

Native American Liaison Office of the Governor



2013 Annual Report

The *State of Oklahoma* recognizes the status of the federally recognized *tribal governments* residing in the geographical boundaries of the state *as sovereign nations* and the state recognizes *the need for further cooperation* between the state and the tribes and their citizens *and the importance of the government-to-government relationship* between the state and the tribe... *There is hereby created the position of **Oklahoma Native American Liaison**...*
74 O.S. § 1207(A-B) (2012)

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A History of the Office

The Office of the Native American Liaison was created by the Oklahoma Legislature in 2011 and modified in 2012. The Native American Liaison replaced the Indian Affairs Commission as the primary go between for the State and the 38 federally recognized tribes within Oklahoma. One of the major differences between the Liaison and the Commission is the access the Liaison has to the Governor. Unlike the Indian Affairs Commission, the Liaison meets weekly with the Governor and attends senior staff meetings with other upper level policy advisors. These meetings provide a more direct line of communication between the tribes and the Governor.

A Letter From the Liaison

Hello,

For those I have not had the opportunity to meet, I am Jacque Secondine Hensley and I was appointed by Governor Fallin as the Native American Liaison in July of 2012. I am a member of the Kaw Nation and am also part Shawnee and Delaware. My parents were the late Dorothy Pepper Secondine and Eddy Secondine. My maternal grandparents were the late Maggie Bowker Pepper and Ralph Pepper and my paternal grandparents were the late Maimie and Buck Secondine. Prior to serving as the Native American Liaison I worked for the Bureau of Indian Affairs as a special agent focusing on child abuse cases and for the Department of Defense investigating fraud cases.

The past year has been quite the whirlwind. My staff and I have been from Miami to Carnegie, Chilocco to Durant, and everywhere in between. Last fall, I met with tribal leaders from all 38 of Oklahoma's federally recognized tribes. These conversations helped shape the policy of my office and often times the same three issues were brought up. First, tribal leaders wanted a more meaningful government-to-government relationship with the state. Second, the welfare of Indian people, both inside and outside of Indian Country, should be a top priority. And, third, there needed to be more tribal-state partnerships on economic development opportunities.

Have I been able to resolve all of these issues over the past 12 months? Unfortunately not. However, I do truly believe that Oklahoma has made significant progress in all three of the areas listed above. There is still work to do. There always is and there always will be. But, with continued cooperative and collaborative efforts we can continue to make strides in all of these areas and make Oklahoma a better place for us all.

It has been a pleasure serving Oklahoma and all of Indian Country this past year. I look forward to continuing relationships and beginning new ones.

*Jacque Secondine Hensley
Native American Liaison, Office of the Governor*

Tribal Outreach

Roundtable Consultations

One of the most impactful outreach efforts we had occurred in October of 2012. That month Steve Mullins, General Counsel to Governor Fallin, Jeffrey Cartmell, and I held roundtable discussions at six different locations throughout Oklahoma. Locations included Afton, Bartlesville, Fort Cobb, McAlester, Muskogee, and Paul's Valley. These discussions focused primarily on tobacco compacts and cross-deputization agreements. That said, each roundtable seemed to take on a life of its own and conversations included everything from child welfare to economic development to environmental protection. The honest and open dialogue from everyone in attendance helped guide the work we have done over the past year. I truly appreciate those who took the time to attend these consultations, especially the tribal leaders.

Tribal Outreach

Native American Heritage Day

On November 27, 2012, Governor Fallin hosted the first annual Native American Appreciation Day Celebration at the State Capitol. Tribal leaders, State Supreme Court Justices, State Legislators, and tribal attorneys were all in attendance. Governor Fallin addressed a large group of invitees and spoke on the cultural and economic impact the tribes within Oklahoma have on our state. The Governor's address allowed a time for the Governor to thank the tribal leaders for the positive impact they have on our state. After the remarks there was a luncheon held in the Rotunda of the Capitol. The luncheon provided an opportunity for both state and tribal leaders to interact in an informal and relaxed environment. Entertainment during the luncheon was provided by students from Riverside Indian Boarding School in Anadarko, OK.

Tribal Outreach

Government to Government Meeting

From my first day on staff, tribal leaders from across Oklahoma requested face-to-face meetings with Governor Fallin to discuss important issues and tribal-state relations. In response to these requests and with the help of Chief Tiger and the Muscogee (Creek) Nation, Governor Fallin met with tribal leaders in June at the Creek Nation Conference Center. The afternoon meeting allowed tribal leaders to express their concerns directly to the Governor. This began an honest and open dialogue between the Governor and elected tribal officials on tribal-state relations and issues of mutual interest. As a follow up to this meeting, the Governor met with tribal leaders this fall in Oklahoma City to continue the dialogue.

Health

Throughout the past year I have been able to meet with and facilitate conversations between State and Tribal health care professionals. These meetings included roundtable discussions conducted by the Oklahoma Department of Health, as well as, Intertribal Health Board meetings in Oklahoma City and Tulsa. The roundtables and the board meetings provided opportunities for State and Tribal healthcare professionals to have an open dialogue on the future of healthcare in Oklahoma and what it means for tribal members. As a result of these meetings, the State was able to work with the tribes in order to receive straight forward responses from the federal government in regards to the effects that the implementation of the Affordable Care Act would have for Oklahoma's Native American population.

Also, I'd be remiss if I didn't mention the Kaw Nation's commitment to improving the overall quality of health for all Oklahomans. Last spring, the Kaw Nation opened the first 100% smoke free casino in Oklahoma. The smoke free facility will improve the quality of life and health for the patrons and employees of the facility. I'm hopeful that more casinos will follow Chairman Munroe's lead and make their facilities smoke free and help improve the overall health of all Oklahomans.

Public Safety

The public safety improvement efforts I have undertaken over the past year are two-fold. First, as a former law enforcement agent, I was well aware of issues and loopholes that existed within the current cross deputization agreements between the State and the Tribes. Our office worked with Representative Billy, Senator Paddack, and tribal law enforcement representatives to expand the authority of tribal law enforcement officers under Oklahoma law. This expansion of authority means a safer Oklahoma for all Oklahomans, especially those in smaller communities that depend on tribal law enforcement officers for their primary police force.

I was also fortunate to speak on a panel at the 26th Annual Sovereignty Symposium that focused on law enforcement and cross deputization issues within Indian Country. This panel was moderated by Sanford Coates, United States Attorney, Western District of Oklahoma, and included Chief Judge David Lewis, Oklahoma Court of Criminal Appeals, District Judge Kurt Glassco, District Court of Tulsa County, State Representative Lisa Billy, and Assistant United States Attorney Arvo Mikkanen. The diverse background of the panel allowed for a productive and informative discussion on tribal, state, and federal law enforcement issues.

Public Safety

The second public safety improvement effort that has been taken over the past year are Tribal-State Burn Ban Agreements. When I was appointed in July of 2012, the State of Oklahoma was in the middle of a terrible drought and new wildfires were catching seemingly daily. As a result of the terrible fires that effected our State, the Governor's office was approached by the Kaw Nation with a desire to draft, execute, and implement a Tribal-State Burn Ban Agreement. Since those discussions, the State has executed Burn Ban agreements with the Kaw Nation, Apache Tribe, Cheyenne and Arapaho Tribes, and the Ft. Sill Apache Tribe. Fortunately, our State has received increased rainfall this year and neither the State nor the Tribes have had to issue any burn bans. It is good to know, however, that these sovereigns have all agreed to work cooperatively to keep all Oklahomans safe through Burn Ban Agreements.

Indian Welfare

Child Welfare

As a former child abuse investigator with the BIA, there is and always will be a soft spot in my heart for Indian children. The past year I have been able to reconnect with former colleagues from my ICW days and worked hard to continue to improve Indian Child Welfare within Oklahoma. This includes countless meetings with the Oklahoma Indian Child Welfare Association and regional and local ICW workgroups. I have also worked extensively with the State-Tribal ICW workgroup that includes both state and tribal child welfare professionals. The workgroup has brought forward many suggested changes to the reporting procedures that the State follows, several of which are currently being implemented in a pilot program. At the end of the day State and Tribal ICW professionals have one goal in mind: the protection and safety of our children. The workgroup and OICWA both help further these goals and allow for dialogue between tribal and state officials.

Indian Welfare

Elder Welfare

In the Indian community we are raised not only respect our elders, but to also care and protect them when the time arises. Last November I attended the Indian Adult Abuse Conference held in Norman. The conference brought together federal, state, and tribal adult protective services workers to discuss the realities too many of our elders are facing and how, through combined efforts, we can resolve these issues.

I have also been working with tribal and state officials in the development and implementation of State-Tribal Adult Services Agreements and with tribal representatives on establishing State licensed tribal elder care facilities. While both of these projects are still in their infancy, I am hopefully that throughout the next year you will see many positive steps taken by both the state and the tribes in the area of elder care.

Indian Education

The education of our children has also been a focus of mine over the past year. I assisted Dwight Pickering, Director of Indian Education for the Oklahoma State Department of Education, to fill vacancies on the Oklahoma Advisory Council on Indian education. The Governor appointed Jana Roth, Delaware Tribe, Jack Shadwick, Modoc Tribe, Gay Munsell, Kaw Nation, and Judy Davis, Miami Tribe, to the Council. After attending multiple Council meetings I am confident in saying that the Council is truly dedicated to the Education of Indian children and I am looking forward to all of the great things they'll do. In fact, I have worked with Director Pickering on getting legislation passed that will extend the Council beyond their original 2014 sunset date.

I have also worked with Director Pickering and the Council on the certification of Native speakers and the introduction of Native languages in Oklahoma classrooms. As we all know, our languages are connections to our past and fundamental to our future. Certifying Native speakers to teach their languages in schools will do much to not only preserve Native languages, but to also introduce Native histories and cultures to more Oklahomans.

Economic Development

Governor's Council for Workforce and Economic Development

Economic development is a shared goal for the state and the tribes. Everyone realizes the important roles the economy and economic development play in being able to provide services to all our citizens. Last fall, Governor Fallin appointed me to the Governor's Council for Workforce and Economic Development. The Council meets every other month and brings together a wide range of individuals with varying personal and professional backgrounds to discuss how, as a state, we can help move Oklahoma forward through improvements in education and economic development. As the liaison, I keep tribes informed of any and all relevant developments and provide the Council with insight and comments I receive from tribal leaders.

Economic Development

Economic Development Outreach

I have also attended numerous economic development and business related conferences and meetings over the past year. In my first month I attended the Oklahoma Indian Gaming Association's Annual Convention in Oklahoma City and the Indian Country Business Summit in Norman. This helped me better understand the economic issues and possibilities that currently exist within Indian country. Throughout the past year I have met with several area chambers of commerce and rotary clubs. In the area of economic development I am essentially a go between for state, tribal, and business leaders. The connections I have made throughout the past year have allowed me to connect these leaders with each other. Specifically, I have been able to facilitate communications in areas of mutual interest with the Department of Agriculture, Department of Commerce, Department of Energy and Environment, and Department of Transportation.

Economic Development

Economic Development Partnerships

Early in my time at the Governor's office I became aware of the Governor's desire to partner with Oklahoma's Tribes on economic development opportunities. Throughout the past year there have been two developments that I believe demonstrate this desire put into practice. In June the Governor travelled with a delegation to Paris for the 50th annual Paris Air Show with the mission of bringing jobs and economic development back to Oklahoma. Part of this year's Oklahoma delegation were officials with Choctaw Defense, which is owned by the Choctaw Nation. I am hopeful that more tribes and tribal enterprises will join Governor Fallin on future economic development trips and bring good paying jobs back to Oklahoma.

Economic Development

Economic Development Partnerships

Additionally, the Governor's office was fortunate to have Darryl Patterson, a Michael S. Dukakis Governor Summer Fellow from the Harvard Kennedy School, in our office this past summer. Mr. Patterson met and spoke with tribal officials, scholars, and business professionals from across North America in order to develop a comprehensive paper addressing potential Tribal-State partnership on economic development. I was able to work closely with Mr. Patterson and provided him insight and connected him with individuals in Oklahoma. His paper can be found at the end of this report.

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RAISE THE TIDE:

RECOMMENDATIONS FOR IMPROVED TRIBAL-STATE GOVERNMENT-TO- GOVERNMENT RELATIONS AND MUTUALLY-BENEFICIAL ECONOMIC DEVELOPMENT IN OKLAHOMA

*Report By: Darryl C. Patterson
2013 Michael S. Dukakis Governor's Summer Fellow
Harvard Kennedy School*

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Just over half a century ago - before a crowd at the Tennessee Valley Authority Muscle Shoals Reservation - President Kennedy said this:

"[b]y working together, we have recognized that a rising tide lifts all boats[.] That is the lesson of the last 30 years."¹

His words capture nicely the theme of this Report.

¹ President John F. Kennedy, *Remarks on the 30th Anniversary of Tennessee Valley Authority, Muscle Shoals, Alabama* (May 18, 1963), <http://www.jfklibrary.org/Asset-Viewer/Archives/JFKPOF-044-021.aspx> (accessed July 25, 2013).

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I. INTRODUCTION & EXECUTIVE SUMMARY

Introduction

1. This Report addresses the opportunities and challenges faced by the State of Oklahoma (including its agencies and political subdivisions) and the 38 federally-recognized Tribes (the “38 Tribes”) within its borders. These opportunities and challenges are manifest in the multidimensional and essential Tribal-State government-to-government relationship in Oklahoma.

2. As the 2013 Harvard Kennedy School Michael S. Dukakis Governor’s Summer Fellow for the State of Oklahoma, you have asked me to develop creative and innovative approaches to Tribal-State taxation negotiations.² You have indicated that Governor Fallin has begun a comprehensive restructuring of Tribal-State taxation policy and that any recommended approaches should emphasize the creation of economic opportunity for the 38 Tribes and their members. A final requirement is that the approaches should have attendant benefits for the entire Oklahoma economy.

3. In Oklahoma, there are competing narratives on what holds back Tribal-State negotiations and cooperation; the respective opinions held by the State and at least some of the 38 Tribes on the matter differ.

4. For the State, a primary obstacle to successful Tribal-State negotiations has been explained to me as follows:

“[p]ast efforts undertaken by the State to negotiate tax policy with the Tribal Nations has centered on the federal definition of ‘Indian Country’ and has limited the ability of both the State and Tribal Nations to maximize their respective economic power.”³

5. On the other hand, Tribes and their representatives have vocalized to me that the most significant obstacles confronted in Tribal-State negotiations in Oklahoma are insufficient trust amongst the parties and lack of appreciation of Tribal sovereignty.

6. Examining these obstacles, which the State and 38 Tribes confront when they engage in compact negotiations, reveals the State and 38 Tribes’ broader challenges. Hallmarks of sovereign governments, after all, include the authority to tax citizens or businesses and the ability to conclude government compacts. These matters necessarily bring to the forefront important issues relating to autonomy and control.

² This Report and its recommendations reflect the author’s views only and not necessarily those of the Harvard Kennedy School.

³ *Harvard Kennedy School, Office of Career Advancement, Dukakis Governor’s Summer Fellows Program, Project Proposals 2013, Oklahoma.*

7. Trying to seek a concession in a tax compact here, or obtain a benefit in a gaming compact there, while ignoring efforts to solidify the broader government-to-government relationship, will forever tie negotiators' hands on both sides of the table. (A crucial precept of successful negotiations is the existence of mutual trust and dependence.) And importantly, disregarding the bigger issues will obfuscate the mutually-beneficial economic development opportunities that do in fact exist within the State. Therefore, leaving out of this Report recommendations to improve the broader Tribal-State government-to-government relationship in Oklahoma would render the more specific recommendations, which are of course included, moot.

8. There is great potential to improve Tribal-State relations in Oklahoma. Tribal-State cooperation exists in many instances throughout the State, which involve various Tribes, State agencies and political subdivisions. Oklahoma's Department of Transportation, for example, works continuously and extensively with Tribes to improve road and other infrastructure within the State. These current modes of cooperation are a great resource upon which the 38 Tribes and State can draw as they consider new models of cooperation.

9. My objective through this Report is to provide recommendations that not only assist Tribal-State negotiations in the short term, but also build more stable and mutually-prosperous government-to-government relations. With these goals in mind, my recommendations seek to reach all 38 Tribes, no matter where each sits currently on the spectrum of willingness to partner or work with the State. At the very least, this Report aims to spark enlightened discussion amongst those most affected by Tribal-State opportunities and challenges, which are ubiquitous in Oklahoma.

10. Following this introductory section, Section II explores and describes the State's proper role in facilitating Tribal economic development. It provides context and support for the Report's recommendations, which follow. Section III describes other States' noteworthy Tribal-State frameworks and initiatives. It serves as a resource for Section V of the Report, as well as a starting point for those looking to conduct further comparative research. Section IV describes briefly Oklahoma's economic development strategy and the 38 Tribes' current economic contributions to the State. Section IV also identifies an environment ripe for greater cooperation and alignment of economic strategies in the right circumstances. And, Section V sets out the recommendations. The remaining sections of this Report include the bibliography and appendices.

11. For Oklahoma's Tribal-State government-to-government relationship to improve, each of the 38 Tribes and the State must commit and contribute to the process of improvement. All parties must expend, albeit wisely, their considerable human, political, intellectual and financial resources to build and nurture the better relationships and partnerships they seek.

My Work

12. As I mention above, my task this summer was to develop creative approaches for Oklahoma's Tribal-State negotiations. I began my work in early June by attending the *Sovereignty Symposium XXVI*, specifically attending panels on Tribal economic development, Tribal and Local government cooperation and compact negotiations. The *Symposium* provided me with most beneficial introductions to Tribal-State relations and the rich Tribal histories of Oklahoma. I heard directly from various Tribal leaders on major issues, which given my time constraints would have been very difficult to do on a one-on-one basis.

13. From June to mid-July, I reached out to various Tribal and State representatives. These representatives included Tribal members, staff and legal counsel, as well as officials from the Department of Commerce, Department of Transportation and Governor's Office, many of whom graciously offered their time to discuss their perspectives on Tribal-State relations in Oklahoma. These stakeholders were an irreplaceable resource, providing informed perspectives on the challenges faced by the parties and suggesting potential strategies to deal with those challenges. During this time period, I also consulted leading academics and out-of-state professionals in the fields of Indian law, Tribal-State relations and Provincial-First Nations relations. In particular, I spoke to professionals with Tribal-State relations experience in Arizona, California, Idaho, New Mexico, and Oregon, as well as Provincial-First Nations relations experience throughout Canada. As one would expect, these professionals offered immeasurable insight into the complex legal, policy and economic issues bearing on the matters considered in this Report.

14. Given the historical and legal contexts within which Tribal-State relations exist, I also conducted extensive legal, historical and comparative research. I reviewed many studies and papers about the Federal Government's role in Native Americans' economic development and wealth accumulation. I also reviewed the comparative dearth of sources about the States' proper role in catalyzing, facilitating and sustaining Tribal economic development. I have included a bibliography of sources cited at the end of this Report. I expect the dearth of sources on the States' role to continue to grow in tandem with the Federal Government's delegation of responsibility over matters of Indian concern to the Tribes themselves and affected State governments.

15. Reviewing other States' approaches and experiences also provided me with a wealth of useful information about Tribal-State relations. Any new approaches suggested for Oklahoma's consideration must obviously be promulgated in contemplation of Oklahoma's own constitutional, political and economical realities. Nevertheless, analyzing other States' unique relationships and experiences with Tribes allowed me to reflect advantageously on what has been tried (successfully and unsuccessfully) elsewhere in the Tribal-State relations arena.

16. Finally, I would be remiss not to acknowledge that this Report would of course have benefited from greater and broader consultation with both Tribal and State officials in Oklahoma. The nature and timing of my fellowship, however, made greater consultation impractical.

The Recommendations

17. The culmination of my work is the following set of recommendations, which are considered and explained at length in Section V of this Report.

RECOMMENDATION 1:

The State of Oklahoma should solidify its government-to-government relationship with the 38 Tribes.

This should first be done through an executive order, which addresses the following matters:

- recognition of the historical importance of the 38 Tribes in Oklahoma;
- recognition of the importance of the past, present and future Tribal-State government-to-government relationship in Oklahoma;
- creation of State agency communication and consultation policies, ongoing training and education programs and accountability; and
- a substantive annual meeting for the Governor, and State and Tribal officials.

Subsequent solidification of the relationship would be possible through legislation and/or a government-to-government accord.

RECOMMENDATION 2:

The State of Oklahoma should encourage greater and creative use of the *Interlocal Cooperation Act* as a way to increase regional economic cooperation, improve infrastructure and enhance access to capital.

Under the Act, political subdivisions of the State and/or State agencies and Tribal Nations should form intergovernmental entities to centralize, plan, fund, implement, and manage economic development and other projects, as well as address together any other issues of mutual concern.

RECOMMENDATION 3:

The State of Oklahoma should partner with and/or otherwise support the 38 Tribes in efforts to eliminate federal restrictions on access to capital.

As Tribes and States address matters of mutual concern at an increasing rate, federal resources for Tribes should be maximally leveraged. State support for parity in the Federal Government's treatment of States, Local Governments and Tribes regarding bonding and financing capabilities would be beneficial. In particular, it could improve Oklahoma's government-to-government relations with the 38 Tribes.

Current efforts should focus on the following issues:

- (a) securing an amendment by the Securities and Exchange Commission (the "SEC") to Rule 501 of Regulation D, adding Tribes as "*Accredited Investors*"; and

- (b) seeking better and more efficient use of existing federal Tribal Economic Development Bonds and obtaining parity in the SEC's treatment of State, Local Government and Tribal bond securities.

RECOMMENDATION 4:

The State of Oklahoma should establish a task force to consider how the State can better facilitate access to capital and economic development directly.

Measures that should be considered by the task force include:

- (a) permitting intergovernmental entities to issue revenue bonds and enter other financing arrangements;
- (b) adding the 38 Tribes as "*eligible local government entities*" for the purposes of the *Oklahoma Community Economic Development Pooled Finance Act*;
- (c) establishing Tribal Economic Partnership Zones and/or Programs;
- (d) establishing a strategic economic development fund and training program; and
- (e) reviewing other incentives with the objective of aligning new approaches to Tribal-State relations with Oklahoma's overall economic development strategy.

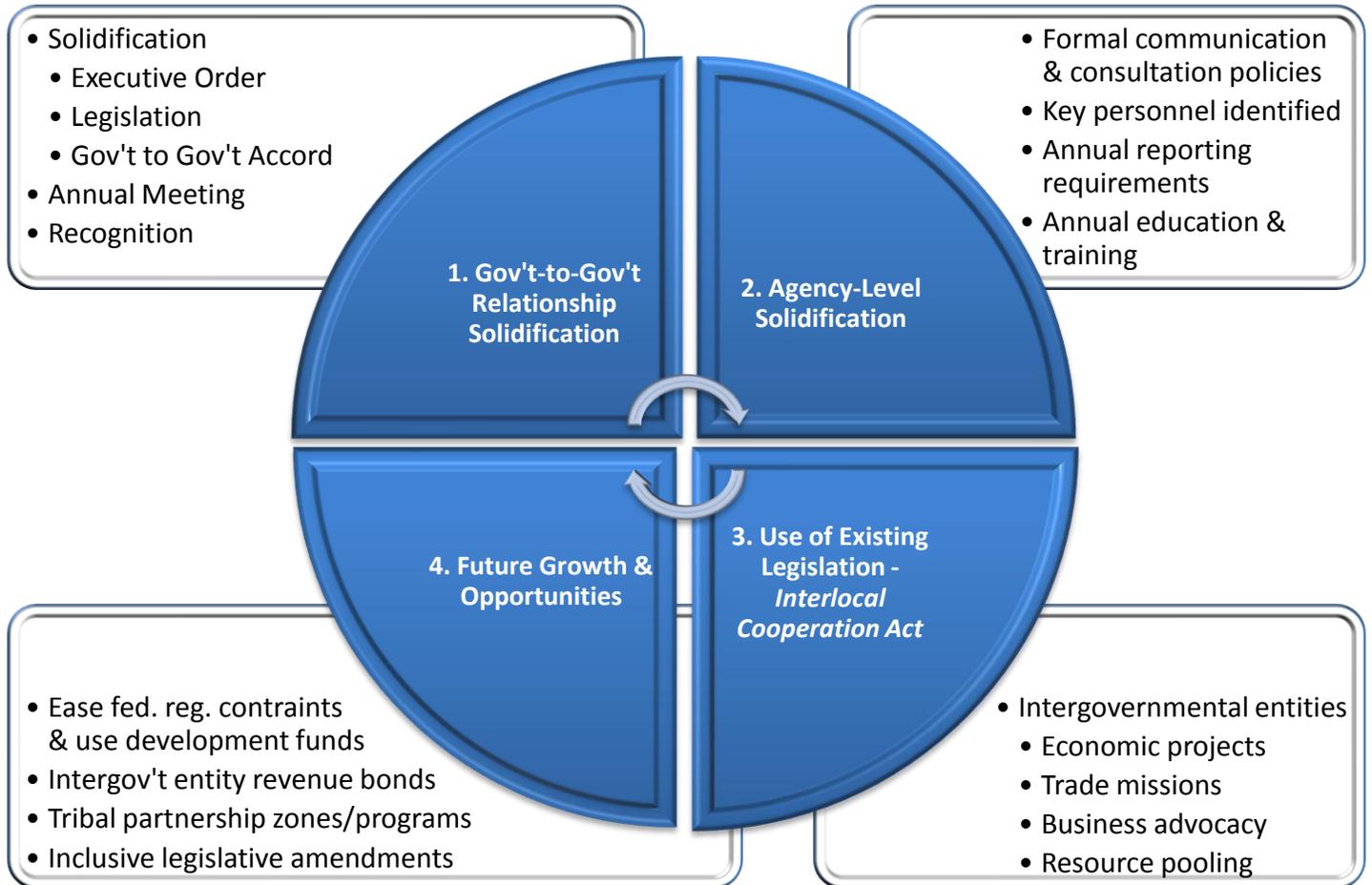
RECOMMENDATION 5:

The State of Oklahoma should develop a comprehensive Oklahoma Native American Liaison website. The website development process should serve as an opportunity to define and cultivate an improved Tribal-State government-to-government relationship. The website's creation and launch should also set State and Tribal expectations moving forward.

18. While it is indeed possible to implement some of these recommendations and not others, they simply cannot be considered in isolation. Sovereign relations require willingness to compromise and coordinate on a continual basis, which often means government representatives must trust each other on a personal level and set aside differences in the name of progress. If the requisite overall relations are wanting, results on specific issues and projects will be suboptimal. If the Tribal-State government-to-government relationship is not solidified, it will be difficult to formalize and maintain agency-level consultation policies, education requirements and accountability. If agencies do not have formal policies for Tribal consultation, it will be cumbersome to form ongoing partnerships and alliances. If there is not instinctual communication between the separate groups, new policies and programs will not consider the other's priorities and therefore discourage cooperation. And so on, and so forth.

19. On the other hand, strong Tribal-State government-to-government relations can overcome or minimize isolated disputes and misunderstandings. The interrelationship amongst this Report's recommendations is depicted in the following chart.

Interrelationship of the Recommendations



II. TRIBAL ECONOMIC DEVELOPMENT: THE STATE'S PROPER ROLE

20. Most of the experts and stakeholders consulted for this Report were asked some variation of the following question:

Since sovereignty and Tribe-specific institutional infrastructure are paramount to sustaining Tribal economic development, and history and law place most Tribal political relations squarely within the Federal Government's domain, what should be the proper role of State government in facilitating Tribal economic development beneficial to Tribes and the State in question?

21. While I received a number of different responses from both sides, a common theme emerged: Oklahoma should be a partner, not lead manager or sole financier. When pressed to elaborate, stakeholders and experts suggested that forms of cooperation must at their foundations align with both State and Tribal economic priorities. These comments coincide with recent empirical research on the proper approach to Tribal economic development. Some of this research is discussed below.

22. Aligning economic priorities presents Oklahoma with a challenge because there are 38 Tribes within its borders, an amount which is behind only California as the largest number of sovereign Indian Nations within a State within the contiguous United States.⁴ A balance must be struck between initiatives that are broad enough to be realistic and flexible enough to incorporate the varied interests and priorities.

23. As mentioned above, there is a comparative lack of study about State governments' role in Tribal economic development. Two recent studies, however, led to conclusions about current challenges for Tribes in developing their economies and best strategies for State governments to help Tribes address those challenges. For this Report's purposes, the studies' conclusions and recommendations are worth a review.

The 2012 Report of Board of Governors of the Federal Reserve System

24. First, in April 2012, the Board of Governors of the Federal Reserve System published a report titled *Growing Economies in Indian Country: Taking Stock of Progress and Partnerships – A Summary of Challenges, Recommendations and Promising Efforts*.⁵ The report summarizes the results of six workshops held in the United States in 2011, which are buttressed by external studies and reports.⁶ The

⁴ *National Conference of State Legislators*, Federally-Recognized Tribes (updated June 2013), <http://www.ncsl.org/issues-research/tribal/list-of-federal-and-state-recognized-tribes.aspx> (accessed August 2, 2013).

⁵ *Federal Reserve, Board of Governors of the Federal Reserve System*, *Growing Economies in Indian Country: Taking Stock of Progress and Partnerships – A Summary of Challenges, Recommendations and Promising Efforts* (April 2012), <http://www.federalreserve.gov/newsevents/conferences/GEIC-white-paper-20120501.pdf> (accessed July 17, 2013).

⁶ *Ibid.*, at p. 3, footnote 3.

workshops brought together about 600 participants from 30 States, including over 100 Tribal representatives from 63 Tribes, 22 Federal and State agencies, 17 universities and research institutions, as well as financial and development institutions.⁷

25. The report identifies eight categories of challenges that encumber economic development for Tribes:

- (i) insufficient access to capital;
- (ii) capacity and capital constraints;
- (iii) insufficient workforce development, financial management training, and business education;
- (iv) tribal governance constraints;
- (v) regulatory constraints;
- (vi) underdeveloped physical infrastructure;
- (vii) insufficient research and data; and
- (viii) lack of regional coordination.

26. After discussing the challenges, the report goes on to consider State governments' role specifically in helping to address them.

27. The Board recommends that State governments consider measures, which:

- enhance access to capital and business development;
- support small business resource providers;
- expand training and education opportunities;
- develop physical infrastructure;
- encourage stakeholder collaboration; and
- encourage and support data collection and analysis.

Drs. Cornell and Kalt's Nation-Building Approach to Tribal Economic Development

28. Second, renowned Tribal economic development authorities, Dr. Joseph P. Kalt⁸ and Dr. Stephen Cornell⁹, also considered non-indigenous governments' proper role in the Tribal economic development

⁷ *Ibid.*, at p. 1.

⁸ Dr. Joseph Kalt is the Ford Foundation Professor of International Political Economy (Emeritus) at the Harvard Kennedy School and Co-Director of the *Harvard Project on American Indian Economic Development* - www.hpaied.org, <http://www.hks.harvard.edu/about/faculty-staff-directory/joseph-kalt> (accessed July 17, 2013). He is also a faculty associate with the *Native Nations Institute for Leadership, Management and Policy*, <http://nni.arizona.edu/whoweare/staff.php> (accessed July 17, 2013).

⁹ Dr. Stephen Cornell is director of the Udall Center for Studies in Public Policy and professor of sociology and public administration and policy at The University of Arizona. He is also Co-Director of the *Harvard Project on*

context. In *Two Approaches to the Development of Native Nations – One Works, the Other Doesn't*,¹⁰ Drs. Cornell and Kalt compare what they term the “standard approach” and “nation-building approach” to Tribal development. They characterize the former as an outdated, narrowly-focused, and state-driven approach, while the latter as a contemporary, comprehensive, partnership-based and strategic one.

29. A general example emblematic of economic development under Drs. Cornell and Kalt’s standard approach is as follows. A well-intentioned State conceives or is presented with a specific business project, such as the construction of a distribution or manufacturing center. The State deems the project suitable for a Tribe that is in need of economic development and opportunities. The State then decides to propose that project to the Tribe, with which at the moment it may or may not have good government-to-government relations. The State’s first interaction with the Tribe regarding the project is when it proposes the project to the Tribe, without having inquired into that Tribe’s political and social structures or economic development agenda. The Tribe, without sufficient strategic analysis but in need of immediate job creation, decides to accept the proposal and figures out how to undertake the project later.

30. Economic development under the nation-building approach, on the other hand, is grounded in strong Tribal-State government-to-government relations. The relations are characterized by habitual communication and consultation amongst stakeholders, as well as mutual trust. Tribes with strong and separate political institutions form their own long-term and realistic economic development strategies, which by virtue of their soundness complement State economic development strategies and priorities. Specific Tribal and State policies and programs then create and/or incentivize economic development projects that are more likely to succeed.

31. Drs. Cornell and Kalt base their nation-building approach on “extended research” on Tribes that have excelled at economic development over the last 30 years.¹¹ They also identify as the “primary source” of their thinking the growing body of research conducted by the *Harvard Project on American Indian Economic Development* (the “Harvard Project”)¹² and the *Native Nations Institute for Leadership, Management, and Policy* at the University of Arizona (the “Institute”).¹³

32. Under the nation-building approach, the authors recommend, among other things, that non-tribal governments work with Tribes in the following specific and optimal ways:

- assist Tribes with building separate and supportive political institutions;

American Indian Economic Development and a faculty associate with the *Native Nations Institute for Leadership, Management and Policy*, <http://udallcenter.arizona.edu/personnel/scornell.php> (accessed July 17, 2013).

¹⁰ Stephen Cornell and Joseph P. Kalt, *Two Approaches to the Development of Native Nations – One Works, the Other Doesn't*, in Miriam Jorgensen, ed., *Rebuilding Native Nations: Strategies for Governance and Development*, The University of Arizona Press (2007) at Chapter 1, pp. 3-33.

¹¹ *Ibid.*, at p. 6.

¹² See note 8.

¹³ *Native Nations Institute*, Homepage, <http://nni.arizona.edu/> (accessed August 5, 2013); See also note 10 at p. 7.

- foster Tribal-State partnerships defined by equality and in circumstances where both sets of interests are at stake;
- shift from an issue-specific, project-by-project development strategy to one that builds synchronized and complementary economies; and
- promote and support development that places not only decision-making, but also accountability, in Tribal leaders' hands.¹⁴

33. Drs. Cornell and Kalt in their work place a premium on strategic goals and calculation. They underscore what some may at first see as ironic - economic development focused exclusively on economics is unlikely to succeed.¹⁵ Tribal and State governments, in their pursuit of timely job and income gains, must not ignore bigger issues, such as the societies that Tribal Nations seek to build.¹⁶ Economic development strategies unaligned with specific Tribal social and cultural priorities typically fail.¹⁷

34. In addition to the work of the Harvard Project and the Institute, a recent paper on the shortcomings of predominantly State-led Tribal economic development supports Drs. Kalt and Cornell's call for a new nation-building approach to Tribal development. While the study focuses on failures of State-led economic development at the federal level, many of its conclusions are applicable to State governments as well.

35. In *The Failure of State-Led Economic Development on American Indian Reservations*, Dr. Rachel L. Mathers attributes the lack of success to (i) non-indigenous government's inability to perform economic calculation because it "operates outside the market"¹⁸ and (ii) the resultant "political allocation of resources"¹⁹ within bureaucratic structures, representatives of which ultimately decide the specific projects to fund. Economic calculation in this context means "the decision-making ability to allocate scarce capital resources among competing uses."²⁰

36. Using previous Economic Development Administration (the "EDA") efforts, Dr. Mathers analyzes EDA grants received by Tribes and their organizations and unemployment rates of American Tribes between 1995 and 2001, noting that there is "no clear relationship" between the two variables.²¹ She observes that if the EDA grants were creating wealth and jobs, the data would show declining poverty and unemployment rates, which the data fail to do over the period considered.²² The inability to perform economic calculation, Mathers argues, forces governments to find other, less useful and

¹⁴ See note 10 at pp. 27-28.

¹⁵ See note 10 at pp. 11-12.

¹⁶ See note 10 at pp. 25-26.

¹⁷ See note 10 at p. 17.

¹⁸ Rachel L. Mathers, *The Failure of State-Led Economic Development on American Indian Reservations* in *The Independent Review*, Vol. 17, n. 1 (Summer 2012) pp. 65-80 at 66.

¹⁹ *Ibid.*

²⁰ *Ibid.*, at p. 68.

²¹ *Ibid.*, at pp. 68-69.

²² *Ibid.*, at p. 68.

misleading measures of achievement, such as simple job creation numbers.²³ On the “political allocation” side, Mather observes that the goal of budget maximization within bureaucracy creates a perverse relationship between resource-allocation decisions and Tribal economic development goals.²⁴

37. The nation-building approach, and the impediments inherent in development that is *led* by outsiders, guided the formulation of this Report’s recommendations for Oklahoma.

²³ *Ibid.*, at p. 72.

²⁴ *Ibid.*, at p. 74.

III. FRAMEWORKS & ECONOMIC DEVELOPMENT INITIATIVES OF OTHER STATES

38. This section resulted from a review of Tribal-State relations in the United States and conversations with out-of-state officials; it provides descriptions of the strategies of other States, which, like Oklahoma, face opportunities and challenges in their Tribal-State relations.

39. This section does not provide an exhaustive review of all Tribal-State relationship frameworks, laws, institutions, commissions or other examples of cooperation undertaken in the United States. Other states (for example Arizona²⁵ and Michigan²⁶) also have meaningful mechanisms to address their Tribal-State relations.

Oregon – Nine Federally-Recognized Tribes

40. *First-Order Principles: Relationships of State Agencies with Indian Tribes Law*

In 2001, Oregon passed a law to establish foundational principles for cultivating positive, on-going Tribal-State relations, known as *Relationship of State Agencies with Indian Tribes*²⁷ (the “Relationship Law”). The Relationship Law is intended to not only increase cooperation, but also decrease costly, relationship-damaging litigation amongst State government and the Tribes. It requires State agencies to develop and implement policies regarding their relationships with Tribes. Those policies (which must be developed in consultation with Tribes) require agencies to do the following:

- specifically identify the agency positions responsible for programs that affect Tribes;
- promote communication and positive relations with Tribes; and
- provide means to notify employees of the law and policy established under the Relationship Law.

In addition, the Relationship Law mandates annual training for State agency employees in regular contact with Tribes, a yearly Tribal-State meeting called by the Governor, and yearly reporting by State agencies on a number of key requirements.²⁸ Importantly, the Relationship

²⁵ Arizona Commission of Indian Affairs, Homepage, <http://www.indianaffairs.state.az.us/> (accessed July 17, 2013); Arizona Commission of Indian Affairs, Tribal Consultation Policies, http://azcia.gov/agency_tribal_consultation_policies.asp (accessed July 17, 2013).

²⁶ Exec. Directive No. 2001-2, State of Michigan, Office of the Governor, “Policy Statement on State-Tribal Affairs” (May 22, 2001), http://www.michigan.gov/documents/som/2002_Tribal-State_Accord_195712_7.pdf (accessed August 7, 2013); Exec. Directive No 2004-5, State of Michigan, Office of the Governor (May 12, 2004), http://www.michigan.gov/som/0,4669,7-192-29701_41909-92821--,00.html (accessed July 10, 2013).

²⁷ State Administrative Agencies, *Oregon Revised Statutes* 182.162-168, <http://www.leg.state.or.us/ors/182.html> (accessed July 9, 2013).

²⁸ The 2012 reports are found at the following: *Legislative Commission on Indian Services*, Homepage, <http://www.leg.state.or.us/cis/> (accessed July 9, 2013).

Law builds upon existing requirements made by an earlier executive order,²⁹ which recognizes the “unique legal status” of Oregon’s Tribes, the need for “trust and mutual respect” and a formalized government-to-government relationship.³⁰

41. *Primary State Institutions: Legislative Commission on Indian Services & Clusters*

Oregon has the *Legislative Commission on Indian Services* (the “LCIS”), an advisory board comprised of 13 Tribal leaders and State legislators, which was established about 40 years ago.³¹ The LCIS monitors State-Tribal working groups, called “clusters”.³² Oregon has six State-Tribal clusters:

- (i) Economic Development and Community Services;
- (ii) Education and Workforce Training;
- (iii) Cultural Resources;
- (iv) Health and Human Services;
- (v) Natural Resources; and
- (vi) Public Safety and Regulation.

Within each of these clusters, representatives from relevant State agencies and the Tribes are brought together regularly to discuss important issues and ideas within their respective cluster’s portfolio.³³

²⁹ Exec. Order No. 96-30, State of Oregon, Office of the Governor “State/Tribal Government-To- Government Relations” (May 22, 1996), <http://www.oregon.gov/LCD/docs/govtogov/eo96-30.pdf> (accessed July 9, 2013); Other examples of executive orders addressing Tribal-State government-to-government relationships include Exec. Order 39, State of Wisconsin, Office of the Governor, “Relating to and Affirmation of the Government-to-Government Relationship Between the State of Wisconsin and Indian Tribal Governments Located Within the State of Wisconsin” (February 27, 2004), <http://witribes.wi.gov/docview.asp?docid=23379&locid=57> (accessed July 10, 2013); Exec. Order 98-10, State of New Mexico, Office of the Governor, “State of New Mexico State/Tribal Government Relations Policy”; Exec. Order 2005-0004, State of New Mexico, Office of the Governor, “Statewide Adoption of Pilot Tribal Consultation Plans” (February 1, 2005), <http://www.indianz.com/docs/richardsoneo2.pdf> (accessed July 10, 2013); Exec. Order 03-05, State of Minnesota, Office of the Governor, “Affirming the Government-to-Government Relationship Between the State of Minnesota and Indian Tribal Governments Located within the State of Minnesota” (April 9, 2003) (extended by Exec. Order 11-08 (April 4, 2011)), <http://www.leg.mn/archive/execorders/11-08.pdf>, <http://www.leg.mn/archive/execorders/03-05.pdf> (accessed July 10, 2013).

³⁰ *Ibid.*, Exec. Order No. 96-30, State of Oregon.

³¹ *Legislative Commission on Indian Services*, About the Commission, <http://www.leg.state.or.us/cis/> (accessed July 31, 2013).

³² *Legislative Commission on Indian Services*, 2013 Key Contact Directory, http://www.leg.state.or.us/cis/key_contacts/agencies_and_clusters.pdf (accessed July 10, 2013).

³³ Joseph P. Kalt, et al., The Harvard Project on American Indian Economic Development, *Tribal-State Relations in The State of Native Nations: Conditions under U.S. Policies of Self-Determination*, Oxford University Press (2008) at p. 72.

42. *State Programs of Note: Intergovernmental Entities, Tribal Enterprise Zones & Reservation Partnership Zones*

Oregon Revised Statutes (“ORS”) 190.003-190.110 sets out a framework to encourage and formalize mutually-beneficial intergovernmental relationships. ORS 190.007 explicitly states that “in the interest of furthering the economy and efficiency of local government... [the relevant provisions] shall be liberally construed.”

Under ORS 190.010, a “unit of local government”³⁴, can enter into a written agreement with another unit (or other units) of local government for the “performance of any or all functions and activities that a party to the agreement, its officers or agencies, have authority to perform.”³⁵ Such an agreement, may also create “an intergovernmental entity”³⁶ to perform those functions and activities, so long as that entity reports to and acts on behalf of the signatories to the intergovernmental agreement.

These intergovernmental entities are authorized under ORS 190.080(1) to issue revenue bonds, enter into agreements for purchase or lease of real or personal property, and adopt rules necessary to carry out its powers and duties established in the intergovernmental agreement. Further, requirements regarding debts, liabilities and distribution of assets upon dissolution are set out in the law. Finally, ORS 190.110 permits units of local government and State agencies to conclude agreements with American Indian Tribes for lawful purposes of intergovernmental cooperation, which include providing jointly for administrative officers. The Supreme Court of Oregon, citing ORS 190.030(1), has held that an agreement under ORS 190.010 “vest[s] each [contracting] entity with the all powers, rights and duties belonging to the other[s].”³⁷

Of interest is that political divisions in Oregon have been creative with the legislative scheme described above, recently using it as the basis to conclude an intergovernmental agreement amongst two counties, an irrigation district and the Confederated Tribes of the Umatilla Indian Reservation (the “CTUIR”). The parties’ agreement established an intergovernmental entity, called the *Umatilla Basin Water Commission* (the “Commission”).³⁸ The CTUIR and the local governments, together as the Commission, own the assets of and operate the project to “restore severely depleted groundwater and enhance in-stream flows in the in the Umatilla River.”³⁹ Also, the parties, as the Commission, have brought together under one administrative

³⁴ *Oregon Revised Statutes* 190.003 defines “unit of local government” as a county, city, district or other public corporation, commission, authority or entity organized and existing under statute or city or county charter.

³⁵ *Oregon Revised Statutes* 190.010.

³⁶ *Oregon Revised Statutes* 190.010(5).

³⁷ *Northwest Natural Gas Co. v. City of Portland* (1985), 300 Or. 291, 711 P.2d 119 (S.C.).

³⁸ Martha Pagel, “New Water Management Model: The Umatilla Basin Water Commission, Counties, Irrigation District & Confederated Tribes Form Administrative Body” in *The Water Report*, Issue #87, http://www.cwi.colostate.edu/southplatte/files/11132012%20water%20report%20Pagel-TWR_87.pdf (accessed July 9, 2013).

³⁹ *Ibid.*

body and framework the stakeholders' diverse interests. Since its creation in 2009, the Commission has secured state funding, entered into contracts for professional services, negotiated lease agreements, and begun work on long-term project objectives.⁴⁰

Business Oregon, a State agency, administers a two-pronged business development incentive program targeted at assisting the State's Tribal Nations.⁴¹ The relevant law first finds that "subjecting businesses... to state taxation in addition to any [tribal] taxation... heighten[s]... economic isolation... and impede[s] the efforts of Indian tribes to develop sufficient tax bases to fund essential government services[.]"⁴²

Under the program, each of Oregon's nine federally-recognized Tribes are permitted one State-designated "tribal enterprise zone" of up to 12 square miles of its Tribal land (which can be noncontiguous) in the State. The Tribes can also enter into intergovernmental agreements with city, port or county governments to "directly create and co-sponsor any number of contiguous 'reservation partnership zones' anywhere in Oregon."⁴³ The "reservation partnership zones" are designed primarily for discrete parcels of land on which the Tribe and Local government have a shared interest in advancing development.

Within both types of zones, qualifying businesses receive local property tax abatements and special tax credits against State income tax liabilities, in addition to the local and property tax incentives given to qualifying businesses in "standard enterprise zones".

New Mexico – 21 Federally-Recognized Tribes

43. *First-Order Principles: State-Tribal Collaboration Act*

In 2009, the Governor signed into law the *State-Tribal Collaboration Act*.⁴⁴ This Act resembles Oregon's Relationship Law in purpose, scope and requirements. Even before this Act, however, New Mexico formally elevated (by statute in 2004) its Indian Affairs Department (the "IAD") to the cabinet level.⁴⁵ In addition, Governor Bill Richardson signed statements with the Pueblos and Navajo Nation, which set out protocols to be followed when addressing "issues of interest or concern".⁴⁶ The precursor to these advancements in Tribal-State relations, however, was a Government-to-Government Policy Agreement, signed in 1996 by the Governor, New Mexico's

⁴⁰ *Ibid.*

⁴¹ Business Oregon, Tribal Enterprise Zone, <http://www.oregon4biz.com/The-Oregon-Advantage/Incentives/Enterprise-Zones/reservation-zone/> (accessed June 14, 2013); *Oregon Revised Statutes* 285C.300-285C.320.

⁴² *Ibid.*, at *Oregon Revised Statutes* 285C.303.

⁴³ *Ibid.*

⁴⁴ SB196 (2009), *State-Tribal Collaboration Act*, <http://www.iad.state.nm.us/docs/legislation/SB0196.pdf> (accessed July 17, 2013).

⁴⁵ See note 33 at p. 72.

⁴⁶ See note 33 at p. 73.

attorney general, Navajo Nation president, chairs of the Apache Tribes of New Mexico and 19 Governors of the Pueblos. This Policy Agreement formalized cooperation and goodwill amongst the governments, paving the way for the partnerships that followed.⁴⁷ Other government actions preceding the Act were the 2003 Statement of Policy and Process signed by the Governor and Tribes and 2005 executive orders addressing the importance of a solidified Tribal-State government-to-government relationship, which reaches all levels of State government.⁴⁸

44. *Primary State Institutions: Indian Affairs Department & Tribal Economic Development Task Force*

The IAD promotes and coordinates Tribal-State government-to-government relations in New Mexico.⁴⁹ The IAD's 2012-2014 Strategic Plan⁵⁰ is focused heavily on economic development goals and objectives. These goals and objectives include identifying each Tribe's economic assets and capacity, strengthening readiness for development, improving access to capital and updating the 2009 Tribal Economic Development Task Force's Report and Recommendations, which is described briefly below.

By Executive Order in 2009, Governor Richardson established the *Tribal Economic Development Task Force* and assigned it to research Native American Enterprise Zones, identify ways for the State to include Native American Tribes, Nations and Pueblos in the development of tourism and identify State resources available to assist Tribes in accessing the film industry's economic development opportunities.

The Task Force recommended, among other things, that Tribes coordinate with the Economic Development Department and consider establishing enterprise zones on Tribal land under the *New Mexico Enterprise Zone Act* [5-9-1 NMSA 1978]. The Act was determined by the IAD's General Counsel to be applicable to Tribes conducting business on Tribal land.⁵¹ Within enterprise zones, businesses receive favorable tax and other treatment as an incentive to set up operations.

The Task Force also concluded that, consistent with the Governor's desire to pursue Green Economy initiatives, "[m]any... Pueblos and Tribes have land suitable for utility-scale renewable

⁴⁷ See note 33 at p. 73.

⁴⁸ *New Mexico National Guard, State-Tribal Collaboration Act – Communication and Collaboration Policy*, [http://www.iad.state.nm.us/docs/stca/tribal_ccc_policies/DMA\(NMARNG\)%20Policy.pdf](http://www.iad.state.nm.us/docs/stca/tribal_ccc_policies/DMA(NMARNG)%20Policy.pdf) (accessed July 17, 2013); See also notes 29 and 44.

⁴⁹ *New Mexico Indian Affairs Department, Homepage*, <http://www.iad.state.nm.us/mission.html> (accessed July 8, 2013).

⁵⁰ *New Mexico Indian Affairs Department, 2012-2014 Strategic Plan*, <http://www.iad.state.nm.us/docs/initiatives/NMIADStrategicPlan.pdf> (accessed June 10, 2013).

⁵¹ *New Mexico Indian Affairs Department, Tribal Economic Development Task Force: 2009 Report & Recommendations*, <http://www.iad.state.nm.us/docs/initiatives/TribalEconomicTFReport.pdf> (accessed June 10, 2013).

energy projects[.]”⁵² and could benefit from customer- and community-scale renewable energy production, bio fuel production, and energy efficiency retrofitting and green building.

45. *State Programs of Note: Tribal Infrastructure Act & Severance Bonds for Tribal Infrastructure (2010 HB162)*

In 2005, New Mexico passed the *Tribal Infrastructure Act*.⁵³ The Act recognizes the lack of basic infrastructure, including water and wastewater systems, roads, and electrical power lines, which plague many New Mexico Tribal communities. In addition, the Act finds specifically that the lack of such infrastructure results in poor social, health, and economic conditions in those affected communities.⁵⁴ To address these serious issues, the Act created the *Tribal Infrastructure Trust Fund* and the *Tribal Infrastructure Project Fund*. To evaluate project proposals and authorize grants and loans under the Project Fund, the Act also formed a 13-member Tribal Infrastructure Board (the “Board”), which is linked to the IAD. The nine Board members who are entitled to vote consist of specific cabinet secretaries (or their designees) and Tribal representatives. The New Mexico Interim Indian Affairs Committee holds legislative oversight over the program, grants and loans.

Following a 2009 report from the IAD and the Board, which detailed Tribal infrastructure challenges and resources,⁵⁵ the program received a greater amount of funding pursuant to HB162 (2010), *Severance Bonds for Tribal Infrastructure*.⁵⁶ The board of finance division now allocates five percent of the estimated senior severance tax bonding capacity each year to Tribal infrastructure projects. The allotted amount is then issued as severance tax bonds for use by the Board to fund proposed projects.⁵⁷ Severance tax bonds are issued against revenue from severance taxes, that is, “taxes imposed when oil, gas, or other natural resource is ‘severed’ from the ground.”⁵⁸ In 2012, the Board awarded over \$13 million to 28 Tribal infrastructure projects.⁵⁹ A representative sample of selected projects includes:

⁵² *Ibid.*, at p. 20.

⁵³ *Tribal Infrastructure Act, New Mexico Statutes* § 6-29-1, http://www.lawserver.com/law/state/new-mexico/nm-statutes/new_mexico_statutes_chapter_6_article_29 (accessed July 8, 2013).

⁵⁴ *Ibid.*, at § 6-29-2.

⁵⁵ *Native American Voters Alliance, Campaigns to Strengthen Native American Working Families*, <http://www.nativevotersalliance.org/campaign-issues.html> (accessed July 9, 2013).

⁵⁶ HB162 (2010), *Severance Bonds for Tribal Infrastructure*, http://legiscan.com/NM/text/HB162/id/449537/New_Mexico-2010-HB162-Enrolled.pdf (accessed July 9, 2013), amending § 7-27-10.1 NMSA 1978 (being Laws 2003, Chapter 134, Section 1, as amended).

⁵⁷ *New Mexico Indian Affairs Division, FY2013 Tribal Infrastructure Project Fund – Notice of Funding Availability*, <http://www.iad.state.nm.us/docs/funding/NOFA%2010%2003%2012.pdf> (accessed July 9, 2013).

⁵⁸ *New Mexico Legislature, LFC Finance Facts, Understanding State Financial Policy – Bonding Capacity*, <http://www.nmlegis.gov/lcs/lfc/lfcdocs/finance%20facts%20bonding.pdf> (accessed July 10, 2013).

⁵⁹ *CNBC, Tribal Capital Improvements Receive \$13M from NM (October 2, 2012)*, <http://www.cnb.com/id/100126230> (accessed June 11, 2013); *New Mexico Indian Affairs Division, Tribal Infrastructure Project Fund – TIF Webinar, Santa Fe (November 2012)*,

- \$32,000 planning grant to the San Ildefonso, Pueblo Housing Authority for a housing subdivision;
- \$150,000 planning grant to Pueblo of Taos for a comprehensive indigenous community plan;
- \$350,250 planning grant to Navajo Nation, Ramah Chapter for a water well;
- \$600,000 planning grant to Navajo Nation, White Rock Chapter for a water pipeline;
- \$400,000 construction grant to Pueblo of Laguna for a school house;
- \$700,000 construction grant to Pueblo of Isleta for a long-term care facility;
- 1.3 million construction grant to Pueblo of Zia for an Enterprise Zone; and
- \$1.675 million construction grant to Pueblo of Santa Clara for wastewater collection system improvement.⁶⁰

The program has not only provided much-needed capital outlay funding for infrastructure projects to Tribes, but also allowed those same Tribes to leverage additional funding from other sources for their projects, according to the Native American Voters Alliance.⁶¹ An estimated \$16.7 million in funding is available in fiscal year 2013.⁶²

Montana – Seven Federally-Recognized Tribes

46. *First-Order Principles: State-Tribal Government-to-Government Act*

In 2003, Montana passed the *State-Tribal Government-to-Government Act*.⁶³ The Act enshrined guiding principles for government-to-government relations and dealings. It also mandates specific annual reporting by State agencies, a yearly Tribal-State meeting called by the Governor and training on “the legal status of tribes, the legal rights of tribal members, and social, economic, and cultural issues of concern to tribes”⁶⁴ for State government employees who regularly communicate with Tribes. Following this legislation, Montana formed several partnerships and programs aimed at Tribal economic and entrepreneurial development. The major ones are described in paragraph 48 below.

<http://www.iad.state.nm.us/docs/funding/TIF%20Application%20Wkshop%20Santa%20Ana.pdf> (accessed July 10, 2013).

⁶⁰ *Ibid.*, TIF Webinar.

⁶¹ See note 55.

⁶² See note 57.

⁶³ HB608 (2003), *State-Tribal Government-to-Government Act*, <http://leg.mt.gov/bills/2003/billhtml/HB0608.htm> (accessed July 11, 2013).

⁶⁴ *Ibid.*

47. *Primary State Institutions: MT Indian Business Alliance, Montana Department of Commerce & State-Tribal Economic Development Commission*

The *MT Indian Business Alliance*⁶⁵ brings together organizations interested in Indian business development. The organizations include Tribal organizations and governments, the Governor's Office, State agencies, non-profits, Tribal colleges, Indian-owned businesses, lending institutions, consulting firms, consumer credit advocacy agencies, community development agencies, the Federal Reserve Bank and Federal agencies.⁶⁶

The Montana Department of Commerce and the State-Tribal Economic Development Commission (the "STEDC") administer the State's major Tribal incentive and other programs.

48. *State Programs of Note: Indian Country Economic Development Grants, Montana Indian Equity Fund, Entrepreneur Development Program & Tribal Infrastructure and Energy Efficiency Reinvestment Program*

The Montana Department of Commerce administers the *Indian Country Economic Development* (or the "ICED") grant program⁶⁷ and coordinates with the STEDC on Tribal economic development efforts. The State-funded ICED program originated in the legislature and the approved funds are earmarked for enterprises that support Tribal business development, workforce or entrepreneurial training, feasibility studies and other economic development projects, subject to certain ineligible activities and costs.⁶⁸ Applicants for these grants must be the Tribal governments themselves, which are then permitted to grant or loan the money (up to \$70,000 for fiscal year 2013) to businesses, if they produce a "positive economic benefit"⁶⁹ to the Tribe. The grant application must be approved by Tribal resolution and, in most cases, the grant funds must be matched in cash or in kind. Although in practice the average Tribal government match-rate well exceeds five-to-one.

The Department of Commerce also administers the *Montana Indian Equity Fund*⁷⁰, with the aim of addressing in part the capital shortfall hindering business and economic development in Indian Country. This ICED program-supported fund, through capital injections, assists current or new Native American business owners with business activities, such as the purchase of new equipment or development of a new product line. Each grant must be matched dollar-for-dollar with cash, in kind, or loan(s).

⁶⁵ Department of Commerce, Tribal Resources, <http://www.mtfinanceonline.com/brdtribalresources.mcp> (accessed July 17, 2013); *Montana Indian Business Alliance*, Homepage, <http://www.mibaonline.org/> (accessed July 17, 2013).

⁶⁶ *Ibid.*

⁶⁷ *Indian Country Economic Development*, Homepage, <http://iced.mt.gov/default.mcp> (accessed July 17, 2013).

⁶⁸ *Ibid.*

⁶⁹ *Ibid.*, Defined as "the near term creation or retention of job opportunities for tribal members in Montana."

⁷⁰ *Montana Indian Equity Fund*, Homepage, <http://www.entrepreneur.mt.gov/indianequityfund.mcp> (accessed July 10, 2013).

The Department of Commerce's *Entrepreneur Development Program* has two key objectives: "[e]xpand Native American business ownership in Montana's tribal communities" and "[p]artner with other networks to develop regional and local organizations mentoring Native American business owners and entrepreneurs."⁷¹ In particular, the Department has provided training, classes and technical assistance to Tribal businesspeople and entrepreneurs.

In 2009 and 2010, the STEDC administered the *Tribal Infrastructure and Energy Efficiency Reinvestment Program*, which was an economic stimulus initiative. The program formed part of the *Montana Reinvestment Act* (HB 645), signed into law on May 14, 2009 (Chapter 489, Laws 2009). The Program provided \$4,943,500 in grants to Tribal governments, which in turn provided funding for projects to improve infrastructure or energy efficiency for Tribes.⁷²

Washington – 29 Federally-Recognized Tribes

49. *First-Order Principles: Centennial Accord & Millennium Agreement*

In August 1989, the State's federally-recognized Tribes and the State of Washington, through its Governor, signed the *Centennial Accord*, "in order to better achieve mutual goals through an improved relationship between their sovereign governments."⁷³ The Accord established an annual meeting, as well as a foundation for reaching future agreements. A New Millennium Agreement was signed in 1999, which reaffirmed the Accord's objectives and set out measures to solidify the government-to-government relationship, including commitments to develop a consultation process, protocols and action plans.⁷⁴ Both the Accord and the Agreement were reaffirmed in 2005 by then Governor Christine Gregoire.⁷⁵

In addition to the Accord and Agreement, Washington has set out its government-to-government relations with Tribes in law. Title 43 of the *Revised Code of Washington, State Government – Executive*, Chapter 43.376⁷⁶ codifies similar requirements to those found in the laws of Oregon, Montana and New Mexico.

⁷¹ *Department of Commerce*, Entrepreneur Development Program, <http://entrepreneur.mt.gov/mission.mcp> (accessed July 10, 2013).

⁷² *Department of Commerce*, State-Tribal Economic Development Commission, <http://tribal.mt.gov/tieerp.mcp> (accessed July 10, 2013).

⁷³ *Governor's Office of Indian Affairs*, Centennial Accord (August 4, 1989), <http://www.goia.wa.gov/government-to-government/data/centennialaccord.htm> (accessed July 11, 2013).

⁷⁴ *Governor's Office of Indian Affairs*, Millennium Agreement (November 3, 1999), <http://www.goia.wa.gov/government-to-government/Data/agreement.htm> (accessed July 10, 2013).

⁷⁵ Susan Johnson et al., *National Conference of State Legislatures*, Government to Government Models of Cooperation between States and Tribes (<http://www.ncsl.org/documents/statetribe/item019417.pdf> at p. 34 (accessed June 7, 2013).

⁷⁶ *Revised Code of Washington*, Title 43, State Executive Government, Chapter 43.376, <http://apps.leg.wa.gov/rcw/default.aspx?cite=43.376> (accessed July 12, 2013).

50. *Primary State Institutions: Governor's Office of Indian Affairs*

The Governor's Office of Indian Affairs is the liaison amongst State and Tribal governments in advisory, resource, consultation and educational capacities.⁷⁷

In 1997, Washington and the Tribes sought a better understanding of the Tribes' economic impact on the State. This initiative culminated with a comprehensive report, titled *Economic Contributions of Indian Tribes to the Economy of Washington State*.⁷⁸ The report's primary purposes were to quantify Tribal economic contributions for better policy setting in the future and dispel the misperception held by some that Tribes were a 'drag' on the State and its economy.⁷⁹

The report concluded that Tribes contribute \$1 billion annually to the State's economy, and in 1997 spent \$865.8 million in supplies, equipment and services, paid \$51.3 million in Federal employment/payroll-related taxes, and paid \$5.3 million in State employment/payroll-related taxes. A subsequent study found that Tribal enterprise and government revenue continued to grow, and in fact doubled between 1997 and 2004, while total revenue of the Indian economy (including individual-owned and non-Indian businesses) exceeded \$3.2 billion.⁸⁰

⁷⁷ *Governor's Office of Indian Affairs*, Homepage – About Us, <http://www.goia.wa.gov/AboutUs/AboutUs.htm> (accessed July 12, 2013).

⁷⁸ Veronica E. Tiller and Robert A. Chase, *Governor's Office of Indian Affairs*, *Economic Contributions of Indian Tribes to the Economy of Washington State*, <http://www.goia.wa.gov/images/pdf/iacbook.pdf> (accessed June 10, 2013).

⁷⁹ *Ibid.*, at p. 1.

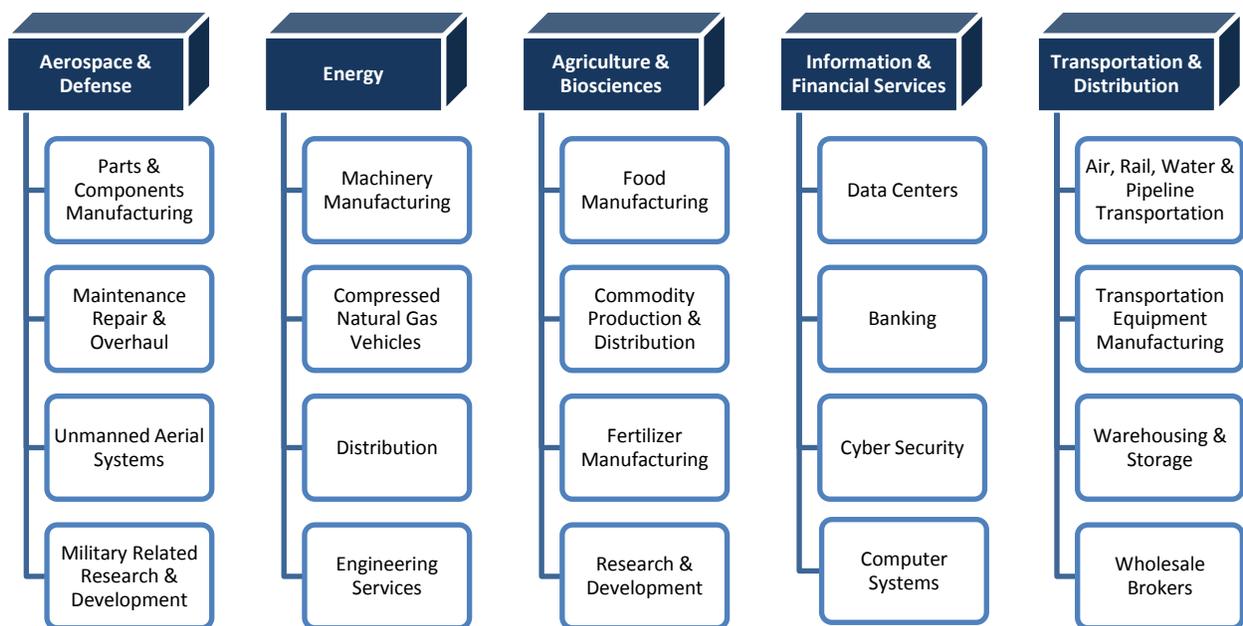
⁸⁰ See note 33 at p. 120, citing Jonathan B. Taylor, *Indian Self-Government in Washington*, vol. 2, *The Character and Effects of the Indian Economy in Washington State*, Cambridge, MA and Olympia, WA: Taylor Policy Group and Washington Indian Gaming Association (2006) at p. 20.

IV. ALIGNING NEW APPROACHES WITH OKLAHOMA'S ECONOMIC DEVELOPMENT STRATEGY

51. Emphasis has been placed on the need for State governments to act as partners in Tribal economic development. For this Report's purposes, this necessarily and importantly means that Oklahoma's economic priorities be considered within any cooperative framework that is developed.

Oklahoma's Five Industry Ecosystems

52. The Department of Commerce recently formulated Oklahoma's economic development strategy. To do so, it analyzed data representing wealth generation, growth potential and competitive advantage in order to identify "Industry Ecosystems"⁸¹, which should drive Oklahoma's economic priorities and policies.⁸² The Department, in its process, also analyzed qualitative data and tested its conclusions against macroeconomic data. The Department recommends that the State focus economic development on five economic systems, as depicted below with non-exclusive representative industries within each system.⁸³



⁸¹Oklahoma Department of Commerce, Key Business Ecosystems, <http://okcommerce.gov/location-or-expansion/oklahomas-business-ecosystems/> (accessed July 15, 2013).

⁸²Deidre D. Myers, Department of Commerce, *Oklahoma's Ecosystems: Accelerating the Growth of the State's Economic Prosperity, Presentation* (February 6, 2013), Oklahoma Association of Realtors Legislative and Economic Summit, February 6 & 7, 2013, Skirvin Hilton Hotel, Oklahoma City, OK, <http://www.oklahomarealtors.com/meetings-events/legislative-economic-summit> (accessed July 15, 2013); <http://www.youtube.com/watch?v=GMYPpU-ZWhM> and http://www.youtube.com/watch?v=vGDLD-b_Dis (accessed July 15, 2013).

⁸³*Ibid.*, The following chart is produced in Ms. Myers presentation to the Oklahoma Realtors Association.

53. The Department also acknowledges the existence of “vital” systems complementary to the ecosystems above. They include infrastructure (construction), quality of life industries (such as health care, tourism and recreation), and skills and knowledge industries (such as education).⁸⁴ Finally, the Department notes that regions within Oklahoma have their own primary ecosystems on which they should focus.⁸⁵

54. If State and Tribal economies are to be synchronized, it is important that the State do its part to not only communicate, but also explain and justify, its economic development strategy to the 38 Tribes in a structured and direct manner. For Tribes to undertake their own strategic planning within Oklahoma, they must have a firm grasp of what their counterparts are thinking and doing at the Department of Commerce. Potential strategies for achieving strategic synchronization and more formalized and habitual communication amongst State agencies and the 38 Tribes are discussed in Section V below.

The 38 Tribes’ Vital (but Distinct) Economic Contributions to Oklahoma

55. As of 2010, three of the 38 Tribes – Chickasaw Nation, Cherokee Nation and Choctaw Nation – were the seventh, tenth and sixteenth largest employers (in terms of numbers employed) in Oklahoma respectively.⁸⁶ Other Tribes, such as Citizen Potawatomi Nation, Cheyenne & Arapaho Tribes and Muscogee Creek Nation, also employ a substantial number of Oklahoma residents.⁸⁷

56. Tribal members constitute 13 percent of Oklahoma’s population (over 480,000 residents). It is unsurprising, therefore, that a 2012 study⁸⁸ estimates that Tribal business operations contribute almost \$11 billion annually to Oklahoma’s economy.⁸⁹ This important contribution, however, is highly concentrated; approximately 71 percent of that almost \$11 billion contribution occurs within (or because of involvement in) one of Oklahoma’s complementary systems. The large majority of the contribution occurs within the tourism and recreation industries in the form of the Tribes’ gaming operations. In comparison, just over two percent of the Tribes’ overall contribution comes from professional services and only about four-and-a-half percent comes from Tribal government economic development and road expenditures, which importantly still amount to significant contributions in terms of actual dollars.⁹⁰

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*

⁸⁶ *Oklahoma Department of Commerce, Major Oklahoma Employers (Spring/Summer 2010)*, http://www.okcommerce.gov/Libraries/Documents/Oklahoma-Major-Employers_1238.pdf (accessed July 26, 2013).

⁸⁷ *Ibid.*

⁸⁸ *The Statewide Impacts of Oklahoma Tribes* (October 4, 2012), Steven C. Agee Economic Research & Policy Institute – Oklahoma City University - <http://goodengroup.wistia.com/medias/gh6nl3l74v> (accessed July 16, 2013). This Study was commissioned by the Department of Commerce and Tribes and undertaken by the Steven C. Agee Economic Research & Policy Institute at Oklahoma City University.

⁸⁹ *Ibid.*, at p. 3.

⁹⁰ *Ibid.*, at p. 18.

57. While gaming operations have resulted in substantial job creation, increased revenues and economic development for many Tribes, results have been mixed and uneven in Indian Country.⁹¹ Gaming operations, moreover, have been the source of legal and jurisdictional battles between Tribes and States across the United States, including Oklahoma.⁹² Furthermore, increased competition and legal uncertainty within gaming, among other factors, have intensified the need to diversify Tribal economies.⁹³ Tribal economic diversification should not come at the expense of gaming operations, but rather serve as an avenue for greater government-to-government cooperation, investment and wealth accumulation.

58. The Tribes' concentrated economic contribution in Oklahoma and acknowledged need by some for economic diversification create an environment conducive to forming more integrated and complementary Tribal-State economic partnerships. This will be so as long as each side takes into account the other's priorities. Tribal representatives have expressed to me their interest in investing in a number of industries, which fall within Oklahoma's ecosystems, including solar power manufacturing and marketing, oil and gas, data and call centers and distribution centers. Within the right environment, there are many potential economic partnership opportunities that the State and 38 Tribes could consider.

⁹¹ See note 33 at pp. 145-158.

⁹² See note 33 at pp. 145-158.

⁹³ Comments made by Tribal leaders during the Tribal Economic Development Panel on Tribal and Local Government Cooperation at *The Sovereignty Symposium XXVI*, June 5 & 6, 2013, Skirvin Hilton Hotel, Oklahoma City, OK.

V. RECOMMENDATIONS

RECOMMENDATION 1: Solidify the Government-to-Government Relationship

59. Oklahoma should solidify the Tribal-State government-to-government relationship first by executive order and later, if necessary, through legislative action.

“I appreciate... your partnership as we work together – both state and tribal governments – to honor our sacred heritage and to create a better future for all Oklahomans.” – **Governor Mary Fallin**, *2013 State of the State Address*

Why Solidification is Advisable

60. Some Tribes in Oklahoma believe that the condition of their overall relationship with the State is wanting. Earlier this summer, Tribal leaders raised with Governor Fallin their concerns about the state of the Tribal-State government-to-government relationship.⁹⁴ Some Chiefs and Chairs requested greater State recognition and understanding of their sovereignty and importance to Oklahoma. Tribal leaders also expressed passionately these views during the Tribal Economic Development Panel on Tribal and Local Government Cooperation at *The Sovereignty Symposium XXVI*. Finally, Tribal representatives communicated these sentiments to me during my consultations.

61. A well-recognized tool for successful negotiations between independent parties, such as sovereign governments, is the presence of trust, which often contributes significantly to the creation of an environment of understanding, information sharing and deal making.⁹⁵ Negotiating specific agreements, such as tax compacts, burn ban agreements or road construction contracts (or even just addressing matters seen as mutually important, such as economic development) in the absence of trust, understanding and predictability is often futile. At the very least, efforts to negotiate are more time consuming and difficult.⁹⁶ The absence of mutual trust and dependence can also be an impetus for resorting to litigation, which has occurred in Oklahoma over water rights⁹⁷ and taxes⁹⁸, among other contentious areas.

⁹⁴ *Tribal Leaders Meeting* (June 11, 2013).

⁹⁵ Max H. Bazerman and Don A. Moore, *Judgment in Managerial Decision Making*, 7 ed., Hoboken, New Jersey: John Wiley & Sons, Inc. (2009) at p. 161; D. Malhotra and M. H. Bazerman, *Negotiating Genius*, New York: Bantam (2007).

⁹⁶ Models of cooperation between States and Tribes are recommended by many authorities on Tribal-State relations. These include: see notes 10, 33 and 75. A practical reason for such models was expressed rhetorically by W. Ron Allen, Chairman of the Jamestown S’Klallam Tribe in Washington, as follows: “*It is very difficult to accomplish anything with the state if every time you meet with someone you have to justify who you are and why you have a right to be involved. Tribes have treaties with the federal government and we are recognized in the U.S. Constitution, but we often have to teach that to every state official we meet. How are we supposed to get into the details of an issue on fisheries or taxes, if we can’t get past the ABCs?*”, see note 75 at p. 8.

⁹⁷ Felicity Barringer, *New York Times*, Two Oklahoma Indian Tribes Contest State for Water Rights (August 19, 2011), http://www.nytimes.com/2011/08/20/science/earth/20tribe.html?_r=0 (accessed August 2, 2013); Joe Wertz, *NPR – StateImpact*, State and Tribes Still Wrestling over Water Rights in Oklahoma (July 8, 2013)

62. Elsewhere in the United States, State governments have recognized the importance of solidified government-to-government relationships between them and Tribal governments. Many States, including Arizona, Minnesota, Oregon, Washington, New Mexico, Wisconsin and Montana, have solidified their governments' relationships with Tribes within their borders. Oregon and Mexico have done so through legislation, which was preceded by executive orders. Washington has done so through a government-to-government accord, followed by a millennium agreement, as well as in law. Other States have addressed their important relationships through executive orders.

63. No matter the mechanism that State governments employ, some common matters are addressed, and include:

- a preamble recognizing, defining and/or committing to the unique Tribal-State relationship that exists;
- State agency requirements to:
 - identify their key agency positions responsible for coordination with Tribes; and
 - develop and implement Tribal communication and consultation policies (some States have listed specific agencies to which this and other requirements apply);
- State agency annual education and training requirements for managers and employees who communicate with Tribes;
 - education programs cover, for example, the legal status of Tribes, legal rights of Tribal members and issues of concern to Tribes;
- State agency annual reporting requirements regarding their work with Tribes during the previous year;
- an annual Tribal-State meeting convened by the Governor, and attended by State agency and Tribal representatives, regarding issues of mutual interest and concern; and
- existing law that aids Tribal-State collaboration at various levels of government.

64. Examples of these laws, executive orders and agreements are attached to this Report as Appendices "B"- "H".

65. Solidifying the relationship in Oklahoma would provide a degree of predictability to Tribes in their relations with the State, enhance habitual communication between State and Tribal officials and establish formal processes and accountability for tackling Tribal-State issues.

<http://stateimpact.npr.org/oklahoma/2013/07/08/state-and-tribes-still-wrestling-over-water-rights-in-oklahoma/> (accessed July 17, 2013).

⁹⁸ *Oklahoma Tax Commission v. Citizen Band Potawatomi Indian Tribe of Oklahoma*, 498 U.S. 505 (1991); *Oklahoma Tax Commission v. Sac and Fox Nation*, 508 U.S. 114 (1993).

Leveraging Oklahoma's Existing Spirit of Cooperation

66. Oklahoma has already brought attention to the importance of Tribal-State government-to-government relations. First, Oklahoma recognizes the “unique status of Indian tribes within the federal government”⁹⁹ and commits to “work in a spirit of cooperation with [them] in furtherance of federal policy for the benefit of both the State of Oklahoma and tribal governments.”¹⁰⁰ Second, Oklahoma acknowledges in statute the 38 Tribes as “sovereign nations”, the “need for further cooperation” and the “importance of the government-to-government relationship[.]”¹⁰¹

67. A spirit of cooperation amongst State agencies, Local governments and Tribes in Oklahoma is palpable. Simple internet searches show cooperation currently in matters as diverse as tobacco use prevention, Tribal economic impact studies, road construction, wind farms and insurance.¹⁰² This cooperation, while vital to Tribal-State relations, is at present piecemeal and underutilized.

68. For the State’s purposes, the approach of the Oklahoma Department of Transportation (“ODOT”) to Tribal-State partnerships serves as an existing example of a solidified government-to-government relationship.

69. Pursuant to 69 O.S. §302.2, the nine-member ODOT Tribal Advisory Board serves as the formal link between ODOT and Tribes regarding transportation projects and programs affecting Tribal governments. In addition, ODOT has a Director, Tribal Coordination, who is responsible for working continuously with the Tribes to improve road infrastructure throughout the State and within its many Tribal jurisdictions. ODOT’s philosophy on Tribal jurisdictions within Oklahoma as they relate to its work – and as that understanding was explained to me – in my view reflects a sophisticatedly-nuanced (yet effective) model for working with Tribes. ODOT’s approach¹⁰³ could have extra-agency applications.

⁹⁹ 74 O.S. §1221.

¹⁰⁰ *Ibid.*

¹⁰¹ *Oklahoma Native American Liaison*, 74. O.S. §1207(a).

¹⁰² *Tobacco Technical Assistance Consortium*, The Oklahoma Tribal and State Partnership, Presentation, http://www.ttac.org/TCN/materials/pdfs/disparities_materials/2_DisparitiesPresentationOK.pdf (accessed June 19, 2013); Don Mecoy, *NewsOK*, Tribal Activities Make \$10.8B impact on Oklahoma’s Economic Output, study suggests (October 16, 2012), <http://newsok.com/tribal-activities-make-10.8b-impact-on-oklahomas-economic-output-study-suggests/article/3719667> (accessed June 19, 2013), see also note 88; *KSWO*, County-tribal partnership to repair section of Cache Road (May 28, 2013), <http://www.ksw.com/story/22441892/comanche-county> (accessed June 19, 2013); Lenzy Krehbiel-Burton, *Native American Times*, Oklahoma Tribes Partner on Chilocco Property Wind Farm (April 30, 2013), <http://www.nativetimes.com/news/environment/8657-oklahoma-tribes-partner-on-chilocco-property-wind-farm> (accessed June 19, 2013) ; *Insurance Journal*, Oklahoma Tribes Exploring Opportunities in Insurance Industry (October 18, 2012), <http://www.insurancejournal.com/news/southcentral/2012/10/18/267110.htm#> (accessed June 19, 2013).

¹⁰³ The Director, Tribal Coordination, is in constant contact with Tribes and the Oklahoma Tribal Transportation Council. The Director often travels to Tribal locations and offices to discuss transportation priorities. The projects undertaken are seen and structured as government-to-government partnerships, usually through Memoranda of Understanding, to improve infrastructure within the large Tribal jurisdictions within the State. ODOT recognizes and marks Tribal jurisdictions with brown (historical) signage on Oklahoma roads. Importantly, ODOT also acknowledges publicly its strong Tribal partnerships and the substantial financial and other contributions made by

Incorporating Tribal perspectives, priorities and, importantly, resources into strategic planning at ODOT is solidified and instinctive, and ODOT's results reflect this.

70. During the past five years, ODOT's government-to-government approach has helped it partner with Tribes on 52 ODOT-managed road projects (completed, ongoing and future) within the State.¹⁰⁴ On these projects, Tribes have contributed or will contribute about \$45 million, approximately 30% of the total cost of the projects.¹⁰⁵ These 52 projects do not include Local government-Tribal county road projects that are not managed by ODOT. To incorporate Tribal funds into these projects, ODOT has developed financing models, which vary depending on whether the funds come directly from Tribes, or flow through the Bureau of Indian Affairs or Federal Highway Administration.

71. ODOT's information-sharing and openness with Tribes has also resulted in faster and cheaper road improvements for the State. For example, having reviewed the State's Eight-Year Construction Work Plan, the Cherokee Nation saw an opportunity to partner with ODOT. The Cherokee Nation offered to partner with the State on an I-44 Interchange project in the City of Tulsa in 2009 in order to push the construction timeline forward. An advanced timeline for the project, which was already a State priority, provided infrastructure that supported new Cherokee Nation business operations. The Cherokee Nation donated \$6 million in land to the State for the project and another \$6 million for construction of it and other projects. Had it not been for this partnership, the project would have taken longer and been more expensive for the State to complete.

72. In the spirit of cooperation, ODOT has helped some Tribes with their Geographic Information Systems ("GIS") data collection to fulfill informational requirements for federal funding programs, and even with the establishment of some Tribes' own GIS systems.

Solidifying the Tribal-State Government-to-Government Relationship in Oklahoma

73. Solidifying the relationship at the highest executive branch level would better leverage existing accomplishments. Furthermore, it would mandate Tribal-State cooperation where it is currently absent or insufficient, establish best practices,¹⁰⁶ and position the State for better relations with the 38 Tribes moving forward.

74. The newly-created position of Oklahoma Native American Liaison (the "Liaison") has a very broad range of statutory responsibilities. The Liaison must monitor all State agency consultation policies,

Tribes to ODOT for the benefit of all Oklahomans. ODOT priorities and eight-year plans are distributed to Tribes for review, a practice which has catalyzed policy harmonization and collaborative efforts.

¹⁰⁴ *Oklahoma Department of Transportation*, List of ODOT-Tribal Projects (FYs 1980-Present).

¹⁰⁵ *Ibid.*

¹⁰⁶ If an executive order were to mandate annual training for State employees, ODOT's institutional knowledge and current practices, to the extent the 38 Tribes support them, could be provided to State agency employees attending the training sessions. The employees could then use ODOT's methods as a model for developing their own agency practices. Any mandated agency "annual reporting requirements" need not be burdensome. They should have the primary objective of encouraging agencies to constantly evaluate and plan in respect of their Tribal relations.

monitor agency interactions with Tribal governments and determine Tribal priorities of interest for possible cooperation with State agencies, among other similarly broad responsibilities.¹⁰⁷

75. However, Oklahoma has not – either through executive order, statute, accord or agreement - defined, formalized or solidified in clear terms its relationship with the 38 Tribes. The laws that do exist either have narrow scopes, addressing specific issues or agencies, or place challengingly broad responsibilities within a single State official’s purview.

76. For example, while the Liaison is the logical choice to monitor State agency Tribal consultation policies, there is not a State-wide agency requirement to have such written policies in place. As another example, the Liaison must submit an annual report to the Governor, House of Representatives and Senate on the interaction between the State (and its agencies) and Tribal governments.¹⁰⁸ He or she would be hard pressed to explain adequately in the annual report interactions between every State agency and every one of the 38 Tribes without great assistance from representatives of all State agencies, who have no such similar requirements to report.

77. Recognizing and committing to the government-to-government relationship would not be a superficial act. Indeed, other States have viewed such actions after the fact as an essential first step, which eventually became a framework for productive government-to-government relations and meaningful agency-level cooperation of mutual benefit.¹⁰⁹

78. Oklahoma law authorizes the Governor “to negotiate and enter into cooperative agreements on behalf of [Oklahoma] with federally recognized Indian tribal governments... to address issues of mutual concern.”¹¹⁰ And, the Governor – of course – has authority over the executive branch of State government. Therefore, a logical first step in the relationship-solidification process would be an executive order, which:

- recognizes the historical importance to Oklahoma of the 38 Tribes;
- affirms and commits Oklahoma to the important Tribal-State government-to-government relationship;
- directs State agencies to implement policy governing their work with Tribes, including consultation policies and policies that identify the agency positions responsible for agency-Tribal relations and work;
- directs State agencies to have their employees who hold the above agency positions attend annual Tribal-State training and education sessions; and
- mandates a substantive annual meeting of the stakeholders.

¹⁰⁷ See note 101 at §1207(e).

¹⁰⁸ See note 101 at §1207(e)(11).

¹⁰⁹ See Section III of this Report.

¹¹⁰ See note 99 at §1221(c).

79. Such an executive order would also assist the Liaison greatly in the performance of his or her Office's important responsibilities.

80. For agencies, such as ODOT, which already work closely with Tribes, this executive order would reinforce and maybe even improve and/or expand their existing policies. For those agencies that lack appropriate Tribal policies and procedures and need them, this executive order would make the creation of them a top priority. The policies and procedures would of course need to take into account the nature of each agency's specific work and its resources.

81. For example, a permanent intergovernmental arrangement, which brings together regularly the Department of Commerce and Tribal economic development interests, would institutionalize communication between the agency and 38 Tribes.¹¹¹ This arrangement would go beyond encouraging Tribes to take advantage of the many tax and other incentives and programs already offered through the Department of Commerce. It would provide a forum for policy harmonization and the creation of trade and economic alliances, as well as provide a venue for the Department of Commerce to communicate, explain and justify the State's economic development strategy.¹¹² Similar intergovernmental arrangements could also address Tribal relations with Oklahoma environmental quality and other authorities.

82. Finally, 74 O.S. §1207(b) contemplates the possibility that the Liaison may serve as the Secretary of Native American Affairs (or a successor cabinet position). As relations amongst the various State agencies and Tribes develop, solidify and flourish, the Liaison's role and responsibilities should grow consequently. There would then be a greater need for the Liaison to coordinate with cabinet members and agency heads and communicate frequently with each agency's Tribal relations point person. As a result, elevating the Liaison position to the cabinet level may be necessary at a later time from political and practical points of view.

83. Solidification of the government-to-government relationship is by no means a panacea. But, it would address – head on – many of the 38 Tribes' paramount concern: a lack of meaningful communication, consultation, and coordination with the State.¹¹³ At the same time, the 38 Tribes should be open to working with the State to find practical ways to solidify the State's government-to-government relationship with each of them. With 38 unique and important relationships to maintain, trade-offs and compromises in formulating the government-to-government framework are inevitable and should not discourage cooperation.

84. If the State and 38 Tribes deem further consideration of this concept necessary, a task force comprised of State and Tribal representatives could be established. That task force could consider and

¹¹¹ While a Tribal Incentives Committee exists, and brings together Tribal and Department of Commerce representatives, it is my understanding that its sole project at this time is updating a tax incentives document, which lists existing incentives offered and available to any qualifying businesses or other entities.

¹¹² *Oklahoma Department of Commerce*, Homepage, <http://okcommerce.gov/> (accessed July 23, 2013).

¹¹³ See note 94 and paragraph 60.

draft optimal language to capture and organize the unique Tribal-State government-to-government relationship in Oklahoma.

RECOMMENDATION 2: Encourage Greater and Creative Use of the *Interlocal Cooperation Act*

85. The State of Oklahoma should encourage greater and creative use of the *Interlocal Cooperation Act* as a way to increase regional economic cooperation, improve infrastructure and enhance access to capital.

86. The purpose of the *Interlocal Cooperation Act* is to create cooperative, efficient and responsive governments for Oklahoma residents and communities.¹¹⁴ This existing legal framework enables the State and 38 Tribes to centralize decision making and planning, pool and leverage separate resources, convene stakeholders and synchronize priorities in order to accomplish pressing Tribal-State objectives.

The *Interlocal Cooperation Act*, 74 O.S. §§1001-1008

87. The formation of the *Umatilla Basin Water Commission* by State and Tribal entities in Oregon under ORS 190.003-190.110 is discussed above. That Commission was a formal entity structured to include multiple stakeholders, pool resources and conduct business regarding a specific and important matter of mutual concern: the preservation of the Umatilla River.

88. Similar to ORS 190.003-190.110, Oklahoma's *Interlocal Cooperation Act* provides a framework for intergovernmental cooperation through the creation of intergovernmental entities by public agencies.¹¹⁵

89. Intergovernmental entities formed pursuant to the *Interlocal Cooperation Act* may, if otherwise permitted, be separate legal entities and controlled by a representative body. They may also pursue certain types of financing for their delegated purposes. Importantly, the Act permits the public agencies that form the entity to exercise and enjoy their respective powers, privileges and authority jointly within the intergovernmental arrangement.¹¹⁶ In Oklahoma these privileges include, for example, local governments' utilization of *Oklahoma Community Economic Development Pooled Finance*, explained in the paragraph below.¹¹⁷

90. In 2009, the *Oklahoma Community Economic Development Pooled Finance Act* created a \$100 million infrastructure pool for bonding local governments and a \$100 million economic development pool for financing local governments working with for-profit entities on certain economic development

¹¹⁴ *Interlocal Cooperation Act*, 74 O.S. §§1001-1008.

¹¹⁵ *Ibid.* at §1003, "Public agencies" include state agencies and local governments, among other entities.

¹¹⁶ *Ibid.*, at §1004(a).

¹¹⁷ *Oklahoma Community Economic Development Pooled Finance Act*, 62 O.S. §§891.1-895, according to the Oklahoma State Bond Advisor's 2012 Annual Report there was at the time of the report over \$43 million available in the Economic Development Pool, <http://www.ok.gov/bondadvisor/documents/2012%20Annual%20Report.pdf> at p. 27.

projects in Oklahoma.¹¹⁸ Through legislative amendment, these two pools will be combined (effective November 1, 2013) to create a streamlined and more efficient \$200 million pool for economic growth in the State.¹¹⁹ The bonds are issued by the Oklahoma Development Finance Authority (the “ODFA”). The Department of Commerce evaluates and approves proposed projects.¹²⁰

91. The *Interlocal Cooperation Act* also speaks to methods for “disposing of property”¹²¹ upon partial or complete termination of the arrangements, reinforcing that the intergovernmental entities can contract and conduct business. Finally, 74 O.S. §1221(d)(1) authorizes governing boards of Oklahoma’s political subdivisions to negotiate and enter into intergovernmental cooperative agreements with the 38 Tribes to address “issues of mutual interest”.

Current and Potential Tribal-State Use of the Interlocal Cooperation Act Framework

92. There is already precedent in Oklahoma for using the *Interlocal Cooperation Act* framework to foster intergovernmental cooperation amongst counties, cities and Tribes. Pursuant to the *Interlocal Cooperation Act*, the Creek, Osage, Tulsa, Rogers and Wagoner counties, certain cities and towns, and the Cherokee, Creek and Osage Indian Nations formed and/or joined the *Indian Nations Council of Governments* (“INCOG”).¹²²

93. A separate legal entity, INCOG has a broad mandate:

INCOG provides planning and coordination services to assist in creating solutions to local and regional challenges in such areas as land use, transportation, community and economic development, environmental quality, public safety, and services for older adults.¹²³

94. While INCOG was formed by written agreement in 1967,¹²⁴ the agreement was amended for a second time (and approved by Oklahoma’s Office of the Attorney General) in 2007 to add the Cherokee, Creek and Osage Nations as INCOG members (the “INCOG Agreement”).¹²⁵ The Council is run by a

¹¹⁸ *Ibid.*, at §§891.7-891.8; *Oklahoma Department of Commerce, Economic Development Pooled Financing*, <http://okcommerce.gov/new-and-existing-business/starting-a-new-business/incentives/economic-development-pooled-financing/> (accessed July 25, 2013).

¹¹⁹ *Ibid.*, at §§891.7(f), 891.8(g) (effective 11/01/2013); *State Chamber of Oklahoma, Press Release* (April 22, 2013), <http://www.okstatechamber.com/news/press-releases/economic-development-legislation-headed-governor-following-senate-passage> (accessed July 25, 2013); <https://www.sos.ok.gov/documents/legislation/54th/2013/1R/HB/2000.pdf>.

¹²⁰ *Ibid.*, at §§891.7-891.8 and §§891.10-891.11.

¹²¹ See note 114 at §1004(c)(5).

¹²² *Indian Nations Council of Governments, Homepage*, <http://www.incog.org/index.html> (accessed July 18, 2013).

¹²³ *Ibid.*

¹²⁴ *Agreement Creating the Indian Nations Council of Governments* (July 1, 1967) (filed with Oklahoma Secretary of State on February 22, 1968), <https://www.sos.ok.gov/documents/filelog/54491.pdf> (accessed July 18, 2013).

¹²⁵ *Second Amended Agreement Creating the Indian Nations Council of Governments* (July 13, 2006) (approved by Office of the Attorney General, January 18, 2007) (filed with Oklahoma Secretary of State, February 21, 2007), <https://www.sos.ok.gov/documents/filelog/64684.pdf> (accessed July 18, 2013).

General Assembly and Board of Directors, which are comprised of representatives of the INCOG Agreement signatories. Section VIII of the INCOG Agreement addresses INCOG’s financing, which includes membership dues¹²⁶, project-specific financing and grants from Federal, State and other entities. A copy of the INCOG Agreement is attached as Appendix “I”.

95. Specific Tribal-State objectives that could be addressed through the *Interlocal Cooperation Act* framework include:

- creating government-to-government consultation and decision-making bodies;
- harmonizing Tribal and State economic policies;
- pooling financial and human resources to better plan and fund specific economic development projects and tackle particular concerns;
- attracting private investment to Oklahoma; and
- forming more streamlined and administratively efficient public-private partnerships.

96. Examples of possible intergovernmental entities that come to mind in light of my stakeholder consultations are the following:

- an entity comprised of Department of Commerce and Tribal representatives to:
 - plan and participate in trade missions or business meetings, which promote economic opportunities in Oklahoma and Indian Country; and
 - provide a permanent forum to coordinate and cooperate;
- entities to plan and develop specific green energy projects, possibly in partnership with the private sector;
- entities to plan and develop specific infrastructure projects deemed necessary to create conditions for private investment and economic development;
- an entity comprised of Department of Environmental Quality and Tribal representatives to consider and coordinate joint efforts; and
- a Tribal-State partnership to support access to capital through changes to federal law.

RECOMMENDATION 3: Support Efforts to Eliminate Federal Restrictions on Access to Capital

97. Current federal restrictions on Tribal financing and access to capital hinder Tribal economic development efforts. These restrictions reduce the amount of capital available to Tribes, which in turn reduces the number of opportunities for Tribal-State collaboration. Supporting Tribal efforts to eliminate federal restrictions would not only increase the prospects for Tribal-State collaboration, but also support improved Tribal-State government-to-government relations.

¹²⁶ In *Pease v. Board of County Commissioners, Osage County*, 1975 OK 62, 550 P.2d 565, the Supreme Court of Oklahoma upheld the constitutionality of the payment of dues to INCOG by member cities and counties.

98. In 2001, the U.S. Treasury Department estimated that there was a \$44 billion equity investment shortfall in Indian Country.¹²⁷ Furthermore, recent Tribal economic development publications note consistently the drastic need to increase the flow of capital to Tribes,¹²⁸ with approximately \$50 billion in unmet capital needs annually in Indian Country. These shortfalls hinder infrastructure and economic development projects, among other undertakings.¹²⁹

99. A few years ago, Dr. Gavin Clarkson¹³⁰ identified three main federal regulatory and statutory impediments to Tribal access to capital:

- (i) the exclusion of Indian Tribes as “*Accredited Investors*” under Rule 501 of Regulation D of the *Securities Act of 1933*;
- (ii) the inability of Tribal governments to issue tax-exempt debt with the same flexibility as State and Local governments; and
- (iii) the lack of securities registration exemptions for Tribal government bonds, creating expensive, less liquid bond markets for Tribes.¹³¹

100. While steps have since been taken to resolve some of these obstacles, inefficiency and inequality remain regarding access to capital for Tribes.

(a) Support an Amendment by the SEC to Add Tribes to the “*Accredited Investor*” Exemption

101. For business, financial and legal reasons, private equity funds often sell securities to “*Accredited Investors*” only.¹³² Adding Tribes (subject to certain asset and other requirements)¹³³ to the list of “*Accredited Investors*” under Regulation D would provide a way for wealthy Tribes in Oklahoma to not only diversify their investments, but also invest – through private equity or venture capital funds - in

¹²⁷ Gavin Clarkson, *Wall Street Indians: Information Asymmetry and Barriers to Tribal Capital Market Access*, 12 Lewis & Clark L. Rev. 943 (2008) at p. 954, citing Cmty. Dev. Fin. Insts. Fund, U.S. Dep’t of Treas., Native American Lending Study 2 (2001).

¹²⁸ See notes 5, 10, 33, and 127; Gavin Clarkson, *Accredited Indians: Increasing the Flow of Private Equity into Indian Country As A Domestic Emerging Market*, 80 Col. L.R. 285 (2009); See also <http://tribalfinance.org/index.html>.

¹²⁹ Gavin Clarkson, *Tribal Bonds: Statutory Shackles and Regulatory Restraints on Tribal Economic Development*, 85 N.C. L. Rev. 1009 at 1017, referencing Eric Henson et al., Harvard Project on American Indian Economic Development, *Native America at the New Millennium 120* (2001).

¹³⁰ Dr. Gavin Clarkson is an associate professor at the College of Business at New Mexico State University and enrolled member of the Choctaw Nation of Oklahoma, see <http://www.gavinclarkson.com/> and <http://business.nmsu.edu/directory/finance/clarkson-gavin/>.

¹³¹ See note 127 at p. 954-959.

¹³² See note 127 at p. 955.

¹³³ Native Investment, *Accrediting Tribes and Increasing Private Equity Investment in Indian Country* (August 16, 2010), <http://nativeamericancapital.com/news/accrediting-tribes-and-increasing-private-equity-investment-indian-country> (accessed July 22, 2013); Native American, LP, *Policy Briefing: Native American Tribes Require Reg. D Change*, <http://nativeamericancapital.com/news/accrediting-tribes-and-increasing-private-equity-investment-indian-country> (accessed July 22, 2013).

smaller, burgeoning Tribal enterprises. This mechanism would provide finance and investment expertise to Tribes with capital to invest and much-needed start-up or add-on financing to Tribal businesses with capital constraints. The inclusion of Indian Tribes as “*Accredited Investors*” has been proposed as part of larger changes to Rule 501 of Regulation D.¹³⁴ Comments on the proposal were received by the SEC from a number of stakeholders between August 2007 and March 2010.¹³⁵ However, Rule 501 of Regulation D has yet to be amended to add Tribes.¹³⁶

102. Forming a Tribal/multi-State coalition for this amendment would draw more attention to the issue. The *National Governors Association* may provide a convenient forum through which to canvass other States’ willingness to add their support. If there is a coalition of States willing to support Tribal efforts, a joint proposal could be proposed to Tribal leadership with the intent of reviving pursuit of an amendment by the SEC to Rule 501 of Regulation D.

(b) Assist Tribes in Considering (i) Use of Federal Tribal Economic Development Bonds and (ii) Amendments to Create Parity in the SEC’s Treatment of State, Local Government and Tribal Bond Securities

103. As part of the *American Recovery and Reinvestment Act of 2009*, §7871(f) of the *Internal Revenue Code* was added. It permits Tribes to issue tax-exempt economic development bonds or debt, capped at \$2 billion.¹³⁷ The Treasury Department and Internal Revenue Service made a second effort to encourage use of the bonds in July 2012.¹³⁸ As of February 2013, however, over \$1.5 billion remained unused due to a number of issues, including project requirements, lack of Tribal economic diversification and Tribal credit constraints.¹³⁹

104. The debt issued through the tribal economic development bonds program can finance joint projects (but a non-tribal joint ownership component subjects the bonds to “private activity bond

¹³⁴ Securities and Exchange Commission, *Revisions of Limited Offering Exemptions in Regulation D*, File No. S7-18-07, Release No. 33-8828 (August 3, 2007), <http://www.sec.gov/rules/proposed/2007/33-8828.pdf> (accessed July 22, 2013).

¹³⁵ Securities and Exchange Commission, *Comments on Release No. 33-8828*, <http://www.sec.gov/comments/s7-18-07/s71807.shtml> (accessed July 22, 2013).

¹³⁶ *Securities Act of 1933*, Rule 501 of Regulation D, <http://www.sec.gov/answers/accred.htm> (accessed July 22, 2013).

¹³⁷ Internal Revenue Service, Notice 2009-51 *IRS Announces Tribal Economic Development Bonds Allocations* (Last Reviewed or Updated April 24, 2013), <http://www.irs.gov/Tax-Exempt-Bonds/IRS-Announces-Tribal-Economic-Development-Bonds-Allocations> (accessed July 22, 2013).

¹³⁸ Internal Revenue Service, Notice 2012-48, 2012-31 I.R.B. 102 (July 30, 2013) *Published Volume Cap Limit for Tribal Economic Development Bonds* (Last Reviewed or Updated June 4, 2013), <http://www.irs.gov/Tax-Exempt-Bonds/Published-Volume-Cap-Limit-for-Tribal-Economic-Development-Bonds> (accessed July 23, 2013).

¹³⁹ Holland & Knight, *Tribal Economic Development Bonds: Huge Capacity, Few Users* (February 13, 2013), <http://www.hklaw.com/news/Tribal-Economic-Development-Bonds-Huge-Capacity-Few-Users-02-13-2013/> (accessed July 22, 2013); Indian Country Today Media Network, *U.S. Treasury Clarifies New Guidelines on \$1.8 Billion TED Bonds at NAFOA Investor Summit* (July 19, 2012), [http://indiancountrytodaymedianetwork.com/article/u.s.-treasury-clarifies-new-guidelines-on-\\$1.8-billion-ted-bonds-at-nafoa-investors-summit-124150](http://indiancountrytodaymedianetwork.com/article/u.s.-treasury-clarifies-new-guidelines-on-$1.8-billion-ted-bonds-at-nafoa-investors-summit-124150) (accessed July 22, 2013).

restrictions on tax-exempt bonds”).¹⁴⁰ The debt can also be structured as tax exempt bank loans.¹⁴¹ The debt incurred must be used to finance projects located on Indian reservations, which for Tribes within Oklahoma means “only lands which are within [their] jurisdictional area... and which are recognized... as eligible for trust land status[.]”¹⁴²

105. Through an intergovernmental arrangement amongst the Department of Commerce and the 38 Tribes, the parties could consider the potential use of these readily available economic development funds (either in partnership or through independent, but complementary, Tribal projects). The parties could also consider means of achieving parity in the treatment of State, Local government and Tribal bond securities.

RECOMMENDATION 4: Establish a Task Force to Consider How the State Can Better Facilitate Greater Access to Capital and Economic Development Directly

106. A number of successful economic development programs and incentives already exist in Oklahoma. Some of them, however, either in law or practice, reach only the State’s political subdivisions. In the interests of creating economic opportunity for the 38 Tribes, with attendant benefits for the entire Oklahoma economy, some of the existing programs and incentives may be suitable to extend to Tribal governments and/or Tribal corporate entities. To fully evaluate the suitability of existing programs and incentives, a task force should be established to make recommendations on the matter.

107. At minimum, the individuals and individuals representing the interests that follow should comprise the task force:

- the 38 Tribes;
- the Department of Commerce;
- the Department of Transportation;
- the ODFA;
- the Oklahoma State Bond Advisor;
- the Oklahoma Tax Commission;
- the Oklahoma Advisory Committee on Intergovernmental Relations;¹⁴³
- the Joint Committee on State-Tribal Relations;¹⁴⁴
- the Liaison; and
- the Oklahoma business community.

¹⁴⁰ *Ibid.*; See also note 137.

¹⁴¹ Orrick, *Tribal Economic Development Bonds (in Plain English)* (September 18, 2009), <http://www.orrick.com/Events-and-Publications/Documents/2094.pdf> (accessed July 23, 2013).

¹⁴² See note 137.

¹⁴³ 74 O.S. §§480-484, (if functional).

¹⁴⁴ 74 O.S. §1222.

108. I identify below potential opportunities for the State to facilitate greater access to capital and economic development directly.

(a) Consider Permitting Intergovernmental Entities to Issue Revenue Bonds and Enter Certain Financing Arrangements

109. There is an important difference between ORS 190.003-190.110 and Oklahoma’s *Interlocal Cooperation Act*. Oregon’s law explicitly permits intergovernmental entities to issue revenue bonds and/or enter into financing agreements under existing authorizations for public bodies, subject to certain requirements.¹⁴⁵ Explicitly permitting intergovernmental entities under the *Interlocal Cooperation Act* to issue revenue bonds and/or enter financing arrangements under existing statutory authorizations would provide another means through which Tribes would have greater access to capital. While the issuance of revenue bonds or other financing arrangements would not be suitable for all types of intergovernmental entities, they may be appropriate for entities that undertake large-scale economic development projects, such as energy or utility projects.

110. A study regarding under what conditions certain intergovernmental entities should be permitted to issue revenue bonds or enter specific financing arrangements to complete their work could be conducted to inform any final recommendations.

(b) Consider Adding the 38 Tribes as “Eligible Local Government Entities” for the Purposes of the *Oklahoma Community Economic Development Pooled Finance Act*

111. Section 891.3(10) of the *Oklahoma Community Economic Development Pooled Finance Act* defines “eligible local government entity” for its purposes as a city, town, county or combination thereof, or certain public trusts. Adding the 38 Tribes to the list of eligible government entities would provide greater Tribal access to financing and opportunities to partner with the private sector for the benefit of all Oklahomans.

112. Consideration would have to be given to proper repayment schemes and contributions to the revolving fund whenever there is Tribal participation. In addition, Tribal sovereignty and the separation of Tribal business leadership from Tribal politics would also be important considerations. These matters could be addressed through the project application rules and scoring systems administered by the Department of Commerce. Addressing these matters through the application process would also provide an incentive for Tribes to create stronger Tribal governance structures, if their current structures need improvement.

(c) Consider Establishing Tribal Enterprise/Partnership Zones or Similar Programs

113. To the extent issues of double taxation are discouraging investment and business with the 38 Tribes within Oklahoma, the State should consider creating Tribal Enterprise/Partnership Zones or

¹⁴⁵ *Oregon Revised Statutes* 190.080(a).

Programs, similar to those found in Oregon. The relevant sections of the ORS are attached for reference as Appendix “J”.

114. In effect, the State could offer businesses State tax credits proportional to the amount those businesses are taxed by Tribal governments as a result of their locating in or around Indian Country. The State could also extend the incentives offered to businesses operating within the Oklahoma’s standard enterprise zones to businesses willing to locate within a Tribal Enterprise/Partnership Zone.¹⁴⁶

115. Other Tribal-State partnership programs could incentivize the locating of Tribal businesses off Tribal land. In exchange for locating off Tribal land, Tribal businesses could receive State tax credits. Alternatively, State and Tribal governments could agree to divide up revenues from property, sales and other taxes normally paid to the State exclusively as a result of the ongoing Tribal business operations off Tribal land.

(d) Consider Establishing a Tribal Economic Development Fund and Entrepreneurship and Business Skills Training Program

116. The State (potentially in partnership with the wealthiest and most experienced of the 38 Tribes) could consider establishing an economic development fund and an entrepreneurial/business skills training program. These could be similar in form to the programs in place in New Mexico and Montana. The fund and program, however, should encourage institutional capacity building (amongst those of 38 Tribes needing it) and place decision-making responsibility predominantly in the hands of Tribal businesspeople.

117. Levels of wealth and economic development vary amongst the 38 Tribes. There are Tribes, such as the Cherokee, Choctaw and Chickasaw Nations, for which access to capital and entrepreneurial/business experience are not likely pressing concerns. But for others, which lack capital and the resources needed to take advantage of both funding programs and potential economic partnerships, access to capital and training are likely primary concerns. For Tribes of the latter type, a development fund and training program could be beneficial.

118. The fund could be administered in a similar manner to the administration of the existing economic development and infrastructure pools, that is, they could be administered through the ODFA and Department of Commerce. However, contributing and participating Tribes should also be involved in the administration of the fund. Consideration would first have to be given by the task force to the limitations the *Oklahoma Constitution* places on the use of State dollars.¹⁴⁷

¹⁴⁶ 62 O.S. §§690.1-690.20; *Oklahoma Department of Commerce*, Oklahoma Incentives and Tax Guide for Fiscal Year 2013 (Last Updated July 15, 2013), http://okcommerce.gov/assets/files/incentives/Oklahoma_Business_Incentives_and_Tax_Guide.pdf (accessed July 26, 2013).

¹⁴⁷ See Art.10 §§14-15 of the Oklahoma Constitution; see also *In the Matter of the Application of the Oklahoma Capital Improvement Authority*, 2012 OK 99, 289 P.3d 1277 (S.C.).

119. The funding program's rules and application process should be designed to ensure that the proposed economic projects are not only viable, but also driven by the specific applicant Tribe(s)' development priorities. Care must be taken to avoid the pitfalls common with State-led Tribal economic development, which are discussed in Section II above. The Tribes should first do their own economic calculation and form their own viable economic development strategies. The State can serve in a supportive role during the calculation and formulation stages, but it should not take on a leadership role. During these stages, Tribes must consider critically their realistic long-term objectives, their priorities and opportunities, as well as their existing Tribal assets as compared to their financial and other constraints.¹⁴⁸ After strategies are formed, Tribes should then seek financial investment and assistance to carry out their strategic projects.

120. The application process should encourage Tribal projects that align with and complement Oklahoma's overall economic development strategy, target those Tribes most in need of financial and technical support, and foster strengthened internal Tribal governance structures. For example, to be eligible for funding and/or support, a requirement could be that the Tribal entity or entities undertaking the development projects be separate from the Tribe(s)' political bodies. Projects could be undertaken on or off Tribal land. The training program could leverage both State and Tribal entrepreneurial and business expertise and resources. Training could target aspiring Tribal entrepreneurs, focus on how Tribes should position themselves for self-driven economic development and provide technical business knowledge. For funded projects, the training program could offer both State and Tribal expertise and support in the projects' planning and execution phases.

121. If the funding and training programs are administered successfully in partnership with the wealthy and experienced Tribes in Oklahoma, the larger Tribal-State government-to-government relationships would be reinforced and existing economic and other partnerships strengthened indirectly.

(e) Review Other Incentives to Better Align Approaches with Oklahoma's Overall Economic Development Strategy

122. The task force could also take the opportunity during which representatives from all major stakeholders are together to evaluate other economic incentives for potential partnerships.

¹⁴⁸ See note 10 at pp. 25-26.

RECOMMENDATION 5: Define and Cultivate the New Tribal-State Government-to-Government Relationship through the Development of an Oklahoma Native American Liaison Website

123. Care and attention should be given to the formation of an Oklahoma Native American Liaison website; its “launch” could help signify the beginning of a new, improved relationship. The website should of course cover Tribal-State matters extending well beyond economic development. For the purposes of this recommendation, however, I focus primarily on the economic development and related components of the recommended website.

124. The website should ultimately serve as the State’s comprehensive source of information on the following matters:

- Oklahoma’s unique Tribal history;
- the 38 Tribes’ current economic, cultural and other contributions to Oklahoma;
- Tribal-State partnership documents and resources; and
- Tribal-State partnership opportunities.

125. It should be not only a valued source of practical information for Oklahomans, especially members of the 38 Tribes, but also an educational resource for all Oklahomans (and promoted as such). The State’s centralized efforts to disseminate knowledge of Tribal contributions to ODOT projects and the large number of Oklahomans employed by Tribal enterprises, for example, would help increase understanding and appreciation of how Tribal-State cooperation raises the Oklahoma tide, lifting Tribal and non-tribal economic vessels alike.

126. The website should be designed in consultation with the 38 Tribes. The Liaison’s Office should first solicit comments from the 38 Tribes. The Liaison should invite Tribal comments as to what information about Tribal history and culture, State resources and programs and partnership opportunities would be helpful to the 38 Tribes as they do their part to improve Tribal-State relations. Second, the Liaison should invite the 38 Tribes to write the initial draft text for the website’s Tribal history and contribution sections. The drafting process should be streamlined and led by widely-regarded and Tribally-appointed experts, one expert in Oklahoma’s Tribal history and the other in Tribal economic contributions in Oklahoma. Upon submission of the draft text, the State and 38 Tribes should work together to finalize the language.

127. As they come, successful Tribal-State partnerships should be announced and celebrated in real time on the website. Also, State agencies should publish and update their consultation and communication policies, provide contact information for their Tribal liaisons and disseminate information about ongoing meetings, initiatives and projects on the Liaison Office’s website. Finally, a private comments website section should invite constructive suggestions from Tribal members, State officials and Oklahoma residents about how to strengthen Tribal-State relationships in Oklahoma.

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VII. APPENDIX A – THE 38 FEDERALLY-RECOGNIZED TRIBES WITHIN OKLAHOMA

<u>TRIBE</u>	<u>WEBSITE</u>
Absentee-Shawnee Tribe of Indians	http://www.astribe.com/astribe/?reload
Alabama-Quassarte Tribal Town	http://www.alabama-quassarte.org/
Apache Tribe	http://www.apachetribe.org/
Caddo Nation	http://caddonation-nsn.gov/
Cherokee Nation	http://www.cherokee.org/
Cheyenne & Arapaho Tribes	http://www.c-a-tribes.org/
Chickasaw Nation	http://www.chickasaw.net/
Choctaw Nation	http://www.choctawnation.com/
Citizen Potawatomi Nation	http://www.potawatomi.org/
Comanche Nation	http://www.comanchenation.com/
Delaware Nation	http://www.delawarenation.com/
Delaware Tribe of Indians	http://www.delawaretribe.org/
Eastern Shawnee Tribe	http://www.estoo-nsn.gov/
Fort Sill Apache Tribe	http://www.fortsillapache-nsn.gov/
Iowa Tribe	http://www.iowanation.org/
Kaw Nation	http://kawnation.com/
Kialegee Tribal Town	N/A
Kickapoo Tribe	http://www.kickapootribeofoklahoma.com/
Kiowa Tribe	http://www.kiowatribe.org/
Miami Nation	http://www.miamination.com/
Modoc Tribe	http://www.modoctribe.net/
Muscogee (Creek) Nation	http://www.muscogeenation-nsn.gov/
Osage Nation	http://www.osagetribe.com/
Otoe-Missouria Tribe	http://www.omtribe.org/
Ottawa Tribe	http://www.ottawatribe.org/
Pawnee Nation	http://www.pawneenation.org/
Peoria Tribe of Indians	http://www.peoriatribes.com/
Ponca Tribe of Indians	http://www.ponca.com/
Quapaw Tribe of Oklahoma	http://www.quapawtribe.com/
Sac & Fox Nation	http://www.sacandfoxnation-nsn.gov/
Seminole Nation	http://sno-nsn.gov/
Seneca-Cayuga Tribe	http://www.sctribe.com/
Shawnee Tribe	http://www.shawnee-tribe.com/
Thlopthlocco Tribal Town	http://tttown.org/
Tonkawa Tribe	http://www.tonkawatribe.com/
United Keetoowah Band of Cherokee	http://www.keetoowahcherokee.org/newsite/index.php
Wichita & Affiliated Tribes	http://www.wichitatribe.com/
Wyandotte Nation	http://www.wyandotte-nation.org/

RELATIONSHIP OF STATE AGENCIES WITH INDIAN TRIBES

182.162 Definitions for ORS 182.162 to 182.168. As used in ORS 182.162 to 182.168:

(1) "State agency" has the meaning given that term in ORS 358.635.

(2) "Tribe" means a federally recognized Indian tribe in Oregon. [2001 c.177 §1]

Note: 182.162 to 182.168 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 182 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

182.164 State agencies to develop and implement policy on relationship with tribes; cooperation with tribes. (1) A state agency shall develop and implement a policy that:

(a) Identifies individuals in the state agency who are responsible for developing and implementing programs of the state agency that affect tribes.

(b) Establishes a process to identify the programs of the state agency that affect tribes.

(c) Promotes communication between the state agency and tribes.

(d) Promotes positive government-to-government relations between the state and tribes.

(e) Establishes a method for notifying employees of the state agency of the provisions of ORS 182.162 to 182.168 and the policy the state agency adopts under this section.

(2) In the process of identifying and developing the programs of the state agency that affect tribes, a state agency shall include representatives designated by the tribes.

(3) A state agency shall make a reasonable effort to cooperate with tribes in the development and implementation of programs of the state agency that affect tribes, including the use of agreements authorized by ORS 190.110. [2001 c.177 §2]

Note: See note under 182.162.

182.166 Training of state agency managers and employees who communicate with tribes; annual meetings of representatives of agencies and tribes; annual reports by state agencies. (1) At least once a year, the Oregon Department of Administrative Services, in consultation with the Commission on Indian Services, shall provide training to state agency managers and employees who have regular communication with tribes on the legal status of tribes, the legal rights of members of tribes and issues of concern to tribes.

(2) Once a year, the Governor shall convene a meeting at which representatives of state agencies and tribes may work together to achieve mutual goals.

(3) No later than December 15 of every year, a state agency shall submit a report to the Governor and to the Commission on Indian Services on the activities of the state agency under ORS 182.162 to 182.168. The report shall include:

(a) The policy the state agency adopted under ORS 182.164.

(b) The names of the individuals in the state agency who are responsible for developing and implementing programs of the state agency that affect tribes.

(c) The process the state agency established to identify the programs of the state agency that affect tribes.

(d) The efforts of the state agency to promote communication between the state agency and tribes and government-to-government relations between the state and tribes.

(e) A description of the training required by subsection (1) of this section.

(f) The method the state agency established for notifying employees of the state agency of the provisions of ORS 182.162 to 182.168 and the policy the state agency adopts under ORS 182.164. [2001

c.177 §3]

Note: See note under 182.162.

182.168 No right of action created by ORS 182.162 to 182.168. Nothing in ORS 182.162 to 182.168 creates a right of action against a state agency or a right of review of an action of a state agency. [2001 c.177 §4]

Note: See note under 182.162.

EXECUTIVE ORDER NO. EO - 96 – 30 - STATE/TRIBAL GOVERNMENT-TO-GOVERNMENT RELATIONS

There are nine federally recognized Indian tribal governments located in the State of Oregon. These Indian tribes were in existence prior to the formation of the United States of America, and thus retain a unique legal status. The importance of recognizing the relationship that exists between the tribes and state government can not be underestimated.

As sovereigns the tribes and the State of Oregon must work together to develop mutual respect for the sovereign interests of both parties. The relationships between our governmental structures can only be built through trust and mutual respect. The purpose of formalizing the government-to-government relationship that exists between Oregon’s Indian tribes and the State is to establish a process which can assist in resolving potential conflicts, maximize key inter-governmental relations and enhance an exchange of ideas and resources for the greater good of all of Oregon’s citizens, whether tribal members or not.

IT IS ORDERED AND DIRECTED:

1. That the Governor’s Legal Counsel, or such other person as the Governor may from time to time designate, shall be accountable to the Governor for the implementation of this Executive Order and be responsible for convening an annual meeting where representatives of the State and the nine federally recognized Oregon tribal governments will work together to achieve mutual goals.
2. That the head of each Cabinet level department who is either appointed by the Governor or who reports to gubernatorial appointees and is made subject to this Order by the Governor (hereinafter “department”) shall be accountable to the Governor’s office for adopting a departmental State/Tribal Government statement that:
 - a. Recognizes that Oregon Indian tribal governments are interested in the development of state policy that affects tribal interests (hereinafter “state policy”) and recognizes the desirability of dialogue between tribal governments and the state, with regard to those state policies;
 - b. Identifies key personnel of the department as a “key contact[s]” responsible for coordination with tribal governments;
 - c. Establishes a process for the identification of those state policies by designated tribal representatives and key contacts;
 - d. promotes dialogue between Oregon departments and tribal governments on those state policies ; and
 - e. That advances the government-to-government relationship by notifying staff and employees of this Executive Order.
3. Through the process established under this Executive Order the key contacts and designated tribal representatives shall identify issues of mutual concern arising from state policy. The departments and each tribal government shall make reasonable efforts to design solutions and develop programs to achieve mutual goals in relation to state policy.

4. That each department shall recognize the opportunity to use a number of tools to achieve mutual cooperation including but not limited to use of cooperative agreements with Indian tribal governments as provided for in ORS 190.110 when it is appropriate to do so.

5. That each department shall provide key managers with periodic training which enables them to better recognize Indian issues and to understand and respect the legal status of tribal governments and of American Indians as citizens of Oregon who also have their own unique and distinct culture. It is important as well for the tribes to develop tribal training so its members will better understand the workings and process of state government. It is the hope of the state that these training's will enable the tribes and the state to learn about each other's cultures and improve our mutual ability to communicate our interests more clearly. The key contact and designated tribal representatives shall consult on the scope and content of training as well as the coverage of its cost.

6. That the departments shall work cooperatively to accomplish the goals of this order.

It is the hope of the state and the tribes that this executive order will result in improving the quality of communication between our sovereign governments. The tribes and the state recognize that this order cannot and is not intended to create a forum for resolution of all issues between the tribes and the state. Nor is it meant to replace presently existing lines of communications. Both the tribes and the state recognize that issues that are the subject of litigation or that are likely to become the subject of litigation are inappropriate for discussion in this process.

Nothing in this order shall require the state or any of its agencies to violate or ignore any laws, rules, directives or other legal requirements or obligations imposed by state or federal law including but not limited to state Public Records laws, Public Meetings laws and provisions of the state Administrative Procedures Act.

This document has been adopted for the sole purpose of enhancing communication and mutual cooperation between the State of Oregon and the tribal governments and is not intended to, and does not, create any right to administrative or judicial review, or any other right or benefit or responsibility, substantive or procedural, enforceable by a party against the State of Oregon, its agencies or instrumentality's, its officers or employees, its subdivisions or any other persons.

Done at Salem, Oregon this 22nd day of May 1996.



OFFICE OF THE GOVERNOR

EXECUTIVE ORDER # 39

Relating to an Affirmation of the Government-to-Government Relationship Between the State of Wisconsin and Indian Tribal Governments Located Within the State of Wisconsin

WHEREAS, the State of Wisconsin has a unique legal relationship with Indian Tribes, as affirmed and set forth in state and federal law; and

WHEREAS, within Wisconsin there are 11 federally recognized Tribes with elected or appointed Tribal governments; and

WHEREAS, the State of Wisconsin, a sovereign state within the United States, recognizes the unique status of Indian Tribes and their right to existence, self-government, and self-determination; and

WHEREAS, state regulations and other policy statements or actions have an impact on Indian Tribes; and

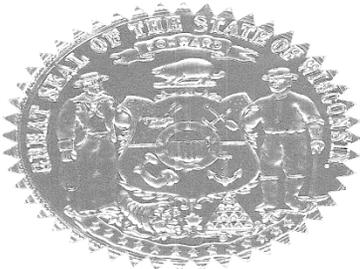
WHEREAS, State and Tribal governments play key roles in serving all of the citizens of the State of Wisconsin and collaboration between Tribes and State agencies will ensure that services are efficiently provided to all citizens, minimize service overlap, preserve natural resources and encourage sustainable economic development;

NOW THEREFORE, I, JIM DOYLE, Governor of the State of Wisconsin, by the authority vested in me by the Constitution and the laws of this State, do hereby:

1. Direct cabinet agencies to recognize the unique legal relationship between the State of Wisconsin and Indian Tribes, respect fundamental principles that establish and maintain this relationship and accord Tribal governments the same respect accorded other governments;
2. Direct cabinet agencies to recognize the unique government-to-government relationship between the State of Wisconsin and Indian Tribes when formulating and implementing policies or programs that directly affect Indian Tribes and their members, and whenever feasible and appropriate, consult the governments of the affected Tribe or Tribes regarding state action or proposed action that is anticipated to directly affect an Indian Tribe or its members;
3. In instances where the State of Wisconsin assumes control over formerly federal programs that directly affect Indian Tribes or their members, direct cabinet agencies, when feasible and appropriate, to consider Tribal needs and endeavor to ensure that Tribal interests are taken into account by the cabinet agency administering the formerly federal program; and
4. Direct cabinet agencies to work cooperatively to accomplish the goals of this order;

5. General Provisions.

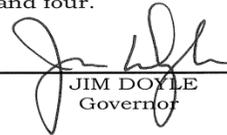
- a. Nothing in this order shall require cabinet agencies to violate or ignore any laws, rules, directives or other legal requirements or obligations imposed by state or federal law.
- b. Nothing in this order shall require cabinet agencies to violate or ignore any agreements or compacts between one or more Indian Tribes and the State of Wisconsin or one or more of its agencies.
- c. If any provision in this order conflicts with any laws, rules, agreements or other legal requirements or obligations imposed by state or federal law, the state or federal law shall control.
- d. Nothing in this order prohibits or limits any cabinet agency from asserting or pursuing any action or right, or taking any position under state or federal law or any existing agreement in relation to the interests of the State of Wisconsin or any of its state agencies.
- e. Nothing in this order creates any right, benefit, or trust responsibility, substantive or procedural, enforceable at law by a party against the State of Wisconsin, its agencies, or any person.



By the Governor:


DOUGLAS LA FOLLETTE
Secretary of State

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Wisconsin to be affixed. Done at the Capitol in the City of Madison this twenty-seventh day of February, in the year two thousand four.



JIM DOYLE
Governor

XI. APPENDIX E – MONTANA – STATE-TRIBAL GOVERNMENT-TO-GOVERNMENT ACT

AN ACT RELATING TO THE GOVERNMENT-TO-GOVERNMENT RELATIONSHIP BETWEEN THE MONTANA INDIAN TRIBES AND THE STATE OF MONTANA; PROVIDING FOR TRIBAL CONSULTATION IN THE DEVELOPMENT OF STATE AGENCY POLICIES THAT DIRECTLY AFFECT INDIAN TRIBES; AUTHORIZING CERTAIN STATE EMPLOYEES TO RECEIVE ANNUAL TRAINING; PROVIDING FOR ANNUAL MEETINGS BETWEEN STATE AND TRIBAL OFFICIALS; AND REQUIRING AN ANNUAL REPORT BY A STATE AGENCY.

WHEREAS, the Legislature recognizes the right of tribes to self-government; and

WHEREAS, the Legislature supports tribal sovereignty and self-determination; and

WHEREAS, the Legislature recognizes the fundamental principle and integrity of the government-to-government relationship between the State of Montana and the Indian Nations of Montana; and

WHEREAS, the Legislature supports strengthening communications and building collaborative relationships that will benefit both the Indian Nations and the State of Montana.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Definitions. As used in [sections 1 through 3], the following definitions apply:

(1) "State agency" means a department, board, or commission of the executive branch of state government.

(2) "Tribal government" means the officially recognized government of any tribe or nation.

(3) "Tribal officials" means the elected or appointed officials of a tribal government.

(4) "Tribe" means an Indian tribe that is recognized by federal law or formally acknowledged by the state.

Section 2. Guiding principles. In formulating or implementing policies or administrative rules that have direct tribal implications, a state agency should consider the following principles:

(1) a commitment to cooperation and collaboration;

(2) mutual understanding and respect;

(3) regular and early communication;

(4) a process of accountability for addressing issues; and

(5) preservation of the tribal-state relationship.

Section 3. Training and consultation. (1) At least once a year, the department of justice and a trainer selected by the tribal governments shall provide training in Helena or a site mutually agreed upon to state agency managers and key employees who have regular communication with tribes on the legal status of tribes, the legal rights of tribal members, and social, economic, and cultural issues of concern to tribes.

(2) At least annually, the governor may convene in Helena a full-day, working meeting at which the governor, representatives of state agencies, and tribal officials, including chiefs and tribal presiding officers, shall:

(a) review the policies that directly impact tribal government and tribal populations that are proposed for adoption by the state agencies and recommend changes to the policies; and

(b) discuss issues of concern to the state and the tribes and formulate solutions.

(3) By December 15 of each year, a state agency shall submit a report to the governor and to each tribal government on the activities of the state agency relating to tribal government and tribal populations. The report must include:

- (a) any policy that the state agency adopted under subsection (2)(a);
- (b) the name of the individual within the state agency who is responsible for implementing the policy;
- (c) the process that the state agency has established to identify the programs of the state agency that affect tribes;
- (d) the efforts of the state agency to promote communication and the government-to-government relationship between the state agency and the tribes;
- (e) the efforts of the state agency to ensure tribal consultation and the use of American Indian data in the development and implementation of agency programs that directly affect tribes; and
- (f) a joint description by tribal program staff and state staff of the training required under subsection (1).

Section 4. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 2, chapter 15, and the provisions of Title 2, chapter 15, apply to [sections 1 through 3].

Section 5. Notification to tribal governments. The secretary of state shall send a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell band of Chippewa.

XII. APPENDIX F – MINNESOTA – EXECUTIVE ORDER 03-05

STATE of MINNESOTA
EXECUTIVE DEPARTMENT
TIM PAWLENTY
GOVERNOR
EXECUTIVE ORDER 03-05

AFFIRMING THE GOVERNMENT-TO-GOVERNMENT RELATIONSHIP BETWEEN THE STATE OF MINNESOTA AND INDIAN TRIBAL GOVERNMENTS LOCATED WITHIN THE STATE OF MINNESOTA

I, TIM PAWLENTY, GOVERNOR OF THE STATE OF MINNESOTA, by virtue of the authority vested in me by the constitution and the applicable statutes, do hereby issue this executive order.

WHEREAS, the United States and the State of Minnesota have a unique legal relationship with Indian tribes, as affirmed by the Constitution of the United States, treaties and statutes; and

WHEREAS, within Minnesota there are 11 federally recognized tribes with elected or appointed tribal governments; and

WHEREAS, the State of Minnesota, a sovereign state within the United States, recognizes the unique status of Indian tribes and their right to existence, self-government and self-determination; and

WHEREAS, state regulations and other policy statements or actions often have an impact on Indian tribes; and

WHEREAS, state and tribal governments play key roles in serving all of the citizens of the State of Minnesota and collaboration between tribes and state agencies will ensure that services are efficiently provided to all citizens, minimize service overlap, preserve natural resources and encourage sustainable economic development; and

WHEREAS, in order to advance both state and tribal concerns, it is necessary to maintain and foster a government-to-government relationship that is built on mutual respect for the sovereignty of both state and tribal governments;

NOW, THEREFORE I hereby order that:

1. Agencies of the State of Minnesota and persons employed by state agencies (the "State") shall recognize the unique legal relationship between the State of Minnesota and Indian tribes, respect the fundamental principles that establish and maintain this relationship and accord tribal governments the same respect accorded to other governments.
2. When undertaking to formulate and implement policies or programs that directly affect Indian tribes and their members, the State and its agencies must recognize the unique government-to-government relationship between the State and Indian tribes and, whenever feasible, consult with the governments of the affected Indian tribe or tribes regarding a State action or proposed action that is anticipated to directly affect an Indian tribe.

3. In instances where the State assumes control over formerly federal programs that directly affect Indian tribes, state agencies shall consider the unique tribal needs and, to the extent feasible, endeavor to ensure that tribal interests are taken into account by the state agency administering the formerly federal program.

4. State agencies and persons employed by State agencies shall work cooperatively to accomplish the goals of this order and at all times act in a manner consistent with this order.

Nothing in this order shall require state agencies to violate or ignore any laws, rules, directives or other legal requirements or obligations imposed by state or federal law, or set forth in agreements or compacts between one or more Indian Tribes and the state or one or more of its agencies. If any provision in this order conflicts with any laws, rules or other legal requirement or obligation imposed by state or federal law, the state or federal law shall control. Nothing in this order prohibits or limits any state agency from asserting or pursuing any action, right or taking any position under state or federal law in relation to the interests of the State of Minnesota or any of its state agencies.

Pursuant to Minnesota Statutes 2002, section 4.035, subd. 2, this Order shall be effective fifteen (15) days after publication in the State Register and filing with the Secretary of State and shall remain in effect until rescinded by proper authority or it expires in accordance with Minnesota Statutes 2000, section 4.035, subd. 3.

IN TESTIMONY WHEREOF, I have set my hand the 9th day of April 2003.

TIM PAWLENTY,
Governor

Filed According to Law:

Mary Kiffmeyer
Secretary of State

XIII. APPENDIX G – WASHINGTON – CENTENNIAL ACCORD

I. Preamble and Guiding Principles

This Accord dated August 4, 1989, is executed between the federally recognized Indian tribes of Washington signatory to this Accord and the State of Washington, through its governor, in order to better achieve mutual goals through an improved relationship between their sovereign governments. This Accord provides a framework for that government-to-government relationship and implementation procedures to assure execution of that relationship.

Each Party to this Accord respects the sovereignty of the other. The respective sovereignty of the state and each federally recognized tribe provide paramount authority for that party to exist and to govern. The parties share in their relationship particular respect for the values and culture represented by tribal governments. Further, the parties share a desire for a complete Accord between the State of Washington and the federally recognized tribes in Washington reflecting a full government-to-government relationship and will work with all elements of state and tribal governments to achieve such an accord.

II. Parties

There are twenty-six federally recognized Indian tribes in the state of Washington. Each sovereign tribe has an independent relationship with each other and the state. This Accord, provides the framework for that relationship between the state of Washington, through its governor, and the signatory tribes.

The parties recognize that the state of Washington is governed in part by independent state officials. Therefore, although, this Accord has been initiated by the signatory tribes and the governor, it welcomes the participation of, inclusion in and execution by chief representatives of all elements of state government so that the government-to-government relationship described herein is completely and broadly implemented between the state and the tribes.

III. Purposes and Objectives

This Accord illustrates the commitment by the parties to implementation of the government-to-government relationship, a relationship reaffirmed as state policy by gubernatorial proclamation January 3, 1989. This relationship respects the sovereign status of the parties, enhances and improves communications between them, and facilitates the resolution of issues.

This Accord is intended to build confidence among the parties in the government-to-government relationship by outlining the process for implementing the policy. Not only is this process intended to implement the relationship, but also it is intended to institutionalize it within the organizations represented by the parties. The parties will continue to strive for complete institutionalization of the government-to-government relationship by seeking an accord among all the tribes and all elements of state government.

This Accord also commits the parties to the initial tasks that will translate the government-to-government relationship into more-efficient, improved and beneficial services to Indian and non-Indian

people. This Accord encourages and provides the foundation and framework for specific agreements among the parties outlining specific tasks to address or resolve specific issues.

The parties recognize that implementation of this Accord will require a comprehensive educational effort to promote understanding of the government-to-government relationship within their own governmental organizations and with the public.

IV. Implementation Process and Responsibilities

While this Accord addresses the relationship between the parties, its ultimate purpose is to improve the services delivered to people by the parties. Immediately and periodically, the parties shall establish goals for improved services and identify the obstacles to the achievement of those goals. At an annual meeting, the parties will develop joint strategies and specific agreements to outline tasks, overcome obstacles and achieve specific goals.

The parties recognize that a key principle of their relationship is a requirement that individuals working to resolve issues of mutual concern are accountable to act in a manner consistent with this Accord.

The state of Washington is organized into a variety of large but separate departments under its governor, other independently elected officials and a variety of boards and commissions. Each tribe, on the other hand, is a unique government organization with different management and decision-making structures.

The chief of staff of the governor of the state of Washington is accountable to the governor for implementation of this Accord. State agency directors are accountable to the governor through the chief of staff for the related activities of their agencies. Each director will initiate a procedure within his/her agency by which the government-to-government policy will be implemented. Among other things, these procedures will require persons responsible for dealing with issues of mutual concern to respect the government-to-government relationship within which the issue must be addressed. Each agency will establish a documented plan of accountability and may establish more detailed implementation procedures in subsequent agreements between tribes and the particular agency.

The parties recognize that their relationship will successfully address issues of mutual concern when communication is clear, direct and between persons responsible for addressing the concern. The parties recognize that in state government, accountability is best achieved when this responsibility rests solely within each state agency. Therefore, it is the objective of the state that each particular agency be directly accountable for implementation of the government-to-government relationship in dealing with issues of concern to the parties. Each agency will facilitate this objective by identifying individuals directly responsible for issues of mutual concern.

Each tribe also recognizes that a system of accountability within its organization is critical to successful implementation of the relationship. Therefore, tribal officials will direct their staff to communicate within the spirit of this Accord with the particular agency which, under the organization of state government, has the authority and responsibility to deal with the particular issue of concern to the tribe.

In order to accomplish these objectives, each tribe must ensure that its current tribal organization, decision-making process and relevant tribal personnel is known to each state agency with which the tribe is addressing an issue of mutual concern. Further, each tribe may establish a more detailed organizational structure, decision-making process, system of accountability, and other procedures for implementing the government-to-government relationship in subsequent agreements with various state agencies. Finally, each tribe will establish a documented system of accountability.

As a component of the system of accountability within state and tribal governments, the parties will review and evaluate at the annual meeting the implementation of the government-to-government relationship. A management report will be issued summarizing this evaluation and will include joint strategies and specific agreements to outline tasks, overcome obstacles, and achieve specific goals.

The chief of staff also will use his/her organizational discretion to help implement the government-to-government relationship. The office of Indian Affairs will assist the chief of staff in implementing the government-to-government relationship by providing state agency directors information with which to educate employees and constituent groups as defined in the accountability plan about the requirement of the government-to-government relationship. The Office of Indian Affairs shall also perform other duties as defined by the chief of staff.

V. Sovereignty and Disclaimers

Each of the parties respects the sovereignty of each other party. In executing this Accord, no party waives any rights, including treaty rights, immunities, including sovereign immunities, or jurisdiction. Neither does this Accord diminish any rights or protections afforded other Indian persons or entities under state or federal law. Through this Accord parties strengthen their collective ability to successfully resolve issues of mutual concern.

While the relationship described by this Accord provides increased ability to solve problems, it likely will not result in a resolution of all issues. Therefore, inherent in their relationship is the right of each of the parties to elevate an issue of importance to any decision-making authority of another party, including, where appropriate, that party's executive office.

Signatory parties have executed this Accord on the date of August 4, 1989, and agreed to be duly bound by its commitments.

XIV. APPENDIX H – WASHINGTON – MILLENNIUM AGREEMENT

The work of the 1999 Tribal and State Leaders' Summit will be the foundation upon which our children will build. A stronger foundation for tribal/state relations is needed to enable us to work together to preserve and protect our natural resources and to provide economic vitality, educational opportunities, social services and law enforcement that allow the governments to protect, serve and enhance their communities.

The undersigned leaders of American Indian Nations and the State of Washington, being united in Leavenworth, WA on November 1, 2 and 3, 1999 in the spirit of understanding and mutual respect of the 1989 Centennial Accord and the government-to-government relationship established in that Accord, and desiring to strengthen our relationships and our cooperation on issues of mutual concern, commit to the following:

- Strengthening our commitment to government-to-government relationships and working to increase the understanding of tribes' legal and political status as governments;
- Continuing cooperation in the future by developing enduring channels of communication and institutionalizing government-to-government processes that will promote timely and effective resolution of issues of mutual concern;
- Developing a consultation process, protocols and action plans that will move us forward on the Centennial Accord's promise that, "The parties will continue to strive for complete institutionalization of the government-to-government relationship by seeking an accord among all the tribes and all elements of state government."
- Enhancing communication and coordination through the Governor's commitment to strengthen his Office of Indian Affairs and the member tribes' commitment to strengthen the Association of Washington Tribes;
- Encouraging the Washington Legislature to establish a structure to address issues of mutual concern to the state and tribes;
- Educating the citizens of our state, particularly the youth who are our future leaders, about tribal history, culture, treaty rights, contemporary tribal and state government institutions and relations and the contribution of Indian Nations to the State of Washington to move us forward on the Centennial Accord's promise that, "The parties recognize that implementation of this Accord will require a comprehensive educational effort to promote understanding of the government-to-government relationship within their own governmental organizations and with the public.";
- Working in collaboration to engender mutual understanding and respect and to fight discrimination and racial prejudice; and,
- Striving to coordinate and cooperate as we seek to enhance economic and infrastructure opportunities, protect natural resources and provide the educational opportunities and social and community services that meet the needs of all our citizens.

We affirm these principles and resolve to move forward into the new millennium with positive and constructive tribal/state relations

XV. APPENDIX I - INCOG SECOND AMENDED AGREEMENT

Tulsa County Clerk - EARLENE WILSON
Doc # 2007009367 Pages 34
Receipt # 905656 01/26/07 13:54:00
Fee 0.00



OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA



FILED

FEB 21 2007

OKLAHOMA SECRETARY
OF STATE

W
Darita DeLoach Huckabee
Legal & Legislative Affairs Coordinator
INCOG
PK 201 West 5th Street, Suite 600
Tulsa, OK 74103-4236

Re: Second Amended Agreement to ICA 98-0025 Creating the Indian National Council of Governments for addition of the Cherokee, Creek and Osage Nations as INCOG members

Dear Ms. Huckabee:

LETTER OF APPROVAL

I have reviewed the referenced Agreement and found it to comply with the provisions of the Interlocal Cooperation Act. Pursuant to the provisions of 74 O.S. 2001, § 1004(f), the referenced Agreement is hereby officially **APPROVED** as of the date of the signature manifested hereon.

Please be advised that, before the Agreement may go into force, copies of the Agreement, and of this Letter of Approval, must be filed with the County Clerk and the Secretary of State.

Signed this 18th day of January, 2007.

Respectfully submitted,

Bryan Neal
Assistant Attorney General

ICA2006/98-0025 2ndAmendment.011807

RECEIVED
FEB 21 2007
OKLAHOMA SECRETARY
OF STATE



nl

**SECOND AMENDED
AGREEMENT
CREATING THE
INDIAN NATIONS COUNCIL OF GOVERNMENTS**

FILED

FEB 21 2007

OKLAHOMA SECRETARY
OF STATE

Whereas, the 30th Oklahoma Legislature enacted Senate Bill No. 343 (Title 74, O.S. Supp. 1965, § 1001 et seq.) permitting public agencies to enter into agreements with one another for joint or cooperative action pursuant to the provisions of said act; and

Whereas, pursuant thereto, it is the purpose and desire of the undersigned public agencies to create a Council of Governments to enable said public agencies to more efficiently use their powers by cooperating with each other on a basis of mutual advantage and thereby provide services and facilities in a manner and pursuant to a form that will accord best with geographic, economic, population and other factors influencing the needs and development of said public agencies.

NOW, THEREFORE, the Indian Nations Council of Governments is hereby created by agreement of the parties hereto, under the authority of Title 74, O.S. Supp. 1965, § 1001 et seq., in accordance with the following provisions.

STATEMENT OF PRINCIPLES AND POLICIES

1. The underlying concept of the Indian Nations Council of Governments (hereinafter referred to as the Council) is that the public agencies, which are closest to the people, should exercise the basic initiative and leadership and have the primary responsibility for dealing with those problems and needs which require action on an area-wide or regional basis.
2. The physical, economic and social well-being of the region, its citizens and business enterprises, now and in the future, are dependent upon an orderly development of the entire region. This will be possible only with the successful coordination of services and policies of public agencies.
3. Counties, cities, and towns are the principal public agencies in the region. As such, they have the responsibility for anticipating and meeting the local governmental needs which future development will produce, including the need for joint and coordinated area-wide services.
4. County, City and Indian Nations are, and should continue to be, the top policy makers in the region. They are directly concerned with all services and regulations affecting the public in their communities.

5. Constructive and workable policies and programs for meeting and solving the area-wide problems of public agencies will be most effectively and expeditiously developed by regular meetings of public agency members in an area-wide voluntary council dedicated to the solution of these problems.
6. The Council is an organization through which individual public agencies can coordinate their efforts. It is not in itself a government nor does it seek to become one.
7. The Council shall consider such matters as are area-wide or regional in nature.

MEMBERSHIP IN INDIAN NATIONS
COUNCIL OF GOVERNMENTS

Section I.

General Assembly Membership: Membership in the General Assembly and execution of this Agreement shall be determined by a passage of an ordinance, resolution or otherwise pursuant to law of the governing body of the participating public agency and shall include the following:

- A. The counties of Creek, Osage, Tulsa, Rogers and Wagoner and any additional contiguous county executing this Agreement.
- B. Incorporated cities and towns that are located in counties which are participating members may join as participating members subject to the provisions herein.
- C. Incorporated cities and towns with population of 3,500 and over that are located in counties contiguous to member counties may join as participating members subject to the provisions herein.
- D. Incorporated cities and towns of under 3,500 population that have unsuccessfully petitioned their respective county to become a participating member.
- E. All public agencies with an elected policy board having some jurisdiction within any county named in Section I-A or any additional county which subsequently joins may be members.
- F. In the case where a county elects not to join INCOG, an individual county commission district in that county desiring to join may execute this Agreement subject to the provisions herein.
- G. The Cherokee, Creek and Osage Indian Nations.

Section II.

General Assembly Participating Membership Delegates and Voting: Participating membership in the General Assembly shall be those eligible incorporated cities and towns, counties, county commission

districts and Indian Nations set forth or determined under Section I which voluntarily determine to cooperate in the activities of the Council by appointing a delegate to the General Assembly as provided below.

- A. Delegates: Each participating member shall appoint one (1) Delegate to the General Assembly. All Delegates shall be public officials who hold an elective office.
- B. Voting: Each participating member shall be entitled to one (1) vote in the General Assembly.

Section III.

General Assembly Associate Membership: Associate membership in the General Assembly shall be open to incorporated municipalities of under 3,500 population that have unsuccessfully petitioned their respective county to become a participating member, and other public agencies with elected policy boards, e.g. special districts, etc., which voluntarily determine to cooperate in the activities of the Council by paying an annual fee for general staff service in an amount sufficient to provide funds as necessitated by the Council budget set by the Board of Directors.

- A. Delegates: Each associate member shall appoint one (1) Delegate to the General Assembly. All Delegates shall be public officials who hold an elective office.
- B. Voting: Associate members shall not be entitled to vote, but may participate in the Assembly's discussion.

Section IV.

- A. Powers of the General Assembly: Powers exercised by the General Assembly shall be to:
 - 1. Annually adopt a budget and annual assessment schedule upon receipt of favorable recommendation from the Board of Directors.
 - 2. Approve and/or adopt plans and policies which are regionwide in nature upon receipt of favorable recommendation of the Board of Directors.
 - 3. Propose and approve amendments to the INCOG General Assembly Bylaws.
 - 4. Amend this Agreement in concert with the Board of Directors according to the procedures set out in Section IX.
 - 5. Any official delegate may at any meeting of the General Assembly request a review by the General Assembly of any action taken by the Board of Directors since the preceding General Assembly meeting other than those actions for which the Board of Directors are assigned sole responsibility under Section VI.

6. The General Assembly may ratify, amend or reject any official action of the Board of Directors which may be requested for review under Item 5 above.
7. The General Assembly shall ratify or reject any action of the Board of Directors regarding the addition of new members to the Council.

Section V.

Board of Directors

- A. The Board of Directors shall be the governing board of the Council of Governments. Between meetings of the entire membership (General Assembly) a quorum of the Board of Directors shall be responsible for the general policies and programs of the Council of Governments and for the administration of all its funds.
- B. The Board of Directors shall be composed of the Chairman of the General Assembly and other members, selected as follows:
 - (1) The governing body of each participating city having more than 50,000 population shall select one (1) representative for each 50,000 increment of population or any fraction thereof. The majority of said representatives shall be public officials who hold an elective office and shall be members of the governing body of said city. For purposes of determining the membership for the City of Tulsa, the Mayor and City Auditor shall be considered to be members of the governing body of the City and shall represent the City on the Board of Directors along with other members appointed to serve.
 - (2) The governing body of each participating city or town having a population between 3,500 and 50,000 shall select one (1) representative who shall be a public official and hold an elective office and be a member of said governing body.
 - (3) The Board of County Commissioners of each county, in consultation with the participating cities and towns of less than 3,500 population in that county, shall appoint one (1) person to represent those cities and towns.
 - (4) The Board of County Commissioners of each participating county having less than 100,000 population shall select three (3) representatives, who shall be county commissioners.
 - (5) The Board of County Commissioners of each participating county having more than 100,000 population shall select three (3) representatives, who shall be county

commissioners, for the first 100,000 population, and select one (1) representative for each additional 100,000 population or fraction thereof. A majority of said representatives shall be public officials who hold an elective office.

- (6) In the case where a county commission district is a participating member, the representative to the Board of Directors shall be the county commissioner of said district.
 - (7) The immediate past chairman of the Board of Directors shall continue to serve on the board as an ex officio non-voting member for a two-year period.
 - (8) The Chief of each participating Indian Nation, or his/her designee.
- C. Each year staff will submit to the Board of Directors for its adoption, an estimate of population of cities, towns, counties which shall serve, when adopted, as the determination of population for representation and finances.
- D. The members of the Board of Directors shall hold office at the pleasure of the governing body or bodies appointing said members, except that the requirements of appointment as designated in Section V B (1-7) shall be maintained at all times.

Section VI.

- A. Powers of the Board of Directors: The Board of Directors shall have the following powers:
1. Board of Directors shall appoint, fix salary of and remove the Executive Director.
 2. The Board of Directors shall propose, initiate, review, adopt or approve any study or plans.
 3. The Board of Directors may establish standing and ad hoc policy and technical advisory committees as it deems necessary and helpful to the exercise of its responsibilities under this Agreement.
 4. The Board of Directors may appoint subcommittees from their members.
 5. The Board of Directors shall receive and expend all grants, gifts and bequests, specifically including Federal and State funds and other funds available for the purposes for which this organization exists, and to contract with the United States, State of Oklahoma, and all other legal entities with respect thereto.
 6. The addition of all new members shall require the approval of the Board of Directors, subject to the ratification of the General Assembly.

7. The Board of Directors shall also be responsible for preparing business for the annual and special meetings of the General Assembly, including the preparation of an annual budget and schedule of assessment for consideration at the annual meeting of the General Assembly.
8. The Board of Directors shall have the power to transfer funds within the approved total budget in order to meet unanticipated needs or changed situations. Such action shall be reported to the General Assembly at its next meeting.
9. The Board of Directors shall have the sole power to ensure that such staff as necessary are employed, that office space is obtained, and such equipment and/or supplies as may be deemed necessary to conduct the business of the Council of Governments are purchased. The Board shall also have sole authority to enter into contracts.

Section VII.

- A. Executive Director: The Executive Director shall be the Chief Administrative Officer of the Council. The power and duties of the Executive Director are:
 1. To appoint and remove all employees of the Council.
 2. Annually to prepare and present a proposed budget to the Board of Directors and to administer the approved budget.
 3. To perform such other and additional duties as the Board of Directors may require.

Section VIII.

- A. MANNER OF FINANCING: The Council's annual budget approved by the Board of Directors and the General Assembly shall be financed as follows:
 1. All member cities, towns and counties shall be assessed membership dues calculated on a per capita basis. Member counties shall pay dues on behalf of cities and towns under 3,500 population.
 2. Tribal Nations shall be assessed membership dues as established by the Board of Directors based on the annual budget and work program.
 3. Other public agencies shall be assessed membership dues as determined by the Board of Directors based on the annual budget and work program.

4. Members needing special studies or services not part of the basic services offered all members shall pay a mutually agreed upon amount for such services.
5. Grants from federal, state and other entities.

Section IX.

- A. Additional Agencies: Public agencies with elected policy boards desiring to participate in the Indian Nations Council of Governments which are not among the original signatories may execute this Agreement and designate representatives subject to the provisions herein.
- B. Amendment of Agreement: Amendments to this Agreement shall be approved by a two-thirds vote of members present at separate meetings of both the General Assembly and the Board of Directors. Amendments must be executed by the governing body of each participating member which has agreed to cooperate in the activities of the Council by paying an annual fee for general staff service in an amount sufficient to provide funds as necessitated by the Council budget set by the Board of Directors.

Section X.

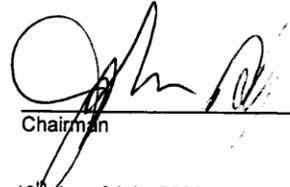
Dissolution:

- A. Dissolution of the Indian Nations Council of Governments shall be effected upon a majority vote of all members of the Board of Directors.
- B. Upon dissolution or final liquidation of the Council, after discharge or satisfaction of all outstanding obligations and liabilities, the remaining assets, if any, of the Council shall be distributed to the participating members in the same proportion to which each participating member contributed to the overall cost of the operation of the Council during the fiscal year of such dissolution or final liquidation.

Section XI.

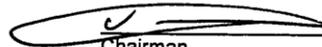
Effective Date: This Agreement shall become effective on July 1, 1967, or upon approval of the Attorney General of Oklahoma if approved after July 1, 1967, and shall remain in full force and effect until the organization is dissolved under the provisions of Section X-A.

Approved by the Board of Directors of the Indian Nations Council of Governments this 13th day of July, 2006.



Chairman

Approved by the INCOG General Assembly this 13th day of July, 2006.



Chairman

Approval by the Attorney General of the State of Oklahoma

I the undersigned, Bryan Neal, Assistant Attorney General for the State of Oklahoma, do hereby approve the above and foregoing 2nd Amended Interlocal Cooperation Agreement as to form and content under 74 O.S. 2001 §1004(f) on this 18th day of January, 2007.


Assistant Attorney General of Oklahoma

Our File No. ICA-98-0025

RESERVATION ENTERPRISE ZONES; RESERVATION PARTNERSHIP ZONES

285C.300 Definitions for ORS 285C.300 to 285C.320. As used in ORS 285C.300 to 285C.320:

(1) “Eligible business” means a business that:

(a) Is engaged within a reservation enterprise zone or a reservation partnership zone in the manufacture or provision of goods, products or services to other businesses or to the general public, through activities including, but not limited to, manufacturing, assembly, fabrication, processing, shipping, storage, retail sales or services, child care, housing, retail food service, health care, tourism, entertainment, financial services, professional services, energy development, construction or similar activities; and

(b) Occupies or owns a new business facility within a reservation enterprise zone or a reservation partnership zone.

(2) “New business facility”:

(a) Means a physical asset within a reservation enterprise zone or a reservation partnership zone that satisfies the following requirements:

(A) The facility is used by a business in the operation of a revenue-producing enterprise, except that the revenue-producing enterprise must consist of activity other than leasing the facility to another person; and

(B) The facility is acquired by or leased to a business on or after January 1, 2002, including a facility, the title or possession of which is transferred to the business on or after January 1, 2002, or a facility, the construction, erection or installation of which is completed on or after January 1, 2002;

(b) Subject to paragraph (c) of this subsection, includes a facility acquired or leased from a person that used the facility in a revenue-producing enterprise within the boundaries of the same Indian reservation immediately prior to the transfer of title or possession of the facility to the business; and

(c) Does not include:

(A) A facility that is used in a revenue-producing enterprise that is the same or substantially identical to the revenue-producing enterprise in which the facility was previously used within the boundaries of the same Indian reservation; or

(B) Any property that merely replaces existing property and that does not expand the capacity of the revenue-producing enterprise in which the facility is to be used.

(3) “Reservation enterprise zone” means an enterprise zone designated under ORS 285C.306.

(4) “Reservation partnership zone” means an enterprise zone cosponsored under ORS 285C.306.

(5) “Tribal government” means the governing body of an Indian tribe, if the governing body has the authority to levy, impose and collect taxes within the boundaries of the reservation of the tribe.

(6) “Tribal tax” means any specific tax that is or may be levied or imposed by a tribal government upon a business and that is measured with reference to a specific level or quantity of that business’s income, operations, use or ownership of property. “Tribal tax” includes, but is not limited to, an income or excise tax, an ad valorem property tax, a gross receipts tax or a sales and use tax. [Formerly 285B.766; 2010 c.76 §23]

285C.303 Legislative findings. The Legislative Assembly finds that the welfare of the residents of the rural Indian reservations of this state is acutely dependent upon the growth, development and expansion of employment and business opportunities within reservation boundaries. Geographic and other obstacles have made it difficult for rural Indian reservations to attract and retain private business investment. The tax systems of this state, by subjecting businesses located within reservation boundaries to state taxation in addition to any taxation imposed by the reservations themselves, has

heightened the economic isolation of this state's rural reservations and impeded the efforts of Indian tribes to develop sufficient tax bases to fund essential governmental services on their reservations. The Legislative Assembly further finds that it is in the best interests of this state to create equality that will enable rural Indian reservations to attract and retain private business investment. The Legislative Assembly declares that it is the purpose of ORS 285C.300 to 285C.320 to remove the tax disincentives that currently inhibit private business and industry from locating and operating enterprises within the boundaries of the rural Indian reservations of this state. [Formerly 285B.767]

285C.306 Reservation enterprise zones and reservation partnership zones. (1) As used in this section, "eligible Indian tribe" means each of the Burns Paiute Tribe, the Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indians, the Confederated Tribes of the Grand Ronde Community of Oregon, the Confederated Tribes of Siletz Indians of Oregon, the Confederated Tribes of the Umatilla Indian Reservation, the Confederated Tribes of Warm Springs, the Coquille Indian Tribe, the Cow Creek Band of Umpqua Tribe of Indians and the Klamath Tribes, as long as each remains a federally recognized Indian tribe.

(2)(a) The government of an eligible Indian tribe may request the Oregon Business Development Department to designate one reservation enterprise zone. The reservation enterprise zone may cover an area of no more than 12 square miles, which does not have to be contiguous.

(b) Upon request, the department shall designate a reservation enterprise zone if the land for which zone designation is sought is:

(A) Land held in trust by the United States for the benefit of the tribe;

(B) Land for which an application to transfer the land into trust has been filed with the federal government and is pending; or

(C) Land that is located within the boundaries of the tribe's reservation.

(c) Land designated as a reservation enterprise zone pursuant to paragraph (b)(A) or (B) of this subsection may be outside the boundaries of the tribe's reservation.

(3)(a) The government of an eligible Indian tribe may cosponsor a reservation partnership zone comprising an area of up to 12 square miles. A reservation partnership zone includes lands within the jurisdiction of a cosponsoring city, county or port and may include both lands held in trust by the federal government for the benefit of the tribe and lands within the boundaries of the tribe's reservation.

(b) A reservation partnership zone must be cosponsored by the government of an eligible Indian tribe and a city, county or port pursuant to an agreement formed under ORS 190.110 to perform the duties imposed on a sponsor under ORS 285C.050 to 285C.250. [Formerly 285B.770; 2005 c.704 §3; 2007 c.71 §86; 2009 c.743 §1]

285C.309 Income tax credit for new business facility in reservation enterprise zone or reservation partnership zone. (1) A credit against the taxes that are otherwise due under ORS chapter 316 or, if the taxpayer is a corporation, under ORS chapter 317 or 318, is allowed to an eligible business operating a new business facility in a reservation enterprise zone or a reservation partnership zone.

(2) The amount of the credit allowed to the eligible business shall equal:

(a) The amount of tribal property tax imposed on a new business facility of an eligible business that is paid or incurred by the eligible business during the income or corporate excise tax year of the eligible business; or

(b) If the eligible business has not previously conducted business operations within the reservation enterprise zone or reservation partnership zone, the amount of tribal tax paid or incurred by the eligible business during the income or corporate excise tax year of the eligible business.

(3) The credit allowed to the eligible business may not exceed the tax liability of the eligible business for the tax year and may not be carried over to another tax year.

(4) A credit is allowable under this section only to the extent the tribal tax on which the credit is based is imposed on businesses not owned by Indians on a uniform basis within the territory over which the tribal government has the authority to levy, impose and collect taxes.

(5) The credit shall be claimed on a form prescribed by the Department of Revenue containing the information required by the department, including information sufficient for the department to determine that the taxpayer is an eligible business and that the facility operated by the business is a new business facility.

(6) An eligible nonresident individual shall be allowed the credit computed in the same manner and subject to the same limitations as the credit allowed a resident by subsection (1) of this section. However, the credit shall be prorated using the proportion provided in ORS 316.117.

(7) If a change in the taxable year of a taxpayer occurs as described in ORS 314.085, or if the Department of Revenue terminates the taxpayer's taxable year under ORS 314.440, the credit allowed by this section shall be prorated or computed in a manner consistent with ORS 314.085.

(8) If a change in the status of a taxpayer from resident to nonresident or from nonresident to resident occurs, the credit allowed by this section shall be determined in a manner consistent with ORS 316.117.

(9) An eligible business claiming a credit under this section shall maintain records sufficient to authenticate the allowance of the credit claimed under this section and shall furnish the department with these records upon the request of the department.

(10) A credit claimed by an eligible business may not be disallowed solely because the eligible business conducts business operations both within and outside of a reservation enterprise zone or a reservation partnership zone. [Formerly 285B.773; 2010 c.76 §24]

Note: Section 21, chapter 913, Oregon Laws 2009, provides:

Sec. 21. A credit may not be claimed under ORS 285C.309 for tax years beginning on or after January 1, 2018. [2009 c.913 §21; 2010 c.76 §28]

285C.320 Status of reservation enterprise zone and reservation partnership zone; sponsor. (1) A reservation enterprise zone and a reservation partnership zone are rural enterprise zones for purposes of ORS 285C.050 to 285C.250.

(2) Reservation enterprise zones and reservation partnership zones may not be taken into account in determining the number of rural enterprise zones allowable in this state under ORS 285C.050 to 285C.250, and are not subject to numerical limitation under ORS 285C.050 to 285C.250.

(3) Exemptions and tax credits available in connection with an enterprise zone are available in connection with a reservation enterprise zone or a reservation partnership zone. In order for property within a reservation enterprise zone or a reservation partnership zone to be exempt under ORS 285C.175, the business firm and property must meet the requirements applicable to business firms and property in an enterprise zone.

(4) As used in this section, "business firm" has the meaning given that term in ORS 285C.050. [Formerly 285B.776; 2005 c.94 §11; 2009 c.743 §2; 2010 c.76 §25]

About the Author

Darryl C. Patterson served as the Michael S. Dukakis Governor's Summer Fellow for the State of Oklahoma from June-August 2013. This opportunity was made possible by the generosity of Marilyn and Calvin Gross, Harvard College Class of 1956, in honor of Michael S. Dukakis, former Governor of Massachusetts, and through the Harvard Kennedy School and the Office of Governor Mary Fallin.

Darryl is a Master in Public Administration student at the Harvard Kennedy School at Harvard University. Before attending the Kennedy School, he practiced litigation law. He holds a Bachelor of Arts, Juris Doctor and Master of Law.