S. HRG. 106–793

INDIAN TRIBAL DEVELOPMENT CONSOLIDATED FUNDING ACT

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS UNITED STATES SENATE

ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

ON

S. 2052

TO ESTABLISH A DEMONSTRATION PROJECT TO AUTHORIZE THE INTEGRATION AND COORDINATION OF FEDERAL FUNDING DEDICATED TO COMMUNITY, BUSINESS, AND THE ECONOMIC DEVELOPMENT OF NATIVE AMERICAN COMMUNITIES

SEPTEMBER 27, 2000
WASHINGTON, DC

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INDIAN TRIBAL DEVELOPMENT CONSOLIDATED FUNDING ACT

WEDNESDAY, SEPTEMBER 27, 2000

U.S. SENATE,
COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to other business, at 10 a.m. in room 485, Senate Russell Building, Hon. Ben Nighthorse Campbell (chairman of the committee) presiding.

Present: Senators Campbell and Inouye.

The CHAIRMAN. We will now move to the hearing of S. 2052.

Senator INOUYE. Mr. Chairman, I would like to stay for the hearing, but as you know, we have other responsibilities. Before I do, may I thank you, on behalf of the people of Hawaii, for permitting the bill, H.R. 4904 to be left on the desk for consideration by the full Senate.

Thank you very much, sir.

STATEMENT OF HON. BEN NIGHTHORSE CAMPBELL, U.S. SENATOR FROM COLORADO, CHAIRMAN, COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. Since we only have three people that are going to testify on S. 2052 today, I would like all three of them to come to the table. It will be Mike Anderson, Peter Deswood, and Joseph Kalt.

Let me turn to this, just to make a very short opening comment. This is the Indian Tribal Development Consolidated Funding Act of 2000, which I introduced earlier this year.

Despite a handful of successful gaming tribes, native people still remain stuck in poverty, unemployment, and hopelessness in many, many reservations. Indian schools are falling apart.

Indians continue to suffer the worst health care status in the Nation. Housing stock is insufficient. The quality is generally poor. Indian youth suicide rates are among the highest in the Nation. Those are all unacceptable facts that I hope we can change.

In this Congress alone, I have introduced legislation aimed at regulatory reform, needs assessment, good governance, physical infrastructure, trade and commence, and agriculture, just to name a few.

One of the biggest problems that we have is the fractured way the United States administers Indian resources. Whether or not an Indian program czar in the White House will solve the problems is open for debate.

But S. 2052 addresses this problem and builds on Indian self-determination and self-governance, the most successful Indian policies yet devised to bring more effectiveness to Federal resources targeted at Indian economic development problems.

Though there are some $9 billion in Federal funds appropriated annually for Indian programs, I am convinced that the current piecemeal administration of those funds is inadequate, unacceptable, and often duplicates efforts.

In my experience as the chairman, I have seen far too many instances where agencies are not cooperating and not coordinating their resources and their efforts with other agencies that are beneficial to Indian people.

[Text of S. 2052 follows:]

II

106TH CONGRESS
2D SESSION

S. 2052

To establish a demonstration project to authorize the integration and coordination of Federal funding dedicated to community, business, and the economic development of Native American communities.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 10, 2000

Mr. CAMPBELL introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

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A BILL

To establish a demonstration project to authorize the integration and coordination of Federal funding dedicated to community, business, and the economic development of Native American communities.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. TITLE.

The Act may be cited as the "Indian Tribal Development Consolidated Funding Act of 2000".

SEC. 2. FINDINGS; PURPOSES.

(a) FINDINGS.—Congress makes the following findings:

1 (1) A unique legal and political relationship ex-
2 ists between the United States and Indian tribes
3 that is reflected in article I, clause 3 of the Constitu-
4 tion of the United States, various treaties, Federal
5 statutes, Supreme Court decisions, executive agree-
6 ments, and course of dealing.
7 (2) Despite the infusion of substantial Federal
8 dollars into Native American communities over sev-
9 eral decades, the majority of Native Americans re-
10 main mired in poverty, unemployment, and despair.
11 (3) The efforts of the United States to foster
12 community, economic, and business development in
13 Native American communities have been hampered
14 by fragmentation of authority, responsibility and
15 performance and by lack of timeliness and coordina-
16 tion in resources and decision-making.
17 (4) The effectiveness of Federal and tribal ef-
18 forts to generate employment opportunities and
19 bring value-added activities and economic growth to
20 Native American communities depends on coopera-
21 tive arrangements among the various Federal agen-
22 cies and Indian tribes.
23 (b) PURPOSES.—It is the purpose of this Act to—

1 (1) enable Indian tribes and tribal organiza-
2 tions to use available Federal assistance more effec-
3 tively and efficiently;
4 (2) adapt and target such assistance more read-
5 ily to particular needs through wider use of projects
6 that are supported by more than 1 executive agency,
7 assistance program, or appropriation of the Federal
8 Government;
9 (3) encourage Federal-tribal arrangements
10 under which Indian tribes and tribal organizations
11 may more effectively and efficiently combine Federal
12 and tribal resources to support economic develop-
13 ment projects;
14 (4) promote the coordination of Native Amer-
15 ican economic programs to maximize the benefits of
16 these programs to encourage a more consolidated,
17 national policy for economic development; and
18 (5) establish a demonstration project to aid In-
19 dian tribes in obtaining Federal resources and in
20 more efficiently administering these resources for
21 the furtherance of tribal self-governance and self-de-
22 termination.
23 **SEC. 3. DEFINITIONS.**
24 In this title:

1 (1) APPLICANT.—The term "applicant" means
2 an Indian tribe or tribal organization applying for
3 assistance for a community, economic, or business
4 development project, including facilities to improve
5 the environment, housing, roads, community facili-
6 ties, business and industrial facilities, transpor-
7 tation, roads and highway, and community facilities.
8 (2) ASSISTANCE.—The term "assistance"
9 means the transfer of anything of value for a public
10 purpose or support or stimulation that is—
11 (A) authorized by a law of the United
12 States; and
13 (B) provided by the Federal Government
14 through grant or contractual arrangements, in-
15 cluding technical assistance programs providing
16 assistance by loan, loan guarantee, or insur-
17 ance.
18 (3) ASSISTANCE PROGRAM.—The term "assist-
19 ance program" means any program of the Federal
20 Government that provides assistance for which In-
21 dian tribes or tribal organizations are eligible.
22 (4) INDIAN TRIBE.—The term "Indian tribe"
23 has the meaning given such term in section 4(e) of
24 the Indian Self-Determination and Education Assist-
25 ance Act (25 U.S.C. 450b(e)).

1 (5) PROJECT.—The term "project" means an
2 undertaking that includes components that contrib-
3 ute materially to carrying out 1 purpose or closely-
4 related purposes that are proposed or approved for
5 assistance under more than 1 Federal Government
6 program.
7 (6) SECRETARY.—The term "Secretary" means
8 the Secretary of the Interior.
9 (7) TRIBAL ORGANIZATION.—The term "tribal
10 organization" has the meaning given such term in
11 section 4(l) of the Indian Self-Determination and
12 Education Assistance Act (25 U.S.C. 450b(l)).

13 **SEC. 4. LEAD AGENCY.**

14 The lead agency for purposes of carrying out this Act
15 shall be the Department of the Interior.

16 **SEC. 5. SELECTION OF PARTICIPATING TRIBES.**

17 (a) PARTICIPANTS.—
18 (1) IN GENERAL.—The Secretary may select
19 not to exceed 24 Indian tribes in each fiscal year
20 from the applicant pool described in subsection (b)
21 to participate in the projects carried out under this
22 Act.
23 (2) CONSORTIA.—Two or more Indian tribes
24 that are otherwise eligible to participate in a pro-
25 gram or activity to which this Act applies may form

1 a consortium to participate as a single Indian tribe
2 under paragraph (1).
3 (b) APPLICANT POOL.—The applicant pool described
4 in this subsection shall consist of each Indian tribe that—
5 (1) successfully completes the planning phase
6 described in subsection (c);
7 (2) has requested participation in a project
8 under this Act through a resolution or other official
9 action of the tribal governing body; and
10 (3) has demonstrated, for the 3 fiscal years im-
11 mediately preceding the fiscal year for which the re-
12 quested participation is being made, financial stabil-
13 ity and financial management capability as dem-
14 onstrated by the Indian tribe having no material
15 audit exceptions in the required annual audit of the
16 self-determination contracts of the tribe.
17 (c) PLANNING PHASE.—Each Indian tribe seeking to
18 participate in a project under this Act shall complete a
19 planning phase that shall include legal and budgetary re-
20 search and internal tribal government and organizational
21 preparation. The tribe shall be eligible for a grant under
22 this section to plan and negotiate participation in a project
23 under this Act.

1 **SEC. 6. AUTHORITY OF HEADS OF EXECUTIVE AGENCIES.**

2 (a) IN GENERAL.—The President, acting through the
3 heads of the appropriate executive agencies, shall promul-
4 gate regulations necessary to carry out this Act and to
5 ensure that this Act is applied and implemented by all ex-
6 ecutive agencies.

7 (b) SCOPE OF COVERAGE.—The executive agencies
8 that are included within the scope of this Act shall
9 include—

10 (1) the Department of Agriculture;
11 (2) the Department of Commerce;
12 (3) the Department of Defense;
13 (4) the Department of Education;
14 (5) the Department of Health and Human
15 Services;
16 (6) the Department of Housing and Urban De-
17 velopment;
18 (7) the Department of the Interior;
19 (8) the Department of Labor; and
20 (9) the Environmental Protection Agency.

21 (c) ACTIVITIES.—Notwithstanding any other provi-
22 sion of law, the head of each executive agency, acting alone
23 or jointly through an agreement with another executive
24 agency, may—

1 (1) identify related Federal programs that are
2 likely to be particularly suitable in providing for the
3 joint financing of specific kinds of projects;
4 (2) assist in planning and developing projects to
5 be financed through different Federal programs;
6 (3) with respect to Federal programs or
7 projects that are identified or developed under para-
8 graphs (1) or (2), develop and prescribe—
9 (A) guidelines;
10 (B) model or illustrative projects;
11 (C) joint or common application forms;
12 and
13 (D) other materials or guidance;
14 (4) review administrative program requirements
15 to identify those requirements that may impede the
16 joint financing of projects and modify such require-
17 ment when appropriate;
18 (5) establish common technical and administra-
19 tive regulations for related Federal programs to as-
20 sist in providing joint financing to support a specific
21 project or class of projects; and
22 (6) establish joint or common application proc-
23 essing and project supervision procedures, including
24 procedures for designating—

1 (A) a lead agency responsible for process-
2 ing applications; and
3 (B) a managing agency responsible for
4 project supervision.
5 (d) REQUIREMENTS.—In carrying out this Act, the
6 head of each executive agency shall—
7 (1) take all appropriate actions to carry out this
8 Act when administering a Federal assistance pro-
9 gram; and
10 (2) consult and cooperate with the heads of
11 other executive agencies to carry out this Act in as-
12 sisting in the administration of Federal assistance
13 programs of other executive agencies that may be
14 used to jointly finance projects undertaken by Indian
15 tribes or tribal organizations.

16 **SEC. 7. PROCEDURES FOR PROCESSING REQUESTS FOR**
17 **JOINT FINANCING.**

18 In processing an application or request for assistance
19 for a project to be financed in accordance with this Act
20 by at least 2 assistance programs, the head of an executive
21 agency shall take all appropriate actions to ensure that—
22 (1) required reviews and approvals are handled
23 expeditiously;
24 (2) complete account is taken of special consid-
25 erations of timing that are made known to the head

1 of the agency involved by the applicant that would
2 affect the feasibility of a jointly financed project;
3 (3) an applicant is required to deal with a mini-
4 mum number of representatives of the Federal Gov-
5 ernment;
6 (4) an applicant is promptly informed of a deci-
7 sion or special problem that could affect the feasibil-
8 ity of providing joint assistance under the applica-
9 tion; and
10 (5) an applicant is not required to get informa-
11 tion or assurances from 1 executive agency for a re-
12 questing executive agency when the requesting agen-
13 cy makes the information or assurances directly.

14 **SEC. 8. UNIFORM ADMINISTRATIVE PROCEDURES.**

15 (a) IN GENERAL.—To make participation in a project
16 simpler than would otherwise be possible because of the
17 application of varying or conflicting technical or adminis-
18 trative regulations or procedures that are not specifically
19 required by the statute that authorizes the Federal pro-
20 gram under which such project is funded, the head of an
21 executive agency may promulgate uniform regulations con-
22 cerning inconsistent or conflicting requirements with re-
23 spect to—
24 (1) the financial administration of the project
25 including accounting, reporting and auditing, and

1 maintaining a separate bank account, to the extent
2 consistent with this Act;
3 (2) the timing of payments by the Federal Gov-
4 ernment for the project when 1 payment schedule or
5 a combined payment schedule is to be established for
6 the project;
7 (3) the provision of assistance by grant rather
8 than procurement contract; and
9 (4) the accountability for, or the disposition of,
10 records, property, or structures acquired or con-
11 structed with assistance from the Federal Govern-
12 ment under the project.
13 (b) REVIEW.—In making the processing of applica-
14 tions for assistance under a project simpler under this Act,
15 the head of an executive agency may provide for review
16 of proposals for a project by a single panel, board, or com-
17 mittee where reviews by separate panels, boards, or com-
18 mittees are not specifically required by the statute that
19 authorizes the Federal program under which such project
20 is funded.

21 **SEC. 9. DELEGATION OF SUPERVISION OF ASSISTANCE.**

22 Pursuant to regulations established to implement this
23 Act, the head of an executive agency may delegate or oth-
24 erwise enter into an arrangement to have another execu-
25 tive agency carry out or supervise a project or class or

1 projects jointly financed in accordance with this Act. Such
2 a delegation—
3 (1) shall be made under conditions ensuring
4 that the duties and powers delegated are exercised
5 consistent with Federal law; and
6 (2) may not be made in a manner that relieves
7 the head of an executive agency of responsibility for
8 the proper and efficient management of a project for
9 which the agency provides assistance.

10 **SEC. 10. JOINT ASSISTANCE FUNDS AND PROJECT FACILI-**
11 **TATION.**

12 (a) JOINT ASSISTANCE FUND.—In providing support
13 for a project in accordance with this Act, the head of an
14 executive agency may provide for the establishment by the
15 applicant of a joint assistance fund to ensure that
16 amounts received from more than 1 Federal assistance
17 program or appropriation are more effectively adminis-
18 tered.

19 (b) AGREEMENT.—A joint assistance fund may only
20 be established under subsection (a) in accordance with an
21 agreement by the executive agencies involved concerning
22 the responsibilities of each such agency. Such an agree-
23 ment shall—
24 (1) ensure the availability of necessary informa-
25 tion to the executive agencies and Congress;

1 (2) provide that the agency administering the
2 fund is responsible and accountable by program and
3 appropriation for the amounts provided for the pur-
4 poses of each account in the fund; and
5 (3) include procedures for returning an excess
6 amount in the fund to participating executive agen-
7 cies under the applicable appropriation (an excess
8 amount of an expired appropriation lapses from the
9 fund).

10 **SEC. 11. FINANCIAL MANAGEMENT, ACCOUNTABILITY AND**
11 **AUDITS.**

12 (a) SINGLE AUDIT ACT.—Recipients of funding pro-
13 vided in accordance with this Act shall be subject to the
14 provisions of chapter 75 of title 31, United States Code.
15 (b) RECORDS.—With respect to each project financed
16 through an account in a joint management fund estab-
17 lished under section 10, the recipient of amounts from the
18 fund shall maintain records as required by the head of
19 the executive agencies responsible for administering the
20 fund. Such records shall include—
21 (1) the amount and disposition by the recipient
22 of assistance received under each Federal assistance
23 program and appropriation;
24 (2) the total cost of the project for which such
25 assistance was given or used;

1 (3) that part of the cost of the project provided
2 from other sources; and
3 (4) other records that will make it easier to
4 conduct an audit of the project.
5 (c) AVAILABILITY.—Records of a recipient related to
6 an amount received from a joint management fund under
7 this Act shall be made available to the head of the execu-
8 tive agency responsible for administering the fund and the
9 Comptroller General for inspection and audit.

10 **SEC. 12. TECHNICAL ASSISTANCE AND PERSONNEL TRAIN-**
11 **ING.**

12 Amounts available for technical assistance and per-
13 sonnel training under any Federal assistance program
14 shall be available for technical assistance and training
15 under a project approved for joint financing under this
16 Act where a portion of such financing involves such Fed-
17 eral assistance program and another assistance program.

18 **SEC. 13. JOINT FINANCING FOR FEDERAL-TRIBAL AS-**
19 **SISTED PROJECTS.**

20 Under regulations promulgated under this Act, the
21 head of an executive agency may enter into an agreement
22 with a State to extend the benefits of this Act to a project
23 that involves assistance from at least 1 executive agency
24 and at least 1 tribal agency or instrumentality. The agree-

1 ment may include arrangements to process requests or ad-
2 minister assistance on a joint basis.

3 **SEC. 14. REPORT TO CONGRESS.**

4 Not later than 1 year after the date of enactment
5 of this Act, the President shall prepare and submit to Con-
6 gress a report concerning the actions taken under this Act
7 together with recommendations for the continuation of
8 this Act or proposed amendments thereto. Such report
9 shall include a detailed evaluation of the operation of this
10 Act, including information on the benefits and costs of
11 jointly financed projects that accrue to participating In-
12 dian tribes and tribal organizations.

○

The CHAIRMAN. We will now go ahead and proceed with the hearing.

We will start with Mike Anderson. Welcome to the committee.

I understand this may be the last meeting that we will have this year. It is the last one scheduled, so we may not see you until next year, Mike. It is nice to have you here.

STATEMENT OF MIKE ANDERSON, DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. ANDERSON. Thank you, Mr. Chairman and members of the committee. This is the last time the department has the opportunity to present its testimony before the Congress this session and, actually, for this Congress.

I just wanted to express a few words of appreciation for your leadership and the vice chairman's leadership on all the vital issues before the committee this year; and, in particular, your staffs, as well, Paul Moorehead, Steve McHugh, Patricia Zell, who have worked with our team, Jackie Cheek, Maura McManiman, and Wendy Fink in trying to coordinate our issues.

Most of the time, we have agreed, and we have had consensus on these issues. Sometimes we have disagreed, but we have always worked in a spirit of cooperation, so we certainly appreciate that.

We are here to present testimony on S. 2052. Certainly, we support the goals of reducing duplication in the Federal Government in terms of services. We will be presenting information and a final Administration position some time before the hearing record on this matter is closed. I will highlight a couple of concerns in my testimony.

I wanted to first highlight a few of the things that the Administration is doing in the area of economic development. This week, in fact, the Federal Communications Commission is having a very large tribal workshop in Minneapolis with a number of Federal partners, designed to get tribes involved in telecommunications issues, whether it is licensing or applying for licensing, site location for low power and high power broadcasting facilities, dealing with rights-of-ways, when those development projects go forward.

Those types of workshop issues are being worked out this week. Our economic development team is there this week, working with a number of tribes. I think about 500 attendees are there.

It follows what was a very successful conference for us in 1998 that the President attended, the White House conference, and some members of the committee, as well. It was designed to try to do more coordination of Federal programs for Indian tribes.

Whether it was Small Business Administration [SBA] loans, Administration for Native Americans [ANA] capability building grants, Department of Agriculture distance learning for telemedicine, a number of these projects were discussed. Tribes had the opportunity to learn about the grant eligibility requirements for these, and it also gave us a chance to help promote them.

Our largest initiative, I think, probably in the economic development area and, I would think, as well, for the committee, has been to increase the Indian budget for these programs. The budget initiative that this committee has supported, that the President re-

leased in the State of the Union, to help develop tribal capacity, opportunities for contracting, for mentoring programs, and for loan programs have all been part of our strategy to increase economic development.

Now as you mentioned in your opening statement, there is a lack of coordination among many of the recordkeeping requirements and grant requirements of Federal agencies. As our testimony notes, and as you noted, this situation does frustrate tribal program administrators, and it confuses those seeking assistance.

One of the successes of this committee, and I think of the Administration, was the Indian Employment Training and Related Services Demonstration Act of 1992, also known as 477, that tried to finally coordinate Federal formula funded programs for training, employment, and for tribes and organizations that the Bureau would help coordinate.

That program has been very successful. I am pleased to report that in fiscal year 2000, about 40 grantees servicing 215 tribes will participate in this program, with funding totalling more than $30 million. As an initial start, over 215 tribes are now participating in this.

This broader effort suggested in S. 2052 is certainly something that could expand that beyond just the narrow goals of 477. We are going to be very pleased to work with the staff in doing that.

As you know, the Federal Government today currently authorizes a wide variety of economic development, employment training, and related procurement contracting and related programs. Some are narrowly focused. Some have similar program goals, but there is overlap, as you mentioned in your statement.

I am going to highlight just a couple of concerns that the Administration has that really go to the drafting and the scope of the bill.

In section 3, in the definitions of S. 2052, it does talk about assistance programs. There is not a lot of definition currently into what an assistance program is for the Federal Government.

It is fairly broad. It could, in our view, lead to the inclusion of other Federal assistance programs like education scholarships, et cetera, that are not community business or development programs. The idea there is simply to help narrow the focus of what an assistance program is.

Also, on the planning phase, and this is a demonstration project, we do have issues concerning the potential cost to all the participating agencies, and some need for clarity on which agency has authorization for the planning grants, and would be responsible for payment of these planning grants. That is a concern that they have raised.

Then the third I will mention, and these are all included in the addendum to our testimony, we are a little unclear as to what the selection criteria would be for the departments listed; in other words, what particular community economic business development programs are targeted specifically. So it is really a question of narrowing and clarifying what the purpose is.

But certainly, the goal of trying to export the successes in 477 is laudable here. We would certainly stand by to work with you and your staff to find a bill that we could agree to support and send to the President for signature.

Thank you, Mr. Chairman, and that concludes my remarks.

[Prepared statement of Mr. Anderson appears in appendix.]

The CHAIRMAN. Thank you for your constructive concerns. We are getting near the end. Very frankly, and you probably know the statistics around here, about 3 percent of bills that are introduced make it through the whole process in the first year.

So we are going to work on this. I know Senator Inouye is interested in this too. In fact, Senator Domenici has just cosponsored this bill, so we know it is a good bill. But we may be back here again, next year. We will just have to go as far as we can. We certainly look forward to working with the agency.

I might mention, too, I am very proud of our work this year. We have passed, I believe, around 40 bills out of this committee. It has been a very productive year.

Part of that has to do, certainly, with the dynamic help of Senator Inouye. This is the only committee that is really in my mind bipartisan. As you know, the chairman and vice chairman are different parties on the Indian Affairs Committee.

I think right from the beginning, people recognized that of all the committees in Congress, the one that should be bipartisan or nonpartisan is the Indian Affairs Committee. We have had a good year. But we may be talking to you again next year on this bill.

Mr. ANDERSON. Mr. Chairman, I just might mention, too, I think the record really should reflect in the area of the budget initiative what this committee has done, and your colleagues on the Appropriation Committee. As we conclude the final discussions on the Indian budget, at least for the Interior Department, we are really looking at quite a record increase.

The discussions have been very encouraging, as we conclude this Congress. I think that the early work with the budget committees in focusing on the Indian concerns has been essential, along with the tribal governments.

So, again, I wanted to thank you and your colleagues for the tremendous work in what we hope is going to be a record breaking year for the Indian budget.

The CHAIRMAN. Great, terrific, and with that, we will move to Peter Deswood, Kayenta Township, Navajo Nation.

STATEMENT OF PETER DESWOOD, KAYENTA TOWNSHIP, NAVAJO NATION, ACCOMPANIED BY JERRY GILMORE, COMMISSION CHAIRMAN

Mr. DESWOOD. Senator Campbell, I would like to defer my comments to Commission Chairman, Jerry Gilmore, who is sitting with me.

The CHAIRMAN. That would be fine. Mr. Gilmore, go ahead.

Mr. GILMORE. Thank you, Mr. Chairman and members of the committee.

First of all, I would like to express our appreciation for being here. We bring greetings to you from my fellow commissioners, the community of Kayenta, and the Navajo Nation.

We are here to testify on S. 2052. I would like to preface the testimony by just going over very quickly the accomplishments of the Kayenta Township Commission. The Kayenta Township Commission is an initiative by the Kayenta community, wherein, we have

implemented a 2½ percent retail sales tax, that is overseen by a five-member commission.

We are complimented by a staff, which enables us to proceed with the administration of the 2½ percent retail sales tax, by establishing ordinances by doing land use planning, and also having the authority to grant business site leases and home site leases.

For the last 3 years, we were able to enact ordinances locally. We were also able to do some projects which have been targeted before the implementation of the township commission.

The 2½ percent retail sales tax goes to solid waste, to infrastructure, to fire departments, to airport facilities, management, enforcement, and also with recreational parks.

We have completed the solid waste transfer station in Kayenta, which has enabled the community to centralize a deposit of all trash and solid waste in the community, as well as surrounding communities.

We have also been able to use the delegated authority of granting business site leases to start up 18 businesses, of which about seven of them are now in business, which is really a significant achievement for Indian communities.

Before that, the leasing process for businesses on the Navajo Nation had taken anywhere between 7 to 10 years. We have shortcut that and we streamlined it. So now in 18 months, a business can be established in Kayenta. It can be done in 18 months.

Also, we have been able to leverage other moneys, other funding, that is available out there for communities. Last year, we were able to leverage some NAHASDA grants, where we are putting in 240 unit housing in our community, and it is well on its way.

So these are some of the accomplishments that we are able to do with this initiative. That is a brief summary of our accomplishments. Now I would like to testify on S. 2052. There are only two points that we would like to make on that.

That is that, first of all, we would like the opportunity to tap the resources of the identified Federal agencies, in which we will be able to get those resources in the form of moneys or technical assistance or other services. We will take advantage of those opportunities.

However, when the implementation of those resources are to our community, we would like to stress that we want to take the lead. I think we have a proven record that we can accomplish things in Kayenta. We are fearful that there would be imposition from the Federal agency, as well as tribal agencies, in trying to tell us how to run our community.

So with that testimony, Mr. Chairman, I conclude my statement.

[Prepared statement of Mr. Gilmore appears in appendix.]

The CHAIRMAN. Thank you.

Dr. Joseph Kalt, the Harvard Project on American Indian Economic Development of the Kennedy School of Government if you would proceed.

STATEMENT OF JOSEPH KALT, THE HARVARD PROJECT ON AMERICAN INDIAN ECONOMIC DEVELOPMENT, JOHN F. KENNEDY SCHOOL OF GOVERNMENT

Mr. KALT. Thank you, Chairman Campbell, and thank you for the opportunity to appear here today.

By way of background, I co-direct the Harvard Project on American Indian Economic Development with Professor Steve Cornell and Manley Begay at the University of Arizona. For the past 14 years, we have been working in Indian Country to try to figure out what is working and what is not. I will try to inject some of what I have to say with the research results that we are finding at the Harvard Project.

Because a lot of what I have to say about the specific legislation that you are considering has somewhat of a cautionary tone to it, I want to start out by being positive. I think that this current legislation can be a very positive step forward in at least two key respects.

First, as you indicated, Mr. Chairman, in your opening remarks, while the media may be hung up on a handful of gaming tribes that are meeting with economic success, we think that the research in the 2000 census will reveal that poverty remains a very intractable problem in Indian County; not only economic under-development, but the social ills and pathologies that go with that, under that lack of economic development. So the need and the trust responsibilities remain strong.

Second, when we look at this legislation, I think there is a tremendous opportunity here to truly live up to a government-to-government relationship between tribes and the Federal Government, allowing tribes to deal in a consolidated basis with an institution called the Federal Government of the United States, rather than a panoply of programs across many different agencies and areas. This legislation holds promise of strengthening the government-to-government principle.

With those positive remarks, let me provide some cautionary notes.

The CHAIRMAN. Why don't we just end there. No, go ahead. [Laughter.]

Mr. KALT. I have cautionary notes, because I understand as well, that this kind of legislation will take awhile to bear fruit.

To begin, I think it is important to recognize that the research evidence is clear on the overall direction of Federal/tribal relations. Self-determination is the only policy in a century that has worked to begin to alleviate the legacy of suppression and economic dependency, to which native peoples in the United States have been subjected.

It is no coincidence that Indian Country is now dotted with an increasing number of reservations, where economic development is taking hold; from Flathead and Grand Ronde to Mississippi Choctaw, Grant Traverse, and Citizen Potawatomi. Sustained economic development is starting to take hold.

The research that we are doing reveals a clear pattern here. Without exception, these tribes that are sustaining economic development are marked by aggressive assertions of sovereignty and

self-rule. In addition, they back up these assertions with the effective capacity to govern themselves.

This capacity to govern the tribes themselves, by themselves, means everything from re-writing constitutions, to building either western-looking or traditional court systems. It means everything from instituting efficient commercial codes and zoning ordinances, as in the Kayenta Township, to taking over foster and dental care at Fon du Lac.

This focus on tribal governmental capacity as a key to successful economic development should not be surprising. From East Germany to the United States, history teaches us that government can be either the break or make characteristics of either unsuccessful or successful societies.

Because institutional capacity is indispensable, and because to be effective, the key institutions that undergird reservation economies and social systems must be self-designed by individual reservation communities.

It is clear why sovereignty and self-rule are the only policies that have built positive results for themselves. They shift the center of accountability home to reservation citizens and their governments and away from Washington, DC.

In addition, the power of self government maximizes the change of cultural match; that is, building institutional capacity, that fits within the distinct communities and cultures that make up Indian Country.

The research findings of the Harvard Project highlight a very difficult problem for Federal policy. Federal policy must confront the challenge of both providing assistance and meeting trust responsibilities without forcing, by rule or incentive, tribes to adopt institutions, practices, programs, and policies that can make tribes effective in playing the grantsmanship game, but result in the perpetuation of the very institutional dependency that has proven so destructive in Indian Country.

Billions of dollars in Federal assistance have been thrown at the problems of Indian Country over the preceding decades. I think even the most sanguine of observers would have to agree that the results have been disappointing.

What are the lessons that we can learn from the past, so that we do not repeat the past? I would like to highlight four points that I think bear on the legislation that you are designing.

The first is adherence to the government-to-government principle. The guiding principle of the Federal role in Indian Country is probably the principle of true government-to-government relations, rather than government-to-dependent relations.

Just as the Soviets taught us in Eastern Europe, so we should not be surprised that policies that intentionally or unintentionally result in abrogation of nations' rights of self-rule are ultimately counter-productive.

In fact, it is worth commenting that those who would seek to eliminate the tribes' powers of self-governance would seem to be welcoming a future in which reservations are trapped as perpetual great society programs, continually burdening the Federal budget, and killing the initiative and energy of Indian communities.

Sovereignty and self-rule for Indian nations is the win/win strategy, both for those who are concerned with promoting economic development on reservations, and for those who are concerned with the budgetary implications of continued lack of development.

The second principle, I think, that needs to undergird legislation of this type is the maximizing of tribal control of programs. As Jerry just mentioned, both the Kayenta Township and through our systematic evidence, it is clear that policies such as contracting and compacting are working.

In our research, for example, the statistical research of 638 contracting for forestry, for example, we find that the 638 tribes in forestry have dramatic improvements in labor productivity.

Similarly, shifting to tribal management under 638 for forestry, for example, results in tribes receiving as much as 6 percent higher prices for their timber. Six percent might not sound like very much, but when you add it up, it amounts of hundreds of thousands of dollars for the typical tribe.

The National Indian Health Board reports that tribes who take over through contracting or compacting their health services both allocate ultimately more resources to health, and their citizens are more satisfied, and find the tribal delivery of health services to be higher quality than the Federal delivery of health services.

Finally, I have just one more piece of evidence. The program in honoring contributions in the governance of American Indian Nations, directed by Andrew Lee of the Harvard Project, annually identifies excellent programs in tribal governance and management. Indeed, the Kayenta Township is one of this year's high honorees in the Honoring Nations Program.

What we find is that whether it is the organizing of a new township such as Kayenta, or gray wolf recovery efforts at Nez Perce, the Navajo Supreme Court, or bison ranching at Cheyenne River, the excellent programs built and run by tribes are marked by first, a "just do it" approach; and second, capable institutions of government; and ultimately, the implicit and explicit incorporation of tribe-specific cultural values and techniques.

In cases such as Fon Du Lac's pioneering foster care program and Jicarilla Apache's wildlife management policies, the Indian models are clearly out-performing State governments themselves, to the point where the non-Indian governments are now turning to the tribes for lessons and advice.

Why does tribal control improve programs and service delivery? Two factors stand out. One is accountability. More than one tribal chairman has said to me and to my colleagues some version of the following.

> This self-determination is a two edge sword. We are in more control, but if we mess up, my tribal members hold me accountable.

Such accountability is the cornerstone of improved program performance in Indian Country.

The third guideline I would like to stress is changing the Federal and tribal incentives in programs of the type envisioned by this legislation.

Federal economic initiatives in Indian Country have long been dominated by a planning and projects mentality; but economic development is a process, not a program. Throughout the world, last-

ing improvement in economic and social conditions comes about through the creation of institutions and policies that allow development to take hold.

The key to tapping this process is incentives. In this case, it is the incentives faced by Federal and tribal decision makers.

The danger in the legislation here is not in this room. It is in its ultimate implementation in the Federal bureaucracy. For while well-intentioned legislation seeks to improve economic development, dependence will be promoted if Federal authorities approach the problem of selecting the recipients of assistance under this legislation within a Government-to-dependent framework, in which the Federal grantor effectively compels the institutional design of the tribe's institutions.

If the Federal agents adopt a so-called checklist approach of, meet this checklist and we will give you money, tribes will have incentives to design their institutions and their projects to fit the checklist. In the process, it will be Federal bureaucratic procedure that drives, as it has for decades, tribes' choices of development strategies and the design of tribal institutional capacity.

Two steps stand out to avoid this mire. One is block granting. In this legislation, by combining Federal programs, it creates a tremendous opportunity for block granting to tribes, in which greater authority and flexibility is provided to tribes and, ultimately, greater accountability is visited on tribal leadership by their citizens, because if block grant dollars are wasted, the tribe suffers.

The second criteria is the making of funding contingent upon actual performance. Mid-stream and after-the-fact performance assessment, rather than pre-grant checklist screening, provides appropriate incentives for tribal leaders and administrators to improve their performance.

Finally, and it is clear in what I have said, a key component of any effort such as contemplated by this legislation must be attention to, respect for, and assistance to the building of tribal institutional capacity.

Federal policy can play a positive role in fostering institutional capacity among tribes by supporting efforts of constitutional reform, respecting and fostering strong efficient tribal courts, and accepting the ceding of policy and program management while tribes establish their own management capabilities.

Planning requirements that encourage tribes to jump through the hoops, set out in micro-management criteria Federal programs distort institutional capacity, and lead to a paralysis of planning. On the other hand, planning which takes the form of institutional capacity building can turn Indian nations or any nation around.

This bill holds tremendous promise of succeeding, if and to the extent it can contribute to the capacity building that is necessary for self-governance and self-determination in Indian Country.

Thank you.

[Prepared statement of Mr. Kalt appears in appendix.]

The CHAIRMAN. As always, I was very impressed with your testimony, Dr. Kalt. I think it is very insightful.

Let me ask you a couple of questions. One of the problems we have always had when trying to help Indian tribes is when we try to network them better with Federal programs, we always run into

turf problems, job protection, and a lot of things that should not be there, obviously. But it is something that we have to deal with and we have to face.

You mentioned coordinating some of these efforts. I am not sure I understand. You talked about performance incentives, but I thought I also heard you say that we should not use a force to compel these agencies to work with tribes. Did I understand you correctly?

Mr. KALT. No; I think what I was trying to convey was that performance-based criteria, which creates both incentives for the Federal administrator, as well as for the tribe, to get it right, is superior to pre-screening approaches, where if you meet the following seven criteria or 13 criteria, we will give you money.

I think that is the kind that we see all over the world. The World Bank is now try to move in this direction.

The CHAIRMAN. The Federal way is usually to tell tribes "if you meet all these criteria, and then we will help you".

Mr. KALT. The Federal agent's incentive is also to avoid mistakes.

The CHAIRMAN. Also, they have to be sensitive to the taxpayers, the guys who are paying the bills, not to spend money frivolously, or not to take risk with it or so on.

Mr. KALT. That is right.

The CHAIRMAN. But I understand your testimony.

Many people say tribes are not going to get it right all the time, when they try new and inventive experiments. They are going to make some mistake, and they are going to lose some. But everybody does. They ought to be able to make some of their own mistakes in the process of moving ahead, too.

Mr. KALT. I think that is exactly right. To try to always avoid mistakes is to consign yourself to mediocrity. It is true that self-determination and self-government will mean that some tribes will fall on their faces. That is where accountability comes in.

The CHAIRMAN. You did talk a little bit about accountability. I think one of the differences is that sometimes, if people intentionally do not run programs properly, or if they do things that in what I call the outside world, they would be held accountable in a court of law, and sometimes tribes are reluctant to prosecute.

If money disappears, for instance, they will ostracize, or they have traditional ways of dealing with it, but they do not deal with it in a hard sense, from the standpoint of putting somebody in jail for disappearing with the money.

That is something that some of them are working on, and it takes a long time. It is just a different cultural way of dealing with problems.

Let me just ask you a couple of things. Aside from money, and it certainly will not always be the answer, but what other incentives can be provided to transition tribes to develop the stronger institutions that you mentioned? Strong institutions are related to strong leadership, and we see that throughout tribes.

Some are very progressive and doing just wonderfully. Others, I mean, half the council has got the other half locked out of the building, yet, and they are trying to negotiate that. The Bureau does that.

Mr. KALT. Sure.

The CHAIRMAN. Would you like to comment on that?

Mr. KALT. There are at least two things, in terms of changing incentives and providing incentives. One that I mentioned in my prepared remarks was block granting.

We find considerable evidence that when money comes in with relative few strings attached, and that is known within the community, stronger strings of accountability are created between the tribal citizens and the tribal government. So the tribal government does not have a housing program in place, or it does not have the ability to manage that money. There greater accountability imposed on the tribal leaders.

Second, we are finding evidence, and we are engaged in a project right now looking, for example, at constitution information. We are finding evidence in our work, in fact, in northern Cheyenne, for example, that ANA capacity building kinds of programs are having some positive effects, because they provide relatively few strings attached kinds of checklist approaches to grant making, but they directly give people incentives in changing their institutions. So that kind of component, it seems to me, is appropriate here.

The CHAIRMAN. Let me ask you about the Harvard Project on American Economic Development. How long has that been in place?

Mr. KALT. We founded that in 1986 or 1987.

The CHAIRMAN. Do the people that work in there spend a lot of time out in the field, on reservations, to see firsthand some of the problems?

Mr. KALT. Yes; the students complain that they cannot find us at the university for help. We are constantly in the field. We spend hundreds of man days and women days a year. Over the 14 years, we have done projects and worked for more than 200 tribes in the country. We are out on the grounds an awful lot.

The CHAIRMAN. Do you have a percent of people that are involved in that program that are Native American?

Mr. KALT. I was asked that the other day. I think, right now, in terms of the employees of the program, the majority of the participants in the overall project are Native American. The three co-directors are myself, Professor Steve Cornell, and Professor Manley Begay, with Begay obviously being Navajo, so we are directed at the top, as well, with Native American direct leadership.

The CHAIRMAN. I thank you for your testimony, again.

Mike, let me ask you maybe one question.

In this bill, we designate the Department of the Interior as the lead agency, as you know. I would just like to know your take on that. Does the Department feel it is capable of taking the lead on that?

Mr. ANDERSON. I think, yes, on a demonstration project basis, if the programs are more narrowly defined, and that is what we are doing in the 477 for labor employment grants. If it is consistent with our mission, and there is perhaps a part of that economic development program that we are already doing, I think it does make sense for the bureau to do it, at least on the front end.

The CHAIRMAN. Yes.

Mr. ANDERSON. There may have to be co-designees later on, but from the outset, I think it makes sense for us to be the lead.

The CHAIRMAN. Well, we deal with a lot of problems out there, and certainly the Department does. I mean, we deal with it in here, whether we need to put more emphasis towards courts or transportation or schools or what have you. What does the Administration see as the most crucial task, as we are here today?

Mr. ANDERSON. I think Dr. Kalt probably said it best, tribal capacity building, the ability of the Federal Government to remove itself from basically its paternalistic method of dealing with tribes.

The CHAIRMAN. Does that pose a threat to the Department? I mean, I have always had the feeling that if Indian tribes were able to do everything themselves and taking care of themselves, and we had absolute capacity, let us say, then we would not need very many people in the Department. Is that threatening?

Mr. ANDERSON. I think there are certainly issues of concern. I could not say it is a threat so much, but the transfer of authorities, Federal responsibilities, to tribes, when we still maintain this trust responsibility, is the biggest issue that I have seen. It is not so much that it is a threat to jobs or security, but how is this trust relationship going to be implemented.

The CHAIRMAN. Well, some of the tribes see it as certainly a veiled threat, too, because they worry that the Federal Government would back out of its trust responsibility, if they can take over all their own programs and have the capacity to do it.

Mr. ANDERSON. That is the dynamic tension that we really live with each day, whether it is in law enforcement, in transferring law enforcement responsibilities to a tribe, away from what the citizenry may have felt was stable police protection from the bureau. That is something that we face all the time.

But the direction of the Administration's policy is to support self-determination. There may be some that do not support that within the agency, but I think they are just going to have to get out of the way of that policy.

The CHAIRMAN. Thank you.

Mr. Gilmore, this really does not have anything to do with this bill, but you talked a little bit about the solid waste program that the tribe developed.

Mr. GILMORE. Yes, sir.

The CHAIRMAN. Has that just been put into place in the last year or so, or has that been a program that has been developed over the years?

Mr. GILMORE. In 1997, when we were given the authority by the Navajo Nation Council to proceed with what we had put together, like I mentioned the 2½ percent retail sales tax, we used those revenues to target community projects, such as the solid waste transfer station. That is a community initiative. It is something that we put together.

The CHAIRMAN. You said you bring that waste in from other communities. Is that including the tribal communities?

Mr. GILMORE. Right, well, it is primarily with the Kayenta, but then the surrounding communities like Chilchinbeto, Oljato, Denmehotso, Shonto, those areas, that we are able to bring in there.

The CHAIRMAN. Do you bring it in from non-Indian communities?

Mr. GILMORE. No; it is not.

The CHAIRMAN. Is it a compactor, or what is it, the solid waste disposal? How do you do with it?

Mr. GILMORE. It is compacted, yes.

The CHAIRMAN. Then what do you do with it, when it is compacted?

Mr. GILMORE. Once it is compacted, it is transferred to other surrounding transfer stations, I believe. It is certified landfills, excuse me.

The CHAIRMAN. Coastal landfills?

Mr. GILMORE. Right.

The CHAIRMAN. Well, I have heard some interesting ways of compacting, using it for building blocks, using it for fuel, and all kinds of things.

The Navajo Nation generally supports the concept of this bill; is that correct?

Mr. GILMORE. That is correct.

The CHAIRMAN. Well, I think, frankly, I have no further questions. Some other members of the committee may have.

So if we have nothing else to deal with, we will keep the record open. Well, in fact, we will not keep it open too long, because will be going out of session in another 1½ weeks, but we will keep it open until then.

I do not know if we will be able to get this to the Floor or not, but we are going to try to move as fast as we can on it. I think it has some real merit.

I certainly appreciate you being here for your comments and testimony. If you have anything further that you need to add to it, if you can do that in the next couple of days, I would appreciate it.

Did you have a final comment?

Mr. DESWOOD. I would just like to comment, Senator, that I think the one comment that needs to be made is that what we have done at Kayenta is be prepared to develop, and preparedness is meeting the opportunity or the pressure to develop different opportunities, tourism and infrastructure development. We are prepared to do all that.

The CHAIRMAN. I go through Kayenta quite a bit. It seems to me there is a little landing strip right by the road there, is there not? It is across from a Holiday Inn or something in Kayenta?

Mr. DESWOOD. Yes.

The CHAIRMAN. That little landing strip has been there as long as I can remember. It is a little dirt landing strip. Have you ever thought about doing something with that? I mean there are so many people that come into that area to go see Monument Valley and some of those beautiful surroundings. Has there ever been any move by the tribe to upgrade that?

Mr. DESWOOD. That has been upgraded in 1992 to a 7,000 foot runway, with 1,000 additional feet designed in, but only 7,000 is developed.

The CHAIRMAN. Is it paved?

Mr. DESWOOD. It is paved, right now. We are looking at the taxiway to be developed.

The CHAIRMAN. I used to fly in there, and the last time I landed there was about 10 years ago. While I was on the ground, it started raining like mad. I almost did not get off the ground. I thought, from that time on, this runway needs to be improved.

Mr. DESWOOD. Your weight increased, like a tractor pull.

The CHAIRMAN. I splashed my way off.

This has nothing to do with anything, but I might tell you, I had this little plane that I could land anywhere, so I decided to go out to, what is the trading post out there by the monument, the famous one?

Mr. DESWOOD. Gouldings.

The CHAIRMAN. Yes; Gouldings, and they have a little dirt place you can land, too.

Mr. DESWOOD. It is half paved.

The CHAIRMAN. That is half paved, too?

Mr. DESWOOD. Yes.

The CHAIRMAN. Well, I radioed in, and they sent somebody down with a Jeep to get you, and take you up to the trading post. So we went up and had something to eat at the trading post. While we were waiting up there, it was really a hot day, and when we went back to the plane, there were a bunch of sheep sleeping under the plane. [Laughter.]

I thought about shooing them off. It was like a movie. While they were sleeping under the plane, and I was thinking, what am I going to do with all these sheep, there were two coyotes sneaking up through the brush on them. [Laughter.]

Yes, I mean, it was just like watching a movie. I watched those coyotes for a while, and pretty soon, a big dog came out of the brush. The dog chased the coyotes away, and scared the sheep, and they moved, too, so I could get off the ground. [Laughter.]

It was a really interesting experience.

Thank you so much for appearing. This committee is adjourned.

[Whereupon, at 10:40 a.m., the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF DANIEL PEACHES, COUNCIL DELEGATE

It is my pleasure to submit these comments to the Senate Committee of Indian Affairs on S. 2052, a bill designed to establish a demonstration project relative to community and economic development of Indian communities, using consolidated approach.

While the topic and subject matter of this legislation are neither new or novel, the coordination and integration aspect of Federal funding may be a new endeavor on the part of the Federal Government in addressing long standing problems on most Indian Reservations.

The socio-economic problems and needs on Indian reservations are enormous in scope and complex in terms of solutions, definitions, and cost. While the possible solutions are not hopeless, the attempts to address these needs have been less than successful in the past because of red tapes, disjointed efforts and total lack of vision, planning, and foresight.

I believe the purpose of S. 2052 is another noble attempt to address a long standing situation on Indian reservations where the degree of human deprivation which persists and is hard to imagine in a land of plenty.

Based on many years of tribal and Federal experience, it is rather difficult to imagine the Federal agencies can coordinate and combine their resources to provide the means to address the community and economic development needs on Indian reservation with any degree of success.

Because of the maze of Federal bureaucracy, it is very difficult that the Federal dollars allocated to address the needs on Indian reservations will reach the intended recipients in effective fashions. It has been demonstrated in the past that Federal resources, once appropriated, are quickly soaked up by the Federal bureaucracy before it leaves Washington.

I believe the best approach is not to gather the Federal agencies to address the needs but rather to establish technical assistance centers to help the tribes in planning solutions to their needs and problems. Community based planning is probably more effective and it's impacts more long lasting than propose more Federal programs.

Technical Assistants to each community in the forms of individual grants would be more effective than establish new programs.

The Navajo Nation is in the process of decentralizing its services to the Navajo people. The Navajo Nation Council in 1996, established Kayenta Tax Commission, to give the people of Kayenta and the community to develop a tax base to develop its community. In order to develop community infrastructures, it is necessary to develop long range planning, even for a 3,600-acre community site. Planning cost money, it requires technical assistance and it requires a vision on the part of the community members and its leadership. This opportunity to start from nothing and be able to develop good plans is possible if the seed is planted in each Indian community. The plan, the vision and resources must come from the people and with the trials and errors, of experience, the people themselves will be able to develop their

community. When the vision is put into plans, then Federal resources can be made available for technical assistance and development.

The Navajo Nation Council also enacted Local Governance Act in 1998, to allow each community to develop its own form of local governance. For many centuries, the Navajo people have survived as self-sufficient and self-reliant people and these latest developments are designed to return responsibilities back to the local people.

Under the proposed S. 2052, I would suggest that Federal technical assistance grants be made to the five agencies of the Navajo Nation through Divisions of Economic Development, Community Development and Chapter Support Programs with emphasis on community planning for economic and other infrastructure development.

I would also suggest that Kayenta Tax Commission and the Four Corners Empowerment Zone be given direct grants since they already have the necessary plans in place.

I thank-you for this opportunity to submit my comments on S. 2052.

STATEMENT OF MICHAEL J. ANDERSON
DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS
DEPARTMENT OF THE INTERIOR
BEFORE THE
SENATE COMMITTEE ON INDIAN AFFAIRS
HEARING ON S. 2052

September 27, 2000

Good morning, Mr. Chairman and Members of the Committee. I am pleased to be here today to discuss S. 2052, a bill to establish a demonstration project to authorize the integration and coordination of Federal funding dedicated to community, business, and the economic development of Native American communities. The Administration has a number of concerns with the bill, including the general and specific concerns described in the attached document. The Administration is continuing to review the bill and will provide its position on the legislation to the Committee in the near future.

The federal government currently authorizes a wide variety of economic development, employment, training, education, procurement, contracting and related programs. Many are narrowly focused and target the same clients, provide similar services, and have the same or similar program goals. The overlap is compounded by the requirement of each funding agency to maintain separate records and separate administrative procedures. This situation frustrates tribal program administrators, and it confuses those seeking assistance. The Department is committed to reducing this administrative burden by participating in the governmentwide effort to implement Public Law 106-107, the Federal Financial Assistance Management Improvement Act of 1999, which Congress passed last year.

The Department, through the Bureau of Indian Affairs (BIA), currently participates in broad national economic development issues such as facilitating credit and welfare reform with other federal agencies such as the Departments of Agriculture, Housing and Urban Development, the Treasury, Health and Human Services, Labor, Commerce, and the Small Business Administration.

Within the BIA's Office of Economic Development, we continue to lead the implementation of the Indian Employment, Training and Related Services Demonstration Act of 1992 (Public Law 102-477), which authorizes the consolidation of all federal formula-funded employment, training, and related programs that tribes and tribal organizations contract with other federal agencies. The primary goals are to improve the effectiveness of services, reduce joblessness in Indian communities and serve tribally determined goals. The program was established in FY 1994, and in FY 1999, 22 grantees servicing 181 tribes participated in the program. Funding from the Departments of Health and Human Services, Labor, and other Indian education, job placement, training and welfare programs totaled more than $20 million. In FY 2000, about 40 grantees servicing 215 tribes will participate in this program with funding totaling more than $30 million. The Public Law 102-477 program supports the Administration's policy of providing tribes with the resources necessary to develop a self-sustaining economic base, which will in turn work to empower tribes.

Developing entrepreneurs and businesses in the e-commerce environment is new for the nation, new for the world and new for Indian reservations. We can report that the BIA has met with several institutions of higher education and proposes to develop a partnership with them to bring professional and state of the art e-commerce knowledge to reservations. Further, we are pleased to report that the BIA established a distance learning plan with the State Commission on Higher Education and with the State Information Technology Commission. This effort lays the ground work for other technology-based opportunities such as bringing advanced technology and e-commerce to tribes across the country. For example, the New Mexico Institute of Technology has recently been funded by the Department of Defense to establish the Institute for Complex Additive System Analysis, an effort to address high technology in the defense system of our country. The Administration supports developing entrepreneurs in the new e-commerce environment.

This concludes my statement. The Administration has identified a number of concerns with the bill and will provide its overall position shortly to the Committee. I will be happy to answer any questions you may have.

Comments on S. 2052:

- **Sec. 2 Findings; Purposes**
  (b) Purposes (5) Establish a demonstration project
  Comment: We recommend proving a sunsetting requirement on this pilot program.

- **Sec. 3. Definition**
  Comment: We are concerned that "ASSISTANCE PROGRAM" is defined too broadly and could lead to the inclusion of other federal assistance programs, such as education scholarships that are not "community business, or economic development" programs intended to be covered by this bill.

- **Sec. 5. Selection of Participating Tribes**
  (b) Applicant Pool - The applicant pool is inconsistent with the definition of "applicant".
  Comment: We recommend inclusion of "tribal organization" after "Indian tribe".
  Although (c) provides eligibility for receipt of grants to assist with the planning phase; we are concerned that there is no authorization of appropriations.

  We are also concerned that the bill does not address how programs would be evaluated and measured for performance success.

- (c) Planning Phase
  This bill authorizes tribes to be eligible for planning grants. We have concerns about this provision on 2 fronts: 1) potential costs to all participating agencies and 2) a lack of clarity on which agency have authorization for planning grants and would be responsible for payment of these planning grants.

- **Sec. 6. Authority of Heads of Executive Agencies**
  (b) Scope of Coverage
  Comment: We appreciate that the scope of coverage includes several agencies, however, we are concerned that there are some agencies have been overlooked that currently contribute to economic development. We also have concerns about how this consolidation would be implemented. For instance, we are unclear as to what the selection criteria were for the Departments listed (e.g., which particular community/economic/business development programs are targeted specifically). We therefore have concerns that the scope of this consolidation is too wide and that the proposed consolidation might impose an unreasonable burden on agencies.

  (c) Activities
  Comment: In item (4) we note that the language supports a review of existing program regulations with the intent to adjust differences among them so that grants are better administered across agencies. We support this move. However, in item (5) there is a suggestion of new regulations, across programs and perhaps across programs and agencies,

that will ensure better coordination. We suggest deleting this section as it reflects an existing governmentwide uniform administrative requirement that has already been established by the OMB Circular A-102 common rule.

(d) Requirements - The heads of each executive agency are required to take all appropriate actions to carry out the Act and consult and cooperate with the heads of other agencies in administering the relevant program.
Comment: This requires agency heads to consult with heads of other agencies on how their programs could be administered. We recommend that there be further clarification on how this would work. We interpret this to be a bit too broad.

- **Sec. 7. Procedures for Processing Requests for Joint Financing**
  Comment: We would like to work with the Committee on this language. Currently, there are several parts of this section that may not be necessary. We would like to suggest that the process should be developed to be similar to the one used within the Public Law 102-477 programs.

- **Sec. 8. Uniform Administrative Procedures**
  Comment: While we understand the intent of the consolidation, we have financial and management accountability concerns over Sec. 8 and 9 on Uniform Administrative Procedures and Delegation of Supervision from one agency to another. First, we are concerned with variations in grantee standards. Logistically, it is unclear as to whether there will be one set of administrative procedures for tribes and another set for all other grantees. Second, we are concerned that these provisions take away individual agency discretion on what is considered essential information in the management and oversight of their programs.

  We recommend deletion of this section as the OMB Circular A-102 already exists and is applicable to this program.

- **Sec. 9. Delegation of Supervision of Assistance**
  Sec. 9 authorizes an agency head to give up responsibility for the oversight and management of programs to another Federal agency.
  Comment: We are concerned that this would cause problems within the various Federal agencies by overriding underlying statutes of the programs that indicate the role of each Secretary. Although the intent is to provide greater flexibility with program melding, this could cause mismanagement of program funds, as well as lack of accountability for those programs.

  We also have concerns on how regulations would be promulgated in general and how it would work in this case, when it involves a State.

- **Sec. 10. Joint Assistance Funds and Project Facilitation**
  Comment: In (b)(3) Agency heads must include procedures regarding the return of excess

funds to participating executive agencies.
Comments: This provision will cause problems since it would give agency heads the authority to reprogram unobligated balances to other Departments, without regard for the intended purpose of the initial appropriation.

- **Sec. 14. Report to Congress**
  Comment: We believe the report that is to be prepared by the "President" should actually be the "Secretary" of the Interior.

Written Testimony of
THE KAYENTA TOWNSHIP COMMISSION
Submitted on behalf of the Navajo Nation
to the United States Senate
Committee on Indian Affairs
September 27, 2000

The members of the Kayenta Township Commission representing the Navajo people of Kayenta would like to thank Chairman Ben Nighthorse Campbell and the Senate Committee on Indian Affairs for this opportunity to provide testimony on S. 2052, the Indian Tribal Development Consolidation Funding Act of 2000.

THE STRUGGLE TO ACHIEVE SELF-GOVERNANCE

On November 5, 1985, at the urging of tribal community leaders from the Kayenta Chapter, Navajo Nation, (AZ), the Navajo Nation established the Kayenta Township Pilot Project by resolution number CN-86-85. Later, another tribal body withdrew 5.5 square miles of land for this new Township government. The Township Project came about to find a way to address the lack of economic development, high unemployment, lack of infrastructure for businesses, lack of a speedy process to attain a business site lease, and the lack of a system for self-governance.

The adopted goals of the five-year "pilot project" were as follows:

- Establish a town council that had ordinance-making powers.
- Adopt a comprehensive land-use plan.
- Set up the central part of the chapter as a legally defined town entity.
- Address the problem of land destabilization, leasing, lack of mechanisms and resources to plan, zone, develop and oversee land allocations.
- Seek solutions to attract, support, and nurture economic development

In 1985 and currently, local governments across the Navajo reservation were represented by a "chapter" system of government that had no real self-governing authorities. The chapters, for example, could not adopt local ordinances, approve leases for businesses, or sign binding contracts with financial institutions, state and federal entities. Chapters were not set-up to address complicated issues and challenges faced by economic growth centers within the Navajo Nation. +

At the end of five years the Township Project was to report back to the Navajo Nation, but the project took longer than anticipated. For the next several years, the project was sporadically funded while intense planning took place. In 1990, project leaders completed a community-wide survey. This survey determined that the community would support a Township form of government as well as a sales tax. The structure of a Township government was based upon an analysis of several state statutes and actual municipal operations. The most feasible of these elements were then modified for the conditions of Kayenta.

Finally in 1996, project leaders knew what was needed to accomplish their objectives. They submitted the Five Year Report to the Navajo Nation along with a proposal to adopt a 2.5 percent retail sales tax and create a Township government to oversee the implementation of the sales tax. The Navajo Nation accepted the report on January 19, 1996 and also approved the Kayenta Retail Sales Tax Project by resolution number CJA-3-96. This resolution established the elected, five-member Kayenta Township Commission as a governing board to oversee the implementation of the sales tax.

Almost 11 years after we began our quest, we were given the power to make local decisions and exercise self-governance. The specific authorities granted by the Navajo Nation to the Kayenta Township Commission were as follows:

- Levy and collect a sales tax within the township boundaries.
- Create laws and enforce Kayenta Township Commission's land use plan, zoning, and building ordinances--all subject to Navajo Nation law within the Township boundaries.
- Pass rules and regulations, laws, and ordinances within the Township boundaries that were not already within jurisdiction of the tribe, county, state, or federal government.
- Develop land within the Township for economic ventures

+ This changed in 1998 when the Navajo Nation Council adopted the Local Governance Act which authorized Chapters to assume governance at the local level.

ACCOMPLISHMENTS

(1) Levy and collect a sales tax within the township boundaries.

On June 15, 1997, the Kayenta Township Commission began levying and collecting a 2.5 percent retail sales tax on businesses within the Kayenta Township boundaries. The retail sales tax money collected was committed to developing plans and projects towards addressing seven areas identified by the community:

(1) Solid waste disposal,
(2) Airport management and maintenance,
(3) Recreational facilities,
(4) Drainage and flood control,
(5) Fire protection,
(6) Streets
(7) Management & enforcement.

The collection of a sales tax has provided for a reliable source of revenue. Over the past three years, the Kayenta Township Commission has collected $1.2 million from the 2.5 percent retail sales tax. The following are a few examples of where this has gone:

- Tax money has been used to leverage funding for a $40 million, 230-unit housing project within the Township boundaries. This project began in January and 40 homes are now ready for occupancy.
- Funded, built and operate a $70,000 Solid Waste Transfer station. The station has two operators that haul trash bins from neighboring communities.
- Developed a plan for a 34-acre recreation site with funding from the state of Arizona. The Kayenta Township Commission will also spend $663,316 to pay for the drainage system at the site. The facility will eventually cost around $2 million. Additional funding is being sought.
- Considering the use of tax revenues to match funding for a 48-bed juvenile detention facility.

Tax revenues have allowed financial institutions to consider the issuance of a $1.5 million bond to the Kayenta Township Commission to fund a 1.8 mile stretch of streetlights through Kayenta. Plans have not been finalized but the Kayenta Township Commission has set aside $1.5 million in this year's budget. Purchased a $23,000 vehicle for the Kayenta Volunteer Fire Department.

(2) Create laws and enforce Kayenta Township Commission's land use plan, zoning, and building ordinances -- all subject to Navajo Nation law within the Township boundaries.
The Township Commission has adopted procedures and laws to create a business-friendly environment. The Township adopted a business site leasing ordinance in October 1998. The Township has also planned, zoned, and subdivided land within the designated 5.5 square mile boundary. A major hindrance to the luring of new business and capital has always been the tedious process to acquire land. A second issue was that of securing land for a period long enough to protect and realize profit from capital investments.

The Township was zoned into nine different use categories (commercial, residential, industrial, etc). Each zoned parcel was then further subdivided. The subdivisions then had plat surveys with legal descriptions completed, along with completed environmental and archaeological assessments. The goal was to expedite the lengthy existing land allocation process within the Navajo Nation. That process included:

(1) A review by the Navajo Nation government
(2) Approval by an approving body within the Navajo Nation Council
(3) Approval by the Navajo Nation President
(4) and approval by the Bureau of Indian Affairs.

All these requests were centralized and generally took 28 steps, often years.

The Kayenta Township's streamlined leasing process included: the negotiation and approval of leases in Kayenta, approval of right-of-ways and easements in Kayenta, and an overall administration of a coordinated management of leases in Kayenta. Due to this streamlined process, leases have been approved in record-time, hence luring more businesses to Kayenta. A few examples are listed here:

- Approved a lease for the construction of a new U.S. Post office in July 1999. Eleven months later in June, they were open for business.
- Approved a lease for a new Women's Shelter in December 1999. Construction on the shelter is now nearly complete.
- Since passing the business site leasing act and procedures in October 1998, the Township Commission has approved 25 leases for businesses and the public sector.
- Since March, a Sonic Drive Inn, a 7-to-11 food store, and a 48-room hotel have had a site designation approved.
- A complete assessment of the water system within the Township was completed

(3) Pass rules and regulations, laws, and ordinances within the Township boundaries that were not already within jurisdiction of the tribe, county, state, or federal government.

By-laws were adopted by the Township Commission to govern the Township. The by-laws require the members to meet once a month, hold an election every four years, hear a status report from the Town Manager, adopt ordinances, and other activities.

The Township Commission has adopted a Kayenta Employment Rights Ordinance that has brought an additional $45,540 to the Township Commission. This ordinance calls for a three percent construction and business activity tax for the purpose of:

(a) insuring compliance with adequate building standards
(b) insuring local employment preference
(c) creation of additional revenues. This ordinance was passed to bring the monitoring and compliance closer to Kayenta.

(4) Develop land within the Township for economic ventures.

By investing in the infrastructure; building homes, seeking funding for water/sewer line expansions, partnering with the business community and federal/tribal/state entities on utility projects, the Township has created an environment that eases the burden on businesses and others.

LESSONS LEARNED

The Kayenta Township Commission has learned that when given the power to decide matters locally, economic and community development can be achieved.

A sustained and predictable revenue base is necessary for addressing economic development problems on a long-range basis. Outside matching funds from state, federal, county and private sources are more available and have a greater impact if matched by local, sustained funding. Fiscal agents more readily consider loans, bonding and other resources when a funding source is assured for long periods of time. Outside capital interests and business entities operate with confidence when they are assured that the necessary components of the community will be there to enhance, protect and compliment the business enterprise.

Before the 2.5 percent sales tax was approved, funding for planning and operation was a challenge. When funding occurs on an annual basis, dependent upon shifting priorities and the ebb and flow of governmental agencies, a project runs the risk of falling short of its stated goals and objectives. Infrastructure and land use planning is expensive. A number of important activities in the development of the Township were never carried-out because they were beyond the financial resources of the initial Kayenta Project. Navajo County funded several projects and Peabody Coal Company provided in-kind services in the form of surveying and aerial photography. An assessment of the water needs alone required $50,000, and sophisticated plat and landscape architectural work-ups were not feasible. In fact, there were times when both the secretary and the director worked half-time, or without pay.

There is a new generation across the Navajo Nation whose values are different than the Navajos of yesterday. In the early days with a wide expanse of land and an emphasis on grazing and traditional living, very little technology and infrastructure was needed. Today, as growth centers accelerate in population and development, a much more sophisticated and complex planning process must be implemented. The existing business site leasing process must be challenged and changed.

Federal entities must allow for flexibility and adaptability at the local level. The BIA, sometimes, was an impediment to processes proposed.

NAVAJO NATION POSITION ON S. 2052

The Navajo Nation has advocated for coordinating federal resources to address economic development needs in Indian country since the mid 1970s. As recently as April 11, 2000, the Navajo Nation urged the House Appropriations Subcommittee on Interior and related agencies to look beyond providing basic services and look toward developing strong Indian economies:

> The traditional "Indian funding" within the Department of Interior budget does little to *compliment the bold economic development initiatives elsewhere* within the FY 2001 budget. Understandably, this Subcommittee oversees Interior appropriations, yet the Navajo Nation concerns are comprehensive with respect to other federal Departments' budgets. The Navajo Nation agrees with Congress in that Indian Self-Determination is inextricable from economic development. "The Congress declares that a major national goal of the United States is to provide the quantity and quality of educational services and opportunities which will permit Indian children to compete an excel in life areas of their choice, and to achieve a measure of self-determination essential to their social and economic well being. *25 U.S. C §450(a)c*
>
> –Written Testimony of the Navajo Nation, April 11, 2000.

The Navajo Nation is at a pivotal point in time where it is faced with depleting natural resources; therefore, it must develop strategic partnerships and create innovative forms of financing to sustain us as a sovereign nation.

One of the largest impediments to a viable Navajo Nation economy is the lack of basic infrastructure such as water systems, sewer systems, electricity, telephone and access roads. Now is the time to allocate increased infrastructure funds towards economic development projects that will promote a multiplier effect and generate new revenues for the Navajo Nation.

Many potential Navajo entrepreneurs lack the equity to finance the start-up costs of their new business. In fact, a majority of start-up costs pertains to infrastructure development, which can total thousands and even millions of dollars.

Accordingly, the proposed Act will help provide the magnitude of funding necessary to overcome this problem and help tribes such as the Navajo Nation become more self-sufficient. These new businesses need capital to develop the infrastructure for their operations.

The Navajo Nation Division of Economic Development has provided substantial amounts of technical assistance and monetary contributions towards the economic growth of the Kayenta community. For example, a shopping center was built comprised of numerous tenants including Navajo-owned franchises, i.e., Burger King and McDonald's.

The Division has also contributed towards the infrastructure cost to develop a Navajo-owned franchise, the Hampton Inn Hotel, and a branch office for the Wells Fargo Bank. The area was also designated as an Enterprise Community under the Department of Agriculture and is ready for implementation.

Through these contributions, the Division established the economic base for further growth of the Kayenta community.

Consequently, the Navajo Nation receives a multitude of requests for financial assistance, yet the Navajo Nation has very limited funds. It is hoped this Act will provide increased windows of opportunity for Navajo entrepreneurs and the Navajo Nation as a whole.

SECTION 4. THE LEAD AGENCY.

The Navajo Nation also recommends that the lead agency be required to consult with Indian nations as an on-going process in developing the Demonstration Project - to honor the government-to-government relationship expressed in Presidential Executive Order.

SECTION 5. SELECTION OF PARTICIPATING TRIBES

Section 5(a)(1) Participants.

With 500 federally recognized tribes, the level of economic devastation that Indian nations face, and the advent of more tribes gaining federal recognition, limiting the number of participating tribes to 24 seems unreasonable. The Navajo Nation recommends that the number of tribes to participate in the demonstration project be increased to 50. In light of the history of Indian economies, 50 is a reasonable number.

SECTION 5. SELECTION OF PARTICIPATING TRIBES

Section 5(b)(3) Applicant Pool

The Navajo Nation recommends this language be amended by inserting the phrase "significant and" immediately proceeding the word "material" in this section.

SECTION 6. AUTHORITY OF HEADS OF EXECUTIVE AGENCIES.

Section 6(b), Scope of Coverage.

The Navajo Nation is concerned that the Department of Energy, the Department of Transportation, the Department of Justice, and the Office of Management and Budget are not included. Each of these departments have programs and technical expertise currently being utilized to develop infrastructure for Indian nations. Excluding these departments from participation would go against the intent of S. 2052 and the United States trust responsibility to Indian nations.

The Navajo Nation recommends that all executive agencies be included within the scope of this Act. The federal trust responsibility to Indian nations spans the entire government.

SECTION 13. JOINT FINANCING FOR FEDERAL-TRIBAL ASSISTANCE PROJECTS.

The Navajo Nation recommends the following language be inserted. "Nothing in this section shall abrogate the sovereignty of Indian Nations nor extend state regulatory authority over Indian nations."

The Navajo Nation recommends this language be inserted to protect the sovereign status of tribal governments.

Conclusion

In conclusion, the Navajo Nation strongly supports the proposed new legislation with the changes recommended. Any improvement in communication, coordination and pooled funding between federal agencies for tribal economic development initiatives will certainly be a win-win situation for all concerned.

Before the
United States Senate
Committee on Indian Affairs

Hearings Regarding S.2052
106th Congress

Statement of
Prof. Joseph P. Kalt
Harvard University Native American Program
and
Harvard Project on American Indian Economic Development
John F. Kennedy School of Government
Harvard University
September 27, 2000

Thank you for the opportunity to appear here today. My name is Joe Kalt. I am the Ford Foundation Professor of International Political Economy at Harvard University's Kennedy School of Government. I am also the Faculty Chair of Harvard's Native American Program and Co-director of the Harvard Project on American Indian Economic Development. Along with my colleagues, Prof. Steve Cornell and Manley Begay of the Udall Center for Public Policy Studies at the University of Arizona, we at the Harvard Project have been working for almost fifteen years for and with tribes and tribal organizations. Our primary objective has been to research and document what is working and what is not working in Indian Country when it comes to building economically and socially successful reservations. To support the efforts of tribal leaders to build their communities' capacities for self-determination, we deliver extensive *pro bono* advisory services upon requests by tribes. Both at Harvard and through the Native Nations Program at the University of Arizona, we also provide strategic executive education programs to tribal leaders, managers, and decision makers.

I would like to address myself today to what we have learned about the impact of federal development initiatives in Indian Country, and the implications for the design of federal programs in the future. There is no doubt that there are severe needs to be met, but repetition of past mistakes is in no one's interest. What frameworks and approaches are likely to best fit the objectives of strengthening tribal economies while also respecting rights of self-determination?

To begin, it is important to recognize that the research evidence is clear on the overall direction of federal-tribal relations: Self-determination is the only policy in a century that has worked to begin to alleviate the legacy of suppression and economic dependency to which Native peoples in the US have been subjected. It is no coincidence that Indian Country is now dotted with an increasing number of reservations where economic development is taking hold. From Flathead and Grand Ronde to Mississippi Choctaw, Grand Traverse, and Citizen Potawatomi, sustained economic development has taken hold. Improvement in economic conditions at such reservations, moreover, has been accompanied by improved social conditions.

At Mississippi Choctaw, for example, the rate of welfare dependence is only about one-fifth of the rate for the US population as a whole, unemployment is all but wiped out, and the Choctaw have been able to make large strides in protecting their culture by taking control of their schools and investing in programs such as native language promotion.[1] What is this doing to Choctaw society? As pointed out so sagely by Chief Philip Martin, people who had left are returning and those who are there want to – and can afford to – remain.[2] There is probably no better test of the health of a community than tribal members voting with their feet in this fashion.

As we have pointed out before,[3] the research reveals a clear pattern among those tribes that are moving forward economically and socially. Without exception, such tribes are marked by aggressive assertions of sovereignty and *self*-rule. They set out and stick to strategies of breaking federal and state control over everything from their courts and police to their housing programs and schools. The tribes that are making progress toward their own, self-defined goals of community well-being are invariably devotees of what we might call the Nike strategy: Often in the face of at best ambiguous jurisdiction and occasionally hostile opposition, they "just do it."

Importantly, in asserting rights of self-governance, the tribes that are showing on-going economic and social success do not stop at simply winning a court case or taking over a federal program under the contracting of Public Law 638. Rather, they recognize that rights of self-rule must be backed up by the institutional *capacity* for self-rule. Accordingly, the successful tribes back up claims of sovereignty and opportunities for self-government by building and rebuilding their tribal governmental capacities. They struggle against a long history of institutional dependence that comes from having had to design their projects, programs, procedures, accounting systems, and even their laws so as to serve as funnels for federal programs. Reversing this dependence means everything from rewriting constitutions that were force

fed to Indian Country decades ago (as at Northern Cheyenne and Lummi), to building either western-looking or traditional dispute resolution judicial systems that protect the rule of law from political interference (as at Flathead and Grand Traverse),[4] to instituting efficient commercial codes and zoning ordinances (as at Kayenta Township), to taking over foster care and dental care (as at Fond du Lac).

This focus on tribal governmental capacity as a key to successful economic development should not be surprising. It is the case the world over that governmental structure and capacity are indispensable to economic development and progress against social ills. Consider, for example, the long running and malevolent experiment that the Soviet Union ran by splitting Germany in two. At the end of this experiment, West Germany was one of the economic powerhouses of the modern world and a target for immigrants looking for better lives. East Germany, on the other hand, had to use machine guns to try to keep people from leaving. The lesson here is that a common culture, substantial resources, heavy investment in education, and infusions of outside funds were not sufficient to generate economic and social success. From Eastern Europe to Indian Country, governments set down the rules of the game that give people incentives to be productive or destructive, to make investors and workers feel secure or flee. As such, governments can make or break a society's economy and social fabric.

The successful tribes are also demonstrating that one size does not fit all when it comes to building the capacity of tribal institutions and implementing economic development strategies. The Harvard Project research consistently points to the finding that, to be effective, tribal governmental structures and economic development policies have to possess "cultural match." That is, they must fit with each tribe's own culturally-based standards of what is legitimate and proper when it comes to such questions of who has what power, what economic system will work, and what economic development projects are viable.

I hasten to add that our findings in this regard are not naïve endorsement of ill-defined "pop" notions of "culturally appropriate" economic development. Instead, there are hard-edged, well-defined dimensions to cultures, Indian and non-Indian, which directly impact the design of institutions and viable economic strategies. Thus, for example, strong and enduring allegiance to a central *tribe* and its government contribute substantially to the ability of places like Mississippi Choctaw and certain of the Apache tribes to sustain economies based largely on tribally-owned enterprises. But we should not expect the same strategy to work at Flathead

(where social and private-sector economic success has taken firm root on a reservation where allegiances are split among multiple tribes) or on the Sioux reservations (where traditions of personal independence and district and sub-tribal allegiance prevail).[5]

Because institutional capacity is indispensable and because, to be effective, the key institutions that undergird reservation economies and social systems must be *self*-designed by individual reservation communities, it is clear why sovereignty and self-rule are the only policies that have built positive records for themselves. They shift the center of accountability home to reservation citizens and *their* governments and away from Washington, D.C. Then, too, the power of *self*-government maximizes the chance of "cultural match" – building institutional capacity that fits within the many distinct communities and cultures that make up Indian Country. Regardless of their intentions, "outsiders" are not going to be the ones who pull off the very subtle task of successfully designing and building the necessary institutional capacity. And if the rights and capacities of self-governance are abridged or subjugated, Indian nations are going to be consigned to on-going and intractable problems of unemployment, poverty, social ill-health, and dependence on the federal government.

The foregoing research findings serve to highlight the need for wisdom in designing federal programs intended to be of assistance to Indian Country. Federal policy must confront a very difficult balancing act: Providing assistance without forcing, by rule or incentive, tribes to adopt institutions, practices, programs, and policies that may make tribes effective in playing the grantsmanship game and garnering federal support but result in the perpetuation of the very institutional dependency that has proven so destructive. Hundreds of millions of dollars in federal assistance have been thrown at the problems of Indian Country over the preceding decades. Even the most sanguine of observers would have to agree that the results have been disappointing. Whether it is the tribe in the Dakotas that suffered through more than a score of economic development projects that invariably failed after one round of high-visibility funding or the flavor-of-the-month federal promotion of everything from rural motels to low-tech manufacturing, Indian Country is riddled with failed projects that have been destructive of Native communities. We should take this opportunity and the legislation under consideration in this hearing to learn from this sorry history.

Clearly, the need *and* treaty and trust responsibilities for federal promotion of economic development and social well-being on America's Indian reservations remain strong. While the media seem to have bought

into an image of tribes as either extremely wealthy from gaming enterprises or extremely poor from lack of economic development, the reality for much of Indian Country lies toward the latter situation. While data on economic conditions since the 1990 Census are scarce, the last Census made it clear that reservation Indians were the poorest identifiable group in the United States. The economic benefits of gaming enterprises are confined to a small minority of tribes, typically those near the markets created by major population centers.[6] On many reservations, our field observations indicate that unemployment remains above the reservation average of 48% found in 1990, and attendant problems of poor health, inadequate housing and other infrastructure, and suicide and similar social pathologies are unabated.

Based on the research results I have described here, I think several guidelines emerge for federal policy:

Adhering to the Government-to-Government Principle: The guiding principle of the federal role in Indian Country is properly the principle of true government-to-government relations, rather than government-to-dependent relations. Just as the Soviets taught us in Eastern Europe, so we should not be surprised that policies that intentionally or unintentionally result in abrogation of tribes' rights of self-rule are ultimately counterproductive. In fact, it is worth commenting that those that would seek to eliminate tribes' powers of self-governance would seem to be welcoming a future in which reservations are trapped as perpetual programs of public support, continually burdening the federal budget and killing the initiative and energy of Indian communities. Sovereignty and self-rule for Indian nations is the win-win strategy, both for those who are concerned with promoting economic development on reservations and for who are concerned with the budgetary implications of continued lack of development.

Maximizing Tribal Control of Programs: The systematic evidence makes it clear that contracting and compacting, whereby tribes take over the management and delivery of programs otherwise within the domain of the federal government (e.g., under P.L. 638), have been successful in both promoting economic development and enhancing tribes' experience in the business of self-governance. In large-sample statistical research for the Harvard Project, Dr. Matthew Krepps finds that 638 contracting of forestry programs by tribes substantially improves the economic contribution of forestry to the tribe. Based on a sample of seventy-five 638 and non-638 tribal forestry programs, Dr. Krepps reports that shifting from BIA-employed forestry workers to tribally-employed forestry workers raises labor productivity by tens of thousands of board feet of harvested timber per year

(without altering the "allowable cut" limit set by conservation and environmental criteria).[7] Similarly, shifting to tribal management from federal management, but selling the same timber in either case, results in tribes receiving as much as 6% higher prices for their timber – amounting to hundreds of thousands of dollars per year in extra income for the typical forestry operation.

Parallel results have been found in research on tribal contracting and compacting for control of tribal health services. Prof. Alyce Adams of the Harvard Medical School and the Harvard Project finds, for example, a significant motivation for tribes to take over their health programs is the unresponsiveness of health services provision under federal auspices and inadequacies of federal resources.[8] The National Indian Health Board reports that tribes are not mistaken in seeing tribal control as a solution to the problems with federal control that Adams has identified. In its recent comparison of service provision under contracting and compacting, NIHB reports not only a sharp decline in inflation-adjusted federal funding of the Indian Health Service, but also that contracting and compacting tribes reset priorities by increasing the allocation of resources to health care. In addition, tribal control of health care services is more often seen as getting better than is the case with federal control.[9]

Finally, the program in Honoring Contributions in the Governance of American Indian Nations, directed by Mr. Andrew Lee at the Harvard Project, annually identifies excellent programs in tribal governance and management. Whether it is the organizing of a new township at Kayenta, gray wolf recovery efforts at Nez Perce, the Navajo Supreme Court, or bison ranching at Cheyenne River, the excellent programs are marked by the "just do it" approach, capable institutions of self-government, and the implicit and explicit incorporation of tribe-specific cultural values and techniques. In cases such as Fond du Lac's pioneering foster care program and Jicarilla Apache's wildlife management policies, the Indian models are clearly outperforming state government approaches – to the point that the non-Indian governments are now turning to the tribes for advice and counsel.

Why does tribal control improve programs and service delivery? Two factors stand out. First, our research indicates that tribal control shortens the lines of accountability. While there are both successes and failures under tribal management (just as with federal management), the general pattern is one of putting *tribal* leaders and decision makers on the hook if things go poorly. In the course of our work for tribes, more than one tribal leader as told us some version of the following: "This self-determination is a two-edged

sword. We're more in control, but if we mess up, my tribal members hold me accountable." Such accountability is a cornerstone of improved program performance. It needs to be brought into the economic development arena.

A second reason that tribal takeover of control and management tends to improve performance is found in the notion of "cultural match". Digging deeper into the data on 638 contracting in forestry, Dr. Miriam Jorgensen, our Director of Research, finds that 638 tribes with combinations of high language and high blood quantum requirements for membership – i.e., tribes with strong degrees of social cohesion – significantly outperformed 638 tribes lower in such measures of cohesion.[10] Evidently, stronger social cohesion allows for clearer signals regarding cultural values and enhances accountability by improving the informal means of controlling leaders' and managers' performance. Overall, the data on tribal control under contracting and compacting, as well as the Honoring Nations results, indicate that, when given the chance, tribes can, indeed, manage their own affairs.

Changing Federal and Tribal Incentives: Federal economic initiatives in Indian Country have long been dominated by a "planning and projects" mentality. Sustained and systemic economic development, however, does not consist of or arise from building a plant or funding a single project. Economic development is a process, not a program. Throughout the world, lasting improvement in economic and social conditions comes about through the creation of institutions and policies that allow development to take hold. The key to tapping this process is *incentives* – in this case, the incentives faced by federal and tribal decision makers and administrators.

The danger in the legislation under consideration here is that it will turn out to be the next in a long list of well-intentioned efforts that ends up fostering institutional dependence among tribes' governmental systems and programs. Such dependence is promoted when federal authorities approach the problem of selecting the recipients of assistance within a government-to-dependent framework in which the federal grantor effectively compels the institutional design of the tribal grantee. The federal authority's incentive is to avoid mistakes and ensure compliance with procedure in the event a mistake or poor outcome arises. This conservative outlook can be inappropriately be manifested in a "checklist" approach to the planning, application, and award stages of program development. If satisfying checklists turns out to be the way to succeed under the proposed legislation, tribes will have incentives to design their institutions and projects to fit the checklists. In the process, it will be *federal* bureaucratic procedure that drives – as it has for decades – tribes' choices of development strategies and

the design of tribal institutional capacity.

How can such a recipe for continued failure be avoided? The key lies in accountability, placing the emphasis on making tribal authorities responsible to their citizens, rather than to federal authorities. Two kinds of options present themselves. The first is the block grant approach. Block granting minimizes micromanaging of the allocation of funds and permits the allocation of activity and resources in accord with *tribal* priorities. In the process, block granting changes tribal leaders' and decision makers' incentives. With tribal authorities in greater control of the allocation of funds, tribal authorities then face enhanced accountability vis-à-vis their tribal members: If resources are wasted, it is tribal decision makers that are responsible.

In addition to block granting, incentives and accountability can be improved by making funding and, especially, continued funding contingent upon actual performance by the recipient tribal authorities, with performance assessed by measured outcomes in the tribal community (such as employment sustained, income generated, etc.). This approach recognizes that mid-stream and after-the-fact attention to demonstrating what has gone right can be superior to before-the-fact "checklist" screening that seeks to avoid what can go wrong. Performance-based criteria provide incentives for positive performance. Pre-screening for bureaucratic and organizational attributes provides incentives for meeting the federal checklist of attributes. That is, such an approach provides incentives for designing tribal systems and policies to fit what the federal guidelines dictate, rather than direct incentives to improve economic and social conditions. It is time that we tried more of the former approach when it comes to promoting economic development in Indian Country.

Building Institutional Capacity: The legacy of dependence on federal dollars and systems places a premium on the building by tribes of their own capacities to manage their own affairs. "Building capacity" here does not mean sending people to accounting courses or the like. The capacity that is needed is *institutional* capacity.

From constitutional reform and the strengthening of tribal courts and codes to the implementation of culturally-matched labor grievance procedures and management systems for natural resource use and protection, the "just do it" tribes are demonstrating the importance of basic institutional infrastructure. Dr. Jorgensen, for example, finds that one of the best predictors of whether a program such as tribal housing is run well (in terms

of needs met, bills paid, etc.) is whether or not a tribe has an independent (western-style or traditional) judicial system that is protected from influence of elected tribal officials.[11] Similarly, the establishment of separations of powers in political structures is a key determinant of overall employment and income levels on reservations.[12] Indeed, such institutional structures may be founded on western-style democracy (for example, as at Flathead) or may be embedded in traditional unwritten "constitutions" (as at Cochiti Pueblo).[13] Without them, however, economic development does not take hold, even where tribes are rich in natural resources, have access to generous federal programs, and exhibit strong educational attainment.

Federal policy can play a positive role in fostering institutional capacity among tribes by supporting efforts at constitutional reform, respecting and fostering strong and efficient tribal courts and other dispute resolution mechanisms, and accepting the ceding of policy and program management when tribes establish their own management capabilities. "Planning" requirements that encourage tribes to jump through the hoops set out in micro-management criteria of federal programs distort institutional capacity and frequently lead to a paralysis of planning in which securing planning grants and demonstrating plans takes the place of economic development. "Planning" which takes the form of institutional capacity building, on the other hand, can turn an Indian nation, or any nation, around.

Peter Ferraro, *The Choctaw Revolution*, 1998.

[1] Hon. Philip Martin, Address, John F. Kennedy School of Government, September 1999.

[2] Joseph P. Kalt, Statement before the US Senate Committee on Indian Affairs, September 17, 1997.

[3] Note that "the rule of law" is hardly a Euro-American invention. Native peoples' reliance on reference to tradition and custom to resolve disputes serves precisely the function of insulating dispute resolution from political interference. See Stephen Cornell and Joseph P. Kalt, "Successful Economic Development and Heterogeneity of Governmental Form on American Indian Reservations" (with Stephen Cornell), in Merilee S. Grindle, ed., *Getting Good Government: Capacity Building in the Public Sector of Developing Countries*, Harvard University Press, 1997.

[4] Stephen Cornell and Joseph P. Kalt, *What Can Tribes Do? Strategies and Institutions in American Indian Economic Development*, University of California, 1992.

[5] In fact, even in such settings, the lessons I have noted above hold: Just as with natural resources, opportunities created by substantial markets for gaming services can be squandered when a tribe is unable to build the institutional capacity of its courts, administration, and programs.

[6] Matthew B. Krepps, "Can Tribes Manage Their Own Resources? The 638 Program and American Indian Forestry" in Cornell and Kalt, *What Can Tribes Do?..., op. cit.*

[7] Alyce Adams, "The Road Not Taken: How Tribes Choose Between Tribal and Indian Health Service Management of Health Care Resources," Doctoral Dissertation, Harvard University, October 1999.

[8] National Indian Health Board, *Tribal Perspectives on Indian Self-Determination and Self-Governance in Health Care Management*, completed 1998.

[9] Miriam Jorgensen, *Bringing the Background Forward: Evidence from Indian Country on the Social and Cultural Determinants of Economic Development*, Doctoral Dissertation, June 2000.

[10] Miriam Jorgensen, *op. cit.*

[11] Stephen Cornell and Joseph P. Kalt, "Where's the Glue? Institutional Bases of American Indian Economic Development," *Rationality and Society* (forthcoming, December 2000).

[12] Stephen Cornell and Joseph P. Kalt, "Successful Economic Development...," *op. cit.*