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WRITTEN TESTIMONY
on
INDIAN ECONOMIC DEVELOPMENT

Submitted to:
THE SENATE SELECT COMMITTEE
ON INDIAN AFFAIRS

by:
JOE DE LA CRUZ, PRESIDENT
NATIONAL CONGRESS OF AMERICAN INDIANS
202 E Street, N.E.
Washington, D.C. 20002

April 29, 1982

Mr. Chairman and distinguished members of the Senate Select Committee on Indian Affairs:

On behalf of over 400 federally and non-federally recognized tribes who constitute the National Congress of American Indians, NCAI, I praise the Committee for your foresight in holding these important hearings on economic development issues crucial to the future of all tribal communities.

Accompanying me today are three technical witnesses who assisted NCAI in the development of our testimony:

Mr. Ted Bryant, a Choctaw-Cherokee who is the national Director of Native American Programs for Deloitte, Haskins and Sells, an international accounting firm.

Mr. Joe Baca, a Pueblo, who is the Chairman of NCAI's Economics Committee and who represents the American Indian Development Corporation of Albuquerque, NM, and

Mr. Bob McLaughlin, the Special Assistant to the Tribal Chairman for Economic Development of the Standing Rock Sioux Tribe.

The National Congress of American Indians will focus this morning's testimony on those issues which are critical to an economic development strategy over the long run. Although we have limited our comments to generally one factor of production - capital - we are aware of the importance of other factors of production such as land, labor, materials and markets to the development and investment process. However, the existing constraints we face in accessing sufficient capital for development clearly points to capital scarcity as the most important factor limiting productive investment throughout Indian country.

We believe that such a scarcity is the result of certain structural conditions that prevent effective investment from occurring. Like small business in general, new Indian business is restricted from gaining open access to the nation's structure of financial institutions and markets. A recent Department of Commerce report, "Small Business and Capital Markets," showed that existing financial markets do not reach small business with capital because the markets are:

- 1) risk-aversers;
- 2) they avoid conditions where there exists high information and transactions costs;
- 3) there exists increasing market and asset concentration throughout the financial market structure;
- 4) conscious and unconscious prejudice for small business in general, and
- 5) government regulation places a higher cost burden on small businesses than large scale enterprise.

Investment in Indian country is further restricted and constrained by a unique and extraordinary condition. I refer to the absolute non-existence of any Indian community based financial institutions operating to encourage indigenous savings or acting as a link between tribal communities and regional and national financial institutions. This lack of local Indian financial intermediation has prevented Indian savings thereby fostering the need to have federal agencies fill the primary role of financial intermediation for investment. We call such intermediation "non-bank federal intermediation" and its track record, as you are aware, has been inefficient and ineffective. This form of federal financial assistance, as questionable as its record is, has been almost completely eliminated by the Administration and Congress.

Because of the above conditions, the NCAI now believes it is timely to recommend to this Committee a strategy which will begin to establish the foundations for real financial intermediation throughout Indian country. Without a mechanism whereby investment capital can flow to venture and development projects it is unlikely that economic development will be self-perpetuating. We believe there is a justifiable need for an independent finance institution which can overcome the barriers to capital which I outlined above. By mobilizing capital and technical assistance for Indian business development, such a financial institution would increase the rate of Indian capital formation and productivity while lying an important cornerstone in the building of financial market structure in Indian country. I would like to add also that President Reagan in his Program for Economic Recovery provided that financial assistance would remain available to those communities "that truly lack access to financial markets" (p. 21).

The NCAI Economic Committee working with the American Indian Development Corporation, AIDC, after two years of intensive study, has developed a blueprint for the creation of an independent financial institution to serve American Indian communities. They recommend the Institution have the following characteristics:

- 1) be a mixed ownership federally chartered corporation.
- 2) have regional branches to serve the widely dispersed Indian population.
- 3) be able to extend long term equity capital to Indian businesses, and tribes.
- 4) be able to raise its own equity and debt funds through the sale of tax exempt bonds.
- 5) be able to invest surplus to generate income.

- 5) be able to invest surplus to generate income.
- 6) be able to charge rates of interest sufficient to defray costs, and earn a reasonable rate of return.

The Institution, to be successful, must have the capacity to provide and coordinate the use of long-term capital, working capital, technical assistance and training for Indian businesses. It must be an independent institution where investment decisions are based on objective financial and market criteria. The Institution at the onset will require financial support from federal sources, Indian tribes, private business and the financial community.

Equity capital for the Institution would be generated from the sale of common stock to the federal government, Indian tribes and the private sector. The Institution would seek long term, low interest federal financing. Capital would also be generated from portfolio sales and earnings. The Institution would raise capital through debt instruments such as bonds and notes. To enhance the marketability of Institution debt, bondholder's interest earnings should be exempt from taxation. Federally chartered commercial banks should be authorized to purchase debt instruments and federal law should authorize the use of Institution debt instruments by banking institutions to satisfy federal reserve requirements.

On the investment policy side, long-term venture capital would be provided to Indian businesses in the form of equity, with Institution retaining the option to sit on the Board of Directors of the enterprise to insure proper management practice. The Institution would establish upper limits on the size of its equity position in any one enterprise;

the share of the Institutions equity and loans in a project's total cost; and on the proportion of the Institution's total funds invested or loaned to any one enterprise. Investment policy would be to diversify its investments among different projects such as natural resources, agriculture, light manufacturing and commerce. Eligible borrowers would be tribal government, tribal enterprise, Indian cooperatives, partnerships, corporations and individuals.

To complement its direct loan and equity investments, the Institution should be able to provide loan guarantees and to engage in co-financing with existing financial institutions. The Institution will assist its borrowers with brokering and underwriting services. In summary, the Institution should serve as the financier, investor, lender, loan packager, guarantor, underwriter, and broker for Indian enterprises.

My final observation today is that we believe the Institution will foster private sector participation. This is critical as the private sector can bring important infusions of technical expertise and technology to venture projects. The Institution can become the vehicle which can reduce the uncertainties of reservation investments in the mind of the private sector. The Institution will stimulate the growth of sound business management practice within tribal communities by generating clear messages that investments will only be made after rigorous financial investment criteria have met on a project by project basis. Such objective criteria will encourage tribes to develop tribal business codes which protect all business ventures and commercial enterprise as well as tribal integrity during the transformation of tribal communities towards economic self-sufficiency.

The National Congress of American Indians and the American Indian Development Corporation and Indian country asks your assistance in creating the American Indian Development Finance Corporation.

Thank you.

WRITTEN TESTIMONY

on

INDIAN ECONOMIC DEVELOPMENT

Submitted to:

THE SENATE SELECT COMMITTEE
ON INDIAN AFFAIRS

by:

PHILLIP MARTIN, PRESIDENT
NATIONAL TRIBAL CHAIRMAN'S ASSOCIATION
and
CHIEF, MISSISSIPPI BAND OF CHOCTAW INDIANS
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Washington, D.C. 20005

April 29, 1982

My name is Phillip Martin, and I am the elected chief of the Mississippi Band of Choctaw Indians and President of the National Tribal Chairmen's Association. With me are Ernest Tiger and Charles Trimble who will lend technical support should you have any questions.

I would like to commend the preceeding witnesses from the National Congress of American Indians and the Council of Energy Resource Tribes, and add my wholehearted endorsement of their statements.

Mr. Chairman and distinguished members of the Senate Select Committee on Indian Affairs: On behalf of the elected principal executives of the more than 150 federally-recognized Tribes that comprise the National Tribal Chairmen's Association, I commend you for holding these hearings on Indian Economic Development which is a critical issue in these times of immense challenge to Indian country and to all America.

The National Tribal Chairmen's Association would like to discuss with you the economic issues of most immediate impact on our tribes, namely:

- o Infrastructural development on our reservations;
- o Greater access of our Indian industries to defense contracting and procurement opportunities to stimulate reservation development; and
- o The proposed Economic Development Strategy of the Bureau of Indian Affairs for Fiscal Year 1983 and beyond.

We are constantly reminded by our federal trustee that we must seek financial investment and industrial relocation for reservation development from the private sector, because of the present national policy of federal budget cutbacks and the shift of responsibility from the federal level to

local governments. Indeed, the proposed enterprise zone concept -- the Administration's sole initiative to offer relief to the economically-distressed areas -- is designed precisely to attract private sector investment and involvement to hard-hit areas, including Indian reservations. Yet, a recent study on the applicability of enterprise zones to Indian country revealed that any incentives offered by tax or regulatory relief are largely negated by the limited infrastructural attributes on most Indian reservations.

Many ideas have surfaced within recent months concerning relationships between Indian tribes and the private sector. While the concept is good, some attention must be focused on the reality of bringing Indian tribes and private industry together for mutual benefit. If tribal leadership were surveyed today, forty-nine out of fifty tribal leaders would not know a chief executive officer of a major corporation. Indian country needs very desperately to be joined in a beneficial relationship with the private sector, but this will not happen without some means of communicating with the private sector. This will not happen if tribal governments do not possess the financial resources by which to enter into economic development ventures with private industry. Technical assistance, loans, and loan guarantees are needed if tribal governments are to develop economic projects on a self-sustaining basis. Bridging the gap between Indian tribes and the private sector cannot occur through the proposed enterprise zone legislation when only three or four tribes might possibly benefit from that concept.

Application for enterprise zone status challenges local governments to offer infrastructural commitments for municipal services and physical improvements within the distressed area. Impacted as our tribal governments are by the loss of federal assistance, few tribes could even provide a guarantee against deterioration of local municipal services, let alone the improvement of them. This is why the NICA so strongly supports the provisions of S,1088. That legislation, including the Section 7 provision for an additional \$50,000,000 for maintenance and improvement of tribal governmental services, is essential to any hope of tribal self-sufficiency in the future.

Infrastructural development assistance is needed, and we ask that you view such assistance as an investment in the future of Indian tribes as self-sufficient entities in the American future.

Indian tribal governments do not have a tax base from which to obtain revenues to support and maintain their social and economic structures; and few tribes currently have sufficient enterprise development from which to support essential tribal governmental functions and services. An examination of the methods by which states, counties, and municipalities support governmental services, physical development, maintenance, and capital improvement reveals a wide range of revenue sources. Without a tax base, Indian tribes do not have these options. Tribes are unable to take advantage of general obligation bonding because of IRS rulings. Consequently, we have few resources from which to support the development and maintenance

of reservation infrastructure. This situation again points up the need for the American Indian Tribal Government Tax Status Act embodied in S.1298, and that is why the National Tribal Chairmen's Association supports that legislation.

There are few remaining federal assistance programs on which we can depend to assist us in our efforts toward economic self-sufficiency; and those programs and strategies are clearly biased toward natural resource development. We do not decry that assistance to those tribes with natural resources. However, the tribes that do not possess significant natural resources feel at a great disadvantage to develop their industrial and business potential. Even tribes with significant extractive resources of energy and minerals desire to expand their employment opportunities and to retain their earnings on the reservation through industrial diversification.

Through the 1960's and 1970's, in the era of relative affluence in federal economic development assistance, the opportunities for industrial development was largely lost to Indian country; and the bureaucracy administering those federal assistance programs must bear much of the blame. The private sector and the tribes themselves are not without blame in the general failure of the reservation industrial development. But we are now in different times, and industrial development for Indian tribes warrants a fresh review.

We do not mean to say that the federal programs for economic development were a complete waste. The much ridiculed EDA-financed industrial parks on reservations are now providing many tribes their only hope for development. Many of these industrial parks are now taking off now that tribes are gaining experience at marketing them in the private sector. The loss of this type of federal assistance for infrastructural development on reservations is seen by many tribal leaders as among the most devastating.

Tribal governments need assistance to overcome the impediments of isolation and underdevelopment in order to attract industry and private sector investment. With the loss and the unlikely restoration of significant funding assistance programs, federal assistance to tribes in their economic development efforts could come from a policy of preferred access for tribal industry in federal procurement and contracting. One such opportunity is in the challenge faced by the American defense industry to meet the Administration's defense build-up requirements over the next several years.

Between now and 1987, the Administration proposes to spend more than 1.5 trillion dollars in defense. Some economists project major problems in the ability of the U.S. defense industry to meet America's needs defined in the arms build-up proposals. The squeeze on domestic suppliers, it is projected, will send more defense procurement overseas, making the U.S. more dependent on foreign sources and more vulnerable.

There is also concern in the Congress over the U.S. industry's capability to meet the country's defense build-up requirements. This past February, Rep. James Blanchard of the House Committee on Banking, Finance and Urban Affairs, introduced the Defense Industrial Base Revitalization Act (H.R.5540). That bill calls for a number of measures, several of which could directly apply to Indian economic development needs. First of all, that bill calls for federal assistance in the form of loans, loan guarantees for small and medium sized businesses. That type of assistance could greatly enhance the capability of Indian industry to compete in the defense contracting arena.

Secondly, the Blanchard proposal offers provisions for training and retraining workers for a quality defense industrial work force. The need for quality skilled labor on the reservations is essential to the development of Indian-owned business and for the attraction of outside industry to the reservations.

Thirdly, the Blanchard proposal calls for greater domestic capability to produce critical and strategic materials, significant reserves of which are to be found on Indian reservations. The tribes with these resources could rightfully demand a greater opportunity for participation in the extraction and processing of such critical and strategic materials.

We hope that this type of legislation gains Congressional support, and that Indians are given special inclusion in the bills. Any initiative to secure equitable or preferred access for Indian industry to defense contracting, however, must not be looked upon as a movement to convert

the national defense budget to social/welfare programs -- to convert "guns to butter," as it were. Reservation industries have shown that they can deliver high quality goods on time and at budgeted costs. There are successful defense and non-defense contracts in reservation-based industries now; but all too few of them.

The idea of promoting greater Indian industrial participation in defense procurement is relatively new. In the FY-1982 Department of Defense Appropriations Act, Sen. Peter Domenici included a provision for Indian preference in defense procurement. The Defense Department is in a quandary over how to apply Indian preference and is currently studying the matter. However, given their lack of experience and knowledge in Indian affairs, it is not likely that a creative policy will be forthcoming.

We urge the Administration to study this matter creatively, and we request the Congress to take necessary measures to assure equitable or preferred access of Indian industry to defense contracting and procurement.

It is our understanding that Sen. Mark Andrews of this Committee is working to exempt Indian defense contractors from certain time restrictions inherent in the Small Business Administration's 8(a) provisions. We commend the Senator, for this is the type of assistance needed to advance our industrial capacity on the reservations.

We would also like to focus this Committee's attention on other issues related to the Small Business Administration. SBA administers a number of programs to assist small and, in particular, minority business firms. The program administered by this agency are for the most part unavailable to Indian tribes, because Indian tribes operate under the jurisdiction of tribal Constitutions and bylaws, and are not chartered through state chartering processes, and SBA cites ownership and control as a major problem in providing assistance to tribal enterprises. The SBA's Small Business Set-aside Program (8(a)), Small Business Investment Company Program, and local development company program could provide many short-range benefits of a private sector nature to Indian tribal governments. However, tribal governments will not benefit through the SBA programs, unless there is Congressional involvement to amend regulations of the Small Business Act of 1958.

Finally, Mr. Chairman, we would like to comment on the Bureau of Indian Affairs' Economic Development Strategy which is proposed for FY-1983 and beyond. This strategy was devised over the past year to finally meet the long-standing demand of the House Appropriations Committee. We commend this Administration for finally giving some direction to their economic development assistance efforts; but we must note that the funding levels to implement the strategy are inadequate and the time is late.

The BIA Strategy requests appropriation of \$10,000,000 to provide conditional grants to tribal projects for the development of natural resources, the encouragement of private sector involvement and investment,

and the promotion of sound business principles.

Restricting the proposed economic development grant program to natural resource development projects eliminates a great majority of tribes and does not address the need for multifaceted economic development efforts desired by most tribes -- even those tribes with abundant natural resources. According to the Assistant Secretary, the objectives of the program will be accomplished through the extension of "seed grants" from the \$10,000,000, reducing internal bureaucratic obstacles and barriers, taking the lead across the federal structure in coordinating economic development assistance, and searching out and stimulating opportunities for tribes.

Mr. Chairman, we are aware that the BIA strategy totally reflects the Administration's policy of fiscal austerity. We are aware that the Assistant Secretary's hands are strapped in this matter; for he knows, as we do, that \$10,000,000 is totally inadequate to provide the assistance our tribes need to pursue their goals of economic self-sufficiency. The burden of dependency is staggering and shrinks that amount to an ineffective level. An amount more significant, effectively administered, would mean a true investment in the future of Indian country, and in the nation as a whole.

We therefore request an additional appropriation of \$5,000,000 to provide "small tribes" a baseline of governmental support; presumably to enhance their efforts to attract industry. The Bureau also proposes to seek from Congress new authorization for the Indian Business Development Fund and loan-guarantee program embodied in 25 U.S.C. 451 - The Indian Financing Act of 1974.

We commend the Bureau's plan to seek reauthorization and re-infusion of the Indian Financing Act, but there is massive evidence to

suggest that the BIA or other federal agencies are not efficient lending entities. By their very nature, they do not function in a banking relationship, and they tend to subsidize inefficiencies. As such, a great many federal programs which are dependent upon the appropriations process for funding, suffer themselves from inconsistencies which affect their ability to promote, administer, and monitor a portfolio of loans and loan-guarantees. The Small Business Administration has recently extended its guarantee and authority to commercial banks because it could not efficiently make sound lending decisions. Thus, the Indian community cannot assess the impact of the proposed reauthorization legislation at this time to ascertain their assurances to make the Bureau's program efficient and functional.

The Indian Financing Act was enacted in recognition of the private capital markets' inaccessibility to reservation enterprises. That situation still exists, and we direly need the Indian Financing Act -- there must be no question about that. But the BIA must be made to put into place an effective mechanism to administer that program.

Thank you for this opportunity to present this statement. With your permission, we would like to submit additional information for the record, at a later date.

NCAI
ECONOMIC DEVELOPMENT COMMITTEE

POSITION PAPER

FOR

THE SENATE SELECT COMMITTEE
ON INDIAN AFFAIRS

PRIVATE SECTOR INVOLVEMENT

BY

TED BRYANT

Many American Indian Tribes and Native Corporations have resources, natural and otherwise, to develop. However, they lack the expertise and the capital. With the declining appropriations to federal agencies, the Tribes and Native Corporations are turning to the private sector.

MIXED EMOTIONS FROM THE PRIVATE SECTOR

opportunities from Tribes with guarded enthusiasm.

Representatives of energy companies and other types of corporations view the Reservations from a position of a lack of information. They perceive problems that do not exist and do not anticipate some that are prevalent.

Solution: An educational program needs to be conducted which will make available to interested companies, the opportunities and the difficulties in doing business there.

Information should be made available concerning the availability of energy resources , timber, agriculture, fisheries, tourism, and industrial opportunities.

Also, information should be made available concerning the peculiar situations that may affect business dealings on a Reservation. Examples of things to be included are: the sovereignty of the Reservations, the trust relationship between the Tribes and the U.S. government and the role of the BIA.

RELUCTANCE ON THE PART OF TRIBES TO GET
INVOLVED WITH THE PRIVATE SECTOR

Problem: Tribes and Alaskan Natives have been placed in the dependency role for years and there has been no need or opportunity to become involved in for-profit ventures. This lack of experience leads to a lack of trust for private corporations. Tribes also tend to have a lack of understanding of the need by stockholders for a good rate of return on their investment.

Solution: A series of workshops should be conducted, bringing together members of Tribal Councils, Tribal Administrative staff members, and representatives of the corporate world. These workshops would allow for interchanges to bring about a better understanding by both parties.

THE CORPORATE WORLD NEEDS INDUCEMENTS
TO LOCATE ON RESERVATIONS

Problem: Local governmental entities and state governments are often in a position to offer various inducements to companies to locate in their areas. Tribes

attract the private sector.

Solution: Senate Bill 1088 and the Enterprise Zone bills are of great importance to give Tribes a competitive position in attracting businesses.

Tribal Councils and Tribal economic development personnel need training in what kind of things can be done in order to make their Reservation more attractive to the business world.

They also need training in methods of packaging what they have to offer and inducing companies to compete for the right to locate on their Reservation.

TRIBAL MANAGEMENT IS OFTEN PART OF THE PROBLEM

Problem: Several aspects of Tribal government present a problem in conducting business with the private sector: the lack of separation between the legislative, executive and judicial branches; the lack of continuity within the elected and the administrative branches; and the lack of acceptable management systems.

Solution: Tribes need assistance in separating the three branches of Tribal government so as to make each branch independent and functional.

Tribes need assistance in establishing terms of office that will provide for continuity among the elected council members.

Tribes need assistance in establishing personnel systems that will provide protection for Tribal employees from the political process.

Tribes need assistance in developing Tribal management systems including: administrative policies and procedures, accounting systems, personnel systems, and purchasing systems. The Tribes need assisting in establishing the systems, training staff in use of systems and then Lands-on assistance for an extended period of time.

THE PRIVATE SECTOR FINDS A LACK OF DEFINITIVE RULES AND REGULATIONS ON RESERVATIONS REGARDING BUSINESS OPERATIONS

Problem: There are at least three forms of government on

Generally there is no body of law that regulates business operations.

Solution: Tribes interested in doing business with the private sector need to adopt a Commercial Credit Code which covers such things as: eminent domain, sovereign immunity, commercial law, etc.

Assistance should be provided to Tribes to aid them in the development of a Commercial Credit Code.

TESTIMONY

OF THE

COUNCIL OF ENERGY RESOURCE TRIBES

BEFORE THE

SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

OVERSIGHT HEARING ON INDIAN ECONOMIC DEVELOPMENT

Washington, D.C.

April 29, 1982

INTRODUCTION

The Council of Energy Resource Tribes (CERT) is pleased to testify at this most important hearing on economic development problems facing American Indian tribes. The economic conditions of Indian tribes and their federal domestic policies have always been at the "edge of the cutting board" of federal domestic policies, and recent policies, particularly the cuts of the past year in the budgets of federal assistance to tribes, have had a direct and major deteriorating impact on tribal economies. We commend this Committee for recognizing the urgency of examining the economic problems in Indian country and for holding these hearings at such a critical time. We hope that the national focus being brought by these hearings to the tremendous problems facing Indian tribes will provide for the development of new national Indian economic development policies that will truly recognize the magnitude, as well as the uniqueness, of these problems. The three American Indian organizations here today have agreed among ourselves to talk about certain aspects of these problems, and we believe that if all of the recommendations presented are considered together they should form basis of these much-needed new policies.

CERT, a coalition of 34 Indian tribes with substantial energy resources, is keenly aware of the failure of many past federal policies to foster the development of stable and sound reservation economies. We are in agreement with the conclusion of the Task Force on Reservation Development and Resource Protection in its 1976 report to the American Indian Policy Review Commission that the three necessary conditions for true long-term economic development are:

- (1) tribal control of reservation resources;
- (2) access to capital, and
- (3) effective tribal management of economic affairs.

Policies which do not serve to provide sound structural change and which do not address all three of these conditions simultaneously -- control, capital and management -- are doomed to the failures of the past. This principle applies to all Indian reservations, not just those which have an endowment of energy resources.

We would like to discuss certain policies today that would serve to bring about needed structural changes. These policies are not by any means all encompassing, but if instituted along with many of the ideas discussed by the other witnesses present today, they would greatly enhance the prospects for getting the reservations on the road to true long-term economic advancement. While certain recommendations address the development of tribal minerals, we believe that the underlying principles are relevant to economic policies affecting all tribes.

We would like to begin our presentation by discussing three major obstacles to tribal economic development that could be reduced with passage of legislation currently pending before this Congress: the need to strengthen tribal governments, as addressed in ✓ S.1088; the need for equitable tax treatment of tribal governments as embodied in the Indian Tribal Governmental Tax Status Act, and the need to authorize the approval of minerals agreements negotiated by tribes, provided in S.1894. We will then turn briefly to certain administrative steps that could be initiated in a relatively straightforward manner by the federal government to meet tribal economic development needs, including regulatory reform in natural resource management and development, assistance to tribes in marketing their resources and improving the current techniques for evaluating the conditions of tribal economies. Finally, we would like to briefly discuss the applicability of the enterprise zone concept to Indian reservations.

NEED TO STRENGTHEN TRIBAL GOVERNMENTS - -

Tribal experience has shown us that the cornerstone of true economic development on Indian reservations is through the establishment of stable tribal governments with the management and structural capacities to carry out their responsibilities effectively. The importance of strong and effective tribal governments associated to long-term economic advancement cannot be over-emphasized. In fact, we believe that without federal support to help tribal governments build strong foundations, all other policies attempting to foster economic development will be destined to fail.

Why is such great emphasis placed on tribal government? The answer is that a stable, strong and effective government is one of the important foundations for both successful economic enterprises and a supportive social and economic infrastructure. Appropriate federal policies are critical to help break down the numerous obstacles to the enhancement of tribal economies. Yet by their very nature such policies cannot be applied rigidly to all reservation situations. The tribes themselves must have the capabilities to establish their economic development objectives appropriate to their individual cultures, socioeconomic conditions, natural resource endowments and the myriad other factors that cannot possibly be evaluated from Washington. And they must have the management tools to effectively govern consistent with these objectives.

Strong and effective governments can develop and carry out community-determined programs supportive of balanced social and economic growth, and can establish a climate conducive to private sector investment, markets and job opportunities for tribal economies. Without such strengths it is likely that private sector investment, if it takes place at all, will not be consistent with the long-term needs and interests of the tribes.

For these reasons, CERT has worked extensively with the Administration for Native Americans (ANA) in carrying out its tribal government capacity-building programs. With the assistance of ANA, tribal governments are gaining the tools they need to effectively manage their own affairs, consistent with their own objectives.

We believe that the capacity-building programs of ANA have proven to be among the most cost-effective tribal economic development activities ever attempted by the federal government. Capacity-building expenditures for this program should be viewed as a cost-effective investment, and not as simply another discretionary federal program ripe for budget cutting. This is particularly true given the relatively small budget of the agency. Yet, ANA's budget was cut by 17 percent last year, and is targeted for an additional 17 percent in the President's proposed budget for FY'83. These cuts must be viewed against the fact that from FY'76 through FY'81 ANA had been funded at a static level of 33.8 million dollars. Thus, with inflation taken into account, the real budget of ANA has been cut about 50% during this period.

We firmly believe that the small budget savings realized by these cuts do not come close to the negative impact that a reduced ANA program will have toward the objective of long-term tribal economic self-sufficiency.

Last year this Committee reported a bill re-authorizing ANA, S.1088, which included a provision designed specifically to enhance the agency's abilities to assist tribes in strengthening their governments. Simply stated, this provision, included as Section 7 of S.1088, would authorize and direct the Secretary of Health and Human Services, through ANA, to provide financial assistance through grants to tribal governments for the employment of tribal government employees and for programs to increase the skills and qualifications of these employees, which would enable tribal governments to more effectively assume local responsibility for the economic and social well-being of their members.

There are three very important points in regard to Section 7. First, there is no discretion involved; the Secretary of Health and Human Services must make this assistance available provided an acceptable plan is submitted. Second, there is explicit provision for funding tribal government staff without ties to social or welfare programs or any other federal grant program. Third, it requires tribal government to plan for the improvement of tribal social and economic self-sufficiency in its own terms.

We believe that the mechanism provided by Section 7 is an important means of transferring responsibilities and authorities to tribal governments. It heralds a turn-away from the paternalism and dependency of the past by establishing a means of staffing and supporting tribal governments so that tribes can become economically self-sufficient.

We strongly support S.1088 and believe that its passage by Congress this year is essential. S.1088 must be viewed as an integral and vital component of a tribal economic development policy which, unlike so many failures of the past, places primary emphasis on the role of strong and stable tribal governments.

We are deeply concerned that there has been no forward movement of this bill since it was favorably reported by this Committee last May. It has not been brought to the Senate floor for consideration, and has yet to be introduced in the House. There is now a very real danger that this critical legislation will not receive a fair hearing on the Senate floor or in the House unless steps are taken now to get it back on track. This bill is far too important to simply die without being brought up for vote, and we urge all members of this Committee to provide their active support to help assure that this does not happen.

NEED FOR EQUITABLE TAX TREATMENT OF TRIBAL GOVERNMENTS

A major obstacle confronting tribal governments attempting to generate revenues is that they do not currently have a number of federal tax advantages enjoyed by every other government in the United States, including state, county and municipal governments. We therefore strongly support the Indian Tribal Governmental Tax Status Act, currently pending in both Houses of Congress (S.1298; H.R.3760), which would remedy this inequitable situation. We support the bill, first, as a matter of equity; second, because the bill would strengthen tribal economic self-sufficiency by strengthening the abilities of tribal governments to provide public goods and services for their people; and third, because the bill recognizes the appropriate role of tribal governments.

The bill would remedy the effects of a series of Internal Revenue Service rulings issued during the late 1960's and early 1970's which held that, since Indian tribes are neither states nor political subdivisions of states, they are not eligible for certain benefits given states and their political subdivisions under the Internal Revenue Code. As a result, revenue raising and saving mechanisms available to and commonly used by other governments are foreclosed to Indian tribal governments. This discriminatory treatment is unfortunate inasmuch as tribal governments are faced with the task of bringing their people, among the poorest in the nation, into economic prosperity. This task is made more difficult, at least in part, because tribal governments are not given the same benefits as other governments in the Internal Revenue Code.

The Act would:

- o allow deductions from federal income taxes for charitable contributions to Indian tribes;

- o allow deductions from federal income taxes for taxes paid to tribal governments;
- o exempt from federal income taxes interest paid on certain bonds issued by tribal governments;
- o allow deductions from federal income taxes for contributions to tribal political campaigns;
- o exempt tribal governments from certain excise taxes including those on special fuels, manufacturers excise taxes, highway use taxes and communications excise tax, and
- o allow tribal governments to offer tax-exempt annuities to certain employees.

Our first point is that as a matter of equity, tribal governments should be given the same benefits given state, county and municipal governments under the Internal Revenue Code. The governments of federally recognized Indian tribes exercise sovereign powers. They have the responsibility to provide a full range of government services to their citizens. Increasingly, tribes have sought to exercise their powers of government to improve their local economies and to provide services to their people. We feel that it is appropriate therefore to facilitate these efforts to confer upon tribal governments the same benefits conferred upon other governments under the Internal Revenue Code. It should be noted that this legislation would not empower tribal governments to exercise any governmental powers which they now do not have, nor would it extend to tribal governments any benefit not now extended to other governments. It merely would end the discriminatory application of the Internal Revenue Code toward tribal governments.

Our second point is that this bill would, at very little cost to the federal Treasury, provide badly needed benefits to Indian tribes. The poverty and lack of economic activity on Indian reservations render little if any tax base. When tribes do seek to levy taxes they are met with tremendous resistance because taxes paid to tribes are not deductible from federal taxes. In addition, because the interest on certain tribal obligations is not given the same favored tax treatment as those of other governments, tribal bonds are virtually unmarketable.

This bill would do much to alleviate these problems. It would allow tribes a mechanism to stimulate business activity, provide a means to finance public facilities, encourage contributions to tribal governments, ease the burden of tribal taxation, and in a host of other ways enhance the ability of tribal governments to improve the lot of their people. While this bill alone is obviously not a total solution to the tremendous economic problems on Indian reservations, it would be an important step toward removing some of the impediments to tribal economic development.

It should be noted that although the immediate revenue impact of the bill would be negative the total effect on the federal budget could be positive. In 1978, a House Ways and Means Committee report estimated and the Treasury agreed that the bill would reduce federal tax revenues by less than \$5 million. This in itself is an extremely small amount. But more significant is the savings that could accrue to the federal Treasury if this bill is passed. Public projects that now are subsidized to a great extent by direct federal assistance would be opened to private financing on the same basis as state, county and municipal projects.

Finally, we support this bill because it recognizes the appropriate role, status and responsibilities of tribal governments, as governments, that are responsive and responsible to the people they represent.

We are greatly concerned that since the Tax Status Act was introduced in Congress last year, there has been no movement of the bill in either chamber. There is now a real danger that it will die in Congress this year, as it has over the past three congressional sessions. This would be a tremendous setback to tribes in their attempts to achieve economic self-sufficiency if allowed to happen and we respectfully urge all Select Committee members to actively support this bill.

NEED FOR DOI AUTHORITY TO APPROVE ALTERNATIVE MINERALS AGREEMENTS

A vast portion of the nation's mineral resources are under the lands of American Indians. In terms of energy resources, the 34 member tribes of CERT own approximately one-third of the strippable coal in the West, some four to five percent of the country's onshore oil and gas resources, roughly 40 to 50 percent of all privately owned uranium, as well as substantial quantities of oil shale, tar sands and geothermal resources.

Given this vast wealth of mineral resources, it would appear that those tribes with such minerals could become economically self-sufficient by using the development of their minerals as a base for developing sound, stable economies. Sadly, this has not been the case. Although energy production has taken place on Indian reservations for many years, and has been particularly significant over the past three decades, it has resulted in very little economic return or monetary benefit to the producing reservations. These tribes, lacking the in-house management capability and the financial resources to obtain their own expertise to evaluate, plan and negotiate their own agreements with minerals companies, have had to rely upon the Bureau of Indian Affairs (BIA) as their trustee to negotiate on their behalf. All too often, the BIA-negotiated agreements have turned out to be very detrimental to the economic and other interests of the respective tribes. We saw in the 1960's, for example, the BIA selling coal leases on the Navajo, Northern

Cheyenne and Crow lands for a fixed 17 cents per ton. While the BIA standard leases have improved somewhat since that time period, they still have the following highly undesirable characteristics:

1. a fixed return in the form of a royalty that does not rise as the value of the resources or the profitability of the operation rises;
2. a virtually endless tenure with no opportunity to renegotiate terms;
3. a clause requiring preferential employment of tribal members that is so weak as to be unenforceable;
4. no requirement to train tribal members so that they may benefit from the jobs created by the operation;
5. no requirement to place tribal members in management positions; and
6. no opportunity for the tribe to participate, in any way, in decisions such as where, at what rate, for how long, and whether to produce.

The benefits from minerals production on Indian reservations have therefore flowed off the reservations. The royalties that the tribes have received have not been adequate to meet the needs of tribal governments, and the tribes continue to remain among the poorest of America's poor. Unemployment rates, even among the energy resource tribes, are several times above the national average.

Realizing that they were not receiving long-term benefits from development of their depletable mineral resources, a number of tribes during the 1970's decided to take

matters into their own hands, and go directly to the bargaining table themselves to engage in active negotiation with minerals companies. Instead of the traditional BIA approach of selling leases with cash bonus and fixed royalty rates, tribes have begun to explore innovative approaches, such as participation in joint ventures, production sharing and service contracts enabling them to maintain full or partial ownership and to have a role in management decisions. Since 1975 at least a half dozen such agreements have been negotiated by the tribes. Yet, in 1980 the Department of Interior (DOI) itself raised questions about its authority to approve such agreements, particularly for oil and gas agreements that were not sold under public auction.

The inability of the DOI to approve alternative minerals agreements negotiated by the tribes is a major obstacle to tribal economic development. There is currently a bill pending before this Committee, S.1894, which would remove any questions about the Department's authority in this area. Simply stated, it would provide the Secretary the authority to approve minerals agreements, whether they are leases, joint venture arrangements, or any other forms of agreements, provided that he does not make a finding that such agreements are not in the best interests of the respective tribe.

During hearings held on S.1894 by this Committee, a number of tribal leaders expressed concerns over specific parts of the bill, and recommended changes to address these concerns. We urge you to take these recommendations into account, and to favorably report a bill responsive to them. We believe that a unanimous vote by this Committee is important to enhancing the bill's prospects before the full Senate.

This must be done in the very near future, since time is running out for consideration by the 97th Congress. For the same reason, we are most anxious for a companion bill to be introduced as soon as possible in the House.

NEED FOR REGULATORY REFORM IN NATURAL RESOURCE MANAGEMENT AND DEVELOPMENT

In conjunction with our discussion on the Department of Interior's lack of authority to approve alternative minerals agreements we would like to briefly address the regulatory framework under which DOI manages tribal natural resources. Regulatory reform is needed throughout the federal government to correct the deficiencies in the treatment of Indian tribes. Very few rules currently on the books provide the proper mechanism for tribal consultation and concurrence in federal programs. In the case of BIA regulations, steps should be taken to put the tribal government in the lead role, with the BIA providing technical support and trust protections. Where necessary, the Administration should support legislation that guarantees tribal control and participation in matters affecting Indian people, resources, and reservations. In this respect we are pleased to see that the Administration has expressed support for S.1894 and would hope that such support will continue in other areas. The federal government should also be working to assist tribes in devising streamlined procedures for tribal regulation of activities on reservations.

The unfortunate fact is that federal policies designed to provide tribal governments with more say in their own affairs have been undermined by bureaucratic inertia, poor administration and controversy. For example, even the Indian Self-Determination Act, which was intended to turn the control and administration of Indian programs over to tribal governments, is administered by over 100 pages of BIA regulations. These rules maintain heavy federal involvement and a perpetuated perception of tribal dependency.

More particularly in the area of natural resource management, the administration of tribal resources continues to be controlled by restrictive regulations that date back to the 1940's and 1950's. These rules pre-date the Self-Determination Act, and provide a very limited role for the tribal government in resource management. As you know, the Self-Determination Act does not mandate changes in these restrictive regulations.

Unfortunately, our experience has shown that reform of BIA's regulatory framework is a very long and cumbersome process. In 1977, the Bureau proposed revising its Indian minerals development regulations (25 CFR Parts 171, 172, 173, 177 and 182) but they never were promulgated. In 1980, over three years later, the regulations were re-proposed but again were not promulgated. When and if the Bureau does promulgate new regulations, we believe that they must include provisions for tribal participation and control in minerals development and management, provided that the individual tribes desire and have the capabilities to assume these responsibilities. The challenge for BIA is to develop a regulatory framework that promotes tribal involvement in the process without the Bureau losing the regulatory capability to fulfill its trust responsibility to assure that the tribes truly benefit from minerals development.

Tribal governments are striving to develop the capabilities needed to manage their resources. Yet it must be acknowledged that many tribes must at the present time rely on BIA to conduct much of their minerals management, including economic and environmental assessments and lease sales. BIA's regulations and procedures must therefore be stringent enough to protect the reservation environments and to assure that tribes receive fair market value over the entire life of the mineral agreements. At the same time, the regulations must not be overly heavy-handed and bureaucratic for those tribes that have developed their own independent capabilities to evaluate, negotiate and monitor agreements.

To meet this challenge -- to assure that the Bureau fully protects the interests of those tribes which have not fully developed their own minerals management capabilities, while at the same time not unduly burdening those tribes which have these capabilities -- the Bureau must develop a regulatory framework that incorporates the following two philosophies.

First, if a tribe demonstrates that it has performed a given task or tasks required by BIA regulations, the Bureau should substitute the tribe's efforts for its own. This would apply, for example, in such areas as pre-sale, economic and environmental assessments, development of environmental and production stipulations, as well as lease site production management which is now being carried out by the Department's Minerals Management Service.

Secondly, the respective tribe should be offered a consultation and concurrence role in major decisions made by the Bureau under its regulations. If the tribe does not have the capability to exercise an option to concur, it should be offered the option to waive the concurrence requirement. However, in all cases the BIA should consult with the tribes prior to making substantive decisions under its regulations.

The CERT tribes have not at this time examined the full range of federal regulations affecting Indian lands, but we feel that the philosophies we have expressed here need to be incorporated generally in regulations which affect tribal affairs. The key here is true recognition of tribal governments in federal programs and regulations, and the opportunity for real participation by tribal governments.

THE NEED FOR TRIBAL RESOURCE MARKETING ASSISTANCE

The member tribes of CERT have a substantial amount of energy resources which potentially could provide a base for the development of stable reservation economies. We have found, however, that while many of the tribes are interested in developing their resources they are often unsure of how to proceed. Both domestic and international markets must be considered by the tribes in order for them to secure long-term, stable purchase commitments of their resources. Currently, no system exists for the tribes to obtain such market information or for tribes to obtain assistance in contacting appropriate potential consumers of their resources.

At the same time, there is not an established and convenient method for potential resource customers to become familiar with the resources of Indian tribes. CERT has been contacted on several occasions by U.S. companies, as well as potential clients in Japan and Taiwan, desiring specific information and advice concerning tribal energy resources and on how the tribes could be approached. There is a pressing need for a system to provide the means to respond effectively to such inquiries and to notify those tribes of marketing opportunities.

We strongly believe that support is needed to assist tribes in obtaining information that they need regarding the potential marketability of their resources, to help them come into contact with appropriate potential markets and to provide a clearinghouse of information regarding agreements which have been made among buyers and sellers of comparable resources. CERT advocates the establishment of marketing services for tribal resources. Such services should involve both domestic and international markets, and could probably be best operated by non-governmental personnel, although federal seed money would probably be needed to initially get them underway. They should be designed to enhance the marketability of Indian resources, and the level of participation by tribal representatives should be totally dependent on their desires. We believe that assistance in the development of such marketing services would be a valuable tool to enable the tribes to effectively participate in the private sector.

NEED FOR AN IMPROVED SYSTEM OF ASSESSING ECONOMIC CONDITIONS OF RESERVATIONS

It is extremely difficult at this time to measure the impacts of economic development policies due to the lack of a systematic means to measure the economic conditions on individual reservations. For this reason, in recent years some development specialists have proposed that it would be useful to have leading economic indicators for

Indian reservations analogous to the national accounts of the United States. In place of Gross National Product, for instance, one could have Gross Reservation Products (GRP). Several reasons motivate these proposals. The economies of Indian reservations are felt to be structurally unusual. For instance, the amount of federal expenditures on reservations that do not benefit from reservation economies may be higher than for other small regions. Expenditures on Indian programs may leave the reservation immediately through employment of non-Indians in the provision of services or in construction of infrastructure. The lack of developed banking and capital market institutions means that the flow of funds among such institutions may be small. Dependency on intergovernmental transfer payments may weaken individual or governmental decision-making. Although widely believed, most of these views are supported by weak evidence. It would be valuable to have a systematic approach which examines the structure of reservation economies.

Such a system of economic indicators would also allow us to record progress in achieving economic self-sufficiency. Baseline data is needed so that both tribal governments and the federal government can measure changes in reservation economies. The need for better statistics about Indian reservations has been recognized by a number of different observers. In 1969, Stephen Langone of the Library of Congress proposed that data on each Indian tribe be collected in a handbook. His proposal was the first essay in the Joint Economic Committee's collection of articles titled Toward Economic Development for Native American Communities. In 1976, the General Accounting Office published a Gross Reservation Product figure for the Fort Apache Indian Reservation. Recently, the Council of Energy Resource Tribes has begun a program to estimate GRP for several reservations, with funding from the Administration for Native Americans.

We believe that these activities can serve to provide a framework against which the effects of economic development policies can be assessed where they really count —

at the reservation level. The development of sound reservation economic and social indicators should be given a high priority as part of an overall reservation economic development policy.

THE ROLE OF ENTERPRISE ZONES IN INDIAN ECONOMIC DEVELOPMENT

We would like to briefly discuss the enterprise zone concept which has received so much interest over the last two years. This concept has been used as an economic enhancement tool for many years in other countries. The basic premise of the enterprise zone concept is that with appropriate economic incentives and reduction of regulatory impediments in specifically targetted economically depressed areas, a climate will be created in these areas which will induce private sector investment. Legislation implementing this concept was introduced in Congress in 1980 and 1981, and the Administration last month introduced its version of this concept.

The Administration's proposal, as embodied in S.2298 now before the Congress, provides for the Secretary of Housing and Urban Development to designate up to 25 targetted areas per year over the next three years as enterprise zones. Such designation would entitle businesses locating in these zones to special federal tax incentives, including certain tax credits and elimination of federal capital gains taxes. In addition, federal regulatory bodies would be given discretionary authority to relax or eliminate certain non-statutory regulatory requirements within enterprise zones, upon the request of the respective local governing bodies.

We are pleased that Indian reservations are recognized in S.2298 to be eligible for enterprise zone designations. The incentives provided by such designation may well induce certain industries to locate on reservations, and thus to contribute to long-term economic advancement.

At the same time we must caution against any notion that enterprise zones can by themselves be viewed as a major solution to the economic problems on reservations. To begin with, since only 75 areas will be designated over the next three areas, the competition for designation among states, municipalities and tribes will be very intense, and it is highly likely that no more than a small handful of reservations will win out in the competition. But beyond this problem, there are more fundamental obstacles to tribal economic development than cannot be remedied with enterprise zone designation alone.

The tax and regulatory incentives of the enterprise zone concept address, at least to some extent, one of the necessary conditions to tribal economic development that we discussed in our introductory remarks — access to capital. However, the problems of tribal control and management are not addressed. Further, in regard to enhancement of capital, the incentives would serve to attract non-tribal entrepreneurs to reservations without providing the capital that tribal enterprises would need to truly participate in business enterprises.

The enterprise zone concept does not address the need for physical infrastructure on reservations as a precondition to private sector investment. The sad fact of economic life on the reservations is that there is an almost total lack of infrastructure to support economic enterprises, including adequate roads, sewers and public utilities. Such accommodations generally exist in urban areas, even in economically depressed portions of cities, and serve to enhance the prospects for the incentive packages that come with enterprise designation to stimulate private sector investment. On Indian reservations, however, these incentives are not likely to attract major investment unless the tribes can demonstrate that an adequate infrastructure is in place or that they are taking steps to build the needed infrastructure. The remoteness of most reservations serves to exacerbate the infrastructure problem. For this reason we believe that it would be a major mistake to believe that private sector incentives by themselves will solve the problem of establishing lasting stable economies on Indian reservations.

We believe that enterprise zones can work on certain reservations, provided that the other necessary factors for economic development are in place. However, the enterprise zone concept must be viewed as only a part of a total tribal economic development policy and cannot work in a vacuum without such policies. We would point out that a study commissioned last fall by the BIA and the ANA to study the applicability of enterprise zones to Indian reservations came to the same conclusion. A major finding of this study was that enterprise zones will work in Indian country where other critical factors for development are present, including infrastructure, capital, management capabilities, and a commitment to development. However, the study cautioned that enterprise zones are not a panacea for Indian reservations and cannot work as a replacement for federal assistance programs.

In conclusion, we are supportive of the enterprise zone concept, and are pleased that Indian reservations are to be included. At the same time the limited capabilities of this concept must be recognized, and other forms of federal economic development assistance must be provided to the tribes. The next witnesses at this hearing will discuss certain of these additional needs, including the key need for assistance to put an adequate physical infrastructure in place on the reservations.

We believe that the national discussion over enterprise zones serves to highlight the need for special measures needed to stimulate private sector investment in particularly economically depressed areas. We hope that the dialogue that has begun will expand and focus on the underdevelopment of reservation economies, and will culminate in the establishment of a comprehensive national policy to support Indian economic development.