

November 2009

## EFFECT OF FEDERAL, STATE, AND COUNTY GOVERNMENT FUNDING AND ADMINISTRATION ON THE SOCIAL SERVICE PROGRAMS OF TRIBAL GOVERNMENTS - BACKGROUND MEMORANDUM

The 2009 Legislative Assembly approved House Concurrent Resolution No. 3003, attached as an [appendix](#), providing for a Legislative Management study of the extent to which the funding mechanisms and administrative structures of the federal, state, and county governments enhance or detract from the ability of the social service programs of tribal governments to meet the needs of tribal members.

### PREVIOUS STUDIES

The **1997-98 Budget Committee on Human Services** studied the responsibilities of county social service agencies as they are distinguished from the responsibilities of regional human service centers and the Department of Human Services when providing services to children and their families and persons with disabilities, including the elderly. The committee learned representatives of the county social service boards and the Children and Family Services Division of the Department of Human Services formed a committee and conducted meetings to develop recommendations on a children and family services "swap" proposal relating to the administrative and grant responsibilities of county social services and the Department of Human Services. In addition, the committee met in October 1997 with the Budget Committee on Long-Term Care and the Welfare Reform Committee to receive input from tribal members and to discuss tribal human service issues.

The committees received testimony from representatives of the Department of Human Services regarding:

- The disproportionate number of American Indians receiving services offered through the department.
- Past efforts that have demonstrated success in providing services on the reservations hinge upon focusing on assisting tribal members to develop and operate their own programs.
- The need for the department and tribal governments to work together to identify the various unmet needs and remove barriers to effective services.
- The percentage of American Indian children in foster care during fiscal year 1997 totaled approximately 33 percent, compared to 7 percent of the state's total population under age 18.
- The belief that the most effective child welfare programs on the reservations are those that the tribes run themselves. Several years ago the department began providing technical assistance to tribes in the development of their

infrastructure for the delivery of child welfare services on reservations.

- The tribal children's services coordinating committees' development of five-year plans for the provision of child welfare services to children at risk, and tribes are eligible to receive their own child care development block grant money.
- The tribes' process of developing, with the assistance of the Children and Family Services Division, other unique child welfare services, including a special needs adoption program for American Indian children, specialized tribal therapeutic foster care, and independent living programs for American Indians.

As a result of its review of county and state responsibilities relating to services for children and their families and the elderly, the committee's only recommendation was in the area of subsidized adoption. The committee recommended 1999 Senate Bill No. 2032 to require the Department of Human Services to pay the cost, in excess of the federal share, of assistance provided adopted children with special needs and related administrative costs. The bill was not approved by the 1999 Legislative Assembly.

The **1997-98 Budget Committee on Long-Term Care** studied American Indian long-term care needs and access to appropriate services and the functional relationship between state service units and the American Indian reservation service systems. The committee received information regarding nursing facilities located on or near Indian reservations, including capacity, percentage of staff that is American Indian, and percentage of residents that are American Indian. The committee learned that there were no American Indian-specific long-term care programs and reviewed the funding of the various long-term care programs. The committee learned 175 American Indians received nursing facility services through the Medicaid program, representing 3 percent of the total number of individuals receiving services during federal fiscal year 1996. The cost of these benefits totaled \$2.8 million and represented 2 percent of the nursing facility expenditures during the same time period.

The committee learned a Task Force on Long-Term Care Planning indicated that it was unable to establish a committee comprised of representatives of each reservation and non-American Indians to study the American Indian long-term care needs. The task force recommended that the study of American Indian

long-term care needs be continued during the next interim.

The committee recognized the need for the continuance of the study of American Indian long-term care needs. In addition, the committee recognized that the opportunity exists for significant improvements relating to the possibilities of coordination of state, county, and local service units and tribal or reservation service delivery and case management. Because of these observations, the committee recommended 1999 House Concurrent Resolution No. 3002 to provide for a Legislative Council study of American Indian long-term care and case management needs, access to appropriate services, and the functional relationship between state service units and the North Dakota American Indian reservation service systems. The resolution called for the creation of a separate working group on each reservation to carry out the provisions of the study. This study was not prioritized by the Legislative Council for study during the 1999-2000 interim.

The **1997-98 Child Support Committee** was charged with studying the provision of child support services in this state and considering whether child support services could be more efficiently and effectively provided and, if so, by which agency or unit of government. The committee learned the regional child support enforcement units do not service North Dakota Indian reservations because federal law requires that tribal codes meet the requirements of Title IV-D of the Social Security Act. The current tribal codes do not meet federal Title IV-D requirements. The Department of Human Services received a federal grant to revise the tribal codes to come into compliance with federal requirements and the grant project is being administered through the Northern Plains Tribal Judicial Training Institute at the University of North Dakota School of Law. Under the grant project, tribal codes will be drafted for each of the four tribal jurisdictions for presentation to the tribal councils for approval. The department reported that once the Indian reservations join the child support enforcement program, Indian reservation cases will account for approximately 16 percent of the state's Title IV-D caseload. The committee made no recommendation regarding the provision of child support services.

The **1997-98 Criminal Justice Committee** studied programs to prevent crime and delinquency and reduce incarceration and the prevention of and dispositional alternatives to juvenile crime with a focus on services offered to American Indian children. The committee was directed to study crime prevention programs other than incarceration and legislation suggested a review of programs identified in the 1996 research report *Diverting Children From a Life of Crime - Measuring Costs and Benefits*, which included information on early childhood interventions for children at risk of developing antisocial behavior, interventions for families with children exhibiting aggressive and antisocial behavior, providing

graduation incentives for disadvantaged high school students, and early monitoring of youth exhibiting delinquent behavior. In addition, the legislation created a Delinquency Prevention Consortium composed of representatives from the Department of Corrections and Rehabilitation, Department of Human Services, Department of Public Instruction, and other state agencies and private organizations to cooperate with the Legislative Council in the completion of this study.

The committee learned a final report of the North Dakota American Indian Juvenile Justice Summit summarized problems facing American Indians and offered solutions for those problems. Because of the status of Indian tribes as sovereign nations, there are limits on the jurisdiction of the state to aid in the juvenile justice system on reservations. According to a representative from the Indian Affairs Commission, the jurisdictional issue is not the major problem, but the issue is of coordination in providing services, especially to children who have entered both the tribal and state systems.

The committee made no recommendation regarding the study of the prevention of and dispositional alternatives to juvenile crime with a focus on services offered to American Indian children.

The **1997-98 Welfare Reform Committee** studied the issues of welfare reform relating to the relationship between the state and the federally recognized Indian tribes within the state. The committee, in conducting its study, was to solicit input from tribal members, tribal leaders, and tribal government officials interested in state and tribal welfare reform issues.

The committee learned the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 allows Indian tribes with an approved tribal family assistance plan to directly receive and administer the temporary assistance for needy families (TANF) block grant funds for a tribal welfare program beginning in fiscal year 1997. The tribe must receive approval from the United States Department of Health and Human Services for a tribal TANF program for a minimum of three years. The state's TANF block grant would be reduced by any amount provided directly to a tribe. In structuring a welfare program, a tribe has the flexibility to establish its own work participation rates and time limits, subject to federal approval.

The committee met in October 1997 with members of the Budget Committee on Long-Term Care and the Budget Committee on Human Services to receive input from tribal members and to discuss tribal human service issues. The committees received testimony from the director of the Division of Tribal Services, Administration for Children and Families, United States Department of Health and Human Services, Washington, D.C. The testimony identified major issues the tribes and the states need to address as tribes develop tribal TANF programs summarized as follows:

- States and tribes should have a common interest and challenge to see that no person who is eligible and in need of services "falls through the cracks."
- States must continue to provide the approximate 30 percent share that was previously contributed under the aid to families with dependent children (AFDC) program to tribes when the tribes assume responsibility for TANF operations.
- Tribal programs will need state administrative support because of certain minimum costs to be incurred regardless of program size, including staff and programming.
- Program standards and definitions must be coordinated between the tribes and the state.
- Accountability must be addressed by an agreement between tribal and state governments, adjusted as necessary.
- Economic development, job creation, and job training must be available on the reservations.

The committee made no recommendations regarding its monitoring of welfare reform and tribal welfare reform issues.

The **1999-2000 Budget Committee on Human Services** studied the operation of the TANF program in North Dakota as it relates to the relationship between the state and the federally recognized Indian tribes in the state. Section 3 of 1999 Senate Bill No. 2114 required the Department of Human Services to report to the Legislative Council regarding the progress of any negotiation with any tribal government to establish a pilot project for administration of a tribal family assistance grant. The Budget Committee on Human Services was assigned this responsibility.

The committee learned the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 allows Indian tribes with a federally approved tribal assistance plan to directly receive and administer the TANF block grant funds for a tribal welfare program. Each tribe's share is based on the federal portion of AFDC money spent in federal fiscal year 1994 for Indian families in the service area described. The state's TANF block grant is to be reduced by any amount provided directly to a tribe, and the state's maintenance of effort requirement is also to be reduced appropriately. The state's contribution for a pilot tribal TANF program is limited to the state per client welfare cost in federal fiscal year 1994 times the tribe's number of welfare clients in April 1999.

The committee received information from a representative of the National Conference of State Legislatures regarding the federal regulations that allow tribes to design their own TANF programs. The committee learned the tribe has the flexibility to establish its own benefits, eligibility requirements, work participation rates, time limits, and definitions of work and family. The tribe may receive federal funding for all welfare-eligible families in the tribe's defined service area but may develop a tribal TANF

program that serves only a portion of the families. Therefore, the state may have an obligation to continue to provide services to members of tribes operating a tribal TANF program based on the tribal TANF service plan. If the plan is accepted, the tribe is required to give the state a 30-day notice of its withdrawal from the state TANF program.

The committee made no recommendations regarding its study of tribal TANF issues.

The **2003-04 Budget Committee on Human Services** studied the administrative costs of human service programs. The study included administrative costs incurred by the central office of the Department of Human Services, human service centers, and county social services. In addition, the study included a review of the effects of the 1997 "swap" legislation on state and county human service program costs.

The committee reviewed the administrative costs and other costs of the Department of Human Services central office, State Hospital, Developmental Center, human service centers, and county social services programs. The committee learned the "swap" agreement, which was approved by the 55<sup>th</sup> Legislative Assembly (1997), required counties, effective January 1, 1998, to assume financial responsibility for the costs of administering certain economic assistance programs and required the state to assume complete financial responsibility for grant programs, including TANF, basic care assistance, child care assistance, and medical assistance. In addition, the state agreed to provide additional support for administrative costs of counties with Indian land.

The committee received information on the administrative functions and costs of child support enforcement programs, including information regarding state jurisdiction on Indian reservations. Congress enacted Public Law 280 in 1953, which gave six "mandatory" states civil and criminal jurisdiction over all or part of Indian country within those states. Public Law 280 also authorized another group of states, which included North Dakota, to voluntarily opt to assume criminal and civil jurisdiction over Indian country. The second group of eight states was empowered to assume such jurisdiction by amending their state constitutions and state statutes. In 1963 the North Dakota Legislative Assembly passed legislation (North Dakota Century Code (NDCC) Chapter 27-19) requiring tribal acceptance of jurisdiction before the state can assume jurisdiction in certain matters. Under this law, determining the parentage of children; termination of parental rights; commitments by district courts; guardianship; marriage contracts; and obligations of support of spouse, children, or other dependents are examples of the types of cases which the state courts could decide if the tribes agreed. In addition to the statutory provision regarding the consent of tribes before the state can assume jurisdiction, in 1968 Congress enacted similar provisions to limit the further extension of Public Law 280. The 1968 provisions require tribal

consent, by majority vote of the adult members, before any of the option states could assume jurisdiction over any areas of Indian country. Since the enactment of this amendment, no tribe has voted to consent to state court jurisdiction. In addition, Public Law 280 was amended to provide that states that had previously opted to exercise jurisdiction over Indian country could retrocede or disclaim such jurisdiction, subject to acceptance by the federal government.

The committee learned the federal government has made federal funding available to Indian tribes for developing their child support programs. The federal regulations require Indian tribes to accept child support withholding orders from other jurisdictions in order to be eligible to receive the federal funds. The committee learned the Sisseton-Wahpeton Reservation has established its own child support program.

Representatives of Ramsey County provided testimony suggesting a committee should be established to review the child support collection process in the state and the committee include representatives of state agencies, regional child support enforcement units, counties, the legislative branch, the judicial branch, and Indian tribes.

The North Dakota Supreme Court's Committee on Tribal and State Court Affairs included representatives of both state and tribal courts. The purpose of the committee was to expand tribal and state court judges' knowledge of the respective judicial systems and to identify and discuss issues regarding court practices, procedures, and administration which are of common concern to members of tribal and state judicial systems. Procedures are to be in place in tribal courts relating to recognizing state court orders. Procedurally, a petitioning process to the court is required; a hearing held; and then, if appropriate, the order will be issued.

The committee discussed the child support enforcement issue, received testimony from other interested persons, and made the following observations:

1. The location of Indian reservations within a regional child support unit's area results in a larger caseload for the unit.
2. Because the counties are required to provide social services to persons on an Indian reservation, while the reservation does not contribute to the county's tax base, an unfair tax burden is placed on other taxpayers.
3. The funding of social services for persons on reservations should be the responsibility of the state or federal government, not the county.
4. The state Child Support Enforcement Division should enter into a cooperative agreement with the tribes to address the jurisdictional issues with the reservations.
5. Discussions between state and tribal leaders need to occur to improve the child support collection process.

6. The lack of child support collections on Indian reservations is an enforcement problem.
7. When child support is not collected, limited state funding available for other children and families in need is further reduced.
8. Improvements can be made on jurisdictional issues with Indian reservations by increasing the level of communication between the entities involved.

The committee recommended, and the 2005 Legislative Assembly approved, House Concurrent Resolution No. 3001 to provide for a Legislative Council study of the legal and enforcement issues relating to child support collections on Indian reservations, including issues relating to state and tribal jurisdictions, recognition of income-withholding orders, and logistics involved in transferring funds collected to custodial parents. This study directive was not prioritized by the Legislative Council for study during the 2005-06 interim.

In addition, House Concurrent Resolution No. 3031, approved by the 2005 Legislative Assembly, 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 directive was not prioritized by the Legislative Council for study during the 2005-06 interim.

House Bill No. 1524 (2005) established the Tribal and State Relations Committee. The **2005-06 Tribal and State Relations Committee** consisted of the Legislative Council chairman or the chairman's designee; three members of the House of Representatives, two of whom were selected by the leader representing the majority faction of the House of Representatives and one of whom was selected by the leader representing the minority faction of the House of Representatives; and three members of the Senate, two of whom were selected by the leader representing the majority faction of the Senate and one of whom was selected by the leader representing the minority faction of the Senate. The Legislative Council chairman, or the chairman's designee, served as chairman of the committee.

In addition, 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. The Native American Tribal

Citizens' Task Force consisted 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.

The committee learned 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.

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 services 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 Older Americans Act Title VI funds directly from the Administration on Aging, United States Department of Health and Human Services, 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 Tribe.

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 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.

The committee made no recommendation concerning tribal and state relations.

The **2007-08 Human Services Committee** studied the success and effects of the laws enacted by the 55<sup>th</sup> Legislative Assembly in House Bill No. 1041 (1997) and Senate Bill No. 2052 (1997), known as the

"swap proposal," which required counties to pay the entire cost of the local administration of Medicaid, energy assistance, basic care assistance, child care assistance, and TANF in exchange for the state's assumption of the full responsibility for paying the grant costs associated with those programs.

The committee received information regarding state appropriations for grant costs of TANF, basic care assistance, child care assistance, medical assistance, and Indian counties assistance for the 1997-99 through 2007-09 bienniums.

The committee learned prior to the 1997-99 biennium, the Department of Human Services was appropriated \$440,000 to be allocated to Benson, Sioux, and Rolette Counties for assisting in the cost of providing economic assistance programs due to the large amount of tax-exempt land in these counties. The 1997 Legislative Assembly provided an additional \$619,000 to the Indian county appropriation for assistance to these counties. Beginning in the 1999-2001 biennium, the Indian county payments were based on a statutory formula. The committee received the following schedule providing information on Indian county payments since the 1997-99 biennium:

		<b>Locally Administered Economic Assistance Program Costs in Excess of Statewide Average Costs (Expressed in Mills)</b>			
		<b>Formula Effective January 1, 2000</b>	<b>Reimbursed at 90 Percent</b>		<b>Reimbursed at 100 Percent</b>
<b>County</b>	<b>1997-99 Biennium</b>	<b>1999-2001 Biennium</b>	<b>2001-03 Biennium</b>	<b>2003-05 Biennium</b>	<b>2005-07 Biennium</b>
Benson	\$174,086	\$266,641	\$393,794	\$441,930	\$540,101
Dunn		30,132	40,788	59,543	68,122
McKenzie		100,036	167,740	105,352	106,518
Mountrail		140,661	270,437	321,497	415,824
Rolette	704,672	926,269	1,193,203	1,347,762	1,499,962
Sioux	180,236	312,681	415,014	440,542	560,359
<b>Total</b>	<b>\$1,058,994</b>	<b>\$1,776,420</b>	<b>\$2,480,976</b>	<b>\$2,716,626</b>	<b>\$3,190,886</b>
Biennial increase		\$717,426	\$704,556	\$236,650	\$474,260
Percentage increase		67.75%	39.66%	9.50%	17.46%

The committee learned since the "swap" agreement, the reimbursement process and budgeting have become easier for counties. Counties have better control over staffing issues and are able to better manage tax revenue requirements. The agreement has resulted in efficiencies to counties for administering economic assistance programs.

The committee received information regarding the estimated fiscal effects of the "swap" agreement on counties and the state. For the 2005-07 biennium, the committee learned counties avoided an estimated \$14.28 million of costs due to the agreement. The following schedule details the avoided county costs since 1999:

	<b>1999-2001</b>	<b>2001-03</b>	<b>2003-05</b>	<b>2005-07</b>
Grant costs in excess of administration reimbursement	\$870,000	\$3,700,000	\$6,530,000	\$10,300,000
Additional funds for countywide cost allocation plan fee	230,000	70,000	0	0
Additional computer costs in excess of fiscal year 1995 costs adjusted for inflation	890,000	1,650,000	1,240,000	1,230,000
Additional Indian county funds provided in excess of \$440,000	1,340,000	2,040,000	2,280,000	2,750,000
<b>Total avoided county expenditures and corresponding additional state costs</b>	<b>\$3,330,000</b>	<b>\$7,460,000</b>	<b>\$10,050,000</b>	<b>\$14,280,000</b>

The committee made no recommendations regarding the study of the economic assistance program responsibilities of the state and counties.

North Dakota Century Code Section 54-35-23 (2005 House Bill No. 1524) established the Tribal and State Relations Committee, which expired July 31, 2007. Senate Bill No. 2402 (2007) extended the expiration date of the committee from July 31, 2007, to July 31, 2009. Section 54-35-23 directed the 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.

The **2007-08 Tribal and State Relations Committee** reviewed periodic reports concerning the interaction of child support enforcement services between the tribes and the state. The Three Affiliated Tribes - Mandan, Hidatsa, and Arikara Nation is the only tribe in North Dakota that has a federally funded child support enforcement program. Representatives of the Child Support Enforcement office of the Department of Human Services reported that the state and the Three Affiliated Tribes - Mandan, Hidatsa, and Arikara Nation have developed a government-to-government working relationship. The state and the Three Affiliated Tribes - Mandan, Hidatsa, and Arikara Nation have entered a cooperative agreement concerning child support enforcement. A review of statistics showed an estimated 700 cases with lack of jurisdiction on which no further collection action was being taken before the cooperative agreement. The cooperative effort began with recognition that each party is a sovereign government receiving federal funding for the operation of a child support program. The cooperative effort protects the cultural diversity of tribal members and citizens of the state and there is a desire to cooperate and share resources and expertise to ensure parents and children receive necessary child support. To the greatest extent possible, the cooperative effort recognizes that only one entity should provide child support enforcement services.

Representatives of the state Child Support Enforcement office reported that progress between the state and the Standing Rock Sioux Tribe is occurring. However, the committee learned that interactions between the state Child Support Enforcement office and the Turtle Mountain Band of Chippewa Indians have not been as successful as with other tribes. The committee learned that child support enforcement cases involving the Turtle Mountain Band of Chippewa Indians with concurrent jurisdiction that would have been taken to tribal court are now moving into state court as that is the only avenue available to the state.

The committee reviewed the provision of home and community-based services to tribal members. Case management for home and community-based services involves providing specialized assistance to

aged and disabled individuals desiring and needing help in selecting or retaining resources and services and of coordinating the delivery of the services to assist functionally impaired persons to remain in the community in the most effective manner.

The committee learned that as of November 7, 2007, there were 115 active cases on the Turtle Mountain Reservation, 104 on the Fort Berthold Reservation, 37 on the Spirit Lake Reservation, and 12 on the Standing Rock Reservation. There were 90 clients identified as American Indian on the Turtle Mountain Reservation, 61 on the Fort Berthold Reservation, 32 on the Spirit Lake Reservation, and 9 on the Standing Rock Reservation. Representatives of the Medical Services Division of the Department of Human Services reported that the potential annual case management payment is \$33,211 for the Turtle Mountain Reservation, \$23,165 for the Fort Berthold Reservation, \$11,007 for the Spirit Lake Reservation, and \$2,791 for the Standing Rock Reservation.

The committee learned that the Medicaid state plan limits case management services to be delivered by public agencies that have individual case managers who meet specific qualifications. North Dakota Century Code Chapter 50-06.2 allows case management services to be provided by county agencies and human service centers. The home and community-based services Medicaid waiver requires that individuals providing case management services meet minimum qualifications. On December 4, 2007, the Centers for Medicare and Medicaid Services issued an interim final rule, which proposes to make significant changes to Medicaid-funded case management. As a result of changes required by this rule, the Department of Human Services was required to modify and submit various state plan amendments in order to assure continued Medicaid coverage of allowable case management services. The committee learned that direct care services may not be claimed as case management, but only those activities defined by the Centers for Medicare and Medicaid Services will be eligible for Medicaid case management reimbursement. These activities include assessment of an individual to determine that individual's service needs; development of a care plan that addresses the service needs identified in the assessment; referral and related activities to help an individual obtain needed services; and monitoring and followup activities, including contacts, to ensure the care plan is effectively implemented. The department submitted language to the Centers for Medicare and Medicaid Services which would allow the community health representatives to provide case management services to American Indian elders. The regulation was subsequently placed on moratorium and a notice of intent to withdraw the regulation was issued. Most of the regulation has since been withdrawn. The department is reviewing the implications of the withdrawal but does not anticipate it will adversely affect the department's application.

Representatives of Rolette County Social Services briefed the committee on county human service caseloads in Indian country. County social service providers are charged with providing many services, including TANF, food stamps, medical assistance, fuel assistance, child care, foster care, home and community-based services, and child protection services. Rolette County is one of the few rural counties in North Dakota with a growing population. As a result, the challenges facing county social service providers in Rolette County are great. These include providing transportation for clients to services, affordable housing, lack of medical care, and attracting and retaining staff. The committee learned that reimbursement rates are substantially below the actual cost of providing services and that social service providers are unable to compete in attracting and retaining staff to provide needed services. The committee learned that 650 of the state's 2,400 TANF cases are in Rolette County. Twenty-six percent of the state's TANF cases are in the Devils Lake region, which includes the Spirit Lake Reservation and the Turtle Mountain Reservation.

The committee received testimony from tribal and local social service office representatives that tribes should be more involved in identifying social service needs on the state's reservations and forwarding this information to the Department of Human Services to be used in preparation of the department's budget. The committee discussed the sustainability of tribal social service programs and the possibility of tribal social service programs participating in development of the Department of Human Services' budget request.

The committee recommended, and the 2009 Legislative Assembly approved, House Concurrent Resolution No. 3003 directing the Legislative Council to study the sustainability of tribal social service programs.

## 2009 LEGISLATION

**Extension of the Committee on Tribal and State Relations** - House Bill No. 1060 amended NDCC Section 54-35-23 to extend the Committee on Tribal and State Relations through July 31, 2011.

**Indian county allocation** - House Bill No. 1540 amended NDCC Section 50-01.2-03.2(3) relating to the funding of economic assistance programs in counties with federally recognized Indian reservation land. Section 50-01.2-03.2(3) provides for grant payments to Indian counties for their economic assistance program administrative costs. Current law provides that any county with more than 20 percent of the caseload for economic assistance programs consisting of people who reside on federally recognized Indian reservation land is eligible for a grant. Grants are equal to 100 percent of the administrative costs that are in excess of the statewide average of administrative costs expressed

in mills. The subsection was amended by the 2009 Legislative Assembly in House Bill No. 1540 to provide that effective July 1, 2010, any county with 10 percent or more of the county's supplemental nutrition assistance program (SNAP) caseload on federally recognized Indian reservation land is eligible for a grant. Grants are equal to a county's actual direct costs and indirect costs for locally administered economic assistance programs multiplied by the percentage of a county's average total SNAP caseload for the previous state fiscal year which reside on federally recognized Indian reservation land not to exceed 90 percent. The Legislative Assembly provided \$3,924,148 for these grants, of which \$1,959,541 is from the general fund and \$1,964,607 is from "retained funds," \$549,938 more than the executive budget and \$1,004,417 more than the 2007-09 biennium appropriation. All changes to the funding were made to the general fund.

**Child support enforcement program** - Section 9 of House Bill No. 1012 provides for a Legislative Management study of the Department of Human Services' child support enforcement program. The study is to include the review of arrearages in terms of total owed and interest accrued and child support enforcement activities in other states. This study has been assigned to the Judicial Process Committee.

## STUDY PLAN

The committee may wish to proceed with this study as follows:

1. Gather and review information regarding tribal social service programs that rely on federal, state, and county governments for funding and administration.
2. Receive information from the Department of Human Services regarding its budget processes and the status of Indian county payments and from the Indian Affairs Commission regarding tribal social service programs.
3. Receive information from interested persons, including representatives of the tribal social service programs, county social service offices, regional human service centers, and the North Dakota County Social Service Directors Association, regarding the involvement of tribal social service offices in the administration and budgeting processes of county social service offices, regional human service centers, and the Department of Human Services.
4. Develop committee recommendations and prepare any legislation necessary to implement the committee recommendations.
5. Prepare a final report for submission to the Legislative Management.

ATTACH:1

**Sixty-first Legislative Assembly of North Dakota  
In Regular Session Commencing Tuesday, January 6, 2009**

HOUSE CONCURRENT RESOLUTION NO. 3003  
(Legislative Council)  
(Tribal and State Relations Committee)

A concurrent resolution directing the Legislative Council to study the extent to which the funding mechanisms and administrative structures of the federal, state, and county governments enhance or detract from the ability of the social service programs of tribal governments to meet the needs of tribal members.

**WHEREAS**, the rate of population growth on the state's Indian reservations is one of the highest growth rates in the state; and

**WHEREAS**, high rates of poverty and unemployment on the state's Indian reservations require strong, sustainable tribal social service programs; and

**WHEREAS**, tribal social service offices should be involved in the Department of Human Services' budgeting process in consultation with the involvement of county social service offices; and

**WHEREAS**, involvement of tribal social service offices will help the state to identify social service needs on the state's reservations;

**NOW, THEREFORE, BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES OF NORTH DAKOTA, THE SENATE CONCURRING THEREIN:**

That the Legislative Council study the extent to which the funding mechanisms and administrative structures of the federal, state, and county governments enhance or detract from the ability of the social service programs of tribal governments to meet the needs of tribal members; and

**BE IT FURTHER RESOLVED**, that the Legislative Council assign this study to an interim Human Services Committee or other similar interim committee for study; and

**BE IT FURTHER RESOLVED**, that the Legislative Council report its findings and recommendations, together with any legislation required to implement the recommendations, to the Sixty-second Legislative Assembly.