crawford, Sisseton-Wahpeton Oyate, was a member of the Native American Tribal Citizens' Task Force until replaced by Chairman Flute.

The committee submitted this report to the Legislative Council at the biennial meeting of the Council in November 2006. The Council accepted the report for submission to the 60th Legislative Assembly.

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 itself. 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 allottee in fee free of all encumbrances. The General Allotment Act also authorized the Secretary of the Interior to negotiate with tribes for the disposition of all excess lands remaining after allotment for the purpose of non-Indian settlement. 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 themselves 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. Both 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 please, 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 have generally 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

North Dakota Century Code (NDCC) Chapter 54-40.2 provides for agreements between public agencies and Indian tribes. 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. The term does not include an entity owned, organized, or chartered by a tribe that exists as a separate entity authorized by a tribe to enter agreements of any kind without further approval by the government of the tribe.

North Dakota Century Code Section 54-40.2-02 provides that 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 is 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. This section provides that the agreement must set forth fully the powers, rights, obligations, and responsibilities of the parties to the agreement.

North Dakota Century Code Section 54-40.2-03.1 provides that 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. The notice must also be published in any newspaper of general circulation for the benefit of any members of the tribe affected by the agreement. The notice must also be posted plainly at the tribal office of any tribe affected by the agreement and in the county courthouse of any county affected by the agreement. The notice must state that the public agency will hold a public hearing concerning the agreement upon the request of any resident of the county in which the notice is published if the request is made within 30 days of the publication of the notice.

North Dakota Century Code Section 54-40.2-03.2 provides that 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. Notice of the time, place, and purpose of the hearing must be published before the hearing in the official newspaper of each county of the state reasonably expected to be affected by the agreement. The notice of the public hearing must also be published in a

newspaper of general circulation published for the benefit of the members of any tribe affected by the agreement. The notice must also be posted plainly at the tribal office of any tribe affected by the agreement and in the county courthouse of any county affected by the agreement. The notice must describe the nature, scope, and purpose of the agreement and must state the times and places at which the agreement will be available to the public for inspection and copying.

North Dakota Century Code Section 54-40.2-04 provides that 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.

North Dakota Century Code Section 54-40.2-05 provides that 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.

North Dakota Century Code Section 54-40.2-05.1 provides that upon the request of a political subdivision or any tribe affected by an approved agreement, the Indian Affairs Commission is required to 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 is required to provide an opportunity, after public notice, for the public to submit written comments concerning the execution of the agreement. The commission is required to prepare a written report of its findings made pursuant to Section 54-40.2-05.1 and to submit copies of the report to the affected political subdivision or public agency, the Governor, and the affected tribes. The findings of the commission made under Section 54-40.2-05.1 are for informational purposes only. In an administrative hearing or legal proceeding in which the performance of a party to the agreement is at issue, the findings may not be introduced as evidence, or relied upon, or cited as controlling by any party, court, or reviewing agency, nor may any presumption be drawn from the findings for the benefit of any party.

North Dakota Century Code Section 54-40.2-06 provides that 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. This section provides that Chapter 54-40.2 may not be construed to authorize an agreement that enlarges or diminishes the jurisdiction over civil or criminal matters that may be exercised by either North Dakota or tribal governments located in North Dakota; authorize a public agency or tribal government, either separately or pursuant to agreement, to expand or diminish the

jurisdiction presently exercised by the government of the United States to make criminal laws for or enforce criminal laws in Indian country; authorize a public agency or tribal government to enter into an agreement except as authorized by its own organizational documents or enabling laws; or authorize an agreement that provides for the alienation, financial encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or Indian tribe, band, or community that is held in trust by the United States or subject to a restriction against alienation imposed by the United States. Finally, Section 54-40.2-09 provides that Chapter 54-40.2 does not affect the validity of any agreement entered between a tribe and a public agency before August 1, 1999.

2005 LEGISLATION

The 59th Legislative Assembly enacted several bills relating to Indian issues. House Bill No. 1081 required a school district that is contemplating entering an agreement with an Indian tribe to provide written notice to the Superintendent of Public Instruction that it is contemplating entering an agreement and consider written recommendations that the Superintendent makes regarding the agreement.

House Bill No. 1190 set the policy of determining further expansion of basic care facilities in the state. The bill stated the two circumstances under which basic care beds may be added between August 1, 2005, and July 31, 2007, provided the process for transferring basic care beds and addressed requirements for basic care beds acquired by Indian tribes.

House Bill No. 1191 set the policy of expansion of nursing facilities in the state. The bill retained one exception to limiting expansion of nursing facility beds, allowing a facility to revert a basic care bed to a nursing bed; allowed transfers of beds from one facility to another; provided a nursing bed that is converted to a basic care bed may be transferred as a basic care bed, but that bed may then be relicensed as a nursing bed; and addressed requirements for nursing beds acquired by Indian tribes.

House Bill No. 1254 provided that acceptable identification for the purpose of voting means identification that allows the individual's residential address and date of birth and may include an official form of identification issued by the state or a tribal government, a form of identification described by the Secretary of State, or a combination of those forms of identification.

House Bill No. 1526 required the Industrial Commission to establish at the Bank of North Dakota a guaranty program for a business located in the state which contracts with a business located in the state which is either owned by one of the five North Dakota Indian tribes or which is an American Indian-owned small business located in the state. The Industrial Commission is required to limit participation in the guaranty program so that the cumulative value of the guaranteed portion of the receivables under the program does not exceed \$5 million at any one time. The bill is effective through June 30, 2007.

Senate Bill No. 2012 increased motor vehicle fuels and special fuels tax rates from 21 cents per gallon to 23 cents per gallon. The bill also allowed an American Indian to claim a refund of motor vehicle fuel or special fuel taxes on fuel purchased from a retail fuel dealer located on the Indian reservation where the American Indian is an enrolled member. The refund provision applies to purchases made after December 31, 2004.

Senate Bill No. 2041 provided that an individual hunting on Indian land pursuant to a tribal hunting license is not required to possess a state license to hunt on that land. For purposes of this provision, Indian land includes land within the exterior boundaries of an Indian reservation held in trust by the federal government for the benefit of an Indian tribe or an Indian and land within the exterior boundaries of an Indian reservation owned in fee by an Indian tribe or an Indian. The bill also allowed properly tagged game birds legally taken on Indian land to be possessed, transported, or shipped in state and big game legally taken on Indian land to be transported, shipped, or possessed off that land.

Senate Bill No. 2372 directed the Legislative Council to study the feasibility and desirability of establishing an organization or ombudsman to support and coordinate federal, tribal, state, including institutions of higher education, and local government and private efforts to discourage destructive behavior, including alcohol and drug abuse and tobacco use. This responsibility was assigned to the Advisory Commission on Intergovernmental Relations.

House Concurrent Resolution No. 3001 directed the Legislative Council to study the legal and enforcement issues relating to child support collections on Indian reservations, including state and tribal court jurisdictions, recognition of income-withholding orders, and logistics involved in transferring child support collected to custodial parents. This study was not prioritized.

House Concurrent Resolution No. 3019 urged the United States Army Corps of Engineers to retain sufficient water in the upper portion of Lake Oahe to ensure a stable water supply for the residents of the Standing Rock Indian Reservation and surrounding communities. The resolution also complimented the Governor and the Attorney General on their efforts and urged them to continue their actions to ensure federal officials retain sufficient water in the upper portion of Lake Oahe to protect the health and well-being of the citizens of the area.

House Concurrent Resolution No. 3031 directed the Legislative Council to study issues relating to tribal-state relations, including methods for encouraging greater tribal-state cooperation; the promotion of economic development on Indian reservations in the state; the identification and study of health care, child welfare services, social services, environmental protection, education, and law enforcement issues on the reservations; the identification and study of the social and fiscal impact of providing social services in counties within and adjacent to the reservations; and the identification and proposals for the resolution of the water issues affecting the state and the tribes. This study was not prioritized.

Senate Concurrent Resolution No. 4024 urged Congress and the Secretary of the United States Department of the Interior to provide funding for the United Tribes Technical College.

ECONOMIC DEVELOPMENT INITIATIVES IN INDIAN COUNTRY

The committee reviewed implementation of Section 36 of Senate Bill No. 2018 (2005), the appropriation bill for the Department of Commerce, which expanded the responsibilities of the North Dakota American Indian Business Office to include the provision of services to assist in the formation of partnerships between American Indian and non-American Indian businesses.

Representatives of the Department of Commerce reported that the goals of this office are to provide leadership in state government to work in partnership with tribal and individual economic developers, businesses, and entrepreneurs to help grow American Indian-led businesses in the state. The office also is charged with facilitating partnerships between Indian and non-Indian businesses. Representatives of the Department of Commerce reported that a director has been hired and an additional responsibility of the office will be to improve communication between non-Indian businesses and tribal-owned and Indian-owned businesses. The functions of the office will include conducting strengths, weaknesses, opportunities, and threats analysis with top American Indian businesses, facilitating partnerships between Indian and non-Indian businesses, providing a link to government and private resources and programs, promoting the Bank of North Dakota tribal-state guaranty program, building a resource data base, communicating government procurement opportunities to American Indian businesses and helping to leverage their status, understanding current government programs and keeping up to date on changing regulations, providing recommendations to the Legislative Assembly on law and regulation changes, and working closely with the federal Small Business Administration.

The committee reviewed the implementation of the tribal-state loan guaranty program. The program was created by House Bill No. 1526 (2005). Representatives of the Bank of North Dakota reported that the Bank had formed a tribal-state guaranty working group to develop recommendations concerning implementation of the program. The working group reported that the real issue is communication between non-Indian business and tribal-owned or Indian-owned business. The working group noted that the North Dakota American Indian Business Office should facilitate improved communication between these entities. The working group reported that there are a number of loan guaranty programs available from the Bureau of Indian Affairs, Small Business Administration, United States Department of Agriculture's rural development business and industry program, and the Bank's beginning entrepreneur loan program which may be accessed. The working group reported that there does not appear to be payment problems between holders of

8A contracts and subcontractors, but there may be an issue with attracting contractors to perform work on reservations, although there are alternative methods of attracting these contractors such as escrow of funds and letters of credit. Finally, the working group reported that the Bank of North Dakota as a financial institution could help with the timing differences between paying out on a claim and final settlement, but the Bank does not have the legal expertise to review contracts required to be in the performance and payment bond business.

TAXATION IN INDIAN COUNTRY

The committee reviewed existing tax collection agreements between the state and Indian tribes in North Dakota. North Dakota Century Code Chapter 54-40.2 addresses agreements between public agencies and Indian tribes and specifically provides authority for a public agency to perform administrative services. This includes the authority for the Tax Commissioner to administer a tax collection agreement that previously has been approved by the Governor and the affected tribe. The committee learned the first tax collection agreement entered by the state occurred on May 28, 1993, with the Standing Rock Sioux Tribe. This agreement provides for the collection of cigarette and tobacco products taxes. A second tax collection agreement was entered by the state on December 1, 1998, also with the Standing Rock Sioux Tribe. This agreement provides for the collection of motor fuel and special fuel taxes.

Representatives of the Tax Commissioner reported the cigarette and tobacco products tax collection agreement between the state and the Standing Rock Sioux Tribe was a result of the tribe approving a tribal cigarette and tobacco products tax ordinance. The ordinance provides for the administration of the taxes in a manner similar to that provided for state cigarette and tobacco products taxes and having the same tax rates. For state cigarette and tobacco products taxes, licensed distributors located in this state are required to pay these taxes on cigarettes and tobacco products intended for sale to retailers in this state. This means cigarettes and tobacco products purchased by retailers from licensed distributors have been subjected to tax. However, for sales occurring on tribal lands, an exemption exists in the state's cigarette and tobacco products tax law which allows a licensed distributor to sell untaxed products to Indian retailers. Products intended for non-Indian retailers on tribal lands remain taxable. Under the tax collection agreement with the Standing Rock Sioux Tribe, only licensed distributors may sell cigarettes and tobacco products to tribal retailers, and out-of-state distributors or retailers who are not licensed are not authorized to sell these products to tribal retailers.

The motor fuel and special fuel taxes tax collection agreement between the state and the Standing Rock Sioux Tribe was the result of the tribe approving a motor fuel and special fuel tax ordinance. For purposes of the tribal tax, motor fuel includes all products commonly known or sold as gasoline and includes agriculturally derived alcohol blended with gasoline. Special fuels means all clear diesel fuel sold for use in a motor vehicle intended for use on public roads. The motor fuel and

special fuel tax ordinances apply only to the sale of fuel intended for use in motor vehicles to be used on public roads. The tax ordinances for the motor fuel and special fuel provide for the administration of the taxes in a similar manner as those provided by the state's fuel tax laws, including the same tax rates. The tribe uses the fuel tax revenues received from the tribal fuel taxes to maintain roads under the tribe's jurisdiction.

The committee learned that both of the tax collection agreements between the state and the Standing Rock Sioux Tribe recognize the tribal share of tax revenues collected on the reservation to equal 75 percent of the total tax collections less a small administration fee to be paid the state for the service of collecting the tribal taxes. The remaining 25 percent represents the sales subject to state taxes. The tribal tax is paid to the tribe on a monthly basis and the remainder is retained by the state.

The state cigarette and tobacco products portion is deposited in the general fund and the state fuel tax portion is deposited in the highway distribution fund. The formula that resulted in the 75 percent and 25 percent fixed allocation of taxes for the agreement between the state and the Standing Rock Sioux Tribe was approved based upon population demographics provided by the United States Bureau of the Census at the time the agreements were entered. The following table shows the tax collection agreement distributions for the Standing Rock Sioux Tribe for fiscal years 2001 through 2005.

Standing Rock Sioux Tribe Tax Collection Agreement Distributions for Fiscal Years 2001 to 2005*			
	Cigarette and Tobacco Products	Motor Fuels	Special Fuels
Fiscal year 2001	\$70,985	\$296,424	\$31,208
Fiscal year 2002	\$95,185	\$320,145	\$23,317
Fiscal year 2003	\$61,872	\$299,667	\$22,504
Fiscal year 2004	\$74,403	\$285,362	\$18,986
Fiscal year 2005	\$74,910	\$272,518	\$222,351
*These amounts are after the administrative fee and adjustments (refunds).			

For those tribes that do not currently have a tax collection agreement for cigarette and tobacco products, the state's authority in administering and collecting taxes is limited. The state is permitted to apply tax on products sold by an Indian retailer to a nonmember of the tribe, but the tribe's sovereign immunity prevents the state from requiring the Indian retailer operating on tribal lands to participate in the collection and remittance of taxes.

For fuel purchases occurring on tribal lands other than the Standing Rock Indian Reservation, and where a tax collection agreement does not exist and where the fuel has been subjected to state fuel tax laws, tribal members may apply for refunds of fuel taxes directly from the Tax Commissioner. The 2005 Legislative Assembly approved legislation that provides a refund of tax for fuel purchased by tribal members. To qualify for this refund, a person must be a member of a tribe located in this state, the fuel must have been purchased from a retailer or distributor located on the tribal lands of

the member's tribe, and the fuel must have been subject to the state's fuel taxes. The actual claim for refund must then be accompanied by the original receipts or invoices for the fuel purchases or an affidavit from the seller certifying the fuel purchases. The state's fuel tax laws provide a provision identifying tribal agencies as being eligible for refund for fuels used in tribal agency vehicles.

Concerning administration of tax collection agreements, representatives of the Tax Commissioner reported that tax collection agreements between the state and a tribe provide a means for the tribe to ensure state taxes are not applied incorrectly to enrolled members based on the tribe's sovereign immunity, yet enable the state to collect taxes owed by nonmembers of the tribe. The benefits of tax collection agreements, such as those between the Standing Rock Sioux Tribe and the state, allow the tribe to use the Tax Commissioner's tax collection processes and thereby receive a stable revenue source.

The committee learned that tribal tax ordinances in place are similar to those provided by state law. For cigarette and tobacco products, all retailers located on the Standing Rock Indian Reservation must purchase products from licensed distributors. With this requirement, the tribe and the state have assurances that cigarettes and tobacco products purchased and subsequently sold by non-Indian retailers and Indian retailers located on the Standing Rock Indian Reservation have been subjected to tax. This benefit to the tribe and the state is evidenced by the assurance that cigarette and tobacco products are not being purchased tax-free from out-of-state unlicensed distributors or retailers for which the state has no jurisdictional authority.

Although motor fuel and special fuel taxes do not prevent the sale of tax-free fuel to retailers located on the Standing Rock Indian Reservation, the tax collection agreements do provide for the registration of retailers and the monthly reporting of fuel purchases. In the event tax-free fuel is purchased by a retailer, the retailer is responsible under the agreement to make payment of the fuel tax. This reporting requirement provides assurances to both the tribe and the state that fuel intended for use in motor vehicles on tribal lands has been subjected to tax.

The committee learned that tax collection agreements between the state and tribes encourage fair competition between businesses operating on and off tribal lands. This goal is accomplished by having agreements in place that provide for similar laws and tax rates regardless of location. Representatives of the Tax Commissioner reported that tax collection agreements provide the process that can remove many of the jurisdictional issues and misunderstandings that may come to the attention of both the tribe and the state as it relates to transactions occurring on tribal land involving tribal members and nonmembers.

The committee learned for fuel purchases occurring on tribal lands other than the Standing Rock Indian Reservation, where a tax collection agreement does not exist and where the fuel has been subjected to state fuel

taxes, enrolled tribal members can apply for a fuel tax refund directly from the Tax Commissioner. This fuel tax refund is subject to the same requirements as other refund programs, such as agriculture and business purposes, and that the person seeking the refund must provide a receipt for the fuel. The committee also reviewed the Tax Commissioner's education program for motor vehicle fuel tax refunds for individual American Indians.

DELIVERY OF SERVICES AND CASE MANAGEMENT SERVICES IN INDIAN COUNTRY

The committee reviewed the provision of home and community-based services case management and other home and community-based services available to tribal members and other eligible citizens who are older persons or persons with physical disabilities. Case management for home and community-based services may be defined as the process within the framework of generic social work practice of providing specialized assistance to aged and disabled individuals desiring and needing help in selecting or obtaining resources and services and in coordinating the delivery of the services in order to assist functionally impaired persons to remain in the community in the most effective manner. Specialized assistance is based on the result of a comprehensive assessment.

The committee learned the provision of home and community-based services case management is currently limited to county social service boards. Case management services are currently provided to approximately 2,057 home and community-based services consumers, 214 of whom are identified as American Indian. Other services that are available to tribal members include personal care, homemaker, family home care, chore, emergency response system, respite care, adult foster care, adult day care, nonmedical transportation, environmental modification, specialized equipment, adult residential, traumatic brain injury residential, traumatic brain injury transitional living, and traumatic brain injury supported employment. These services are funded through the long-term care services budget of the Department of Human Services, which includes service payments for elderly and disabled, expanded service payments for elderly and disabled, Medicaid state plan for personal care, Medicaid waivers for aged and disabled and traumatic brain injury, and targeted case management. Home and community-based services recipients currently have the right to choose who will provide their services for all service categories except case management.

The committee learned there are currently two tribal entities enrolled as providers of home and community-based services. In addition, several tribal members are enrolled as qualified service providers of in-home care.

The committee learned that Older Americans Act Title III-funded services are also available to tribal members. The Department of Human Services Aging Services Division contracts with each of the tribal governments except the Three Affiliated Tribes - Mandan, Hidatsa, and Arikara Nation, to provide

transportation, outreach, health maintenance, and congregate and home-delivered meals. In addition, each tribal government receives Title VI Older Americans Act funds directly from the Administration on Aging to provide services to elders. This includes the National Family Caregiver Support Program.

Adult protective services, provided through the regional human service centers, are available to tribal members on the Spirit Lake and Turtle Mountain Reservations through an agreement between the Lake Region Human Service Center and both of the tribal governments. The West Central Human Service Center coordinates adult protective services with the elder protection team of the Standing Rock Sioux Nation.

The committee learned that consumer choice and consumer direction are concepts increasingly supported by the federal and state governments. As part of the New Freedom Initiative, the state has applied for and received two Real Choice Systems Change grants. One of the projects funded by the first grant, through the Olmsted Commission, was to the Indian Affairs Commission to increase the cultural appropriateness of home and community-based services.

The committee learned that the Aging Services Division of the Department of Human Services is currently implementing a Real Choice Systems Change Grant Rebalancing Initiative. The goals of this grant are to increase access to and utilization of home and community-based services for people aged 60 and above and people with disabilities, to provide a financing mechanism for home and community-based programs and services, to increase choice and self-direction for people aged 60 and above and people with disabilities, to decrease reliance on institutional forms of care, and to develop quality management mechanisms for service delivery.

The committee learned that the Governor's Committee on Aging includes five members appointed to represent each of the tribal governments and the Trenton Indian Service area. Also, two of the individuals who represented North Dakota at a recent White House conference on aging were tribal members.

The committee reviewed the status of nursing facility and basic care bed licensing on the Turtle Mountain Indian Reservation. House Bill Nos. 1190 and 1191 (2005) required basic care and nursing facility beds to be licensed within 48 months of acquisition. Representatives of the Department of Human Services reported that the Turtle Mountain Band of Chippewa Indians acquired 15 basic care beds on October 22, 2004, and the 48-month period will expire on October 22, 2008. The tribe acquired 45 nursing facility beds between August 1, 2003, and October 8, 2003, and the 48-month period will expire between August 1, 2007, and October 8, 2007. Although the State Department of Health will not license an entity on tribal property, the entity must meet licensing requirements in order to be eligible for Medicaid payments. The chairman of the Turtle Mountain Band of Chippewa Indians reported the original financing package for the Turtle Mountain Band of Chippewa Indians facility was delayed when the tribe was unable to secure a grant from the United States

Department of Agriculture for the facility. However, a site has been selected, feasibility studies have been completed, and the design is complete. The tribe is confident the new financing package will be completed and construction will commence in 2007. However, the facility will not be completed by August 1, 2007, when the 48-month expiration commences, and thus it will be necessary for the tribe to request an extension during the 2007 legislative session.

CHILD SUPPORT ENFORCEMENT IN INDIAN COUNTRY

The committee reviewed the interaction of child support enforcement services between the tribes and the state. One of the greatest challenges for the North Dakota Child Support Enforcement office is the jurisdictional issue that arises between the tribes and the state in an environment overshadowed by the federal government. The Child Support Enforcement office's caseload includes approximately 1,100 court orders issued by tribal courts in North Dakota. The office also handles court orders issued by other tribes throughout the county but has not tracked those separately. The office has approximately 5,000 additional cases, primarily with the Devils Lake and Bismarck regional child support enforcement units, where the office's options may be limited because it lacks jurisdiction to take the next step to obtain or enforce a court order.

The committee learned the federal government is a major player in addressing tribal child support issues, primarily through its authority to control intergovernmental operations and the ability to fund or not fund programs. The federal role has impacted child support enforcement in several ways. The Child Support Enforcement office has underwritten a tribal and state workgroup that has addressed a number of subjects and searched for solutions for existing problems. Regulations have been modified so tribes can obtain funding to start their own child support programs. The regulations authorize up to \$500,000 over a two-year period for a tribe to develop and implement the needed infrastructure and provide 14 core services, either through staff or contract. Federal law prescribes that states must enact the Uniform Interstate Family Support Act, which governs reciprocity among states. However, tribes are not subject to this law; instead, they follow the Full-Faith and Credit for Child Support Orders Act, which states that a court, tribal or state, which first enters a support order over parties within its jurisdiction retains continuing, exclusive jurisdiction in the case until none of the parties reside in that jurisdiction. Representatives of the Child Support Enforcement office reported the Three Affiliated Tribes - Mandan, Hidatsa, and Arikara Nation has received federal approval to run its own child support program.

TRANSPORTATION FINANCE ISSUES IN INDIAN COUNTRY

Representatives of the Department of Transportation reported the department is holding annual meetings with each tribe to discuss the department's four-year

construction and transit programs. The department also is holding tribal meetings to update the state transportation plan, TransAction.

The committee learned the state has concurrent jurisdiction with the tribes on state roads that run through the reservations. For Bureau of Indian Affairs roads, the bureau, and not the state, has jurisdiction on roads located on the reservation. The committee learned that fuel tax revenues returned to the tribes may be used by the tribes to match federal transportation funds for construction and maintenance of roads on the state's reservations.

SOVEREIGN LANDS AND OIL AND GAS RESOURCE DEVELOPMENT IN INDIAN COUNTRY

The committee invited a representative of the Attorney General to discuss the issue of sovereign lands. The representative reported that beds of rivers and lakes owned by the state are known as sovereign lands. The State Engineer manages these lands with the exception of minerals that are managed by the Board of University and School Lands. The board leases the Missouri River's riverbed throughout the oil and gas-producing areas of the state, including that area within the Fort Berthold Indian Reservation's original boundaries. At least since the mid-1980s, the Land Department has issued oil and gas leases in this area and there are approximately 100 outstanding leases. Lands leased are based on the river's pre-Garrison Dam characteristics. Relying primarily on aerial photographs from the 1940s and early 1950s, the Land Department identifies the location and acres over which it asserts authority. The department has not leased the bed of Lake Sakakawea, only the old riverbed under the lake.

When North Dakota entered the Union in 1889, the state took title to the beds of all navigable waters. An origin of this title is English law. Under English law, the Crown owned navigable waterways because title to navigable waters was important to the sovereign's ability to control navigation, fishing, and other commercial activities and thus was an essential attribute of sovereignty. The Crown's title extended to waterways in the colonies. After the Revolution and the creation of the United States, the original 13 states, as sovereign successors to the Crown, assumed title to the beds of navigable waters. The original 13 states held absolute right to all their navigable waters and the soils under them. Each new state entering the Union was entitled to the same rights held by the original states; each state enters the Union on an equal footing with the original states. State title to navigable waters thus became founded on the equal footing doctrine. This doctrine also requires the federal government to hold sovereign lands in trust for future states.

The Missouri River was navigable in 1889 and, therefore, North Dakota acquired title to it. However, where navigable waters border or flow through an Indian reservation, the question has arisen whether the equal footing doctrine applies. The tension between state title under the equal footing doctrine and tribal title recognized by treaty has resulted in considerable

litigation. The strong presumption to state title to land under navigable waters provides perhaps the best rationale under which the Land Department exercises jurisdiction over the minerals in question. This presumption can be overcome if the intent to do so was definitely declared or otherwise made plain. A state can be deprived of title to navigable waters but only in the most unusual circumstances.

WATER ISSUES IN INDIAN COUNTRY

The committee reviewed water issues in Indian country. The State Engineer briefed the committee on tribal water rights and water issues. Many western states have entered negotiations with Indian tribes to settle Indian reserved water rights claims. These claims are usually adjudicated based upon one of two standards, the practicable irrigable acreage standard or the economic viability standard. Under the practicable irrigable acreage standard, the tribe receives sufficient water to irrigate the reservation it occupies; while under the economic viability standard, the tribe receives the amount of water necessary for economic viability or to fulfill the purposes of the reservation. Whichever standard is adopted, the settlement of Indian reserved water rights claims requires a large amount of water. Indian reserved water rights have a priority date from the date the reservation was created and thus are senior to any other water rights in a specific area. Recently, an agreement was negotiated between New Mexico and several tribes from that state which is awaiting congressional ratification. The agreement calls for over \$1 billion in water development in New Mexico. The cost of the settlement is one reason the settlement has not been ratified by Congress.

The State Engineer testified that negotiation is preferable to litigation and although North Dakota does not have much experience negotiating Indian reserved water rights, there is a lot of experience nationwide. Also, there have not been any Indian reserved water rights settlements involving the Missouri River. It is incumbent upon a tribe to determine if and when it wishes to quantify and adjudicate its reserved water rights claims. The State Engineer reported the only tribe in North Dakota that has expressed any interest in pursuing its reserved water rights claims is the Turtle Mountain Band of Chippewa Indians.

The State Engineer also briefed the committee on the Indian municipal, rural, and industrial water supply program. This program is administered by the Bureau of Reclamation. Garrison municipal, rural, and industrial water supply funds are essentially split 50-50 between the state and tribes. One difference between the state program and the tribal program is that the federal government pays 100 percent of Indian municipal, rural, and industrial water supply operation and maintenance costs. Under the state municipal, rural, and industrial water supply program, water users are responsible for 100 percent of the operation and maintenance costs. The state municipal, rural, and industrial water supply program is composed of 75 percent federal funds and 25 percent nonfederal funds.

The Indian municipal, rural, and industrial water supply program was authorized under two federal Acts--the Garrison Reformulation Act of 1986 and the Dakota Water Resources Act of 2000. The Garrison Reformulation Act of 1986 authorized \$200 million of state municipal, rural, and industrial water supply projects and \$20 million in Indian municipal, rural, and industrial water supply projects. The Indian municipal, rural, and industrial water supply funds were indexed for inflation while the state funds were not. All of the money authorized in this Act has been expended. The Dakota Water Resources Act of 2000 authorized \$200 million in state projects, \$200 million in Indian projects, and a \$200 million Red River Water Supply Project. The 2000 authorizations were indexed for inflation. The state has not received any of the money authorized in 2000 and, indexed for inflation, the total authorization is now \$260 million. Tribes in North Dakota have spent \$48 million in Indian municipal, rural, and industrial water supply funds since 1986 and have approximately \$240 million in authorized funds remaining.

GAME AND FISH ISSUES IN INDIAN COUNTRY

The committee reviewed the implementation of 2005 Senate Bill No. 2041, which dealt with hunting on Indian land. Representatives of the Game and Fish Department reported that, in general, the legislation is working very well and there have been fewer conflicts involving Indian and non-Indian hunters hunting on or off reservation. Also, the bill has led to improved communication between the state Game and Fish Department and tribal fish and game departments. Positive aspects include the cooperative season on mountain lions, separate regulations implemented for North Dakota and South Dakota by the Wahpeton-Sisseton Oyate Tribe, and similarity of seasons between the state and the Three Affiliated Tribes - Mandan, Hidatsa and Arikara Nation. However, representatives of the Game and Fish Department reported the department does have several concerns. These concerns involve the Standing Rock Sioux Tribe which has adopted certain regulations counter to state law and there is a lack of coordination between state and tribal seasons.

Representatives of the Three Affiliated Tribes - Mandan, Hidatsa and Arikara Nation testified that enactment of 2005 Senate Bill No. 2041 was a huge success and emphasizes state and tribal cooperation in the game and fish area. They characterized North Dakota as a leader among the states in relations between the states and tribes on game and fish issues.

METHAMPHETAMINE ISSUES IN INDIAN COUNTRY

The committee reviewed the methamphetamine problem and how the state and tribes can work together to confront the methamphetamine epidemic in North Dakota. Representatives of the Bureau of Criminal Investigation reported that from January 1, 2003, to October 10, 2003, the state discovered 254

methamphetamine laboratories. The state discovered 175 laboratories during the same period in 2004 and 184 during the same period in 2005, while only 38 laboratories have been discovered during the same period in 2006. The representative of the Bureau of Criminal Investigation attributed the decline in methamphetamine laboratories in North Dakota to the work the Legislative Assembly and the Attorney General have done to control the distribution of psuedophedrine. However, the majority of methamphetamine present in North Dakota is not being produced in North Dakota but is being brought in from out-of-state producers. Thus, 40 percent of the state's Highway Patrol officers have been trained to identify drug couriers.

Representatives of the Bureau of Criminal Investigation reported the Safe Trails Task Force has recently been established. The task force is composed of 10 members, including tribal and Federal Bureau of Investigation officers, and is headquartered in Bismarck. The task force is establishing contacts on each of the state's reservations to combat the methamphetamine problem. Also, the Bureau of Indian Affairs and the Indian Affairs Commission assisted the United Tribes Technical College in applying for and receiving a grant to develop information-sharing techniques between state, federal, and tribal law enforcement agencies. The grant is designed to reduce alcohol and drug-related crimes in a borderless environment.

The president of United Tribes Technical College reported the objective of the task force established under the grant is to develop better communication between the state and the tribes on law enforcement issues. The task force learned that because methamphetamine does not respect jurisdictional lines, there needs to be greater cooperation among the state's various law enforcement agencies to combat these problems. The task force is grappling with the issue of how sensitive information can be shared between law enforcement agencies without violating any confidentiality restrictions.

LAW ENFORCEMENT ISSUES IN INDIAN COUNTRY

The committee reviewed law enforcement issues in Indian country. The committee learned the North Dakota Supreme Court has recognized that NDCC Section 11-15-02 provides a sheriff wide latitude in the appointment of special deputies. The appointment of a special deputy is not limited to only one-time conditions and the special deputy appointed by a sheriff does not have to be a peace officer licensed by the Peace Officer Standards and Training Board. As a deputy to a county official, a special deputy has the same peace officer powers of the sheriff unless such powers are limited by the appointment.

EDUCATION IN INDIAN COUNTRY

The committee reviewed the activities of the P-16 Education Task Force. In September 2005, the State Board of Public School Education, State Board of Higher Education, the Education Standards and Practices Board, and State Board for Career and Technical Education established a steering committee

charged with developing a P-16 Education Task Force. The task force consisted of members representing various levels of education, the business community, school boards, associations, agencies, students, and parents selected from throughout North Dakota. The task force was established to examine all levels of education and to review standards, student assessments, the rigor of the curriculum, data availability, public awareness, teacher availability and development, resources, and best practices.

Goals agreed upon by the task force included the goal that North Dakota should put in place and enforce throughout its P-16 education system uniform, consistent proficiency expectations and standards to ensure that each student has a support system in place to enable the student to achieve proficiency; the goal that all North Dakota students should have equitable access to and the expectation of completing a rigorous core curriculum and standards taught by effective and highly qualified P-16 educators; the goal that top performing North Dakota students should be encouraged to become P-16 educators; the goal that North Dakota should provide academic and career assessment and counseling that is comprehensive, developmental, and systematic from preschool through postsecondary education and to employment and life to help students enhance their academic achievement by linking classroom studies to future choices, achieve skills the students will need to transition successfully to post-secondary education and work, and develop the skills needed to make informed decisions throughout life; the goal to educate the public about the importance of identifying and correcting weaknesses in the North Dakota education system; and the goal to seek new and to reallocate current resources to accomplish these goals.

In order to accomplish the first four goals, the task force developed 26 strategies, including establishing statewide requirements for graduation from high school and admission into postsecondary institutions of four years of language arts and reading, four years of mathematics, three years of science, three years of social and multi-cultural studies, one year of physical education, and two years of foreign language or career and technical education or fine arts by 2014; developing a statewide data system, ensuring that all students are proficient in these areas through regular assessments and individual assistance; creating an alignment commission to develop on a continuing basis a common set of standards and expectations at all levels of education in North Dakota; increasing the number of student-teacher contact days from 173 to 183 by 2013; enhancing educator salaries consistent with increased number of teaching days and student achievement and providing more professional development incentives and opportunities; adding three units to the current 21 units required to graduate by 2011; requiring immediate implementation of full-day kindergarten beginning at age 6; and increasing substantially the number of academic and career counselors to assist students and parents to set and achieve appropriate career paths and goals.

The executive director of the Indian Affairs Commission reported that the tribal members of the P-16 Education Task Force identified several goals in addition to the six contained in the final report. The tribal members believed the task force should have endorsed the adoption of a policy of systematic representation and creation of an Indian education advisory council so that education professionals would have a cadre of educators to work on American Indian specific strategies designed to approve student achievement. This goal may be realized through legislation enacted during the 2007 legislative session. This legislation should target schools with significant enrollments of American Indian students, provide focused professional development for teachers of American Indian students on culturally sensitive and appropriate strategies, provide summer school enrichment strategies for students, create college-bound cohorts of American Indian students, and provide career path counseling.

The superintendent of the Twin Buttes Public Schools reviewed high school tuition shortfalls for the Twin Buttes Public School District. The Twin Buttes Public School District is an elementary school district located within the Fort Berthold Indian Reservation in the southern segment of the reservation. The district has had to send its high school students to off-reservation public high schools for their high school education. The Twin Buttes Public School District is being asked to pay as much as \$24,000 for tuition per student per year by the Halliday Public School District, \$10,359 by Golden Valley, and \$5,000 by Killdeer. The cost for tuition and transportation payments has become cost-prohibitive to the Twin Buttes Public School District. The superintendent testified that NDCC Section 15.1-29-03 should be amended so that elementary school districts that are charged with educating their students outside the district are given the resources to pay the high school tuition and transportation costs.

Representatives of the state's tribal colleges briefed the committee on the function of the state's tribal colleges and the services provided by these institutions. There are five tribal colleges located in North Dakota--Fort Berthold Community College at New Town, Turtle Mountain Community College at Belcourt, Cankdeska Cikana Community College at Fort Totten, Sitting Bull Community College at Fort Yates, and United Tribes Technical College at Bismarck. The Sisseton-Wahpeton Community College is located just across the border in Sisseton, South Dakota. There are 54,074 tribal members in North Dakota, and reservations in North Dakota consist of 3,829,221 acres of land. American Indian unemployment and poverty rates greatly exceed the national average while high school and college graduation rates are less than the national average. Ten percent of North Dakota's school-age population is American Indian, and this segment of the state's population is the only portion that is growing. The tribal college system was created because of a lack of a state commitment to the tribes and the need for tribal access to higher education. Tribal colleges are distinctly indigenous and do what other colleges cannot. Tribal colleges provide education for American Indians,

including American Indian culture, history, languages, rights, and law. In addition, the state's tribal colleges are land grant colleges similar to North Dakota State University and thus can compete for United States Department of Agriculture grants. There are no enrollment caps at the state's tribal colleges and the colleges have an open door policy in that they turn no students away. Tribal colleges and universities receive no Section 471 federal money or state funds for education for non-Indian students and thus must absorb the cost for educating non-Indian students. Non-Indian students comprise 7.3 percent of total enrollment at the state's tribal colleges.

The president of Sitting Bull College at Fort Yates testified that tribal colleges provide a valuable service to American Indian students and benefit not only the tribes and tribal communities but the entire state of North Dakota. The president of United Tribes Technical College testified the state's tribal colleges have a large economic impact on the state. United Tribes Technical College has experienced a near doubling of its enrollment in the last few years and as United Tribes Technical College grows, so does its impact on Bismarck and Mandan. United Tribes Technical College's total direct impact on Bismarck and Mandan is \$21,552,865 and accounts for 1.8 percent of taxable

sales in those cities. During the United Tribes International Powwow, total direct impact on Bismarck and Mandan is \$4,344,320 with a statewide impact of \$4,551,525. United Tribes Technical College's total direct impact in North Dakota is \$21,780,070.

The president of United Tribes Technical College testified the state's tribal colleges are facing several fundamental issues. These include non-Indian student enrollment; transfer students; cooperation and collaboration protocol; the P-16 Education Task Force recommendations; economic development; and inequity in science, technology, engineering, and mathematics. The state's tribal colleges are recommending that partnerships be formed that respect the integrity of tribes and tribal colleges, that the state and tribal colleges explore mechanisms to fund non-Indian students attending tribal colleges and universities, that tribal colleges be included in the state's centers of excellence program and that the state work with tribal colleges to strengthen partnerships in education, business, technology, health, and research.

CONCLUSION

The committee makes no recommendation concerning tribal and state relations.