

TRIBAL TAXATION ISSUES COMMITTEE

Section 4 of Senate Bill No. 2312 (2019) extended the Tribal Taxation Issues Committee for a second interim. The committee is composed of 10 members--the Governor, who was designated by the Legislative Management to serve as Chairman of the committee; the Lieutenant Governor; the Tax Commissioner; the Executive Director of the Indian Affairs Commission; the Majority and Minority Leaders of the House of Representatives and the Senate; and the Chairmen of the Finance and Taxation Standing Committees of the House of Representatives and the Senate. The committee's nonlegislative members are nonvoting members. The legislation required the committee chairman to invite tribal chairmen to each committee meeting.

The Tribal Taxation Issues Committee was directed to study tribal taxation issues, including tax collection agreements that exist between the state and tribes, the interaction between tribal sovereignty and state law, consideration of how statutory changes may affect provisions in existing agreements, the amount and manner of revenue sharing under the agreements, the costs and benefits to the state and the tribes if tax compacts are implemented, implementation models used in other states for tax compacts, best practices for negotiating and ratifying tax compacts, the procedure for withdrawal from an agreement and how to handle disputed funds, and methods for sourcing revenue generated from wells located inside or outside of the external boundaries of a reservation in this state when a horizontal lateral enters a spacing unit that is located both inside and outside of the external boundaries of a reservation in this state. The committee also was authorized to study tribal-state issues, including government-to-government relations, human services, education, corrections, and issues related to the promotion of economic development.

Section 3 of Senate Bill No. 2312 extended the suspension of North Dakota Century Code Section 54-35-23 through July 31, 2021. Section 54-35-23 provides for the Tribal and State Relations Committee. This committee, which was created in 2005, conducts joint meetings with the North Dakota Tribal Governments' Task Force. The North Dakota Tribal Governments' Task Force is composed of six members--the Executive Director of the Indian Affairs Commission, or the director's designee; the Chairman of the Standing Rock Sioux Tribe, or the Chairman's designee; the Chairman of the Spirit Lake Tribe, or the Chairman's designee; the Chairman of the Three Affiliated Tribes of the Fort Berthold Reservation, or the Chairman's designee; the Chairman of the Turtle Mountain Band of Chippewa Indians, or the Chairman's designee; and the Chairman of the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, or the Chairman's designee. The Tribal and State Relations Committee is required to study tribal-state issues, including government-to-government relations, human services, education, corrections, and issues related to the promotion of economic development.

The Legislative Management delegated to the Tribal Taxation Issues Committee the responsibility to receive a report from the Department of Corrections and Rehabilitation, the Juvenile Court, and the Indian Affairs Commission regarding recommendations on the status, effectiveness, performance, and sustainability of a memorandum of understanding to provide services to juveniles adjudicated in tribal court, pursuant to Senate Bill No. 2153 (2019).

The committee members were Governor Doug Burgum (Chairman); Representatives Josh Boschee, Craig Headland, and Chet Pollert; Senators Dwight Cook, Joan Heckaman, and Rich Wardner; and Citizen Members Scott J. Davis, Indian Affairs Commission; Ryan Rauschenberger, Tax Department; and Brent Sanford, Lieutenant Governor.

FEDERAL INDIAN LAW AND POLICY

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

From 1789 to approximately 1820, the federal government sought to minimize friction between non-Indians and Indians by limiting contact between the groups. This era was followed by the Indian removal era--approximately 1820 to 1850--when the federal government removed Indians from east of the Mississippi River to the Oklahoma Territory. This era was followed by the reservation era--1850 to 1887--when, as non-Indians continued to move west 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 small portion. This is the origin of the term reservation.

When the federal General Allotment Act of 1887, or Dawes Act, was enacted, United States-Indian relations entered a new era known as the allotment era because the Act authorized the President to allot portions of reservation land to individual Indians. Title to the allotted land was to remain in the United States in trust for 25 years, after which it was to be conveyed to the Indian allotted free of all encumbrances. The 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 tribe's land base was protected by extending the trust period indefinitely for existing allotments still held in trust and encouraging tribes to establish legal structures for self-government. This era was followed by the termination and relocation era--1953 to 1968--when the federal government sought to terminate tribes believed to be prosperous enough to become part of the American mainstream, terminate the federal government's trust responsibility, and encourage the physical relocation of Indians from reservations to urban areas.

The termination and relocation policy was regarded as a failure, and the modern tribal self-determination era began with the federal Indian Civil Rights Act of 1968. The effect of the Act was to impose upon the tribes most of the requirements of the Bill of Rights. The Act also amended Public Law 280 so states could no longer assume civil and criminal jurisdiction over Indian country unless the affected tribes consented at special elections called for this purpose. Several federal acts have been enacted since 1968 to enhance tribal self-determination.

STATE-TRIBAL RELATIONS

One of the most important concepts in state-tribal relations is the concept of sovereignty. In the federal system, both the states and Indian tribes are sovereigns. Tribal sovereignty refers to the right of Indians to govern themselves. Sovereignty for tribes includes the right to establish their own form of government, determine membership requirements, enact legislation, and establish law enforcement and court systems.

Based on early United States Supreme Court cases, tribes are sovereign and free from state intrusion on their sovereignty. State laws generally have been held inapplicable within the boundaries of reservations, although exceptions have been made under the plenary power of Congress to limit tribal sovereignty.

STATE-TRIBAL COOPERATIVE AGREEMENTS

Chapter 54-40.2 provides for agreements between public agencies and tribal governments. A 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. Under this chapter, any one or more public agencies may enter an agreement with any one or more tribal governments to perform any administrative service, activity, or undertaking that any of the public agencies or tribal governments are authorized to perform by law and to resolve any dispute in accordance with Chapter 54-40.2 or any other law that authorizes a public agency to enter an agreement. The agreement must set forth fully the powers, rights, obligations, and responsibilities of the parties to the agreement.

STATE-TRIBAL TAX REVENUE SHARING AGREEMENTS

The committee received information from the Tax Department regarding the existing revenue sharing agreements between the state and tribal nations within the state and the revenue allocated to tribes in accordance with each agreement.

Tribe	Effective Date	Tax Type	Current Revenue Allocation		Admin. Fee	Tribal Share of Fiscal Year 2019 Revenue
			Tribe	State		
Standing Rock Sioux Tribe	July 1, 1993	Cigarette and other tobacco products	87%	13%	1%	\$76,485
Standing Rock Sioux Tribe	January 1, 1999	Motor fuel and special fuel	87%	13%	1%	\$387,653
Spirit Lake Tribe	September 1, 2006	Motor fuel and special fuel	76%	24%	1%	\$234,967
Three Affiliated Tribes of the Fort Berthold Reservation	September 1, 2007	Motor fuel and special fuel	70%	30%	1%	\$1,766,981
Three Affiliated Tribes of the Fort Berthold Reservation	July 1, 2008	Oil and gas	50%	50%	None	\$256,043,013
Turtle Mountain Band of Chippewa Indians	September 1, 2010	Motor fuel and special fuel	96%	4%	1%	\$700,560

Cigarette and Tobacco Excise Tax Agreement

On July 1, 1993, a collection agreement between the Tax Commissioner and the Standing Rock Sioux Tribe became effective. Under the agreement, the tribe levies a cigarette and tobacco excise tax on all licensed wholesalers and distributors operating on the Standing Rock Sioux Reservation. The tax rates are identical to the state tax rates. The Tax Department serves as an agent of the tribe in collecting the tax. The agreement's renegotiated terms, which became

effective on May 1, 2015, provide 87 percent of the tax, less a 1 percent administrative fee, is returned to the tribe. Thirteen percent, plus the 1 percent administrative fee, is deposited in the general fund.

Motor Vehicle Fuel and Special Fuel Tax Agreements

The state has entered motor vehicle fuel and special fuel tax agreements with all tribes in the state except the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation. The tax applies to sales of motor vehicle fuel and special fuel within the exterior boundaries of the reservation at a rate of 23 cents per gallon. The state's agreement with:

- The Standing Rock Sioux Tribe became effective January 1, 1999. The agreement's renegotiated terms, which became effective on May 1, 2015, provide for a revenue allocation of 87 percent, less a 1 percent administration fee, to the tribe. Thirteen percent, plus the 1 percent administration fee, is deposited in the general fund.
- The Spirit Lake Tribe, which became effective September 1, 2006, provides for a revenue allocation of 76 percent, less a 1 percent administration fee, to the tribe. Twenty-four percent, plus the 1 percent administration fee, is deposited in the general fund.
- The Three Affiliated Tribes of the Fort Berthold Reservation, which became effective September 1, 2007, provides for a revenue allocation of 70 percent, less a 1 percent administration fee, to the tribe. Thirty percent, plus the 1 percent administration fee, is deposited in the general fund.
- The Turtle Mountain Band of Chippewa Indians, which became effective September 1, 2010, provides for a revenue allocation of 96 percent, less a 1 percent administration fee, to the tribe. Four percent, plus the 1 percent administration fee, is deposited in the general fund.

Oil and Gas Tax Agreement

The oil and gas revenue sharing agreement between the Three Affiliated Tribes and the state was signed June 10, 2008, by Three Affiliated Tribes Chairman Marcus D. Wells, Jr., and Governor John Hoeven and was to remain in effect for 24 calendar months after July 1, 2008. The agreement was entered pursuant to the authority provided in Chapter 57-51.2, which was enacted following the passage of House Bill No. 2419 (2007). A renegotiated agreement was signed on January 13, 2010, by Three Affiliated Tribes Chairman Marcus D. Levings and Governor Hoeven. The provisions of the 2010 agreement were to remain in effect indefinitely, unless formally cancelled by either party.

In 2013, Chapter 57-51.2 was extensively revised to provide more beneficial terms for the Three Affiliated Tribes under an oil and gas tax agreement. A new agreement implementing the 2013 legislative changes was signed on June 21, 2013, by Three Affiliated Tribes Chairman Tex Hall and Governor Jack Dalrymple. In 2015, Chapter 57-51.2 was amended to expand the scope of the chapter to apply to agreements entered by the Standing Rock Sioux Tribe and the Turtle Mountain Band of Chippewa Indians and to add confirmation requirements for future agreements. Specifically, any agreement entered after July 31, 2015, was subject to confirmation by a majority of members elected to the House of Representatives and the Senate.

In 2019, the confirmation requirements were removed by Senate Bill No. 2312 and the revenue sharing split was changed from a 50/50 revenue split to an 80/20 split in favor of the tribe for oil tax revenue from trust lands and an 80/20 split in favor of the state for revenue from all other production. An agreement reflecting the new revenue split was signed on February 28, 2019, by Three Affiliated Tribes Chairman Mark Fox and Governor Doug Burgum and became effective on March 29, 2019.

The committee received testimony from representatives of the Three Affiliated Tribes regarding issues with the oil and gas tax agreement, including concerns pertaining to the ongoing legal battle of the ownership of riverbed mineral rights. Tribal representatives noted the tribe will seek a revenue sharing agreement regarding riverbed production if the royalty disagreements cannot be resolved. Testimony indicated the tribe favors placing tax revenue derived from riverbed minerals in a neutral, interest-bearing federal account to ensure an accurate accounting of the funds, the accrual of interest, and protection from fund depletion due to operator bankruptcies. A tribal representative suggested depositing 20 percent of the oil and gas tax revenue derived from riverbed minerals with the state, and 20 percent with the tribe, and depositing the remaining 60 percent in an escrow account until the ownership issue is resolved.

Tribal representatives expressed concerns regarding oil and gas activity and horizontal drilling near the boundaries of the Fort Berthold Reservation. Testimony indicated if a well is padded and drilled within the exterior boundaries of the reservation, and a horizontal lateral from the well extends to lands situated outside the exterior boundaries of the reservation, the tribe receives 80 percent of the tax revenue attributable to production from trust lands within the spacing unit and 20 percent of the tax revenue attributable to nontrust land within the spacing unit. If a well is padded and drilled outside the exterior boundaries of the reservation, and a horizontal lateral from the well extends to land situated within the exterior boundaries of the reservation, the tribe does not receive any tax revenue attributable to the production derived from the spacing unit. Tribal representatives indicated the tribe is losing tax revenue on the portion of cross-

border wells that are not subject to the tax agreement, and the revenue is needed to fund infrastructure and invest in social programs. Testimony indicated past tax revenue collected from the cross-border wells not subject to the tax agreement could be calculated using historical data, and the revenue the tribe did not receive because those wells were not subject to the tax agreement should be considered when trying to resolve the issue.

The committee received testimony from a representative of the Department of Mineral Resources indicating the department does not dictate the surface location of a well within a spacing unit. Testimony indicated operators choose the locations and base the decision on a number of factors including the ease of permitting. According to the testimony, the state permitting fee is \$100 and the Bureau of Land Management permitting fee is \$1,250 making it less expensive for operators to drill outside the exterior boundaries of the reservation.

The committee received testimony from a representative of MineralTracker, which conducted a forecast and analysis of projected production for 214 wells with wellbores that traverse the exterior boundaries of the Fort Berthold Reservation. The study analyzed each well individually, accumulated each well's historical production, used a reservoir engineering technique to project how much oil and gas likely remains in each well, and conducted a forecast and analysis to calculate the wells' projected production based on historical and economic data. According to the testimony, 132 of the wells have wellheads located outside the reservation boundary, and 82 wells have wellheads located inside the reservation boundary. The study estimated the wells would produce approximately 50 million barrels of oil in the future. The study calculated the prorated amount of oil associated with footage inside and outside the boundary and determined the footage outside the boundary would produce 10.8 million barrels of oil more than the footage inside the boundary. The study estimated an additional 73 to 93 cross-border wells might be drilled in the future. In determining the number of additional cross-border wells that might be drilled in the future, the study only considered spacing units that already had some level of development in place.

The committee acknowledged the intent of the oil and gas tax legislation was to create a more stable regulatory environment to incentivize companies to drill and operate in the state. Committee members agreed both the state and the tribe benefit when oil and gas resources are developed under a stable taxing environment.

Sales and Use Tax Collection Agreement

House Bill No. 1406 (2015) authorized the governor to enter an agreement with the Standing Rock Sioux Tribe for the state administration and collection of state- and local-level tribal sales, use, and gross receipts taxes imposed within the exterior boundaries of the North Dakota portion of the Standing Rock Sioux Reservation. The bill outlined the parameters for an agreement, including provisions relating to the rate of tax imposed, conforming tribal taxes to the state sales tax base, allocating revenues, authorizing the Tax Commissioner to administer and collect the tax and providing for these services, authorizing the Tax Commissioner to offset future distributions to the tribe in the case of an overpayment, and determining the proper venue for resolving any disputes arising from an agreement.

The agreement, which became effective July 1, 2016, provided for an 80/20 tribal/state split of tax collections. The agreement required the Standing Rock Sioux Tribe to impose a 5 percent general sales and use tax, a 3 percent sales and use tax on new manufactured homes, a 7 percent alcohol gross receipts tax, and a 3 percent farm machinery gross receipts tax on new farm machinery and new farm irrigation equipment. The taxes were identical to North Dakota's sales, use, and gross receipts taxes. The Standing Rock Sioux Tribe also imposed a .25 percent tribal local tax that applied to all transactions subject to the state-level taxes. All exceptions that applied to the state's taxes also applied to the tribal taxes.

On January 27, 2017, Tax Commissioner Ryan Rauschenberger issued a memorandum to North Dakota sales and use tax permitholders which provided "[e]ffective March 7, 2017, the North Dakota Office of State Tax Commissioner will discontinue its administration of the Standing Rock Sioux Tribe's sales, use and farm machinery and alcohol gross receipts taxes including the tribal .25 percent local tax." The memorandum further provided the Standing Rock Sioux Tribe's taxes would be administered by the Standing Rock Sioux Tribe Tax Department rather than by the state Tax Department. Chapter 57-39.8, which authorized the agreement, was repealed by Senate Bill Nos. 2257 and 2258 (2019). The authority to enter sales tax agreements is now provided under Chapter 57-39.9.

FRAMEWORK FOR FUTURE TAX REVENUE SHARING AGREEMENTS

Committee members and tribal representatives agreed the primary goal of tax revenue sharing agreements is to avoid dual taxation and promote economic development. The committee received testimony from representatives of the Tax Department regarding other states' tax revenue sharing agreements with tribal nations. The testimony included information on revenue sharing agreements in Minnesota, Montana, and South Dakota.

According to the testimony, the most common methods other states use for tax revenue sharing agreements include a fixed percentage revenue split, a per capita split, and a per capita plus a fixed percentage split. Revenue sharing

agreements in Montana use a per capita method based on consumption for all tax types, including cigarette, alcohol, and motor fuels. The only exception is Montana's oil and gas tax revenue sharing agreement, which uses a fixed percentage split allocating 50 percent of the revenue to the state and 50 percent to the tribe. South Dakota uses a fixed percentage method for all tax types allocating 69 percent of the revenue to the tribe and 31 percent to the state. Minnesota uses a per capita plus a fixed percentage method for all tax types with the per capita formula creating the base and the base being shared equally between the state and the tribe. North Dakota uses a per capita plus a fixed percentage method for all tax types except the oil and gas tax, which uses a fixed percentage method. South Dakota's fixed percentage method specifically tracks sales made on each tribal reservation whereas Minnesota's formula, which is similar to North Dakota's, consists of a per capita formula based on the entire state and then a fixed percentage split based on each tribe's population.

Testimony indicated although Senate Bill Nos. 2257 and 2258 (2019) provide a framework for collecting and administering an alcoholic beverage wholesale tax, a tobacco products wholesale tax, an alcoholic beverages and gross receipts tax, and a sales, use, and gross receipts tax, no tribal agreements have been signed.

Tobacco Products Wholesale and Alcoholic Beverage Wholesale and Gross Receipts Tax Revenue Sharing Agreements

A representative of the Tax Department presented testimony regarding a framework for state-tribal agreements for the administration and collection of alcoholic beverage wholesale tax, tobacco products wholesale tax, and alcoholic beverages gross receipts tax. The testimony included a review of the requirements of a state-tribal agreement under Senate Bill No. 2257 (2019), the tax revenue formula, and a snapshot of what tribes could potentially receive based on the formula. According to the testimony, if all five tribes entered a revenue sharing agreement for the administration and collection of an alcoholic beverage wholesale tax, tobacco products wholesale tax, and an alcoholic beverages gross receipts tax, distributions based on the formula could range from \$19,823 to the Sisseton-Wahpeton Oyate of the Lake Traverse Reservation to \$898,198 to the Turtle Mountain Band of Chippewa Indians. Testimony indicated the estimated tax revenues could be higher if higher tribal population numbers are reflected in the 2020 federal census.

The committee received testimony from representatives of the Three Affiliated Tribes identifying the key reasons why the tribe has not entered a state-tribal alcohol tax agreement. According to the testimony, the tribe's primary concern with the framework for a state-tribal alcohol tax agreement is the manner in which the tax revenue is split between the tribe and the state. Tribal representatives asserted the revenue split should be more favorable to the tribe because the formula fails to account for the negative impact of alcohol use on the reservation. Representatives of the tribe also expressed concern regarding the legislation's requirement for state collection of the alcohol tax and view the requirement as an erosion of the tribe's sovereign right to regulate alcohol sales within reservation boundaries. The tribal representatives noted there is an opportunity for dual regulatory authority, such as allowing the tribe to revoke a retailer's license if the retailer violates licensing requirements. The committee received testimony from representatives of the Tax Department indicating additional legislation would be required to allow the state to enter an alcohol tax agreement allowing for dual regulation or requiring the state to cede its regulatory authority.

The committee received testimony from representatives of the Turtle Mountain Band of Chippewa Indians and Spirit Lake Tribe indicating their respective tribes might be interested in entering a state-tribal alcohol and tobacco tax agreement. Testimony indicated tribal councils may be interested in meeting with the Tax Department to discuss how the state could assist in collecting alcohol and tobacco taxes for the tribes. According to the testimony, the Turtle Mountain Band of Chippewa Indians has collected approximately \$120,000 per year from tax revenue generated from a cigarette tax of 5 cents per pack, and the tribe recently increased the tax from 5 cents to 10 cents. Representatives from the Spirit Lake Tribe indicated the tax revenue allocation formula might need to be re-evaluated as the current formula only considers the number of enrolled members living on the reservation and fails to account for over 1,000 members who live off the reservation in surrounding communities and use the tribe's services. Testimony indicated the current formula also neglects to account for nonenrolled members who use the tribe's local establishments.

Online Sales Tax

The Tax Department provided information regarding the taxation of online sales. It was reported the United States Supreme Court in *South Dakota v. Wayfair* (2018) held states can require businesses, that do not have a physical presence in the state and that meet certain requirements, to collect and remit sales taxes on transactions in the state. According to the testimony, as of December 3, 2019, over \$27 million in sales tax was collected from remote sellers and over 5,700 remote sellers are registered to collect sales tax. Testimony indicated Senate Bill No. 2258 (2019) provides the framework for state-tribal sales tax agreements, and because the allocation of the sales tax revenue is based on a formula, which was derived from formulas used in other states, the legislation eliminates the need to track individual sales on the reservation. According to the testimony, if a tribe had entered a state-tribal sales tax agreement, the tribe would have received a portion of the \$27 million collected by the state from online sales taxes.

The committee received testimony from a representative of the Three Affiliated Tribes indicating tribes have a right to the proceeds from online sale tax collected from enrolled members on the reservation, and tribes are missing out on tax revenues.

Conclusions

Committee members encouraged tribal representatives to bring proposals or concerns regarding state-tribal tax agreements to the Indian Affairs Commission and the Governor's office in anticipation of the 2021 legislative session. The committee members expressed hope more state-tribal tax agreements would be entered.

GAMING CONCERNS

The committee received testimony from tribal representatives regarding the impact on tribal gaming due to the implementation of new gaming devices in the state and gaming regulations. According to the testimony, state-tribal gaming compacts initially were entered to help promote tribal economic development, but tribal economies have been negatively impacted by the implementation of electronic pull tab devices across the state. Tribal representatives expressed concerns regarding the high level of regulations with which tribal casinos must comply compared to the state's limited regulatory oversight of electronic pull tab devices used for charitable gaming.

The committee received testimony from a representative of the Attorney General's office indicating electronic pull tab device activity doubled the gross proceeds for the 2019 fiscal year to over \$585 million and generated over \$8.1 million for the general fund. According to the testimony, there were over 2,700 electronic pull tab devices in 618 sites across the state as of June 30, 2020. Testimony indicated the federal government has imposed certain reporting requirements for tribal casinos whereas the federal reporting requirements do not apply to the state's charitable gaming. The committee received a comparison of the regulations that apply to electronic pull-tab devices operated by charitable organizations under the state's charitable gaming laws and the regulations that apply to Class III gaming devices operated by tribal casinos under state-tribal gaming compacts and federal law.

The committee received testimony from a representative of the Spirit Lake Tribe indicating tribal casino revenue decreased by over 40 percent after electronic pull tab devices were implemented in August 2018. According to the testimony, the lack of adequate staffing by the state has resulted in little regulatory oversight over the large amount of gaming devices operating across the state, and the unregulated use of these devices can result in money laundering and tax evasion issues. Testimony also indicated tribal casinos have heavily regulated procedures in place which help identify and deter such activities.

Committee members acknowledged the interim Taxation Committee is studying charitable gaming taxation issues, including whether the Attorney General has adequate funding to regulate the state's charitable gaming, and the interim Judiciary Committee is studying charitable gaming regulations.

TRIBAL HEALTH CARE FUNDING

The committee received testimony from tribal representatives regarding health care funding needs. The committee received testimony from representatives of the Turtle Mountain Band of Chippewa Indians indicating the federal Indian Health Service (IHS) is the tribe's primary health care provider but is chronically underfunded and understaffed. According to the testimony, House Bill No. 1194 (2019) addressed coordination care agreements, but prohibited tribes from using funds received under an agreement for capital construction projects or for services covered by IHS. Testimony indicated restricting the use of the funds in that manner is burdensome for the tribes. According to the testimony, IHS has a lower standard pay scale for medical professionals, and the ability to use those funds more freely would assist in attracting medical professionals to the area.

INFRASTRUCTURE NEEDS

The committee received information regarding various tribes' infrastructure needs and challenges. Tribal representatives indicated road conditions and maintenance are a concern for tribes. According to the testimony, a road maintenance issue on State Highway 57 involving an exposed culvert has caused safety concerns for the Spirit Lake Tribe. Testimony indicated the cost of road maintenance is a concern for the Turtle Mountain Band of Chippewa Indians because the tribe services many county roads located on the reservation. A representative of the Standing Rock Sioux Tribe indicated a technical assistance team should be formed to address road conditions in rural areas. A representative from the Department of Transportation encouraged a meeting with each tribe's transportation director to discuss the issues facing the tribes.

Committee members discussed the benefits that may result from tribal cities choosing to become incorporated under North Dakota law. Benefits discussed included funding for certain infrastructure projects due to legislation passed during the 2019 legislative session and a share in the state aid distribution fund and the highway tax distribution fund. Committee

members expressed understanding that incorporating is a sensitive subject for tribes and education on the process and effect of incorporating would be beneficial in furthering additional discussions on incorporation.

LAW ENFORCEMENT ISSUES

The committee received information regarding law enforcement issues facing the tribes. Tribal representatives indicated drug use is prevalent on the reservations, and there is a shortage of law enforcement officers and inadequate funding. Testimony indicated a desire for the formation of a joint drug task force, and additional resources to combat the rampant drug activity. Testimony from a representative of the Turtle Mountain Band of Chippewa Indians indicated only four tribal officers and nine Bureau of Indian Affairs officers patrol the 18,000 member, 6- by 12-mile reservation. Testimony from a representative of the Spirit Lake Tribe indicated the tribe would like assistance from the state in expediting background checks to improve the officer hiring process.

OTHER ISSUES AFFECTING TRIBES

Impact of Coronavirus

The committee received testimony from tribal representatives regarding the impact of the Coronavirus (COVID-19) pandemic on tribes. Representatives of several tribes indicated tribal revenue has been negatively impacted by the pandemic, in part due to the temporary closure of tribal casinos due to COVID-19 concerns. Testimony indicated tribal casinos that have reopened have implemented numerous health and safety precautions relating to COVID-19. The committee was informed underlying medical conditions are prevalent in many tribal communities, and the State Department of Health has been working closely with the Indian Affairs Commission and tribal councils to provide resources and testing supplies.

Federal Census

The committee received testimony from tribal representatives regarding the concern for an accurate federal census count of tribal members. The committee received testimony from a representative of the United States Census Bureau regarding the tribes' self-response rate. The census self-response is the number of individuals who respond to the census before enumerators follow up with individuals who have not responded. According to the testimony, if the self-response rate in an area is 30 percent or lower, the area is classified as an area of concern, and most reservations were below that mark. Testimony indicated the census deadline was extended to September 30, 2020, due to the COVID-19 pandemic, but the pandemic caused every census process to be delayed which has compressed the time available to reach places with low response rates.

Oil Spill Concerns

The committee received testimony from representatives of the Standing Rock Sioux Tribe regarding concerns of the potential of an oil spill affecting the Cannonball area. According to the testimony, the tribe's main concern is an oil spill affecting the community's water source. The tribe indicated it would like the state's assistance in creating an emergency hazard mitigation plan. The committee received testimony from a representative of the Department of Emergency Services indicating the department could facilitate or partner with the tribe to conduct a hazardous chemical or crude oil spill exercise. The committee was informed the tribes can apply for grant funding opportunities involving emergency situations.

REPORT ON MEMORANDUM OF UNDERSTANDING

The committee received a report from the Department of Corrections and Rehabilitation, the Juvenile Court, and the Indian Affairs Commission regarding recommendations on the status, effectiveness, performance, and sustainability of a memorandum of understanding to provide services to juveniles adjudicated in tribal court as required by Senate Bill No. 2153 (2019). The bill allowed the Department of Corrections and Rehabilitation, the Supreme Court, and the Indian Affairs Commission to enter a memorandum of understanding with tribal governments to provide for the treatment and rehabilitation of tribal juveniles who have been adjudicated in tribal court under tribal or federal laws.

The report noted a memorandum of understanding was developed and signed between the Spirit Lake Tribal Court and relevant state entities on January 15, 2020. The memorandum of understanding facilitates the sharing of information, data collection, and resources between the participating entities, and six juvenile cases have been involved in the pilot project. No other tribes have entered memorandums of understanding.