S. HRG. 108–673

NATIVE AMERICAN CAPITAL FORMATION AND ECONOMIC DEVELOPMENT ACT

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

SECOND SESSION

ON

S. 519

TO ESTABLISH A NATIVE AMERICAN-OWNED FINANCIAL ENTITY TO PROVIDE FINANCIAL SERVICES TO INDIAN TRIBES, NATIVE AMERICAN ORGANIZATIONS, AND NATIVE AMERICANS

JULY 21, 2004
WASHINGTON, DC

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NATIVE AMERICAN CAPITAL FORMATION AND ECONOMIC DEVELOPMENT ACT

WEDNESDAY, JULY 21, 2004

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

The committee met, pursuant to notice, at 10:27 a.m. in room 485, Russell Senate Building, Hon. Ben Nighthorse Campbell (chairman of the committee) presiding.

Present: Senators Campbell, Domenici, Dorgan, Inouye, Johnson, and Murkowski.

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

The CHAIRMAN. The committee hearing this morning is on legislation I introduced last year that would create the Native American Development Corporation and carry out a number of other functions.

The committee held a hearing on this legislation in April 2003. Yesterday, the committee held a forum of tribal leaders, bankers and Indian development experts to discuss the generic question of whether a tribally owned development corporation is worthwhile to pursue. I believe it is very important and worthwhile and necessary if Indian country and the U.S. Government are serious about raising the standard of living in Native America.

[Text of S. 519 follows:

II

108TH CONGRESS
1ST SESSION

S. 519

To establish a Native American-owned financial entity to provide financial services to Indian tribes, Native American organizations, and Native Americans, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 5, 2003

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 Native American-owned financial entity to provide financial services to Indian tribes, Native American organizations, and Native Americans, and for other purposes.

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Native American Capital Formation and Economic Development Act of 2003''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Findings.
Sec. 3. Purposes.
Sec. 4. Definitions.

TITLE I—NATIVE AMERICAN CAPITAL DEVELOPMENT CORPORATION

Sec. 101. Establishment of the Corporation.
Sec. 102. Authorized assistance and service functions.
Sec. 103. Native American lending services grant.
Sec. 104. Audits.
Sec. 105. Annual housing and economic development reports.
Sec. 106. Advisory Council.

TITLE II—CAPITALIZATION OF CORPORATION

Sec. 201. Capitalization of the Corporation.

TITLE III—REGULATION, EXAMINATION, AND REPORTS

Sec. 301. Regulation, examination, and reports.
Sec. 302. Authority of the Secretary of Housing and Urban Development.

TITLE IV—FORMATION OF NEW CORPORATION

Sec. 401. Formation of new corporation.
Sec. 402. Adoption and approval of merger plan.
Sec. 403. Consummation of merger.
Sec. 404. Transition.
Sec. 405. Effect of merger.

TITLE V—OTHER NATIVE AMERICAN FUNDS

Sec. 501. Native American Economies Diagnostic Studies Fund.
Sec. 502. Native American Economic Incubation Center Fund.

TITLE VI—AUTHORIZATIONS OF APPROPRIATIONS

Sec. 601. Native American financial institutions.
Sec. 602. Corporation.
Sec. 603. Other Native American funds.

SEC. 2. FINDINGS.

Congress finds that—

(1) there is a special legal and political relationship between the United States and the Indian tribes, as grounded in treaties, the Constitution, Federal statutes and court decisions, executive orders, and course of dealing;

(2) despite the availability of abundant natural resources on Indian land and a rich cultural legacy that accords great value to self-determination, self-reliance, and independence, Native Americans suffer rates of unemployment, poverty, poor health, substandard housing, and associated social ills to a greater degree than any other group in the United States;

(3) the economic success and material well-being of Native Americans depends on the combined efforts and resources of the United States, Indian tribal governments, the private sector, and individuals;

(4) the poor performance of moribund Indian economies is due in part to the near-complete absence of private capital and private capital institutions; and

(5) the goals of economic self-sufficiency and political self-determination for Native Americans can best be achieved by making available the resources and discipline of the private market, adequate capital, and technical expertise.

SEC. 3. PURPOSES.

The purposes of this Act are—

(1) to establish an entity dedicated to capital development and economic growth policies in Native American communities;

(2) to provide the necessary resources of the United States, Native Americans, and the private sector on endemic problems such as fractionated and unproductive Indian land;

(3) to provide a center for economic development policy and analysis with particular emphasis on diagnosing the systemic weaknesses with, and inhibitors to greater levels of investment in, Native American economies;

(4) to establish a Native-owned financial entity to provide financial services to Indian tribes, Native American organizations, and Native Americans; and

(5) to improve the material standard of living of Native Americans.

SEC. 4. DEFINITIONS.

In this Act:

(1) ALASKA NATIVE.—The term ''Alaska Native'' has the meaning given the term ''Native'' in section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602).

(2) BOARD.—The term ''Board'' means the Board of Directors of the Corporation.

(3) CAPITAL DISTRIBUTION.—The term ''capital distribution'' has the meaning given the term in section 1303 of the Federal Housing Enterprise Financial Safety and Soundness Act of 1992 (12 U.S.C. 4502).

(4) CHAIRPERSON.—The term ''Chairperson'' means the chairperson of the Board.

(5) CORPORATION.—The term ''Corporation'' means the Native American Capital Development Corporation established by section 101(a)(1)(A).

(6) COUNCIL.—The term ''Council'' means the Advisory Council established under section 106(a).

(7) DESIGNATED MERGER DATE.—The term ''designated merger date'' means the specific calendar date and time of day designated by the Board under this Act.

(8) DEPARTMENT OF HAWAIIAN HOME LANDS.—The term ''Department of Hawaiian Home Lands'' means the agency that is responsible for the administration of the Hawaiian Homes Commission Act, 1920 (42 Stat. 108 et seq.).

(9) FUND.—The term ''Fund'' means the Community Development Financial Institutions Fund established under section 104 of the Riegle Commu-

nity Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4703).

(10) INDIAN TRIBE.—The term ''Indian tribe'' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(11) MERGER PLAN.—The term ''merger plan'' means the plan of merger adopted by the Board under this Act.

(12) NATIVE AMERICAN.—The term ''Native American'' means—

(A) a member of an Indian tribe; or

(B) a Native Hawaiian.

(13) NATIVE AMERICAN FINANCIAL INSTITUTION.—The term ''Native American financial institution'' means a person (other than an individual) that—

(A) qualifies as a community development financial institution under section 103 of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4702);

(B) satisfies—

(i) requirements established by subtitle A of title I of the Riegle Community

Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4701 et seq.); and

(ii) requirements applicable to persons seeking assistance from the Fund;

(C) demonstrates a special interest and expertise in serving the primary economic development and mortgage lending needs of the Native American community; and

(D) demonstrates that the person has the endorsement of the Native American community that the person intends to serve.

(14) NATIVE AMERICAN LENDER.—The term ''Native American lender'' means a Native American governing body, Native American housing authority, or other Native American financial institution that acts as a primary mortgage or economic development lender in a Native American community.

(15) NATIVE HAWAIIAN.—The term ''Native Hawaiian'' has the meaning given the term in section 201 of the Hawaiian Homes Commission Act, 1920 (42 Stat. 108).

(16) NEW CORPORATION.—The term ''new corporation'' means the corporation formed in accordance with title IV.

(17) SECRETARY.—The term ''Secretary'' means the Secretary of Housing and Urban Development.

(18) TOTAL CAPITAL.—The term ''total capital'' has the meaning given the term in section 1303 of the Federal Housing Enterprise Financial Safety and Soundness Act of 1992 (12 U.S.C. 4502).

(19) TRANSITION PERIOD.—The term ''transition period'' means the period beginning on the date on which the merger plan is approved by the Secretary and ending on the designated merger date.

TITLE I—NATIVE AMERICAN CAPITAL DEVELOPMENT CORPORATION

SEC. 101. ESTABLISHMENT OF THE CORPORATION.

(a) ESTABLISHMENT; BOARD OF DIRECTORS; POLICIES; PRINCIPAL OFFICE; MEMBERSHIP; VACANCIES.—

(1) ESTABLISHMENT.—

(A) IN GENERAL.—There is established and chartered a corporation, to be known as the ''Native American Capital Development Corporation''.

(B) PERIOD OF TIME.—The Corporation shall be a congressionally chartered body corporate until the earlier of—

(i) the designated merger date; or

(ii) the date on which the charter is surrendered by the Corporation.

(C) CHANGES TO CHARTER.—The right to revise, amend, or modify the Corporation charter is specifically and exclusively reserved to Congress.

(2) BOARD OF DIRECTORS; PRINCIPAL OFFICE.—

(A) BOARD.—The powers of the Corporation shall be vested in a Board of Directors, which Board shall determine the policies that govern the operations and management of the Corporation.

(B) PRINCIPAL OFFICE; RESIDENCY.—

(i) PRINCIPAL OFFICE.—The principal office of the Corporation shall be in the District of Columbia.

(ii) VENUE.—For purposes of venue, the Corporation shall be considered to be a resident of the District of Columbia.

(3) MEMBERSHIP.—

(A) IN GENERAL.—

(i) NINE MEMBERS.—Except as provided in clause (ii), the Board shall consist of 9 members, of which—

(I) 3 members shall be appointed by the President; and

(II) 6 members shall be elected by the class A stockholders, in accordance with the bylaws of the Corporation.

(ii) THIRTEEN MEMBERS.—If class B stock is issued under section 201(b), the Board shall consist of 13 members, of which—

(I) 9 members shall be appointed and elected in accordance with clause (i); and

(II) 4 members shall be elected by the class B stockholders, in accordance with the bylaws of the Corporation.

(B) TERMS.—Each member of the Board shall be elected or appointed for a 4-year term, except that the members of the initial Board shall be elected or appointed for the following terms:

(i) Of the 3 members appointed by the President—

(I) 1 member shall be appointed for a 2-year term;

(II) 1 member shall be appointed for a 3-year term; and

(III) 1 member shall be appointed for a 4-year term;

as designated by the President at the time of the appointments.

(ii) Of the 6 members elected by the class A stockholders—

(I) 2 members shall each be elected for a 2-year term;

(II) 2 members shall each be elected for a 3-year term; and

(III) 2 members shall each be elected for a 4-year term.

(iii) If class B stock is issued and 4 additional members are elected by the class B stockholders—

(I) 1 member shall be elected for a 2-year term;

(II) 1 member shall be elected for a 3-year term; and

(III) 2 members shall each be elected for a 4-year term.

(C) QUALIFICATIONS.—Each member appointed by the President shall have expertise in 1 or more of the following areas:

(i) Native American housing and economic development matters.

(ii) Financing in Native American communities.

(iii) Native American governing bodies, legal infrastructure, and judicial systems.

(iv) Restricted and trust land issues, economic development, and small consumer loans.

(D) MEMBERS OF INDIAN TRIBES.—Not less than 2 of the members appointed by the President shall be members of different, federally-recognized Indian tribes enrolled in accordance with the applicable requirements of the Indian tribes.

(E) CHAIRPERSON.—The Board shall select a Chairperson from among the members of the Board, except that the initial Chairperson shall be selected from among the members of

the initial Board who have been appointed or elected to serve for a 4-year term.

(F) VACANCIES.—

(i) APPOINTED MEMBERS.—Any vacancy in the appointed membership of the Board shall be filled by appointment by the President, but only for the unexpired portion of the term.

(ii) ELECTED MEMBERS.—Any vacancy in the elected membership of the Board shall be filled by appointment by the Board, but only for the unexpired portion of the term.

(G) TRANSITIONS.—Any member of the Board may continue to serve after the expiration of the term for which the member was appointed or elected until a qualified successor has been appointed or elected.

(b) POWERS OF THE CORPORATION.—The Corporation—

(1) shall adopt bylaws, consistent with this Act, regulating, among other things, the manner in which—

(A) the business of the Corporation shall be conducted;

(B) the elected members of the Board shall be elected;

(C) the stock of the Corporation shall be issued, held, and disposed of;

(D) the property of the Corporation shall be disposed of; and

(E) the powers and privileges granted to the Corporation by this Act and other law shall be exercised;

(2) may make and execute contracts, agreements, and commitments, including entering into a cooperative agreement with the Secretary;

(3) may prescribe and impose fees and charges for services provided by the Corporation;

(4) may, if a settlement, adjustment, compromise, release, or waiver of a claim, demand, or right of, by, or against the Corporation, is not adverse to the interests of the United States—

(A) settle, adjust, and compromise on the claim, demand, or right; and

(B) with or without consideration or benefit to the Corporation, release or waive, in whole or in part, in advance or otherwise, the claim, demand, or right;

(5) may sue and be sued, complain and defend, in any Federal, State, tribal, or other court;

(6) may acquire, take, hold, and own, manage, and dispose of any property;

(7) may—

(A) determine the necessary expenditures of the Corporation and the manner in which those expenditures shall be incurred, allowed, and paid; and

(B) appoint, employ, and fix and provide for the compensation and benefits of such officers, employees, attorneys, and agents as the Board determines reasonable and not inconsistent with this section;

(8) may incorporate a new corporation under State, District of Columbia, or tribal law, as provided in this Act;

(9) may adopt a plan of merger, as provided in this Act;

(10) may consummate the merger of the Corporation into the new corporation, as provided in this Act; and

(11) may have succession until the designated merger date or any earlier date on which the Cor-

1 poration surrenders the Federal charter of the Cor-
2 poration.
3 (c) INVESTMENT OF FUNDS; DESIGNATION AS DE-
4 POSITARY, CUSTODIAN, OR AGENT.—
5 (1) INVESTMENT OF FUNDS.—Funds of the
6 Corporation that are not required to meet current
7 operating expenses shall be invested in—
8 (A) obligations of, or obligations guaran-
9 teed by, the United States (or any agency of
10 the United States); or
11 (B) in obligations, participations, or other
12 instruments that are lawful investments for fi-
13 duciary, trust, or public funds.
14 (2) DESIGNATION AS DEPOSITARY, CUSTODIAN,
15 OR AGENT.—Any Federal Reserve bank or Federal
16 home loan bank, or any bank as to which at the time
17 of its designation by the Corporation there is out-
18 standing a designation by the Secretary of the
19 Treasury as a general or other depositary of public
20 money, may—
21 (A) be designated by the Corporation as a
22 depositary or custodian or as a fiscal or other
23 agent of the Corporation; and
24 (B) act as such a depositary, custodian, or
25 agent.

(d) ACTIONS BY AND AGAINST THE CORPORATION.—Notwithstanding section 1349 of title 28, United States Code, or any other provision of law—

(1) the Corporation shall be deemed to be an agency covered under sections 1345 and 1442 of title 28, United States Code;

(2) any civil action to which the Corporation is a party shall be deemed to arise under the laws of the United States, and the appropriate district court of the United States shall have original jurisdiction over any such action, without regard to amount or value; and

(3) in any case in which all remedies have been exhausted in accordance with the applicable ordinances of an Indian tribe, in any civil or other action, case, or controversy in a tribal court, State court, or in any court other than a district court of the United States, to which the Corporation is a party, may at any time before the commencement of the civil action be removed by the Corporation, without the giving of any bond or security and by following any procedure for removal of causes in effect at the time of the removal—

(A) to the district court of the United States for the district and division in which the action is pending; or

(B) if there is no such district court, to the United States District Court for the District of Columbia.

SEC. 102. AUTHORIZED ASSISTANCE AND SERVICE FUNCTIONS.

The Corporation may—

(1) assist in the planning, establishment, and organization of Native American financial institutions;

(2) develop and provide financial expertise and technical assistance to Native American financial institutions, including methods of underwriting, securing, servicing, packaging, and selling mortgage and small commercial and consumer loans;

(3) develop and provide specialized technical assistance on overcoming barriers to primary mortgage lending on Native American land, including issues relating to—

(A) trust land;

(B) discrimination;

(C) high operating costs; and

(D) inapplicability of standard underwriting criteria;

(4) provide mortgage underwriting assistance (but not in originating loans) under contract to Native American financial institutions;

(5) work with the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, and other participants in the secondary market for home mortgage instruments in identifying and eliminating barriers to the purchase of Native American mortgage loans originated by Native American financial institutions and other lenders in Native American communities;

(6) obtain capital investments in the Corporation from Indian tribes, Native American organizations, and other entities;

(7) act as an information clearinghouse by providing information on financial practices to Native American financial institutions;

(8) monitor and report to Congress on the performance of Native American financial institutions in meeting the economic development and housing credit needs of Native Americans; and

(9) provide any of the services described in this section—

(A) directly; or

(B) under a contract authorizing another national or regional Native American financial services provider to assist the Corporation in carrying out the purposes of this Act.

SEC. 103. NATIVE AMERICAN LENDING SERVICES GRANT.

(a) INITIAL GRANT PAYMENT.—If the Secretary and the Corporation enter into a cooperative agreement for the Corporation to provide technical assistance and other services to Native American financial institutions, the agreement shall, to the extent that funds are available as provided in this Act, provide that the initial grant payment, anticipated to be $5,000,000, shall be made at the time at which all members of the initial Board have been appointed under this Act.

(b) PAYMENT OF GRANT BALANCE.—The payment of the remainder of the grant shall be made to the Corporation not later than 1 year after the date on which the initial grant payment is made under subsection (a).

SEC. 104. AUDITS.

(a) INDEPENDENT AUDITS.—

(1) IN GENERAL.—The Corporation shall have an annual independent audit made of the financial statements of the Corporation by an independent

public accountant in accordance with generally accepted auditing standards.

(2) DETERMINATIONS.—In conducting an audit under this subsection, the independent public accountant shall determine and submit to the Secretary a report on whether the financial statements of the Corporation—

(A) are presented fairly in accordance with generally accepted accounting principles; and

(B) to the extent determined necessary by the Secretary, comply with any disclosure requirements imposed under section 301.

(b) GAO AUDITS.—

(1) IN GENERAL.—Beginning on the date that is 2 years after the date of commencement of operation of the Corporation, unless an earlier date is required by any other law, grant, or agreement, the programs, activities, receipts, expenditures, and financial transactions of the Corporation shall be subject to audit by the Comptroller General of the United States under such rules and regulations as may be prescribed by the Comptroller General.

(2) ACCESS.—To carry out this subsection, the representatives of the General Accounting Office shall—

(A) have access to all books, accounts, financial records, reports, files, and all other papers, things, or property belonging to or in use by the Corporation that are necessary to facilitate the audit;

(B) be afforded full facilities for verifying transactions with the balances or securities held by depositaries, fiscal agents, and custodians; and

(C) have access, on request to the Corporation or any auditor for an audit of the Corporation under subsection (a), to any books, accounts, financial records, reports, files, or other papers, or property belonging to or in use by the Corporation and used in any such audit and to any papers, records, files, and reports of the auditor used in such an audit.

(3) REPORTS.—The Comptroller General of the United States shall submit to Congress a report on each audit conducted under this subsection.

(4) REIMBURSEMENT.—The Corporation shall reimburse the General Accounting Office for the full cost of any audit conducted under this subsection.

SEC. 105. ANNUAL HOUSING AND ECONOMIC DEVELOPMENT REPORTS.

Not later than 1 year after the date of enactment of this Act, and annually thereafter, the Corporation shall collect, maintain, and provide to the Secretary, in a form determined by the Secretary, such data as the Secretary determines to be appropriate with respect to the activities of the Corporation relating to economic development.

SEC. 106. ADVISORY COUNCIL.

(a) ESTABLISHMENT.—The Board shall establish an Advisory Council in accordance with this section.

(b) MEMBERSHIP.—

(1) IN GENERAL.—The Council shall consist of 13 members, who shall be appointed by the Board, including—

(A) 1 representative from each of the 12 districts established by the Bureau of Indian Affairs; and

(B) 1 representative from the State of Hawaii.

(2) QUALIFICATIONS.—Of the members of the Council—

(A) not less than 6 members shall have expertise in financial matters; and

(B) not less than 9 members shall be Native Americans.

(3) TERMS.—Each member of the Council shall be appointed for a 4-year term, except that the initial Council shall be appointed, as designated by the Board at the time of appointment, as follows:

(A) Each of 4 members shall be appointed for a 2-year term.

(B) Each of 4 members shall be appointed for a 3-year term.

(C) Each of 5 members shall be appointed for a 4-year term.

(c) DUTIES.—The Council shall—

(1) advise the Board on all policy matters of the Corporation; and

(2) through the regional representation of members of the Council, provide information to the Board from all sectors of the Native American community.

TITLE II—CAPITALIZATION OF CORPORATION

SEC. 201. CAPITALIZATION OF THE CORPORATION.

(a) CLASS A STOCK.—The class A stock of the Corporation shall—

(1) be issued only to Indian tribes and the Department of Hawaiian Home Lands;

(2) be allocated—

(A) with respect to Indian tribes, on the basis of Indian tribe population, as determined by the Secretary in consultation with the Secretary of the Interior, in such manner as to issue 1 share for each member of an Indian tribe; and

(B) with respect to the Department of Hawaiian Home Lands, on the basis of the number of current leases at the time of allocation;

(3) have such par value and other characteristics as the Corporation shall provide;

(4) be issued in such a manner as to ensure that voting rights may be vested only on purchase of those rights from the Corporation by an Indian tribe or the Department of Hawaiian Home Lands, with each share being entitled to 1 vote; and

(5) be nontransferable.

(b) CLASS B STOCK.—

(1) IN GENERAL.—The Corporation may issue class B stock evidencing capital contributions in the manner and amount, and subject to any limitations on concentration of ownership, as may be established by the Corporation.

(2) CHARACTERISTICS.—Any class B stock issued under paragraph (1) shall—

(A) be available for purchase by investors;

(B) be entitled to such dividends as may be declared by the Board in accordance with subsection (c);

(C) have such par value and other characteristics as the Corporation shall provide;

(D) be vested with voting rights, with each share being entitled to 1 vote; and

(E) be transferable only on the books of the Corporation.

(c) CHARGES AND FEES; EARNINGS.—

(1) CHARGES AND FEES.—The Corporation may impose charges or fees, which may be regarded as elements of pricing, with the objectives that—

(A) all costs and expenses of the operations of the Corporation should be within the income of the Corporation derived from such operations; and

(B) those operations would be fully self-supporting.

(2) EARNINGS.—

(A) IN GENERAL.—All earnings from the operations of the Corporation shall be annually transferred to the general surplus account of the Corporation.

(B) TRANSFER OF GENERAL SURPLUS FUNDS.—At any time, funds in the general surplus account may, in the discretion of the Board, be transferred to the reserves of the Corporation.

(d) CAPITAL DISTRIBUTIONS.—

(1) DISTRIBUTIONS.—

(A) IN GENERAL.—Except as provided in paragraph (2), the Corporation may make such capital distributions as may be declared by the Board.

(B) CHARGING OF DISTRIBUTIONS.—All capital distributions under subparagraph (A) shall be charged against the general surplus account of the Corporation.

(2) RESTRICTION.—The Corporation may not make any capital distribution that would decrease the total capital of the Corporation to an amount less than the capital level for the Corporation established under section 301, without prior written approval of the distribution by the Secretary.

TITLE III—REGULATION, EXAMINATION, AND REPORTS

SEC. 301. REGULATION, EXAMINATION, AND REPORTS.

(a) IN GENERAL.—The Corporation shall be subject to the regulatory authority of the Department of Housing and Urban Development with respect to all matters relating to the financial safety and soundness of the Corporation.

(b) DUTY OF SECRETARY.—The Secretary shall ensure that the Corporation is adequately capitalized and operating safely as a congressionally chartered body corporate.

(c) REPORTS TO SECRETARY.—

(1) ANNUAL REPORTS.—On such date as the Secretary shall require, but not later than 1 year after the date of enactment of this Act, and annually thereafter, the Corporation shall submit to the Secretary a report in such form and containing such information with respect to the financial condition and operations of the Corporation as the Secretary shall require.

(2) CONTENTS OF REPORTS.—Each report submitted under this subsection shall contain a declaration by the president, vice president, treasurer, or any other officer of the Corporation designated by

the Board to make the declaration, that the report is true and correct to the best of the knowledge and belief of that officer.

SEC. 302. AUTHORITY OF THE SECRETARY OF HOUSING AND URBAN DEVELOPMENT.

The Secretary shall—

(1) have general regulatory power over the Corporation; and

(2) promulgate such rules and regulations applicable to the Corporation as the Secretary determines to be appropriate to ensure that the purposes specified in section 3 are accomplished.

TITLE IV—FORMATION OF NEW CORPORATION

SEC. 401. FORMATION OF NEW CORPORATION.

(a) IN GENERAL.—In order to continue the accomplishment of the purposes specified in section 3 beyond the terms of the charter of the Corporation, the Board shall, not later than 10 years after the date of enactment of this Act, cause the formation of a new corporation under the laws of any tribe, any State, or the District of Columbia.

(b) POWERS OF NEW CORPORATION NOT PRESCRIBED.—Except as provided in this section, the new corporation may have such corporate powers and at-

tributes permitted under the laws of the jurisdiction of in which the new corporation is incorporated as the Board determines to be appropriate.

(c) USE OF NAME PROHIBITED.—The new corporation may not use in any manner the names ''Native American Capital Development Corporation'' or ''NACDCO'', or any variation of those names.

SEC. 402. ADOPTION AND APPROVAL OF MERGER PLAN.

(a) IN GENERAL.—Not later than 10 years after the date of enactment of this Act, after consultation with the Indian tribes that are stockholders of class A stock referred to in section 201(a), the Board shall prepare, adopt, and submit to the Secretary for approval, a plan for merging the Corporation into the new corporation.

(b) DESIGNATED MERGER DATE.—

(1) IN GENERAL.—The Board shall establish the designated merger date in the merger plan as a specific calendar date on which, and time of day at which, the merger of the Corporation into the new corporation shall take effect.

(2) CHANGES.—The Board may change the designated merger date in the merger plan by adopting an amended plan of merger.

(3) RESTRICTION.—Except as provided in paragraph (4), the designated merger date in the merger

plan or any amended merger plan shall not be later than 11 years after the date of enactment of this Act.

(4) EXCEPTION.—Subject to the restriction contained in paragraph (5), the Board may adopt an amended plan of merger that designates a date under paragraph (3) that is later than 11 years after the date of enactment of this Act if the Board submits to the Secretary a report—

(A) stating that an orderly merger of the Corporation into the new corporation is not feasible before the latest date designated by the Board;

(B) explaining why an orderly merger of the Corporation into the new corporation is not feasible before the latest date designated by the Board;

(C) describing the steps that have been taken to consummate an orderly merger of the Corporation into the new corporation not later than 11 years after the date of enactment of this Act; and

(D) describing the steps that will be taken to consummate an orderly and timely merger of the Corporation into the new corporation.

(5) LIMITATION.—The date designated by the Board in an amended merger plan shall not be later than 12 years after the date of enactment of this Act.

(6) CONSUMMATION OF MERGER.—The consummation of an orderly and timely merger of the Corporation into the new corporation shall not occur later than 13 years after the date of enactment of this Act.

(c) GOVERNMENTAL APPROVALS OF MERGER PLAN REQUIRED.—The merger plan or any amended merger plan shall take effect on the date on which the plan is approved by the Secretary.

(d) REVISION OF DISAPPROVED MERGER PLAN REQUIRED.—If the Secretary disapproves the merger plan or any amended merger plan—

(1) the Secretary shall—

(A) notify the Corporation of the disapproval; and

(B) indicate the reasons for the disapproval; and

(2) not later than 30 days after the date of notification of disapproval under paragraph (1), the Corporation shall submit to the Secretary for approval, an amended merger plan that responds to

the reasons for the disapproval indicated in that notification.

(e) NO STOCKHOLDER APPROVAL OF MERGER PLAN REQUIRED.—The approval or consent of the stockholders of the Corporation shall not be required to accomplish the merger of the Corporation into the new corporation.

SEC. 403. CONSUMMATION OF MERGER.

The Board shall ensure that the merger of the Corporation into the new corporation is accomplished in accordance with—

(1) a merger plan approved by the Secretary under section 402; and

(2) all applicable laws of the jurisdiction in which the new corporation is incorporated.

SEC. 404. TRANSITION.

Except as provided in this section, the Corporation shall, during the transition period, continue to have all of the rights, privileges, duties, and obligations, and shall be subject to all of the limitations and restrictions, set forth in this Act.

SEC. 405. EFFECT OF MERGER.

(a) TRANSFER OF ASSETS AND LIABILITIES.—On the designated merger date—

(1) all real, personal, and mixed property, all debts due on any account, and any other interest, of

or belonging to or due to the Corporation, shall be transferred to and vested in the new corporation without further act or deed; and

(2) no title to any real, personal, or mixed property shall be impaired in any way by reason of the merger.

(b) TERMINATION OF THE CORPORATION AND FEDERAL CHARTER.—On the designated merger date—

(1) the surviving corporation of the merger shall be the new corporation;

(2) the Federal charter of the Corporation shall terminate; and

(3) the separate existence of the Corporation shall terminate.

(c) REFERENCES TO THE CORPORATION IN LAW.—After the designated merger date, any reference to the Corporation in any law or regulation shall be deemed to refer to the new corporation.

(d) SAVINGS CLAUSE.—

(1) PROCEEDINGS.—The merger of the Corporation into the new corporation shall not abate any proceeding commenced by or against the Corporation before the designated merger date, except that the new corporation shall be substituted for the

Corporation as a party to any such proceeding as of the designated merger date.

(2) CONTRACTS AND AGREEMENTS.—All contracts and agreements to which the Corporation is a party and which are in effect on the day before the designated merger date shall continue in effect according to their terms, except that the new corporation shall be substituted for the Corporation as a party to those contracts and agreements as of the designated merger date.

TITLE V—OTHER NATIVE AMERICAN FUNDS

SEC. 501. NATIVE AMERICAN ECONOMIES DIAGNOSTIC STUDIES FUND.

(a) ESTABLISHMENT.—There is established within the Corporation a fund to be known as the ''Native American Economies Diagnostic Studies Fund'' (referred to in this section as the ''Diagnostic Fund''), to be used to strengthen Indian tribal economies by supporting investment policy reforms and technical assistance to eligible Indian tribes, consisting of—

(1) any interest earned on investment of amounts in the Fund under subsection (d); and

(2) such amounts as are appropriated to the Diagnostic Fund under subsection (f).

(b) USE OF AMOUNTS FROM DIAGNOSTIC FUND.—

(1) IN GENERAL.—The Corporation shall use amounts in the Diagnostic Fund to establish an interdisciplinary mechanism by which the Corporation and interested Indian tribes may jointly—

(A) conduct diagnostic studies of Native economic conditions; and

(B) provide recommendations for reforms in the policy, legal, regulatory, and investment areas and general economic environment of the interested Indian tribes.

(2) CONDITIONS FOR STUDIES.—A diagnostic study conducted jointly by the Corporation and an Indian tribe under paragraph (1)—

(A) shall be conducted in accordance with an agreement between the Corporation and the Indian tribe; and

(B) at a minimum, shall identify inhibitors to greater levels of private sector investment and job creation with respect to the Indian tribe.

(c) EXPENDITURES FROM DIAGNOSTIC FUND.—

(1) IN GENERAL.—Subject to paragraph (2), on request by the Corporation, the Secretary of the Treasury shall transfer from the Diagnostic Fund to

the Corporation such amounts as the Corporation determines are necessary to carry out this section.

(2) ADMINISTRATIVE EXPENSES.—An amount not exceeding 12 percent of the amounts in the Diagnostic Fund shall be available in each fiscal year to pay the administrative expenses necessary to carry out this section.

(d) INVESTMENT OF AMOUNTS.—

(1) IN GENERAL.—The Secretary of the Treasury shall invest such portion of the Diagnostic Fund as is not, in the judgment of the Secretary of the Treasury, required to meet current withdrawals. Investments may be made only in interest-bearing obligations of the United States.

(2) ACQUISITION OF OBLIGATIONS.—For the purpose of investments under paragraph (1), obligations may be acquired—

(A) on original issue at the issue price; or

(B) by purchase of outstanding obligations at the market price.

(3) SALE OF OBLIGATIONS.—Any obligation acquired by the Diagnostic Fund may be sold by the Secretary of the Treasury at the market price.

(4) CREDITS TO FUND.—The interest on, and the proceeds from the sale or redemption of, any ob-

ligations held in the Diagnostic Fund shall be credited to and form a part of the Diagnostic Fund.

(e) TRANSFERS OF AMOUNTS.—

(1) IN GENERAL.—The amounts required to be transferred to the Diagnostic Fund under this section shall be transferred at least monthly from the general fund of the Treasury to the Diagnostic Fund on the basis of estimates made by the Secretary of the Treasury.

(2) ADJUSTMENTS.—Proper adjustment shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

(f) TRANSFERS TO DIAGNOSTIC FUND.—There are appropriated to the Diagnostic Fund, out of funds made available under section 603, such sums as are necessary to carry out this section.

SEC. 502. NATIVE AMERICAN ECONOMIC INCUBATION CENTER FUND.

(a) ESTABLISHMENT.—There is established within the Corporation a fund to be known as the ''Native American Economic Incubation Center Fund'' (referred to in this section as the ''Economic Fund''), consisting of—

(1) any interest earned on investment of amounts in the Economic Fund under subsection (d); and

(2) such amounts as are appropriated to the Economic Fund under subsection (f).

(b) USE OF AMOUNTS FROM ECONOMIC FUND.—

(1) IN GENERAL.—The Corporation shall use amounts in the Economic Fund to ensure that Federal development assistance and other resources dedicated to Native American economic development are provided only to Native American communities with demonstrated commitments to—

(A) sound economic and political policies;

(B) good governance; and

(C) practices that promote increased levels of economic growth and job creation.

(c) EXPENDITURES FROM ECONOMIC FUND.—

(1) IN GENERAL.—Subject to paragraph (2), on request by the Corporation, the Secretary of the Treasury shall transfer from the Economic Fund to the Corporation such amounts as the Corporation determines are necessary to carry out this section.

(2) ADMINISTRATIVE EXPENSES.—An amount not exceeding 12 percent of the amounts in the Economic Fund shall be available in each fiscal year to

pay the administrative expenses necessary to carry out this section.

(d) INVESTMENT OF AMOUNTS.—

(1) IN GENERAL.—The Secretary of the Treasury shall invest such portion of the Economic Fund as is not, in the judgment of the Secretary of the Treasury, required to meet current withdrawals. Investments may be made only in interest-bearing obligations of the United States.

(2) ACQUISITION OF OBLIGATIONS.—For the purpose of investments under paragraph (1), obligations may be acquired—

(A) on original issue at the issue price; or

(B) by purchase of outstanding obligations at the market price.

(3) SALE OF OBLIGATIONS.—Any obligation acquired by the Economic Fund may be sold by the Secretary of the Treasury at the market price.

(4) CREDITS TO FUND.—The interest on, and the proceeds from the sale or redemption of, any obligations held in the Economic Fund shall be credited to and form a part of the Economic Fund.

(e) TRANSFERS OF AMOUNTS.—

(1) IN GENERAL.—The amounts required to be transferred to the Economic Fund under this section

shall be transferred at least monthly from the general fund of the Treasury to the Economic Fund on the basis of estimates made by the Secretary of the Treasury.

(2) ADJUSTMENTS.—Proper adjustment shall be made in amounts subsequently transferred to the extent prior estimates were in excess of or less than the amounts required to be transferred.

(f) TRANSFERS TO ECONOMIC FUND.—There are appropriated to the Economic Fund, out of funds made available under section 603, such sums as are necessary to carry out this section.

TITLE VI—AUTHORIZATIONS OF APPROPRIATIONS

SEC. 601. NATIVE AMERICAN FINANCIAL INSTITUTIONS.

(a) IN GENERAL.—There are authorized to be appropriated to the Fund, without fiscal year limitation, such sums as are necessary to provide financial assistance to Native American financial institutions.

(b) NO CONSIDERATION AS MATCHING FUNDS.—To the extent that a Native American financial institution receives funds under subsection (a), the funds shall not be considered to be matching funds required under section 108(e) of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4707(e)).

SEC. 602. CORPORATION.

There are authorized to be appropriated to the Secretary, for transfer to the Corporation, such sums as are necessary to carry out activities of the Corporation.

SEC. 603. OTHER NATIVE AMERICAN FUNDS.

There are authorized to be appropriated such sums as are necessary to carry out sections 501 and 502.

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The CHAIRMAN. Senator, did you have an opening statement for this?

Senator DOMENICI. Mr. Chairman, I was going to ask, is the Secretary coming to the meeting this afternoon?

The CHAIRMAN. Yes; apparently he is.

Senator DOMENICI. Thank you.

The CHAIRMAN. You bet.

Senator Murkowski, did you have an opening statement?

Senator MURKOWSKI. Yes, Mr. Chairman.

STATEMENT OF HON. LISA MURKOWSKI, U.S. SENATOR FROM ALASKA

Senator MURKOWSKI. I do want to just make a few brief comments. I appreciate the hearing this morning, as well as the forum yesterday afternoon on the problem of economic development in our Indian communities.

It was several months ago, actually it was more than that, but Julie Kitka who is the president of the Alaska Federation of Natives, approached me about bringing the World Bank and the International Development Banks to Alaska to see what our Alaska Native community can learn from them about how to bring the good jobs to remote places.

I have to tell you that there were a lot of skeptics, a lot of people questioned what we could actually get from this. Julie is going to be here this morning to tell us about what happened at that conference, but I have to tell you it was a standing room only crowd in one of Anchorage's largest facilities. I do not want to steal her thunder, but I will tell you that the skeptics were silenced. The conference was the right thing to do at the right time.

Mr. Chairman, I think we know all too well that when we lack economic opportunities in our villages, what we see is despair, is lack of hope. It fuels self-destructive behaviors such as alcohol, drug abuse, domestic violence, suicide. It truly puts our Native people in peril. It is through economic opportunities that we can break this cycle.

So I am pleased that we will be able to hear this morning some of the outcome of that conference.

I do understand, Mr. Chairman, there is probably still a fair amount of work to be done on S. 519 before it is ready for consideration by the full committee, but I appreciate your efforts, as I am sure do all of the people of our Native communities throughout the country.

The CHAIRMAN. Thank you. We will now take the first panel of one. That will be Dave Anderson, assistant secretary, Indian Affairs, Department of the Interior. Thanks for appearing, Dave, and thanks for also going to Montana and meeting with the Montana-Wyoming tribal leaders and giving a terrific speech to the young graduates of our Indian school in Lame Deer, MT.

STATEMENT OF DAVID W. ANDERSON, ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Mr. ANDERSON. Thank you. I enjoyed being there.

Good morning, Mr. Chairman, Mr. Vice Chairman, and members of the committee. I am David Anderson, assistant secretary for Indian Affairs.

I want to thank you for the opportunity to present the views of the Department of the Interior on S. 519, the Native American Capital Formation and Economic Development Act of 2003. We understand that the committee will be significantly amending S. 519. Therefore, our comments do not specifically speak to the provisions, but rather address the concepts of the bill.

The Department supports exploring creative approaches to economic development in Indian country, and, specifically, we are encouraged that this bill is being put together. I think all of us understand that economic development on tribal reservations poses many challenges. When I first came to the Department, I think most of my meetings, initially, were just day after day, many different tribes coming to my office. Every one of them had just a slew of unmet needs or needs that they were facing within Indian Country. One of the things that really stuck out very clearly to me was the need for significant economic development. I really believe that this bill addresses this need, so I am very encouraged by it.

Because the access to capital in Indian country is extremely limited. This shortage of capital represents one of the primary barriers to comprehensive and lasting economic development. In addition, there are few opportunities to generate capital on Indian reservations. Studies show that unemployment on or near Indian reservations commonly exceeds 50 percent and, in some areas, that figure jumps to over 90 percent. Unemployment in Indian country has placed more than 500,000 people who live on or near Indian reservations at or below the poverty level.

These obstacles are further compounded by the rural location of most Indian reservations. As a result of these factors, Indian country accounts for many of the poorest areas in the United States. I find that objectionable, that America's first people would be on the bottom rung of all social and economic problems that we face throughout Indian country.

Although poverty and joblessness pose great obstacles to economic development and remote reservation settings, economic development is not impossible. Increasingly, tribes continue to overcome these obstacles and create growth in reservation economies. Over the last few months, I have had an opportunity to be able to travel throughout the United States and to visit some of these tribes. We do have shining examples of tribes that have succeeded in rural locations. Yesterday, I attended the forum that you sponsored. I was very encouraged to be in the midst of some tribal leaders, Philip Martin, the Oneidas, and the Chickasaws, that have really succeeded economically.

It proves, and I really believe, that as Indian people that we can stand up and we can be counted in the ranks of people who succeed in economic development ventures.

Within the Bureau of Indian Affairs [BIA], we are working with tribes to continue to discover creative and long-term solutions to building sustainable tribal economies. Through the recent reorganization of the BIA, the offices of Indian gaming management, self-governance and self-determination were elevated to the assistant

secretary's office under the newly created deputy assistant secretary for Policy and Economic Development. By elevating these and other economic development programs, the BIA will emphasize expanding reservation and tribal community business opportunities and Indian employment. With the creation of the new deputy assistant secretary, the BIA hopes to maximize efficiency in assisting tribal economic development.

One of my goals is something that I see that was severely missing within the Department. As I said when I first came on board, we had an Office of Indian Education. We have a law enforcement department. We work with the trees and the fish. But one of the things that we have been missing is really a credible program that helps develop the economic development policies, and helps coordinate other economic development opportunities with other departments within the BIA. That is an initiative I am making a priority within the BIA.

Another challenge the BIA is working to address is the issue raised by many investors and private lenders regarding the tribal legal infrastructure, and inadequate or nonexistent legal and business codes. To address this issue, the BIA included in its fiscal year 2005 budget request for $1 million to help tribes develop tribal ordinances and commercial business codes. We view this as a positive first step to help encourage more capital investment on tribal lands.

The Department also encourages the use of self-governance programs as a method of encouraging tribal economic development. Through self-governance programs, the tribes control administration of Federal programs to ensure the programs meet the needs of individual tribes. For the tribes that choose to engage in self-governance or self-determination compacts and contracts, this direct control creates tailor-made programs that lead to the creation of viable and stable economies and tribal self-sufficiency. We will work to continue with tribes to expand self-governance and self-determination as a way to find creative solutions to economic development.

Currently, the BIA independently administers a program that is addressing some of the financing needs in Indian country. Since 1974, the BIA has successfully administered an Indian Guaranty, Insured and Interest Subsidy Program. The mission of this program is to stimulate an increase in Indian entrepreneurship and employment through the establishment, acquisition or expansion of Indian-owned economic enterprises. The program guarantees loans up to $20 million from the private sector to promote economic development of tribes, individual Indians and Alaska Natives. The guaranteed and insured loan portfolio currently totals $271 million.

With the enactment of the fiscal year 2005 budget request, the program expects to leverage private sector financing of 65 new businesses and create 1,300 jobs on or near Indian reservations. The guaranteed and insured loan program has achieved a success rate of 93 percent in the number of businesses, without default for all loans funded since fiscal year 1992. From 1992 to the present, 719 loans have been guaranteed and a total of only 51 loans have defaulted.

While the BIA loan program is successful and takes steps toward addressing the needs in Indian country, it does not fulfill every financing need. There is a gap between the small-scale financing that the BIA can provide and funding required for economic development projects. This is where I believe this financing package we are looking at is really needed. Because I really believe that as Indian people, we need to start thinking bigger. We need to be dreaming bigger dreams for economic development. I find it frustrating sometimes when I am in budget meetings and here we are with the brain trust of Indian country and we are arguing over millions of dollars, when we should be discussing billions.

I believe that within the black community that they have a goal of getting knowledgeable and qualified black people on the boards of directors of major corporations throughout America. As Indian people, we have yet to reach that level. This is why this bill is so important because we need to be able to access larger amounts of money. We need to be able to access capital markets. I believe this is a very important step toward that.

I just wanted to quickly comment, I keep pushing this idea out there that I believe, as Indian people, if we are going to be economically self-sufficient, that we also become a nation of homeowners. I think being able to access Indian people's financing through home ownership helps build strong communities, and we start learning the basic fundamentals of investing. One of the things that I am working on is developing leadership academies within the BIA, turning BIA schools into leadership academies. As part of that concept, I want to start teaching our students investing 101, how to save and invest money.

When we start discussing concepts like the creation of capital markets or being able to access capital markets through the investment community, that we are going to be knowledgeable in order to do that. So that the investing community, the raising of investments for creating entrepreneurial economies, that it will not be a foreign concept. Maybe we will not see the fruits of this within this generation, but we are starting to address it, thinking long term. Hopefully, my ideas with leadership academies and creating investing 101 courses within our school system will help begin to address a larger need that we have throughout Indian country.

We welcome the opportunity to further work with this committee regarding this bill. We are also willing to participate in further discussions regarding other innovative approaches to enhance economic development in Indian country. I feel that some of my background in economic development would be very well suited for this.

So I look forward to this bill and I look forward to working with this committee.

Thank you.

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

The CHAIRMAN. Thank you. I appreciate that.

You mentioned you have traveled extensively through Indian country since your appointment, so I know you have probably seen some really successful models and some common hurdles that Indian country faces in its quest for economic development. Could you mention a couple of hurdles you have come across?

Mr. ANDERSON. I think one of the hurdles that I personally experienced is that while it is great to be able to create a program of this nature, I think as Indian people, though, we need to start stepping up. For example, we have never taught success 101 in our schools. When I was chief executive officer for my tribe, the Lac Courte Oreilles, we had a number of businesses. We had a forest products company. We had a grocery store. We had an auto center. We had a print shop. We had WOJB–FM radio station.

For the most part, we were bleeding money like water going through a sieve. Part of the problem that I recognized was if we are going to be successful in business, we have to have, as part of our mental framework, the understanding of success, achievement and accomplishment. Because when you are faced with communities, as I have mentioned earlier, where we have high unemployment or high suicide rates, high dropout rates, high substance abuse, the basic fundamental thinking of being successful, is almost a foreign concept.

I think nationwide, throughout Indian country, we need to start cultivating the mental health of our Indian people in the areas of being successful in business.

We need Indian people that get up in the morning at 5 a.m. that are cheerful and enthusiastic and passionate about being successful. Sometimes when I am addressing these issues, it is not just building another building, filling it full of inventory, and hanging your sign out. We need to start cultivating Indian people that think successfully, that are out there being solution-conscious, not problem-conscious. When we start doing that, I believe that a lot of our economic development problems will be solved.

Again, I have seen tribes that have cultivated that mentality and they are flourishing. We have successes as well as areas that need improvement.

The CHAIRMAN. We have successes in my view, but they have been uphill battles a lot of times because when you talk about initiating the attitude of success, we are dealing with a people who have been told for 100 years they cannot be successful. You just cannot turn that around overnight. I think many Indian tribes are recognizing that and working very hard to promote that among their youngsters.

You probably have also seen some models that have been successful. Would you like to mention if you see any common thing in there that other tribes can use? I recognize there are some in rural areas that do not have access to markets, for instance, or others who do not have the same educational background in their framework. But there must be something that is emerging that could be used as a model for other tribes.

Mr. ANDERSON. I believe that what you are suggesting is something that we are working on. We want to create a blue ribbon panel, and I would be happy to work with this committee in the formation of that, working with tribes like the Oneidas, who have turned back BIA moneys and are now economically self-sufficient. Philip Martin with the Mississippi Choctaws has done an incredible job with their economic development and their business ventures. I think in every case that you see is that they have been able

to successfully separate the business engine of the tribe from the political arena of the tribe. I think that is important.

I also believe that the tribes that are flourishing are the ones that have been able to stabilize their tribal governments and create a sense of security where if you sign a contract with the tribe that an outside investing group or an outside business knows that they will be able to succeed without some sense of insecurity because a particular political group is in power. I think being able to create a foundation for security through knowing that if you do business with an Indian tribe, that you are not going to be affected by the political changing structure of the tribe.

The CHAIRMAN. You are perfectly right. Anybody that has visited the old carpet factory at Crow or the electronics factory of the Navajos recognizes why some investors are reluctant to work with tribes when they know that there is an unstable government.

I have some further questions I would like to put in writing to you, but I think we will probably move along and ask Senator Inouye if he has questions.

Senator INOUYE. I am always encouraged to listen to the testimony of Secretary Anderson. But Mr. Secretary, I would have to be leaving because we just received a conference report from the House on the defense appropriations, and we will try to finish that up tomorrow. So I have been called to sign a few papers and make decisions. So if you will excuse me, I would like to submit questions in writing to you, sir.

And to all the other witnesses, Mr. Chairman, may I have permission to submit my questions?

The CHAIRMAN. Yes; the other committee members may also do the same.

Senator INOUYE. I am especially saddened that I will not be here to personally listen to the testimony of Haunani Apoliona, the president and CEO of the Office of Hawaiian Affairs. I will read your testimony.

The CHAIRMAN. She has probably talked to you on a good number of times, face-to-face, I would imagine, Senator. You know part of her testimony already by heart, I would guess.

Senator Murkowski, did you have questions of Secretary Anderson?

Senator MURKOWSKI. Just one very quick question. I appreciate your focus on the culture of success and how we build that. I also appreciate the chairman's concern that it is difficult to do that in the short term. It is something that has to be built. And of course, it needs to be built from our young people on up. It needs to be part of their makeup. Have you given any thought to how we can instill that culture of success within our schools for our young native people? How do we urge them to set high expectations for themselves and others?

Mr. ANDERSON. I am glad you brought that up. By the way, I am planning on being in Alaska the second or third week in August to fulfill my promise to you of getting up there and visiting Alaska.

Senator MURKOWSKI. We look forward to having you.

Mr. ANDERSON. I am glad you brought that up because I really believe that if we are going to be successful in economic develop-

ment as Indian people, it has to start with our young people. We need to start cultivating the attitude of success.

One of my initiatives are these leadership academies. Because Bureau schools have always been almost secondary schools of choice. One of the things that we are working on, in fact this week we are convening a group of principals from the BIA schools and we are starting the process of looking at identifying key schools that we can use as prototypes to turn into leadership academies.

What we are looking at doing is challenging the human mind, the human body and the human spirit. I really believe that people who say that we need to dummy-down the standards of our children, that they cannot compete like other students, are performing a disservice. I believe that is very bad thinking.

One of the things that I saw on CNN just a short while ago was a feature that they did on an Asian school in Chinatown in New York. If you were any well-to-do black person, you tried to get your student in that school. If you were any well-to-do Jewish person, you tried to get your student in that school. The reason is they had the highest math scores, the highest economic scores and the highest science scores.

Now, I am a believer that Indian children are not born into this world with any less brain cells than these Asian students. So what is the difference? It is parent expectations and teacher expectations. One of my goals is to start, within our school system, the framework for creating a success mentality, that, as Indian people, we can achieve. It does not matter where you have been. It does not matter what you have been through. In this great country that we live in, if you have dreams and if you are a young person, and you never, ever give up and you are willing to work hard, that you can achieve your dreams.

In our leadership academies, we want parents to be able to sign contracts with the teachers and the students that they will support those students getting homework. We want our teachers to start carrying cell phones, that if these students have any questions, that they can ask a teacher or a tutor. We want to go so far that the only way you can graduate is if you are accepted into college or a vo-tech school.

We look at creating a mentoring opportunity with local businesses. We look at challenging the students with the ropes challenge courses, with rock climbing, winter camping, but not just sports. We look at including a health and nutrition aspect as part of the school. Just 2 weeks ago, I addressed 1,500 students at the United National Indian Tribal Youth Organization. One of the fortunate things was a lot of the students were like this. I want to encourage throughout this whole discussion that this is something that we start addressing.

It is the success philosophy of what it takes. Because I think throughout all of this, I have always heard that we have to create the infrastructure. We have to create access to capital formation. But fundamental before any of that, we need to have the success and the willingness and the thinking to want to achieve.

This is something that I have made a priority. Understanding that, you know, I never realized this, but being head of all our school system, we have the ability to create a whole different model

for our school systems. I want to see success philosophies in every one of our schools, in our cafeterias, in our gymnasiums.

These are just some of the ideas that I have had for revamping what people consider the Bureau schools and to turning them into leadership academies that are graduating young people who will want to be successful in the arenas of business.

Senator MURKOWSKI. I like your ideas. We do not have the Bureau schools in Alaska. Our native students are educated in the public school system there. So I would encourage you to work with us to bring this idea of the leadership academies to Alaska to see how we might be able to partner with you or benefit from the ideas that you are implementing in the lower–48.

Mr. ANDERSON. Thank you.

Senator MURKOWSKI. Thank you.

The CHAIRMAN. Thank you, Mr. Anderson. Some other committee members will probably submit some of the questions in writing. Thank you for your appearance.

Mr. ANDERSON. Thank you.

The CHAIRMAN. Our next panel will be Mark Brown, chairman of the Mohegan Indian Tribe; Julie Kitka, president of the Alaska Federation of Natives in Anchorage; Chester Carl, chairman of the National American Indian Housing Council; Haunani Apoliona, chair of the Board of Trustees of the Office of Hawaiian Affairs; and Kate Spilde from Rancho Mirage, CA.

If you folks would take your seats at the table there. Squeeze in and move the microphone around if we have not quite enough microphones.

We will proceed in the order that I mentioned your names. So Mark, nice to see you again. Why don't you go ahead and proceed.

STATEMENT OF MARK F. BROWN, CHAIRMAN, MOHEGAN INDIAN TRIBE

Mr. BROWN. Thank you, Chairman Campbell.

Chairman Campbell, members of the committee, I am Mark F. Brown, chairman of the Mohegan Tribe. I am here to speak about the importance of self-determination and self-reliance.

In Mohegan, we learn first-hand about true self-determination and how very closely bound it is to tribal economic development, economic development that would benefit greatly by the concepts introduced in this bill. The two concepts, first, removing legal and practical obstacles to public and private investments in Indian country; and second, identifying investment opportunities and matching available capital resources with need.

Far too many times, the U.S. Government in trying to draft something for Indian country drafts something that is all-inclusive. But we are all sovereign nations. We have different ways we approach things, and this is not a one-fits-all type of situation.

Clearly, true self-determination comes from the inside out, and the concepts within this bill will take care of that.

The Mohegan experience is a good example of a tribe who could have benefitted from easy access to early capital. A little more than a decade ago, the U.S. Government finally told us what we knew our whole life, that we truly were a tribe. From that point, we have moved forward. We found a business partner with a proven record

of destination resort success and we entered the field of gaming. Many capital institutions were not too comfortable dealing with a Native American tribe, so we had to educate our prospective lenders on reliable, predictable tribal laws and tribal government. We had to prove we were about serious regulation. We hired a former head of the DEA, assistant to the FBI, and then myself as a former police officer. I am very critical about how we are about integrity.

With all these things in place, in 1995 the tribe went out for financing to do a $300-million facility. We were the first tribe to go to Wall Street. When we went there, we were able to secure the financing we needed at an effective rate of 18 percent. It is not cheap money, but at that point in time it was the only way we could get to the point we needed to be at today. We had one of the most successful casinos nine miles to our east, and we had to compete, so we had to do what we had to do at that time.

A few years later, we decided to be totally self-determined and break our ties with our managing partners. We decided to move forward with an expansion phase. This required us to once again go back to Wall Street. At that time, we were able to go by ourselves with no one else and secure a rate of approximately 8.3 percent.

More recently, we had a bond issuing, and that came in a 6.38-percent. This is rarely the case in any financing, let alone in Indian country, but it can be done.

Now that our expansion is fully operational, Mohegan Sun is where we believe it should be on the market. We are looking to bring our expertise that we have gained to other areas and other tribes. This effort will help diversify our assets. It will also be improving the lives of other first Americans.

Nearly 2 years ago, I had an opportunity to meet with a man, a father, a career soldier I had admired for many years. That man told me that he and others in Washington wanted to see if IGRA truly would help all tribes. His words were, prove to me IGRA works; reach out and help other tribes. That man was Senator John McCain. I took that to heart and we have a focus and a goal.

We found our first relationship with the Menominee Tribe of Wisconsin, a proud people who want only the best for their own 8,000 members. We now look for the same things that people looked for in us. We are looking at secure, stable government. We are looking for good community ties with the outlying area. And we are also looking to see what the available capital will be. This bill can probably help that aspect to come to fruition.

Like any other corporation, we as Mohegan look at the bottomline. But unlike a corporation, we are also a tribe. We Mohegan have adopted a buy-American philosophy. Whenever possible, that is Native American. We are encouraging any future partners to do the same. We buy our lobsters from tribes in Maine, our buffalo from tribes in the Midwest, and our natural gas from tribes in the Southwest. Although these tribes are not in gaming, they are working to provide for their people through self-determined economic development, which again would clearly benefit with S. 519.

S. 519 is a sound bill. We pledge to work with you and your colleagues to support enactment of as much of it as can be accom-

plished. We believe time is long overdue, and once again thank you for your time. I will entertain any questions.

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

The CHAIRMAN. Thank you.

We will now go to Julie Kitka. Welcome, Julie.

STATEMENT OF JULIE KITKA, PRESIDENT, ALASKA FEDERATION OF NATIVES

Ms. KITKA. Thank you, Mr. Chairman.

It is an honor for me to testify this morning. I appreciate the invitation. I will try to be condensed in our testimony, but I have a lot of information that I want to share with the committee, so you, Mr. Chairman, please feel free to cut me off if I go on too long.

First of all, before I respond to Senator Murkowski's comments on reporting on the recent leadership forum that we had on building knowledge-based economies, I first wanted to inform you, Mr. Chairman and the committee, of why we are doing what we are doing, and then I will get into sharing some of the exciting things that we are involved with.

First off, we have just completed a 30-year trend analysis on a whole lot of major indicators for our population. We are working with the University of Alaska Institute of Social and Economic Research, and we would be glad to provide the 30-year trend analysis to the committee so that you can see both the progress that has been made, as well as some of the challenges that are still facing us.

Basically in a nutshell, the 30-year trend analysis shows major signs of improved living conditions for our people. Mortality is down. Total death rate is down. Life expectancy is up. But when we look at the economic aspects of our people, this is what we see, that native income has increased every decade since 1960, even after taking into account inflation. In the year 2000, real per capita incomes were four-times higher than it was in the 1960's. But the growth rate in the 1990's was only about 7 percent.

The second point is, native income remains far below that of non-natives. In 2000, native per capita was less than one-half of non-natives in our State.

The third point, one-half of our native families have income below $30,000 a year. With our larger native families, that means these incomes are supporting even more and more people.

The fourth point is incomes are low in remote areas, especially in the very remote areas which are populated by at least 60 percent of Alaska Natives.

The fifth point, our most remote areas are also the places of the highest living costs. Fuel costs, food costs, clothing costs, if you name any cost, it is the highest in some of the areas that have the lowest income.

The sixth point is Alaska Natives, we see much progress in the last 30 years on poverty indicators. Thirty years ago, our poverty rates for our people were in the mid to low, 60 percent of our population was below the Federal poverty rate. We are now down to about 20 percent poverty rate, which is a huge improvement in the living conditions for our people in the last 30 years. But the disparity is still there as the improvements are, because our poverty rate

is now 20 percent compared to 7 percent of non-natives. Our people are three times more likely to live in poverty than non-natives in our State.

We have also, another seventh finding is that families headed by women are most likely to be poor in our State, and basically 25 percent of all our native families in remote villages live below the poverty level. So that is the reason why we are putting a major emphasis on the economic arena, is these very hard statistics, both of the success that has been accomplished, and I think that the members of the Congress that have spent their entire public careers over this span of time in particular, our senators, Senator Stevens and others, Senator Inouye, you know, 30-plus years in the Congress, have much to be proud of when you look at these improved living conditions.

So what we are looking at is how do we close the gap and the disparity? How do we make that next major inroad into these indicators that are not positive, and make progress for the next generation of people?

I will put a caveat. One of the things that we have been following a lot of things that have been going on internationally. We feel very strongly in Alaska that we have much to be grateful to for living in the United States. When you look at one billion people in the world living below $1 a day in income, and two billion people living below $2 a day, you know, to say that you have these indicators with the amounts of incomes in our families on that, it truly is relative. We can do more with what we have, but we also need government to be more responsive and put in place policies that are more helpful to make that next inroad.

We are very strongly supportive of the Government's policy on self-determination. We credit that as one of the major changes over the last 30 years which has helped us greatly, everything from Alaska Natives taking over the Indian Health Service, where we are running our hospitals and our regional hospitals and our clinics, and the whole system. Self-determination on every level has contributed to the improved living conditions. So members of Congress that have been involved for a long time should be very proud of their efforts.

But we would like to focus on what we are looking at right now and what are some of the observations that we have which we think can make some great improvements. So I have given you the "why" of why we are focusing on that.

We also believe that we stand on the shoulders of the people that have come before us. What I testify about or what we prepare in reports or testimony is not coming out of a vacuum. It is based on our own leadership in our state and many generations of leaders that have tried to improve things for our people. So I am just the next person in the long list of people to convey to you our desires and wishes and what we want to try to accomplish. So I do not want to make any more of our comments other than that.

But basically, we feel very strongly that our people need a sense of hope. We need to bring a sense of urgency to the concerns that affect their daily lives, and not be lulled into false security because of some of the successes that we have had on many areas. So the urgency needs to continue and the Congress needs to help us enact

policies that bring the sense of urgency to the ground at the village level.

We need the recognize that we do not work in isolation, that we do have partnerships with the State. We do have partnerships with the private sector. We need to build those partnerships and we need to strengthen that. Government clearly has a role in opening up our opportunities for greater private sector expansion in our State, because we feel that with greater economic growth, that the private sector can be an engine for the Government polices that need to help set the infrastructure and the ground for them to expand.

We also feel that expanding the private sector is essential in our state to overcome what has been characterized as distorted economies, economies which are primarily transfer economies of transfer payments and government spending. We need to open up greater opportunities for private sector involvement in economic growth because of the jobs that they create.

You look at our population, we are about 20 percent of the State of Alaska. We are about 125,000 people. We are projected to double every 23 years. I think we have projected that in the year 2020, we will be up to about 165,000 in the State, quite a number out of State.

We are also seeing some very disturbing trends. Our people are people of the land. Our people have lived in many parts of the State for nearly 10,000 years. You can see continuous occupancy in many of our communities for many, many thousands of years. But the disturbing trend is that we are seeing the migration from our villages and off the land into the regional hubs and into the cities, looking for job opportunities, looking for access to the health care for their families, and education.

We have to, quite frankly, stem that trend. I am, for one, very encouraging of people to explore all options for their families and for their children, but to be having to relocate off the land and go to a city and urban life because of lack of economic opportunity, to me is a very big crime and it is something that we need to partnership with the Congress and the State to reverse that trend.

We are seeing trends as high as 40 percent of our population moving off the land and into the cities. Again, you look at it, and it is primarily lack of economic opportunities, lack of the infrastructure that we need to increase the private sector. That is one of the reasons we are very interested in this bill is because we feel very strongly that we need another tool in our arsenal to deal with the problems our people face. That is an economic institution that has a broad scope to deal with social development, cultural development, educational development, economic development.

We think a development entity, whether or not it is a development fund, a development bank, a development institution could have that broad scope. We do not need any more institutions which are silos that are just taking care of one sector of our population or just one aspect. We need the broad scope that can encompass education and economic development, that can encompass encouraging the private sector and analyze economic opportunities.

We really appreciate the consideration of the economic diagnostic fund, the incubation fund, in addition to the technical assistance

fund on that. Because we cannot expect our people in our communities to analyze economic opportunities and make good choices if they do not have the tools to analyze the opportunities in this global economy.

We very much recognize it is a global economy. So many decisions that are made in the economic realm are outside of our state and are outside of our country. We need to recognize that. The Congress needs to give Native Americans the tools to compete globally and not just compete against each other or compete isolated in our own small areas.

We are also re-thinking Federal spending that is coming into our state for our people, and re-thinking what can be done to improve the effectiveness of the Federal resources that are coming in. We have a number of recommendations that can be done on that. Basically, what we are looking at is trying to do more with what resources we have, to try to make it more effective. We are finding that in some areas what we need is Federal resources that will support the introduction of new ideas and champions for new initiatives, not flooding the area with lots of money, just the people that are interested and the leadership in the areas that are interested in going forward economically and socially and culturally, that they need the support to make the changes.

We are very interested in systemic change. We are very interested in growing success. If we see a successful program or project which is effective in one village or effective in five villages, we ought to have policies in place that grow that to affect 25 villages and 100 villages. Success will breed success. We have a lot of shining stars of things that work in our state. The CDQ program is a prime example of a successful economic policy decision that Congress helped enact, which in a very short period of time created $40 million in new wealth. It is now up to about $500 million in new wealth for those coastal communities in vesting the local people with percentages of the fish resources, and letting them engage in the marketplace on that.

So there are successful models out there. We need to just grow those ones.

Okay, now to the leadership forum we had. I said I will try to keep my comments short on that because I am very enthusiastic about that.

The CHAIRMAN. We have a vote in about 20 minutes, so we have to move along, Julie. I hate to rush you.

Ms. KITKA. Okay. I will be very quick.

Basically, it was a very significant conference that was held, with the help of our congressional delegation, Senator Murkowski, Senator Stevens and Congressman Young. We thank them very much.

We hosted a conference with Harvard University, the Center for International Development, with the participation of the World Bank, the Asian Development Bank and the Inter-American Development Bank. We were very interested in sharing experiences in success, and we definitely found that there was common ground and areas to work together on building toward a knowledge-based economy.

I really urge the committee to take a look at the whole area of knowledge-based economies as far as native economies, because we

believe very strongly that that is a direction that we need to move forward in. Basically, the 30-second version of a knowledge-based economy is an economy that innovates within itself, and that is willing and able to accept innovation outside of the economy. I think if we can move in the direction of supporting native economies to be able to create innovation internally and use the mind and brainpower of our young people in particular, we will make those breakthroughs that we need to have.

Lastly, like I said I could probably go on for a long time on this because we have a number of positive things that came out. I will bring to your attention the World Bank's development marketplace as a very innovative idea which we are going to be implementing in the state. It is again putting money behind innovative ideas and encouraging practical solutions to problems. We are very excited about that.

But we would also like to urge the committee to work with us on successful initiatives that the United States has used abroad with the different multilateral institutions and the development banks, and what the Bush administration has done in the Millennium Challenge Account initiative, in which the Congress has recently formed the Millennium Challenge Corporation now headed up by Secretary Colin Powell.

This new entity and its mission, which manages currently about $5 billion in assets, we believe that there is a role for a domestic version of this, and this might be something that could be considered as you are reworking this piece of legislation, to take a look at the strengths on that. But that recent initiative from the Bush Administration we believe has a very strong component that could be used domestically, especially with its emphasis on results-based management. I think a results-based management approach is something that we hear from OMB and everybody else that they want to see us move forward on Federal resources.

There are some very innovative ways to do results-based management, and it is something we are very much interested in piloting in our state with some of the Federal resources that come up there, because we think that the results-based management will help us move from just building a health clinic and saying how we are satisfied that we built a health clinic, but being able to say now that we have a health clinic, we see these health indicators going down; or building a school and not only saying we built a school, but being able to say the education of our children is going up.

So we commend those as examples of some new parameters and policies that I think will be fruitful for the coming year.

With that, I will wrap up my testimony, and appreciate the invitation to testify.

[Prepared statement of Ms. Kitka appears in appendix.]

The CHAIRMAN. I could not get to your last Alaska Federation of Natives Conference. I am sorry I could not, but staff did go up, as you know, and came back with some fine reports about the event. They found it very educational and informative. Thanks for inviting us.

We will now move to Chairman Carl.

STATEMENT OF CHESTER CARL, CHAIRMAN, NATIONAL AMERICAN INDIAN HOUSING COUNCIL

Mr. CARL. Chairman Campbell, again it is an honor to come before you. I would first like to thank you for all your leadership these past few years. Certainly, being a member of the Navajo Nation, and at one time being nominated for the Indian Hall of Fame with you, was an honor again likewise. Of course, Vice Chairman Inouye, his strong support these years, and distinguished member Murkowski.

On behalf of the National American Indian Housing Council, thank you for this opportunity to address you today.

Across this country, thousands of native families are facing housing conditions similar to those of undeveloped countries. The problem is accelerated by the remoteness, the rural location of tribes, many of which have few economic opportunities. As the mainstream American economy progresses, development has not extended to native communities, in part because of the land jurisdiction, but for many other reasons as well.

One of those is the Federal policies. So today, we find ourselves in a situation seeking ways to help tribes take advantage of the private market and develop their own economies without relying solely on Federal subsidy or gaming. I understand the committee's purpose and this hearing is to evaluate the creation of a tribally owned development corporation that could assist in developing tribal economies.

I have learned much through my work with the Navajo Nation and my long career as an Indian businessman. As a businessman, the key to economic success is to utilize rules that are proven to work to build capital and to take advantage of them in ways that other successful businessmen do.

Although tribes are unique and their structure and culture, I believe a solution to economic challenges can only come through sound investment and business practices that integrate tribal economies with the greater financial community. I believe that capital growth through a development corporation has the potential to stimulate tribal economies in ways that could lead to less reliance on the Federal Government.

While some tribes have been successful in economic community development, this resourcefulness is often lacking on many American Indian reservations. It seems that over the course of hundreds of years of dealing with Indian tribes, the Federal Government has created unnaturally scarce resources of physical infrastructure, financing vehicles, and most important, land, all the things that make an economy function, and replacing those functioning economics with a system of Federal subsidy.

Many people have unfairly criticized tribes for not being more successful in a market-based system, when the government has in fact isolated them from that system. We must look at some of the goals. Our first goal must be to continue to eliminate the policies that hinder economic growth on reservations in our Indian communities. For example, a tribal member goes to a lender to get a mortgage loan and is approved, pending title clearance of the land. Had the loan been on fee land, the tribal member could expect to receive

a title status report in a matter of days. With trust or allotted land, it takes many months to obtain a title status report.

While land title issues continue to be a major concern on reservations, they are not the only impediment to development. We are told that efforts are under way at BIA to address this situation, but the problem was not created overnight and will not be solved overnight.

The House Financial Services Committee, in response to frustration voiced by tribes at a congressional field hearing, is working with the National American Indian Housing Council to develop legislation that would reinforce and more clearly define the ability for tribes to choose to process land titles in-house.

The inability to create effectively a registration tracking system, one that would allow tribal members across the country to engage in trade and mortgage borrowing that most of the rest of us take for granted is an example of how an inadequate legal infrastructure hampers economic development in Indian country. Later on, I will propose an idea that I would like this committee to seriously consider.

Lease recordation is only one of the challenges the tribes face. Many businesses which have considered operating on the reservation have not done so because of concerns with legal infrastructure. In some cases, the concerns are valid, and in others they are not. Regardless, any businessman that is going to invest on tribal land needs to know that they can get market rates back for their investment.

It is in diversification that our economy thrives, and I can understand the value of having an Indian-owned bank that can create and maintain relationships in communities that facilitate interaction between potential consumers and the institution itself. Likewise, creating an Indian government- sponsored enterprise within this corporation to purchase loans from such a bank would step up mortgage activity. But it should not be to the exclusion of others.

Institutions like Fannie Mae connect Wall Street with lenders and in doing so create a mechanism for investment capital to actually make loans more plentiful and affordable. We should find ways to connect the tremendous capital resources of this country and the global economy of Indian country. More important, all these large institutions need their feet put to the fire in working in Indian lands. For example, we have been working with Fannie Mae and Freddie Mac to establish a real definite goal on how many mortgages they can process in Indian country. To date, that has not happened.

As an alternative solution, we partner with them and other agencies to come out with a goal of producing 100 mortgages on either new construction or rehab in Indian country.

Programs with a single purpose could be seen as a contributing factor to the failure of many programs designed to assist tribes. Successful models such as Public Law 93–638 provide assistance, but also provide flexibility in implementation.

Community development through private investments are key for certain native-owned corporations and could allow tribes to purchase assets and businesses and support housing. We know that housing alone is not enough. Investment in housing is a tremen-

dous stimulus for American communities, but only when the opportunities and legal infrastructure exists. Simple housing alone just provides a roof. Housing development with a manufactured housing plant, with a roofing business, with a title plant, a hardware store, or building supply store stimulates the local economy.

Home equity is one of the greatest builders of personal wealth, and we must move from subsidized housing to home ownership to allow tribal members to grow personal wealth. For example, on Navajo, with our housing authority, we have developed a self-insurance program. We have been able to provide employment to seven people, but more importantly establish $13 million in reserve from savings by managing our own risk management program. We have developed a cabinet company that has been able to gross close to $1 million in sales a year, and continually for the last 6 years employs 30 people.

We have provided incomes through our mortgage program, which is 100 percent guaranteed, by taking the NAHASDA grant and putting that into construction financing and then taking the home and refinancing it and using the mortgage proceeds to provide additional income.

We have developed a manufacturing plant which is in the process of being constructed, which will use fly ash to build building materials which will return back to the housing authority $28 million in 8 years.

So these are some of the examples of what we have done within the Navajo housing authority. Additionally, we have developed a modular home construction plant where we use volunteer labor to produce a house for $35,000.

So as to providing some of the recommendations that this committee has asked for, I believe there are some recommendations I would like to provide which may be very useful to this committee. While many in this room may not immediately agree with my opinions, I believe personally that for business purposes we need to really consider taking land out of reservation trust land and putting it into fee land, which would help tribes get mortgages or business leases executed.

By doing so, you develop a market, even though the individual lot may have cost $40,000 to develop and put water and sewer and electrical connections to that land. But if the land is worth $5,000, that is the market. At least you know that would be the market. If it contains trust land under lease, then there is no such way of knowing what that asset would be worth. So you develop a market for that.

One example is with the Flexcrete plant, we had to relocate off the reservation, but close to the reservation, simply because we would not be able to expect return on our investment in the property. So by purchasing land, we at least have a fallback to recoup our investment in case the business went under.

We have other recommendations that I would like to offer. One of them is to as Secretary Anderson discussed, look at the human resource aspect. One of the problems I see in these businesses, is that as a number one challenge to economic progress, a lack of human resources, not just the monetary resources. There is a severe shortage of people in Indian country who have business sense.

Most of our people operate under the welfare mentality. The committee and the Congress has done very well in providing self-determination provisions in a lot of the legislation. However, we have not promoted that same self-determination to Indian tribes, meaning that the Indian tribes themselves must also look at developing self-determination provisions in their own statutes and their own constitutions.

There is, however, the trust responsibility, but it only provides for so much. In order for tribes to move forward, they need to also look at a self-determination provision.

So looking again at the welfare mentality effectuated by Federal policies, we need to be able to provide in the legislation technical assistance that would allow internships similar to what Indian Health Services does with doctors and nurses, develop scholarships for our students to go into a business environment, even an internship with some of the large corporations, and bring that knowledge back to the reservation at a salary which is competitive and not necessarily based on the reservation pay scale.

The other recommendation I would like to also provide: This committee is looking for an agency which this program can be placed under. Although we do have our issues with Housing and Urban Development, I believe that is one legislation that has been a prime example of success being flexible, driven by tribal leaders such as Chief Martin in negotiating rulemaking to get a lot of regulations changed, which makes it more tribally driven.

I believe that the proper agency may be HUD, but with some minor twists. One of those may be to elevate the position of Deputy Assistant Secretary to the Assistant Secretary's position. Today, we find some of the policy decisions coming up from the Assistant Secretary that do not necessarily agree with Indian country, only because we do not have direct contact with the Assistant Secretary.

Last, in closing, if we do not work to provide the opportunity, the drain of resources from Indian communities, not only the business investment, but the human investment, we will not be able to meet the needs of our people down the road. I commend this committee for taking the step to look at this legislation to allow opportunities for Indian people.

I would again like to thank the members of this committee for continued support of tribes for Indian housing programs and all of the Indian tribes as well. I will be happy to answer any questions.

Thank you very much.

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

The CHAIRMAN. Thank you. We will have some questions.

Ms. Apoliona.

STATEMENT OF HAUNANI APOLIONA, CHAIR, BOARD OF TRUSTEES, OFFICE OF HAWAIIAN AFFAIRS

Ms. APOLIONA. Mr. Chair, my name is Haunani Apoliona and I am chairperson of the elected board of trustees of the Office of Hawaiian Affairs.

I would just like to take a moment to acknowledge others who have traveled with me from Hawaii from the Office of Hawaiian Affairs: Trustee Stender, our administrator Clyde Namuo and Chip McClellan, manager of our economic development program. I would

also like to acknowledge the presence of our Washington, DC bureau, chief, Office of Hawaiian Affairs, Martha Ross and two of her interns, Mana and Helen, who are here this morning.

I would like to thank you for the opportunity to be present to provide our comments on S. 519. We have basically one suggested amendment, and that is in the findings sections of S. 519 the Congress defines Native Americans as either a member of an Indian tribe or a Native Hawaiian. We ask that you consider amending the definition in section four to use the definition of Native Hawaiians that is found in S. 344, the Native Hawaiian Government Reorganization Act of 2004.

We feel after reviewing S. 519 that it certainly will provide the opportunity for productive economic development policy and analysis that can and will result in improving the material standard of living of all Native Americans to include Native Hawaiians.

Development of unique programs, bringing the resources from the Federal, State, and private sector together to create new or expand existing industries, business and economic development opportunities, establishing localized incubator and entrepreneurial training programs, and providing policies and institutional support to assure economic solvency for all Native Americans will be and should be the major goals of this program.

In the interests of time, I will ask that my 3-page testimony be entered for the record. Once again, we want to commend you, Chairman Campbell, for developing such an important piece of legislation, and we do support continuing your efforts, as well as supporting our Native Hawaiian Government Reorganization Act of 2004.

The proposal in S. 519 will certainly complement the economic self-determination for Native Hawaiians that we see in the near future horizon as we go forward. We want to thank you again for inviting Native Hawaiians to take a seat at this table among our indigenous people.

Mahalo.

[Prepared statement of Ms. Apoliona appears in appendix.]

The CHAIRMAN. Thank you. Your complete testimony will be in the record.

Ms. Spilde.

STATEMENT OF KATE SPILDE, RANCHO MIRAGE, CA

Ms. SPILDE. Good morning, Mr. Chairman and distinguished members of the committee. My name is Katherine Spilde and I am currently a research fellow with the Kennedy School of Government at Harvard University. I am honored to be here today to participate in this discussion of the opportunities that could potentially be realized through the creation of a tribally owned development corporation. I will be very brief.

I want to commend the committee for undertaking the very important task of addressing the needs for access to capital in Indian country. I am particularly excited about the committee's interest in creating a research component and economic data repository that will address our lack of knowledge about the economic needs and highlight the economic activities and best practices of native communities.

While my written testimony provides more detailed information about my research on Indian gaming and its application to tribal economic development, I will limit my remarks today to my support for the committee's interest in and commitment to economic needs assessment and best practices in Indian country as it is expressed in the concept of a tribally owned development corporation.

While we know a great deal about the obstacles to economic development in Indian country, including physical infrastructure deficits and the lack of human capital, among others, there is very little research that quantifies the economic needs of native communities. This lack of quantifiable data results in a lack of adequate representation to governmental agencies and ultimately a lack of sufficient funds to undertake meaningful development.

Of course, one reason for the lack of economic data on native communities is the fact that there is no single agency charged with assessing and then addressing economic needs. Additionally, any economic figures that we do have access to, such as the NIGC's gross gaming revenue figure, are not well contextualized due to a lack of benchmarks. For example, just last week the NIGC revealed that the national 2003 gross gaming revenues for Indian gaming topped $16.7 billion. While this is an impressive figure, we cannot definitively state how sufficient or insufficient that revenue is with regard to meeting the needs even of those tribes with gaming, which of course represent only about one-third of all native communities.

So even those agencies that do attempt a systematic needs assessment find that one of the challenges is the lack of meaningful benchmarks for comparisons between mainstream America and Indian country. So while I realize that the research component of this economic development corporation is a small part of the overall concept, I believe that its potential to contribute to our ability to make quantified statements about economic needs in Indian country is one of its most meaningful features.

Regardless of which form a development corporation may take, I support the committee in its goal of creating a unified economic development strategy that includes research into economic needs and best practices of native communities among its key features.

Thank you for the opportunity to present my ideas today.

[Prepared statement of Ms. Spilde appears in appendix.]

The CHAIRMAN. Thank you.

That was our call to vote so we are going to stand in recess about 10 minutes while I run over there and back.

[Recess.]

The CHAIRMAN. The committee will be back in session. We will continue. I would like to ask a few questions. Did all of our witnesses come back, or did somebody have to leave? I guess maybe they are all here.

Maybe just to start with Mark Brown. I was writing a few notes, you mentioned that you had gone to Wall Street, three different times, as I heard you say, and the first time you got some access to capital for 18 percent and the next time it was 8 percent and the last time was 6 percent. Do you attribute that to a reduction in prime, them trusting you more, or what was it?

Mr. BROWN. It is the trust. I think one thing we have clearly seen is banks are hesitant to work with sovereign nations because they look at that as, what does that mean, are there controls, are there protections.

What we have done besides the facility itself proving financially it can provide the needs of the leverage ratios, we also as a tribe have shown that the government structure is in such a way that it is secure and competent and it is going to move forward.

The three questions I am asked every time, it has only been three times, I go to Wall Street, they want to know how long my term as chairman is, first, so they know that there is a stability in government there. They want to know are our rolls closed, looking at maybe some changing dynamics of the leadership. And third, what is your per capita plan, and is that stable. So with that, confidence that has built over the last few times we have been down there.

Another key component is the personal contact. I am constantly, consistently meeting with the bankers and so they know who I am. So I represent the tribe. They get a comfort level with me as an individual, and it also helps put that same comfort level with the tribe. So I think it is important for tribal leaders to be involved in these issues.

The CHAIRMAN. The last time I was up to visit you, it has been quite some time ago, the new hotel and conference center was not quite open. Has that been a success like your other endeavors with the Mohegan Tribe?

Mr. BROWN. Everything is complete, running, and it is nice to say ahead of budget, so we are happy with it. It is working very well.

The CHAIRMAN. S. 519 I think is important to gaming tribes. Can you tell us why a concept like S. 519 is so important for your particular tribe? Does it give you any advantage you do not have now?

Mr. BROWN. What it will do for us, as we reach out into Indian country looking for it to help other tribes, maybe even doing gaming ventures or other businesses, it allows us to understand that there will be financial stability there, financial resources for those tribes when they move forward. We understand if we come to the table because of our track record, that will give some strength to their borrowing power. But S. 519 will add that extra component so we can almost guarantee that as we try to move other projects forward, there will be resources.

The CHAIRMAN. And so far have you invested capital with other tribes to develop facilities?

Mr. BROWN. We are currently working with the Menominee Tribe in Wisconsin, and that is working very well. We have also been approached by other tribes. As far as we are concerned, if we had that core competency, right now of course it is gaming, and tribes want to look to do that, it is nice to know that the Federal Government will also be assisting us in some way to get tribes to where they are going to be economically self-sufficient.

The CHAIRMAN. I am a big supporter of gaming, as you know. I was here in 1988 when we wrote that bill. In fact in retrospect, I guess we could have done a couple of things differently, but I think it has been a tremendous success. But I have this feeling, I have

to tell you, Mark, that with roughly 30 more on the drawing boards around the country, we are going to reach a saturation point at some time. All tribes are not going to be equally successful.

I note with interest that some of the forward-thinking tribes are already starting to divest money into other things. I think that is really smart to do. Are the Mohegans also doing that?

Mr. BROWN. What we are doing, we are dividing two components. One will be gaming, which we would be doing and the tribe itself is looking at diversification also. I think that the gaming aspect, though, is also the residual effect or the ripple effect of the other products that we buy from Native American tribes. So we can actually help to assist in other ways through that venue, too.

The CHAIRMAN. You made the observation in the past that tribes who exercise their sovereignty, I guess that means sort of selectively waive sovereignty, what did you mean by that? That word "sovereignty" around here, you know, ears perk up immediately with our tribal people.

Mr. BROWN. Absolutely. There are tribes, and I have met with tribes where they will not look to ever waive their sovereign immunity even on a limited basis to do business. Unfortunately, the mechanisms for conducting business have been in place. It is up to us to find the ways that we as Indian country can also participate.

If a tribe would not consider waiving its sovereign immunity in a limited fashion, that can happen. The ability to waive sovereign immunity is in a sense utilizing it. You are using that tool, that ability. It is not giving it away. It is utilizing it for what it is needed.

I think that is something that has to be looked at more often, knowing and understanding it.

The CHAIRMAN. Waiving it would mean if you waived it, it basically would mean if you had an investor and they lost money through whatever reason, they would have an option to go to court to sue to recover that money.

Mr. BROWN. Absolutely.

The CHAIRMAN. Julie, if I can move on to you, you have spoken often about the native cultures, how important they are to the native economies. Could you explain to the committee what role native cultures would play in the establishment of a tribally owned development corporation, traditional cultures?

Ms. KITKA. Thank you, Mr. Chairman. That actually is an example of a success that came out of this recent leadership forum, out of both the Asian Development Bank and the Inter-American Development Bank, which is a concept of development with identity. They have found some of the best success that they have had with indigenous people is where they strengthen and enhance the culture. It gives the indigenous people an economic edge.

One of the benefits we see of a development entity such as what is in the bill is having a broad scope of cultural, social, economic and educational development so that you can mesh different aspects on that to be more effective in the niche that you are working on.

Also, to respond to one of the benefits that we see of this, we think it will provide what we describe as patient money. Many of the economic opportunities are not viable on commercial banks,

and commercial banks will not go into them. But if you had the ability to provide patient money, 30- and 40-year loans at zero percent interest with just a 1-percent fee such as the Asian Development Bank does in some of their areas that they need to stimulate economic growth, or you had some very, very attractive rates on that, you will see economic opportunities flourish in some areas that have been very stubborn to create that.

The other benefit we see on this development identity is for the Congress to vest it with the full faith and credit of the United States. That is absolutely essential to this entity to have, and I know that the Congress and the government is very hesitant of doing that because it really makes it an extremely valuable tool, but I would certainly insist that any entity coming out that it have that ability because that is what is going to allow it to raise money on the markets and grow the amount of money of capital that it has.

The CHAIRMAN. You talked about rural villages in your testimony. I can see how S. 519, just in my own mind, could help with some of the things that Mr. Carl mentioned, like a furniture factory or something of that nature. What would be the benefit to some of these real isolated communities that are in Alaska that might be 400 or 500 miles from the nearest metropolitan area, if I can even use that word in Alaska. I guess the biggest city is really Anchorage, and some of them are, my gosh, 1,000 miles from Anchorage.

Ms. KITKA. We have had discussion of some of the benefits if there was a pilot of the development entity in Alaska. One of the first ideas that came out from one area was the idea of underwriting at zero percent interest a loan to start a second-hand clothing store where you could employ people to scout for second-hand clothes, but actually run that, but how that would translate in reducing the cost of living in villages where people are so cash-poor that the idea of flying out of their village into a regional hub, flying into Anchorage to buy school clothes for their children and Nike tennis shoes and all this stuff is cost prohibitive.

So that does not sound like a very attractive idea investment thing, but if you translate in practical terms how that will impact people on the ground and how that will allow them to stretch their resources and give more options for a very cash-poor community on that, that to me is an attractive idea.

Also the idea of being able to do micro-loans, the $500 loans or the $1,500 or the $5,000 loans. That is a model that is not used widely in our state. I think that that, especially with our statistics on poverty, that most of them are headed by women, the micro-loan programs around the world, primarily actually a lot of them are geared toward women and they have very strong track records on paying the micro-loans back.

The CHAIRMAN. In India particularly.

I would think, too, correct me if I am wrong, but with a lot of the Native Alaskan villages, they are so isolated. In one respect, it is a little bit like the Navajo Reservation. Some of the people live a long way from anybody. Home crafts have become a form of economic survivability. Micro-loans, it would seem to me, would have a real advantage in that, where people need the materials to carve or to make rugs or do whatever, and then sell them either through

a coop or through some intermediary so they can be taken to the city.

Ms. KITKA. Yes; In fact, that one example that I used in my testimony, the development marketplace, our first theme on that in Alaska is going to be to support native artists in both the marketing of their art as well as transmission of the skills and the knowledge from one generation to the next.

I did want to add one other component you might consider in your bill as you reformulate it. In our very limited knowledge of these big multinationals like the Asian Development Bank and the World Bank is we see that they are moving to position themselves not as just financial entities, but as entities that are considered knowledge management entities, so the technical assistance that they provide, the information that they have on successes and best practices is just as important as the finance that they have. I would recommend if there is a Native American development entity that it also position itself as a knowledge management entity and have that dual role.

Like I said, I just notice from our limited observation. I guess the importance of that to me is sometimes it is not a matter of money, it is a matter of ideas. We need to encourage the sharing of ideas and things that give our people hope. For example, something that is going on in the Navajo Nation that we in Alaska will not know about, but just the sharing of best practices or information could be just the spark that takes off in some area that had we not shared the information.

The CHAIRMAN. Chairman Carl, you stated there is a value in having a native-owned bank. Some people I think view this S. 519 as we have gotten some feedback on it, as creating some competition for native-owned banks. As I understand it, one of the panels yesterday had some concerns that a tribal development entity might or might not have a big impact on native-owned banks. Do you have a feeling about that? It is really some kind of an enhancement mechanism, not a competitive mechanisms for native-owned banks.

Mr. CARL. Right. Mr. Chairman, I appreciate that question. What we see is that competition breeds performance. In this case, if there is another native corporation, then that would provide competition to native-owned banks. But we also see if we develop a narrow policy to have tribes rely on native-owned corporations, native-owned banks, then it relieves the big financial institutions such as Fannie Mae and Freddie Mac not to perform separately on behalf of Indian country.

So we see that as an issue. In looking at this in broad perspective, we need to be able to connect the native-owned corporation, native-owned banks with the bigger institution, again holding their feet in the fire to perform as well.

The CHAIRMAN. In your testimony, you gave an example of how difficult it can be to put into place business rules and regulations because of cultural reasons, traditional reasons. That is certainly understandable. I can understand why they may not want to pass certain business laws that they have some concerns about it. Do you see these business laws such as the Uniform Commercial Code

as necessary to encourage private sector capital development on reservations?

Mr. CARL. One of the policies that has placed Indian country in the position it is today is the welfare mentality or dependency state. Congress with the help of tribal leaders has developed the self-determination act, which allows the recognition of the trust responsibility on behalf of the Federal Government, but at the same time you have to be able to incorporate self-sufficiency into your program to leverage financial institutions to meet the needs of people on the reservation.

I believe that legislation has gone a long ways in recognizing that dependency is not enough to meet the needs of your people. So as a tribal leader, you have to go out and develop legislation which would promote getting away from that dependency. Part of those would be enactment of legislation that includes not only the mortgage code, but the Uniform Commercial Codes that will promote those types of activities.

Just for an example, taking the trust lands out of trust and putting that into fee simple land. Right now, as an individual Indian member of my tribe, I am restricted to one homesite lease. That homesite lease really has no value other than the lease that is held. So in this case, if you were to promote capitalism, if I see another homesite lease that is fee simple, if I have the capacity to buy that fee simple, then I can buy it. I can develop that, or a business site at least. So you promote Donald Trump activity on the reservation where you really do not have any, other than having the casino tribes and other tribes promote economic activity. You develop the wealth of that individual Indian tribal member.

The CHAIRMAN. Well, we probably will not have to promote Donald Trump. He is quite capable of doing it all by himself. [Laughter.]

We have a delicate balance, of course, between trust responsibility and what I sometimes call forced dependency because traditional cultures did not want to be dependent on anybody, and here they find themselves dependent on the Federal Government.

Sometimes we have this head-on collision when we talk about getting Indian people less dependent, sometimes they construe that to mean, oh, then is that going to let the government off the hook from trust responsibility? I do not think it should, but certainly 150 years of mistakes the Federal Government has made to literally make Indian people more and more dependent on grants from the feds has not worked.

I was reminded yesterday by one of my staff, it is a little bit like the old days where they got issuance of a beef allowance and blankets and pots and pans or something of that nature. Well, they are still getting sort of an allowance, only now it is called commodities or it is called Federal grants or it is something, but it is still a form of dependency. Until we can allow tribes to develop their own resources and their own skills, that is always going to be in the background.

It seems to me we have to make sure that we allow them to get more independent, but at the same time not let the Federal Government step back from its responsibilities under the treaties.

In September 2000, we had a representative from Kayenta Township testify on the Indian Tribal Development Consolidation Act. That testimony was interesting. How is that Kayenta Township doing?

Mr. CARL. Mr. Chairman, the Kayenta Township is the first creative idea outside the box of allowing the local government, in this case the chapter, to provide its own taxation, to provide its own zoning laws and provide its own leasing option. There have been many challenges to that, but I believe it has been very successful.

Having to operate housing programs within that community, I have to operate under their jurisdiction of government. It is a new process, but it is also a form of self-sufficiency, being able to look at ways to develop resources to meet the needs of the community.

So having street lights on the reservation is a commodity that is not necessarily found on the reservations, so if you drive on a reservation most of the time at night it is very dark. But in this case, they have been able, just for an example, been able to put street lights on some of their streets. I believe that model is successful.

The CHAIRMAN. You also stated that taking land out of trust for business purposes may help tribes, not hurt them. Should we do that strictly for businesses, such as shopping centers, manufacturing and so on? Or should there be other reasons why we should take it out of trust?

Mr. CARL. I believe it is still under control of the tribe as a sovereign government. We have done business deals with other outside entities, banks and so on through my housing authority. We always rely on jurisdiction of the tribal court. There are issues with licenses and stuff. We refer it to arbitration. But the reality is so long as you have tribal control, whether it be tribal court or some type of jurisdiction of the tribe, if you have that set up, why not look at a new way of doing business? Having land acquisition in the outside world, just for example in the Durango area, 5 acres is worth now close to over $1 million. On the reservation, it is not worth anything.

But even though it may cost some money to develop it, there is still a market, however you cannot trade that market freely. You still have to go back and terminate the lease, then you have to go back through the tribe, through the BIA again to get another lease approved. By the time you are done, you are 5 months or 2 years down the road in getting that transaction. If you were to convert that into fee simple land, then you just transact in fee simple land that belongs to an individual within the tribal jurisdiction.

I know it is a new idea, but I think it is an idea based on capitalism, based on whoever has the funds to create those type of transactions.

The CHAIRMAN. Thank you.

Ms. Apoliona, you stated that the Office of Hawaiian Affairs approved a 2000–07 strategic plan and the plan has a two-part economic initiative impacting 7 percent of the Native Hawaiian population, and the second goal was obtaining return on investment goals. What types of economic activities has the Office of Hawaiian Affairs been involved in in implementing that plan?

Ms. APOLIONA. We have and continue to administer a Native Hawaiian revolving loan fund serving and providing capital to Native

Hawaiian first-time business owners and/or business owners who want to expand their businesses. In years past, we also have assisted in community-based economic development projects in the State of Hawaii. That has been primarily the extent of our service and support to Native Hawaiians who want to move forward in economic development.

We currently are looking at a project on the island of Maui that has been longstanding for a marketplace. It is in the district of Hana and that has been looked at as an opportunity for the community because it is a highly visited spot on the island of Maui, and an opportunity for the community to establish storefront businesses that can serve the people traffic that comes as visitors to Hana.

There is much more certainly that we can be involved in, and we see the opportunities that S. 519 may be able to provide to be very complementary to some of the future objectives.

The CHAIRMAN. You are helping in housing. You mentioned the Native Hawaiians, some of them, have been priced out of conventional housing because the market is going up so fast. Would S. 519 offer some support for Native Hawaiians, to develop housing for Native Hawaiians?

Ms. APOLIONA. Yes; providing always additional resources so people can afford to stabilize their housing situation is key. Certainly with some of the thoughts and concepts in S. 519, that would help a lot.

The CHAIRMAN. Thank you.

We will probably have some further questions in writing. Senator Inouye may have and some of the other committee members may have also. But I certainly appreciate everybody appearing today. I am sorry to keep you when I had to run out.

Julie reminded me of something, though. I was just musing on the way over when I voted and came back. As you probably know, Senator Inouye and I have worked for 18 years on the new Museum of the American Indian. That was one of my first bills and he took the lead on it here in the Senate when I was on the House side. September 21, that whole week is the opening, as you know.

We had a meeting the other night with Rick West, who is the director, who told us they expect between 10,000 and 20,000 Native Americans to be in Washington during that time, more than any time in the history of America, which is really something. There is going to be a procession from the Washington Monument to the building where we will do the ribbon-cutting. We are of course encouraging people to wear their native dress.

But I got to thinking when I saw Julie that September might be pretty hot for a parka. [Laughter.]

The CHAIRMAN. Native Alaskan people may have a particularly difficult time.

Ms. KITKA. We have summer parkas. [Laughter.]

The CHAIRMAN. You have summer parkas. Those of us who wear buckskins are worried about just even the buckskins, how hot it is going to be.

Ms. APOLIONA. Senator, the Native Hawaiians coming from Hawaii, we come really light, dress really light. And we will be there on the Mall as well.

The CHAIRMAN. And you will be very comfortable, but those of our friends from further north may be a little bit uncomfortable, but it is going to be worth the trip and worth the day, so we are really looking forward to seeing everybody.

Thank you for being here. This committee is adjourned.

[Whereupon, at 12:10 p.m. the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF DAVID W. ANDERSON, ASSISTANT SECRETARY, INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR

Good morning, Mr. Chairman and members of the committee. I am David Anderson, assistant secretary—Indian Affairs. Thank you for the opportunity to present the views of the Department of the Interior on S. 519, "The Native American Capital Formation and Economic Development Act of 2003." We understand the committee will be significantly amending S. 519, therefore, our comments do not speak to provisions of S. 519, but rather address the concepts of the bill. The Department supports exploring creative approaches to economic development in Indian country.

Economic development on tribal reservations poses many challenges. Access to capital in Indian country is extremely limited. This shortage of capital represents one of the primary barriers to comprehensive and lasting economic development. In addition, there are few opportunities to generate capital on Indian reservations. Studies show that unemployment on or near Indian reservations commonly exceeds 50 percent and in some areas that figure jumps to over 90 percent. Unemployment in Indian country has placed more than 500,000 people who live on or near Indian reservations at or below the poverty level. These obstacles are further compounded by the rural location of most Indian reservations. As a result of these factors, Indian country accounts for many of the poorest areas in the United States.

Although poverty and joblessness pose great obstacles to economic development in remote reservation settings, economic development is not impossible. Increasingly, tribes continue to overcome these obstacles and create growth in reservation economies.

The Bureau of Indian Affairs [BIA] is working with tribes to continue discovering creative and long-term solutions to building sustainable tribal economies. Through the recent reorganization of the BIA, the offices of Indian Gaming Management, Self-Governance, and Self-Determination were elevated to the Assistant Secretary's Office under the newly created Deputy Assistant Secretary, Policy and Economic Development. By elevating these and other economic programs, the BIA will emphasize expanding reservation and tribal community business opportunities and Indian employment. With the creation of the new Deputy Assistant Secretary, the BIA hopes to maximize efficiency in assisting tribal economic development.

Another challenge the BIA is working to address is the issue raised by many investors and private lenders regarding tribal legal infrastructure; inadequate or nonexistent legal and business codes. To address this issue, the BIA included in its 2005 budget request $1 million to help tribes develop tribal ordinances and commercial business codes. We view this as a positive first step to help encourage more capital investment on tribal lands.

The Department also encourages the use of self-governance programs as a method of encouraging tribal economic development. Through self-governance programs, the tribes control the administration of Federal programs to ensure the programs meet the needs of the individual tribe. For the tribes that choose to engage in self-governance or self-determination compacts and contracts, this direct control creates tailor-

made programs that lead to the creation of viable and stable economies and tribal self-sufficiency. We will continue to work with tribes to expand self-governance and self-determination as a way to find creative solutions to economic development.

Currently, the BIA independently administers a program that is addressing some of the financing needs of Indian country. Since 1974, the BIA has successfully administered an Indian Guaranty, Insured, and Interest Subsidy Program. The mission of the program is to "stimulate and increase Indian entrepreneurship and employment through the establishment, acquisition or expansion of Indian-owned economic enterprises." The program guarantees loans up to $20 million dollars from the private sector to promote economic development of tribes, individual Indians and Alaska Natives. The guaranteed and insured loan portfolio currently totals $271 million. With enactment of the fiscal year 2005 Budget Request, the program expects to leverage private sector financing of 65 new businesses and create 1,300 jobs on or near Indian reservations. The guaranteed and insured loan program has achieved a success rate of 93 percent in the number of businesses without default for all loans funded since fiscal year 1992. From 1992 to the present, 719 loans have been guaranteed, and of that total only 51 loans have defaulted.

While the BIA loan program is successful and takes steps toward addressing the need in Indian country, it does not fulfill every financing need. There is a gap between the small scale financing the BIA can provide and the funding required for other economic development projects.

We would welcome the opportunity to further discuss our program. Additionally, we are willing to participate in further discussions regarding innovative approaches to enhance economic development in Indian country. Thank you for the opportunity to participate in the discussion today. I would be happy to answer any questions you may have.

U.S. DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, DC, November 9, 2004.

HON. BEN NIGHTHORSE CAMPBELL,
Chairman, Committee on Indian Affairs,
U.S. Senate Washington, DC.

DEAR MR. CHAIRMAN: I am pleased to provide the responses prepared by the Bureau of Indian Affairs to the questions submitted following the July 21, 2004, hearing on S. 519, the "Native American Capital Formation and Economic Development Act of 2003."

Thank you for the opportunity to provide this material to the committee.

Sincerely,

JANE M. LYDER,
Legislative Counsel,
Office of Congressional and Legislative Affairs.

Question 1. Where do you think the Tribal Development Corporation [TDC] should be housed? Do you see such a corporation as a new private entity or should it be public in nature, such as a new department or Federal agency?

Answer. A Tribal Development Corporation, if created, should be well-managed and accountable for results. We expect that the proposed Tribal Development Corporation Study Group, created under the revised version of S. 519, will consider what sort of form would be most successful at ensuring these goals are met.

Question 2. At the Forum on Establishing a Tribally Owned Development Corporation, you spoke about the need for project development as the key to reservation economic development. Should project development be the focus of the new tribal development corporation?

Answer. Yes; project development, in the sense of locally controlled private entrepreneurial business, should be a focus of a Tribal Development Corporation.

Question 3. In your testimony on S. 519, you note that Tribal Self-Governance has lead to the creation of stable and viable tribal economies. Do you believe that the development of a tribal development corporation would promote a similar stability? If so, how?

Answer. If created, a Tribal Development Corporation would help promote stability. However, in order to promote stability and viability, the Tribal Development Corporation would need to advocate and support such basic economic development practices and institutional internal controls such as risk assessment and ensuring

best business practices. A Tribal Development Corporation could also improve business strategies and relationships.

Question 4. Would you comment specifically on the concepts contained in title VI of S. 519?

Answer. Title VI of S. 519 provided for the authorization for appropriations. Title VI of the bill also provided a waiver of the matching funds requirements of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4707(e)). This title has been struck from the amended version of the bill.

PREPARED STATEMENT OF MICHAEL LIU, ASSISTANT SECRETARY, PUBLIC AND INDIAN HOUSING, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Chairman Campbell, Vice Chairman Inouye, and members of the committee, I am pleased to submit this testimony for the record. I welcome the opportunity to share with you the Department of Housing and Urban Development's perspective on many of the concepts included in S. 519, the Native American Capital Formation and Economic Development Act of 2003, which has been introduced by Chairman Campbell.

My name is Michael Liu, and I am the assistant secretary for Public and Indian Housing [PIH]. PIH is responsible for the management, operation and oversight of HUD's Native American programs. These programs are available to 562 federally recognized, and a limited number of State-recognized Indian tribes. We serve these tribes directly, or through tribally designated housing entities [TDHEs], by providing grants and loan guarantees designed to support affordable housing, and community and economic development activities.

In addition to those duties, my jurisdiction encompasses the public housing program, which aids the nation's 3,000-plus public housing agencies in providing housing and housing-related assistance to low-income families.

I would like to express my appreciation for your continuing efforts to improve the housing conditions of those who need it most. As you have heard from previous testimony, much progress is being made and tribes are taking advantage of new opportunities to improve the housing conditions of the Native American families residing on Indian reservations, on trust or restricted Indian land, and in Alaska Native Villages. This momentum needs to be sustained as we continue to work together toward creating a better living environment throughout Indian country.

At the outset, let me reaffirm the Department of Housing and Urban Development's support for the principle of government-to-government relations with Indian tribes and our commitment to honoring this fundamental precept in our work. Although the Administration has concerns with some of the provisions in S. 519 as introduced, we are pleased to have the opportunity—at the invitation or the chairman—to work closely with the committee to bolster the effort to build capital in the Native American community."

Capital in Native America tends to come from four primary sources: tribal financial resources, Federal guaranteed loans, grants and tax credits, debt capital, and equity investors. The latter is woefully inadequate for many reasons. Issues raised by investors and private lenders include: The legal status of tribal lands; inadequate or non-existent legal and business codes; insufficient understanding of issues related to tribal sovereignty and sovereign immunity; a lack of technical assistance resources; uncertainty related to leadership changes in tribal governments, and a lack of financial institutions and services on or in close proximity to Native American communities.

HUD is committed to exploring new opportunities to surmount barriers to lending on tribal land and to facilitating access to alternative sources of capital, financial services and technical expertise. HUD's Office of Native American Programs [ONAP] is currently working with tribal governments, TDHEs, and lenders to increase private housing investments through the section 184 Indian Housing Loan Guarantee Fund Program, and the title VI Tribal Housing Activities Loan Guarantee Fund.

Many tribes and TDHEs, as well as other tribally affiliated community and economic development organizations, use a project-by-project approach to housing and economic development. There is a great need to create a more comprehensive approach to the creation of sustainable economies. There are clear roles that tribal governments, Federal agencies and lending institutions can play in creating these economies.

The promotion of capital development and economic growth for Native American communities, through involvement of the private sector is in harmony with our approach to meeting the needs of Indian country.

The proposed provision of technical assistance to Indian tribes, financial institutions, and other organizations is an on-going part of our efforts to increase mortgage lending to Native American communities.

We have learned of many of the barriers through the work of a number of Federal agencies inclusive of the USDA, BIA, the Community Development Financial Institutions Fund and, most recently, the six regional housing summits that HUD's Office of Native American Programs is sponsoring for its tribal, public and private sector partners.

We recognize the need to increase the purchase of Native American mortgage loans by the secondary market. We are already working with several entities to increase participation; for example, the Federal Home Loan Bank system and Fannie Mae. The creation of a new Corporation raises several questions. The entity would be allowed to enter into contracts, which could lead to the Federal Government being implicitly responsible if the corporation was not able to fulfill its contractual duties. While several objectives envisioned in the bill are positive, they can be accomplished through existing Government programs.

In summary, we encourage the development of new and innovate approaches to meeting the needs of Indian country that advance private sector participation with tribal nations. We agree with many of the findings as outlined in S. 519 and believe that much of the poor performance of Native American economies correlates to the absence of private capital and private financial institutions. We will continue to work in partnership with tribal governments, Native American organizations, the private sector, and other Government agencies to support private investment and leveraging in Indian country. And, Mr. Chairman, EIM is prepared to work with you to help overcome these barriers to accessing capital in Indian country.

Testimony of Chairperson Haunani Apoliona
Office of Hawaiian Affairs
Senate Committee on Indian Affairs
Regarding S. 519
July 21, 2004

Mr. Chairman and Members of the Committee, my name is Haunani Apoliona and I am the Chairperson of the elected Board of Trustees of the Office of Hawaiian Affairs (OHA).

OHA was created in 1978 by the State Constitutional Convention, and in 1979, ratified by the entire statewide electorate. Chapter 10 of the Hawaii Revised Statutes mandates OHA to "address the needs of the aboriginal class of people of Hawaii" Over more than two decades of operation, the social, political, cultural and economic fabric of Hawaii has changed profoundly.

In 2002, after several years of community meetings and culmination of a strategic planning process, the Board of Trustees approved the OHA 2002-2007 Strategic Plan. The mission statement is "to Malama (protect) Hawaii's people and environmental resources, and OHA's assets, toward ensuring the perpetuation of the culture, the enhancement of life style and the protection of entitlements of Native Hawaiians, while enabling the building of a strong and healthy Hawaiian people and nation, recognized nationally and internationally." The Strategic Plan identifies ten goals and provides strategies to reach those goals. The goal areas are: Advocacy-Native Rights, Culture, Economic Development, Education, Environment-Natural resources, Nationhood, Policy, Social Services, Land and Housing and Health. OHA's Economic Development goal, by 2007 OHA's investment in the creation and retention of wealth for Native Hawaiians shall have: 1) impacted at least 7 percent of the total statewide Native Hawaiian population by improving economic solvency and 2) accounted for a return on investment to OHA "equal or greater than the cost of capitol used to fund the activity and/or OHA's current rate of return (total fund) from the Native Hawaiian Trust Fund." Achieving this goal and future economic development goals of the Native Hawaiian Governing entity require access to and adequate funding for diagnostic assessment to identify and remove obstacles to goal achievement and technical assistance.

In the findings of S. 519, the Congress defines "Native American" as either a member of an Indian tribe or a Native Hawaiian. In the findings, it is noted Native Americans suffer rates of unemployment, poverty, poor health, substandard housing, and associated social ills to a greater degree than any other group in the United States. Congress further finds that the goal of economic self-sufficiency and political self-determination for Native Americans can best be achieved by making available the resources and discipline of the private market, adequate capital, and technical expertise.

As noted in S. 344, despite the overthrow of the government of the Kingdom of Hawaii, Native Hawaiians have continued to maintain their separate identity as a distinct native community through cultural, social, and political institutions, and to give expression to their rights as native people to self-determination, self-governance, and economic self-sufficiency. Native Hawaiians have also given expression to their rights as native people to self-determination, self-governance, and economic self-sufficiency – through the provision of governmental services to Native Hawaiians, including the provision of – health care services; educational programs, employment and training programs; economic development assistance programs; children's services; conservation programs; fish and wildlife protection; agricultural programs; native language immersion programs from kindergarten through high school; college and master's degree programs in native language immersion instruction; traditional justice programs, and by continuing their efforts to enhance Native Hawaiian self-determination and local control. Native Hawaiians are actively engaged in Native Hawaiian cultural practices, traditional agricultural methods, fishing and subsistence practices, maintenance of cultural use areas and sacred sites, protection of burial sites, and the exercise of their traditional rights to gather medicinal plants and herbs and food sources.

We note that the Department of Hawaiian Home Lands (DHHL) is identified in the Section 4 under Definitions. Housing is a major problem of all Hawaiians. The Hawaii State Constitution mandates the Office of Hawaiian Affairs to better conditions of all Native Hawaiians. Therefore it is requested that the Office of Hawaiian Affairs additionally be considered for inclusion in S. 519 in the appropriate sections. Historically low interest rates have made high-end Hawaiian homes more "affordable" and fueled an infusion of off-shore dollars by non-residents seeking "reasonably priced" retirement homes in Paradise. As those dollars have continued to flow into the Islands, the median cost of a single-family home on Oahu rose from $335,000 in March 2003 to $481,000 in early July 2004.

That phenomenal 30% growth on Oahu—the highest in the nation—was even greater on the neighbor islands, where the median price of a single-family home now ranges from $500,000 to $600,000. The condo and town home markets have both had comparable growth.

As the median price of single family homes has undergone this phenomenal growth, more and more Native Hawaiians have been priced out of the conventional housing market.

Therefore one of the purposes of S. 519 – "To establish the Native American Economies Diagnostic Studies Fund and the Native American Incubation Center to provide Native Americans with access to financial capital, to provide technical assistance and to encourage entrepreneurial activities among Native Americans could greatly assist our Native Hawaiian communities in their efforts to achieve the homeownership goals and economic well-being.

With initial oversight proposed to be provided by the Federal Department of Housing and Urban Development, housing clearly will be a priority, but other opportunities cannot be overlooked. We feel that S. 519 would also provide the opportunity for a productive economic

development policy and analysis that would result in improving the material standard of living of Native Hawaiians. Development of unique programs, bringing the resources from the Federal, State and private sector together to create new or expand existing industries, business and economic development opportunities, the establishment of localized incubator and entrepreneurial training programs and to provide policies and institutional support to assure economic solvency for all Native Americans should be major goals of this program.

With regards to possible amendments, we respectfully request that you amend Sec. 4 Definitions (15) to reflect the definition of Native Hawaiian as defined in S. 344 –

> *7) NATIVE HAWAIIAN- For the purpose of establishing the roll authorized under section 7(c)(1) and before the reaffirmation of the political and legal relationship between the United States and the Native Hawaiian governing entity, the term "Native Hawaiian" means --*
>
> > *(A) an individual who is one of the indigenous, native people of Hawaii who is a direct lineal descendent of the aboriginal, indigenous, native people who--*
> >
> > > *(i) resided in the islands that now comprise the State of Hawaii on or before January 1, 1893; and*
> > >
> > > *(ii) occupied and exercised sovereignty in the Hawaiian archipelago, including the area that now constitutes the State of Hawaii; or*
> >
> > *(B) an individual who is one of the indigenous, native people of Hawaii and who was in 1921 for the programs authorized by the Hawaiian Homes Commission Act (42 Stat. 108, chapter 42) or a direct lineal descendent of that individual.*

and Sec. 201 and other appropriate sections to allow the Office of Hawaiian Affairs (OHA) to participate in the economic opportunities provided by this bill so that all Native Hawaiians could participate.

The inclusion of the Office of Hawaiian Affairs would assure that all the benefits of this legislation to apply to all Native Hawaiians. Further, this legislation would enhance our responsibilities to our Native Hawaiian beneficiaries in fulfilling the goals and objectives of the OHA 2002 – 2007 Strategic Plan, especially in the areas of economic development, education, land and housing and health.

Once again, we commend you for developing such important legislation as well as your continued support of S. 344 – the Native Hawaiian Government Reorganization Act of 2004. The proposals in S. 519 would complement the economic opportunities offered by this legislation. We stand ready to work with you and your staff on the bill.

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STATE OF HAWAI'I
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September 30, 2004

The Honorable Ben Nighthorse Campbell
Chairman
Senate Committee on Indian Affairs
846 Hart Office Building
Washington, D.C. 20510

Dear Chairman Campbell:

Your letter of September 9 raised several questions relating to
S. 519 – the Native American Capital Formation and Economic Development Act of 2003 and we are pleased to provide the following answers.

What percentage of Native Hawaiians owns their own homes?

According to an SMS research marketing firm 2003 survey [conducted by SMS Research, a marketing research firm], 52% of all Hawaiians in the state own their own homes. Native Hawaiians are ten percentage points less likely to own a home than whites; and 25 percentage points less likely to own a home than Japanese.

The reduced supply of housing inventory --- during a high demand period --- led to higher housing prices for the remaining available units. Therefore, as the median price of homes rose, more and more OHA beneficiaries were priced out of the housing market.
In 2004, the Hawaii housing market is much worse. Fueled by the lowest interest rates in several decades, the mortgage loan market underwent substantial changes in 2003 – 2004. Historically-low interest rates made high-end Hawaii homes more "affordable" and fueled an infusion of off-shore dollars brought in by Baby Boomers seeking "reasonably priced" retirement homes in Paradise. As those off-shore dollars continued to flow into the islands, the median cost of a single-family home on Oahu rose from $335,000 in March 2003 to $481,000 in early July 2004.

That phenomenal 30% growth on Oahu--- the highest in the nation --- was even greater on the neighbor islands, where the median price of a single-family home ranged from $500,000 to $600,000. The condo and town home markets also had comparable growth.
In the first half of 2004, many homeowners took advantage of rising housing prices and historically-low interest rates to sell, refinance or remodel their homes or rental properties. Consequently, more and more housing inventory was taken off the market.

What is the Office of Hawaiian Affairs doing to help families obtain affordable homes?

The Office of Hawaiian Affairs has several initiatives that strive to help families obtain affordable homes. These initiatives are comprised of both direct and in-direct services:

1. **Homesteader Loan Program:** In 1993, OHA's Board of Trustees established a $20 million housing assistance fund for Native Hawaiians who wanted to purchase, renovate or repair a home on Hawaiian Homesteads land. Ten million was used to fund down payment loans and $10 million to fund rehab program for Hawaiian homesteaders. The program was later amended to include self-help projects, interim financing and permanent loans. It targeted low income and first homebuyers; and was a highly successful program. These are some of the statistics: 536 families used the program; 98 families have already repaid their loans; 438 loans remain on the books. OHA is about to launch an improved version of this program which will involve partnering with: Department of Hawaiian Homelands; USDA Rural Development; City & County of Honolulu Rehab Loan Department.

2. **OHA 103 Loan Program:** In 2002, OHA created the OHA Homeownership Program in collaboration with Fannie Mae, Bank of Hawaii and First Hawaiian Bank. Using this program, native Hawaiian borrowers receive two loans for up to 103 percent of the home's value. The first loan is 100 percent of the value and the second loan is up to 3 percent of the purchase price. This allows borrowers to finance costs associated with their home purchase. Fannie Mae allocated $135 million in financing to afford Native Hawaiians mortgage loans and informational workshops. OHA provided $4 million to guarantee the second mortgages.

3. **Kikala-Keokea Project:** In 1938, the U.S. Congress passed the Kalapana Extension Act. It stipulated that native Hawaiian residents in this Hawaii island community were to be provided leases for home sites. It also limited fishing in that area to the native Hawaiian residents, and visitors under their guidance. Congress, thereby, created one of the last Hawaiian settlements on the island. Unfortunately, the entire settlement was destroyed in 1983 by volcanic eruptions and lava flows. In 1992, in an effort to assist the displaced families, Hawaii's Department of Land and Natural Resources awarded home leases in the adjacent Kikala-Keokea community to 48 Hawaiian families. Regrettably, the area lacked the required infrastructure so the families were unable to occupy the home sites. The cost for the necessary infrastructure improvements was $2.7 million. Then in 2002, the State Legislature appropriated $1.35 million and OHA matched that amount with an additional $1.35 million. The infrastructure work should be completed and the home sites should be available for occupancy in May 2005.

4. **Kalama`ula Housing Project:** OHA gave the Department of Hawaiian Homelands $220,000 to help build 11 homes in the Kalama`ula self-help housing project on Moloka`i. Lot selection was held this past July and the project will soon start construction.

5. **National Homeowners Month**: June is National Homeowners Month. In observance of this event, the Hawaii HUD office sponsored the Fourth Annual Homebuyers Fairs at various locations in the state. HUD invited various government agencies, non-profits, financial institutions, and mortgage brokers to promote their housing-related services or products. The Fairs were open to all interested parties, but the focus was on first-time and low-income homebuyers. Our staff participated in the Fairs and provided housing-related information and assistance to approximately 100 beneficiaries.

6. **Housing Information Queries**: Our housing staff handles about 60 native Hawaiian housing information queries monthly. In addition to the housing-related component (e.g. purchasing, rehab, available financing sources, affordable rental assistance), many have concomitant issues involving healthcare, human services, education or community development issues. Based on our "one-stop-shopping" approach to handling client problems, we get them the answers they need or refer these queries to the appropriate area specialists in our office.

7. **Habitat for Humanity**: Habitat for Humanity typically works with clients that are 50% of median income and below. Since 1992, OHA has collaborated with the seven Habitats for Humanity affiliates in Hawaii. Ninety-five percent of their clients are Native Hawaiians. The collaboration included: establishing a $10 million revolving loan fund; and providing a $1.4 million emergency relief loan to Kauai Habitat to help overcome the devastating effects of Hurricane Iniki.

8. **State Housing Directors/Administrators Meetings**: OHA's housing staff participates in this monthly forum, which is comprised of federal, state, and county housing directors, including: HUD; USDA; the state housing agency; neighbor island counties; and DHHL. These senior housing managers discuss the affordable housing issues facing the individual island communities in order to anticipate problems and discuss possible solutions.

9. **Strategic Housing Plan**: In accordance with OHA Strategic Plan, OHA's housing staff has completed a draft of the OHA Strategic Housing Plan. It will be used to institutionalize OHA's interest in addressing all affordable housing-related issues that impact the Native Hawaiian communities.

10. **Housing Information Database**: Over the last year, our housing staff has compiled over 400 housing-related articles from various national, state and local sources, including the *Honolulu Advertiser, Honolulu Star Bulletin, Pacific Business News, CNN News On-Line,* and *USA Today*. This database enables the staff to stay apprised of the latest issues, problems and best practices to ensure OHA's housing programs and proposals are based on sound, relevant and current data.

Can the kind of tribal development corporation envisioned in S.519 offer support for Native Hawaiians in developing affordable housing? If so, how?

The services outlined in S. 519, SEC. 102 "Authorized Assistance and Service Functions," would have a significant impact on the Native Hawaiian community's ability to secure affordable housing:

The proposed national-level corporation would assist in planning, establishing and organizing regional Native American financial institutions. These would provide the culturally-sensitive financial network desperately needed to advocate for our Native Hawaiian communities at the institutional level.

This would be similar to the current federal home loan bank system, which consists of 12 regional wholesale banks whose customers are retail banks in local communities. In Hawaii, for example, our major retail banks --- Bank of Hawaii, First Hawaiian Bank, American Savings Bank, etc. --- are all customers of the Federal Home Loan Bank of Seattle (FHLBS). They are, therefore, able to offer a variety of FHLBS's housing assistance programs with a local flavor.

You said that the Office of Hawaiian Affairs needs access to a diagnostic assessment to identify and remove obstacles to goal achievement and technical assistance.
What are the barriers that have prevented the governing entity from undertaking a diagnostic assessment? Would a tribal development corporation having diagnostic expertise be helpful for the Native Hawaiian community?

It is the position of the Office of Hawaiian Affairs that the Native Hawaiian community at large would benefit from the types of services intended to be funded by the "Native American Economies Diagnostic Studies Fund" ("Diagnostic Fund") as envisioned in section 501 of S. 519. Although we hesitate to do so, we remind the Committee that as of today, there is no Native Hawaiian governing entity. Moreover, as a creation of the State constitution and statute, the Office of Hawaiian affairs cannot be the Native Hawaiian governing entity and, within its constitutional and statutory mandates, may only serve as a surrogate.

Upon enactment of S. 344, the governing entity ultimately created by that legislation would face, at the very least, initial impediments to obtaining diagnostic services primarily because the economic base of the governing entity depends upon negotiations with the United States and the State of Hawai'i. Until a sound and sustainable economic base is established for the governing entity, access to such services would be almost impossible without financial assistance from other sources, such as the Diagnostic Fund.

In the interim, the Office of Hawaiian Affairs believes that the need for assistance in this area continues to be a priority for all indigenous peoples in the United States – not merely Indian tribal economies. While it may be true that some Indian tribes have been less effective than others in the development of their economic infrastructures, this does not

SENATOR BEN NIGHTHORSE CAMPBELL
September 30, 2004
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detract from the fact that the other indigenous peoples – Alaska Natives and Native Hawaiians – face similar economic difficulties.

It is our recommendation, therefore, that the provisions of section 501 of S. 519 be included to provide assistance to native peoples (American Indians, Alaska Native and Native Hawaiians) in a manner equivalent to the provisions of section 502 of S. 519 rather than limiting those services just to "Indian tribes". We also recommend that, until the Native Hawaiian governing entity has established its own economic base, the Office of Hawaiian Affairs be authorized to access the services anticipated under the provisions of section 501.

We believe that it is important that the Native Hawaiian community be able to seek diagnostic assistance from organizations and/or individuals with knowledge and understanding of the Hawaiian community, its resources, traditions, practices, principles and beliefs. While the experience of tribal economies may be relevant to some degree, the Native Hawaiian community lacks the land and natural resources, such as minerals, oil and gas reserves, timber, and the like, available to many Native American tribes. We do not believe, therefore, that merely having access to a tribal development corporation with diagnostic expertise would be sufficient to assist the Native Hawaiian community to develop its own economic infrastructure.

Would you comment specifically on the concepts contained in Title VI of S. 519?

Title VI of S. 519 authorizes appropriations for Native American financial institutions, the proposed Native American Capital Development Corporation and the funds established in sections 501 and 502. In general, the Office of Hawaiian Affairs supports the funding of these programs. As noted above, however, the Office of Hawaiian Affairs would urge that section 501 of S. 519 be modified to include all Native Americans and not limit its reach only to Indian tribes.

Thank you for the opportunity of providing the information you requested. If you need anything further please let us know.

'O wau nō me ka 'oia'i'o

Haunani Apoliona

Haunani Apoliona
Chairperson
Office of Hawaiian Affairs

Testimony of

Chester Carl,

Chairman

NATIONAL AMERICAN INDIAN HOUSING COUNCIL

Before the

SENATE COMMITTEE ON INDIAN AFFAIRS

July 21, 2004

Chairman Campbell, Vice Chairman Inouye, and other distinguished members of the Committee, on behalf of the Members of the National American Indian Housing Council and its Board of Directors, thank you for this opportunity to address you today on S.519, the Native American Capital Formation and Economic Development Act of 2003. My name is Chester Carl, and in addition to being the Chairman of the National American Indian Housing Council, I am also the CEO of the Navajo Housing Authority. For my testimony today, I rely not only on my own experiences in tribal housing and in business, but on what I have learned from colleagues who have spent years working on tribal development issues.

Across this country, thousands of Native families are facing housing conditions similar to those in undeveloped countries. Compared to most American homes, many tribal homes lack proper sewage and water systems, adequate roads, telephone lines, indoor plumbing and electricity. The problem is exacerbated by the remote or rural locations of tribes, many of which have few, if any, economic opportunities. As the mainstream American economy progressed, development did not extend to Native communities, in part because of land jurisdiction, but for many other reasons as well, including federal policy. So we find ourselves in the situation we are in today – seeking ways to help tribes take advantage of the private market and develop their economies without relying solely on federal subsidy or gaming.

I understand that the Committee's purpose in this hearing is to evaluate the creation of a tribally-owned development corporation that could assist in developing tribal economies. I have learned through my work with the Navajo Nation and in my long career as a businessman that the key to economic success is to utilize the tools that are proven to work to build capital and take advantage of them in the ways that other successful businesses do. Although tribes are unique in their structure and culture, I believe a solution to

economic challenges will come only through sound investment and business practices that integrate tribal economies with the greater financial community. Capital growth through a development corporation has the potential to stimulate tribal economies in ways that could lead to less reliance on the federal government.

Some of this committee's staff accompanied NAIHC on an Indian housing tour to the Northwest in the spring of 2002. One of the tribes visited was the Hoh Tribe, which, with approximately 100 members and a 1 mile square reservation, receives about $150,000.00 in NAHASDA funds from HUD each year, administered through an umbrella TDHE (Tribally Designated Housing Entity). It became obvious to all on the tour that, unlike in most of America, investing housing funds in this community was not resulting in economic stimulus because of its 80% unemployment rate and isolation from any sort of business or economic structure. Housing dollars were going strictly into building desperately needed homes, but with so much unemployment and with everything so heavily subsidized, the tribe was making little progress in improving their economic situation. Despite the tribe's efforts, it was difficult to imagine a time when the Hoh Tribe would no longer need federal housing subsidy.

On the other hand, up the road with the Quinault Tribe, similar geographic isolation was being met with efforts to build the economy from within. In addition to a tribally-owned resort, a flourishing fisheries business was providing employment as well as outside income to the community. But of particular note, the housing authority saw an opportunity to keep tribal funds in the community by creating a roofing business to serve the housing authority and other private homeowners on the reservation. Rather than paying for someone to drive out from miles away to do the work, a job training program was set up so that Quinault gained a workforce of skilled roofers and were able to save money for the tribe. These are new and wonderful ideas that will help sustain this tribe in the future.

While some tribes have been tremendously successful in economic and community development, this resourcefulness is often lacking on many American Indian reservations. It seems that, over the course of hundreds of years of dealing with Indian tribes, the federal government has created an unnatural scarcity of resources -- of land, of food, of cash payments, of all the things that make an economy function -- and replaced functioning economies with a system of government subsidy.

Under this scenario of unnatural scarcity, the idea of economic gain of the individual benefiting the community simply does not work; your gain can only come at your neighbor's expense. Success is therefore met with suspicion or even hostility. The government established isolated communities in which economics is a zero sum game. Many people unfairly criticize tribes for not being more successful in a market-based system when the government has in effect isolated them from that very system. I believe, and it seems this Committee agrees, that for both economic and moral reasons we must work with tribes to create economic opportunities based on market principles that allow for the creation of wealth, rather than fostering a reliance on federal assistance.

The challenges facing tribes are not due simply to the system of reservations and this is not an argument for either assimilation or a return to the termination policies of the mid-twentieth century. We must look to self-determination and embrace a functioning free-market system as the long-term solution to the challenges of tribal economies, not more subsidies. I am also not advocating an abandonment of support. The federal government created this problem and the federal government must now work with tribes and private institutions to help solve it by creating and supporting institutions of true, long-term economic value. The federal government has a dual responsibility to its citizens: to assist persons in poverty and to ensure that they can escape that poverty.

Our first goal must be to discontinue the policies that hinder economic growth on the reservation and in other Indian communities. A good example of this concerns the use of leases on trust-held land. Prior to the passage of the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA), most individual tribal members could get a lease for land for only 25 years. Yet some policy makers

scratched their heads and wondered why tribal members weren't getting 30-year mortgages. It's simple: no banker in their right mind is going to lend you money for 30 years if you get the land for 25. That has nothing to do with race or reservation, it's just basic business practice. Another example is a tribal member going to a lender to get a mortgage loan is approved pending title clearance on the land. Had the loan been for a home on fee land, the tribal member could expect to receive a Title Status Report (TSR) in a matter of days. With trust or allotted land, it can take many months to many years to obtain a TSR. How many lenders do you know that will hold a loan approval for a matter of years?

Land title issues continue to be a major concern on reservations and are often an impediment to development. Nevertheless, I believe the issue is a solvable problem that is too often used as an excuse for not pursuing further investment. The mere presence of leases does not prevent economic activity. The failure is in the administration of the leases, a matter that is under the jurisdiction of the Bureau of Indian Affairs and the Department of Interior. We are told that efforts are underway at the BIA to address this situation, but the problem was not created overnight and it will not be solved overnight. The House Financial Services Committee, in response to frustrations voiced by tribes, is working with NAIHC to develop legislation that would reinforce and more clearly define the ability for tribes to choose to take title processing in-house. Navajo intends to set up its own title plant in the next couple years.

The inability to create an effective lease registration and tracking system, one that would allow tribal members across the country to engage in the kind of trade and mortgage borrowing that most of the rest of us take for granted, is an example of how an inadequate legal infrastructure hampers economic development in Indian Country.

This is somewhere capital is sorely needed. Tribes are no longer willing to wait the months and years it often takes for the BIA to issue a Title Status Report. They want to create their own title plants, but that costs money. Ideally, a tribe contracting with the BIA to provide these services would receive funding as well as the responsibility, but with federal funds for BIA lagging, tribes must look elsewhere. The Confederated Salish and Kootenai Tribes of Montana, a self-governance tribe, has compacted with the BIA for title processing work and has set up its own title plant. They were able to obtain all the records they needed from the BIA, but they also inherited all of the backlog. The tribe has had to supply much of the funding needed to set up the title plant and keep it functioning. A lot of tribes do not have the extra funding to do that. The benefit to Salish-Kootenai is that now they are able to participate actively in the private mortgage market because they no longer have to wait for the BIA to process titles.

Should a diagnostic study of a tribe, of the sort proposed in S.519, show that a major impediment to development of a mortgage market is the inability to borrow money because of land issues, the recommendation could be for the corporation to fund a title plant. With a housing market that, by providing timely legal documentation, can attract lenders, the investment in a title plant would pay for itself many times over. In addition, tribes could join together to create a larger title plant as a consortium, spreading the cost out among the members.

Lease recordation is only one of the challenges that tribes face. Many businesses that have considered operating on a reservation have not done so because of concerns with legal infrastructure. In some cases their concerns are valid, in others they are not. Regardless, any businessman needs to know that they can get recompense if there is a contract dispute. We would all like the private sector to be more active in tribal development. From the vantage point of NAIHC, many in the private sector are ready to step up and in fact are trying very hard to craft programs and products that fit with Indian country, but they keep running up against BIA title delays, inconsistent legal documentation, or a complete lack of tribal legal infrastructure. For example, many tribes have not developed their own Uniform Commercial Codes, which are vital for working with lenders.

One of the staff at Navajo Housing Authority, Raymond Concho, Jr., is the former director of the housing program for the Pueblo of Acoma in New Mexico. Acoma, like many reservations, has a shortage of housing. Just five years ago the Tribe's governor was commuting 40 miles from Albuquerque to perform his duties. There was no chance for a tribal member – even one who clearly had a good job – to purchase a home. The mechanism to do so, the tribal codes that would allow for mortgage lending, simply did not exist.

Raymond set out to create a viable mortgage lending program at his tribe. After much work with lawyers, HUD, Fannie Mae, PMI Mortgage Insurance and others, he presented a set of proposed legal documents to his tribal council for approval.

While the council supported his proposal, they told him that he needed to have it approved by the Casique, the traditional leaders of the tribe. For thousands of years, the Casique, or Antelope Clan, have governed the tribe and have given approval to families who wished to build a house or move from one to another. Raymond's ideas were a radical departure from centuries of tradition. For the first time, the proposed legal documents he presented them would take away their authority and put it in the hands of bankers and other institutions. The Casique might grant you a lease, but a banker might seek to have you kicked out for not paying your mortgage.

Nevertheless, the Casique approved of the plan. They recognized that in order to continue the economic development that has begun at the tribe and to give an opportunity for their members to build wealth and move away from dependence on federal programs and funding, they had to cede some power. This is not a sign of weakness, this is a sign of immeasurable strength and belief in their own people.

The example of Acoma Pueblo is important for several reasons. First, it shows how challenging it can be to create viable legal infrastructures, those necessary for business and investment. Second it shows that tribes, while challenged with the need to advance economically, can do so without losing their cultural identity. This is an area that the diagnostic tool in S.519 would be of great assistance.

Many of my colleagues working on behalf of Indian tribes, both as members of tribes and as advocates for them, have proposed the creation of any number of separate institutions for economic growth, including the capital formation corporation proposed by this committee. But there are some challenges inherent in such a move that must be considered.

It is in diversification that our economy thrives. I can understand the value of having an Indian-owned bank. It can create and maintain relationships in communities that can facilitate interaction between potential consumers and the institution itself. Likewise creating an Indian Government-Sponsored Enterprise within this corporation to purchase loans from such banks could help step up mortgage activity, but should not be to the exclusion of others. Institutions like Fannie Mae connect Wall Street with lenders and in doing so create a mechanism whereby investment capital actually make loans more plentiful and affordable. We should find more ways to connect the tremendous capital resources of this country and of the global economy with Indian Country, and be cautious of looking to create new institutions if they will merely serve to perpetuate the economic isolation of too many tribal communities.

There are many examples of how we can assist in the development of infrastructure and work with sovereign governments to improve their economies. Many people discuss third world countries and make comparisons to tribal economies, but I think comparisons to Eastern Europe are more appropriate. The countries of the former Soviet Bloc had strong, but distant central control. Yet through foreign investment, decentralization and the development of effective economic and legal infrastructure, many of these countries are thriving. For many tribes, the tribal government is the center of the universe – the biggest employer and the conduit of all federal assistance. However, examples of decentralization in Eastern Europe have shown that investment in business associations and business training associations outside the central government are crucial to building economies.

Programs with a singular purpose following a narrow policy could be seen as a contributing factor in the failure of many programs designed to assist tribes. Successful models, like Public Law 93-638, provide assistance, but allow flexibility in implementation. Neither the developing countries of Eastern Europe nor the vastly different tribes in the United States should be subjected to a one-size-fits-all prescription for development. A Native-owned corporation must be open to innovative ideas and be as flexible as possible.

So how does housing fit in? We see this as an opportunity. With the new amendment to NAHASDA passed in 2002 with the help of this Committee, tribes are able to use the Title VI loan guarantee program to fund housing related community development activities and, pending the outcome of the community development project that is currently being explored by HUD, may in the future be able to leverage their NAHASDA funds for community development that is not strictly sticks and bricks but rather activities to grow wealth in the community. Tribes are in a position to begin to disengage from a singular path, prescribed for all, and attend to the needs and opportunities of their own situation.

Community development through private investment is key. For certain, a Native-owned corporation would allow tribes to purchase assets or businesses to support housing. We know that housing alone is not enough, as evidenced by my example of the Hoh tribe earlier. Investment in housing is a tremendous stimulus for American communities, but only when the opportunities and legal infrastructure exist. Simple housing alone just provides a roof. Housing development with a manufactured housing plant, with a roofing business like at Quinault, with a title plant, with even businesses like hardware stores or building supply stores stimulate the local economy. Additionally, home equity is one of the greatest builders of personal wealth. We must move from subsidized housing to homeownership to allow tribal members to grow personal wealth. The corporation would allow tribes to take the next step.

We have a vision for Navajo in 10 years and in 100 years. Many tribally-owned businesses are already in place that are leading to a more vibrant economy on our reservation. For example, Navajo has developed a self-insurance program that currently has $13 million in reserve and the risk is only $200,000 a year. We also have a cabinet company that not only provides cabinets for new housing through the housing authority, but also provides income to the tribe from sales outside the reservation. Our Flexcrete plant, which manufactures innovative building materials that will cut down on the cost of building and heating homes, is expected to generate $28 million in 8 years. We are also looking into creating a mortgage company with a program that would provide 100% guarantee for home loans for families who are not otherwise eligible for financing and who must fulfill the homebuyer counseling requirement. Fannie Mae is supporting us in this effort. Additionally, we have a modular construction plant that utilizes volunteer labor to manufacture homes at reduced cost. These are all ventures that have required capital from the tribe and now are not only alleviating some of the severe need for housing on the reservation, but are also generating income and creating jobs. This corporation could allow other tribes the opportunity to set up similar businesses that support housing.

The Committee has asked for a discussion of systemic barriers to tribal development and places the corporation would be helpful. I will close today with a discussion of a few that add to those already mentioned.

While there are numerous national initiatives and programs already in place, tribal communities still have a need for lenders and other financial institutions to step up their mortgage loan activity. One way to attract lenders is to make financial services more readily available. How can a mortgage market or business market prosper when there is one bank branch in an area of several hundred square miles? Some tribal areas do not have any banking services whatsoever. Navajo currently has one bank branch and four ATM machines to service more than 180,000 tribal members. Additionally, much of the Native community is in need of homebuyer training, financial literacy skills or credit counseling. Without this training, some Native

homebuyers are left with little choice than to accept loans with high interest rates, excessive fees, and discriminatory or unscrupulous practices.

NAIHC also encourages the expansion of the use of Individual Development Accounts (IDA), for putting tribal members on the road to homeownership. Some Federal Home Loan Banks have set up IDAs where deposits from the family are matched by the bank in anticipation of a down-payment on a future mortgage. The matching funds create an incentive to save and give the family a stake in their own future. The corporation could offer this kind of service. IDAs are still a form of subsidy, but without it most will not take the risk and would rather continue to rely on tribal housing departments. IDAs make it easier to get into a home, but at the same time, not too easy. Tribes have the challenge of seeing so many families they want to put into a new home, but know they are not ready to be homeowners. IDAs can begin to bridge that gap.

In most cases Native families are either first generation mortgage loan recipients or first-time mortgage loan recipients. Tribal families often seek assistance to learn about homeownership, its benefits, and requirements because it is unfamiliar territory. In some instances, they may have less than good credit or no credit history at all, or they may not be familiar with the mortgage lending process and required home maintenance activities. Education and counseling is imperative in helping a Native American individual or family become a successful homeowner. The more sophisticated and knowledgeable our people get in the area of housing finance the more likely they are to be successful.

Large scale infrastructure is also an area desperately needing investment. For most Americans, the cost of basic infrastructure—like water, sewer and roads, is an expense shared by a local community, or paid for by county and state taxes. As you know, in Indian Country things are slightly different. Although tribes receive federal money for housing through the form of Native American Housing Block Grant funds and other programs, tribes are not able to build a home without putting infrastructure in place first. For most public housing programs, it is taken for granted that a water and sewer system already exists for the house to be hooked up to. For much of tribal development, that system must be built, and that is not cheap. Water treatment plants, sanitation facilities, roads, hospitals, fire departments – all of these are so easily taken for granted, but in Indian country are usually absent.

NAIHC issued a report on infrastructure in Indian Country in 2003. NAIHC's report revealed that a small percentage of tribal communities have no infrastructure in place, while in other areas, roads were described as "poor to fair" and sewer systems/facilities were described as "generally poor," negatively affecting not only housing, but also much-needed business development as well. With a large percent of the Native population in need of basic infrastructure, particularly as compared to businesses and schools in most of the United States, Native entrepreneurs are at a distinct disadvantage when it comes to successfully building or establishing a business.

One possible new initiative would be to create an incentive for tribes to cultivate private investment. Right now, most incentives are for the lender in the forms of guarantees or the ability to meet Community Reinvestment Act (CRA) requirements. Other than the desire to put their members in homes, there is no real incentive for tribes to do private lending. Perhaps there could be some monetary incentive to reward leveraging. For example, if a tribe combines its own funds with corporation funds, at some point they could get some of it back. The opposite currently exists for NAHASDA at HUD – you get more money because you have fewer resources. You are rewarded for having a depressed economy. There is not a solid incentive to improve that economy.

Many in this room may not immediately agree with this opinion, but I personally believe that, for business purposes, taking land out of trust and making it fee land will help tribes, not hurt them. For our Flexcrete plant, which manufactures building materials to be used both on and off the reservation, we could

have located on Navajo land, but what would happen if the business went under? Instead we bought 10 acres of fee land for the plant that can be sold if the business fails. This way we have our interests protected.

I believe that the number one challenge to economic progress for tribes is a lack of resources – not only monetary resources, but human resources. There is a severe shortage of people in Indian country who have business sense. Through no fault of their own, most of our people have what some call a "welfare mentality," often perpetuated by federal policies. If the federal government provided more tools and education, taking the focus off subsidy, I believe you would see more economic growth in tribal communities. I therefore urge this Committee to maintain technical assistance and business training as a critical component for this legislation. In particular, I would like to see an internship program with the corporation to teach young Native Americans about business. I would also like to see a mentoring program set up for tribes to learn from private corporations.

Leveraging made possible under NAHASDA is a great opportunity that many tribes are taking advantage of, but it is still developing in Indian Country. Those who are positioned well to be successful are successful. But those with poor economies, a lack of jobs, or a poor location are not well positioned and will continue to struggle until their situation improves. A source of additional capital would give many tribes the boost they need.

Indian country stands out in its extreme level of need and warrants the investment of resources that can fund a more aggressive and comprehensive approach to solving its problems. With the federal government's main Indian housing program, the Native American Housing Block Grant, only able to produce about 5,000 new units per year nationally, looking to new paradigms is the only way we as a people can hope to make progress.

CONCLUSION:

In closing, each individual tribe must decide for itself how to preserve its culture and strike a balance, as the Pueblo of Acoma has done, that allows development and economic integration, but maintains the tribe's unique identity.

If we do not work with the tribes to provide opportunity, the drain of resources away from Indian communities will continue. I am not referring to an economic drain, but an intellectual one. Young people need opportunity. If they do not have economic opportunity in Indian Country, more of them will continue to leave and seek their fortunes elsewhere. This is a danger to cultural identity as great as any other. It is, however, one that we in this room and throughout government and the private sector can work to help tribes overcome.

I would again like to thank all the members of this subcommittee, in particular Chairman Campbell and Vice Chairman Inouye, for their continuing support for the Tribes and for Indian housing programs. NAIHC looks forward to working with each of you in the rest of this session of Congress and I am happy to answer any questions you may have.

The National American Indian Housing Council is a 501(c)(3) organization representing tribes and tribal housing organizations nationwide. It operates a national technical assistance and training program as well as the Native American Housing Resource Center in Washington, DC through an appropriation from the Congress administered by HUD. NAIHC's offices are at 900 Second Street, NE, Suite 305, Washington, DC 20002; phone: (202) 789-1754, fax: (202) 789-1758; http://www.naihc.net.

September 28, 2004

The Honorable Ben Nighthorse Campbell
Chairman, Senate Indian Affairs Committee
838 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Campbell:

Please accept the following response to your follow-up questions from the July 21, 2004 hearing on S.519, the Native American Capital Formation and Economic Development Act of 2003. I would like to thank you for including me in this important discussion.

Question 1: Regarding privatization of the administration of Title Status Reports (TSRs), I believe it is a viable solution to our current problem. We all know that the Bureau of Indian Affairs currently has inadequate staffing, resources, and technology to process title documents in a way that can compete with the private sector. That is what we need if we are going to truly develop mortgage markets in Indian country – to be able to work with lenders in a timely fashion comparable to what lenders can expect from regular fee land transactions. It only makes sense if a tribe has the resources and capacity to take charge of its land documentation that they should be able to do so.

An excellent example is the Confederated Salish and Kootenai Tribes of Montana. Under a 638 contract with the BIA, CSKT took over all of their land records and are now able to process TSRs within a day or so, whereas it takes BIA on average a minimum of 6 months up to several years. The caveat is that CSKT, when they took over this responsibility, also took over all of the backlog as well as most of the expense. The land title office is now funded largely with tribal funds. One would assume that the funds used by BIA to service CSKT would be funneled down to the tribe once they took on that responsibility, but I understand that is not the case. Therefore, this should only be an option for tribes who are economically able to absorb the burden and who also have the

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technological and administrative capability to make this successful. It is for these reasons I believe you see so few tribes taking this opportunity. I know of only three or four tribes currently operating their own title offices.

In discussions on this issue with BIA staff, capacity was one of their biggest concerns. The last thing they want is to hand over land documents to a tribe who then was unable to service their members and the BIA would have to come in and take it all back. Another concern for the BIA was security. In an increasingly internet-based system, who would have access to the land database if it was tied into the BIA? How would it be updated? One of the ways to beat problems of capacity, resources, and even possibly security is what you suggest with a consortium of tribes developing a title plant together. This is something the Navajo Nation is already pursuing. As you know, by specific Congressional authority, Navajo is poised to begin work on a new land title office. Our goal would be to offer the services of this office to any of the surrounding tribes in New Mexico and Arizona. The cost burden could be shared and the resulting benefit would be immediate because really there are very few liens on Indian land. Once set up, there should be very little problem with processing these documents at a market-accepted rate.

A tribal development entity could be key in helping tribes to join together in consortia to create title plants. Providing monetary assistance and the more important technical assistance could help some tribes embark on such a project when they would otherwise be unable to. There will always be tribes who will leave this work to the BIA, I believe, but many more would like to have increased control, which would then lighten the burden on the BIA.

Question 2: I wholeheartedly believe that instituting tribal business laws are crucial for encouraging private sector and capital development. We must create an environment for business to be comfortable in. As a friend and colleague recently said, money is a coward. If we set up the structures to facilitate commerce, money will follow. Almost without exception, generating tribal revenue must include non-tribal, non-government investment. If there is no Uniform Commercial Code (UCC) to follow, not many non-tribal, non-government entities will be interested.

A tribal development corporation would be able to provide examples to tribes, helping to streamline code requirements, the approval process, etc. In my experience, the BIA and Indian Health Service tend to take portions of tribal activities into their jurisdiction if there is an absence of UCC's. Helping tribes with UCCs would also allow for greater self-determination.

The mentoring aspect I mentioned during my testimony would be key. There are a lot of successful businesses to learn from. The corporation could help make that connection. I recently heard a very good idea that the corporation could be involved in – assembling business advisory groups in tribal areas. I think this could really help some tribes, not only to learn about business, but to give them confidence through a support network and to help generate ideas.

Question 3: I realize that my suggestion of taking tribal land out of trust for business purposes may seem controversial, but in discussions I have had with tribal leaders, when I can explain how it would work they will almost always agree that it could be a powerful benefit to the tribe. I am suggesting both that land be taken out of trust for purposes of home mortgages and also for businesses. Building the personal wealth and equity for individual tribal members is just as important to tribal economies as building tribal business. As I illustrated during the hearing, as a Navajo member, I may only lease a single piece of land on the Navajo reservation. I should be able to, as in other areas of the United States, own my own home and land, but also have the option to buy other properties to build my own personal wealth. In trust, that land has no monetary value to me as an individual. It would have value as fee land.

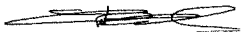
It is important to note, however, that when I suggest converting trust land into fee land, it should not be for general access. The land should have the restriction of only being owned or sold to a tribal member, keeping it restricted tribal land without the accompanying burden of BIA oversight and trust status. It would all be under tribal control so it would depend on how they set it up.

When weighing the options, I suggest that placing land into trust is not always the best option for the tribe. Keeping the land as fee land, but under tribal control can open up a lot of leveraging capabilities for tribes. It would be vital in such a scenario to strengthen tribal courts who have jurisdiction over the land to avoid the pitfalls you suggest. Fractionation would not occur if the tribe and courts had the correct controls in place.

Question 4: In regard to the funding concepts of Title VI of S.519, I believe that each of the goals of the legislation must be adequately funded without taking existing federal resources away from the tribes. In particular I would support Section 603, which authorizes funds for the diagnostic fund and the economic incubation center. Both of these tools have the potential of benefiting many tribes who are currently struggling with problems they have not been able to address or are without seed money for business ventures.

Please let me know if I can be of further assistance to you or to the Committee.

Sincerely,



Chester Carl
NAIHC Chairman

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Statement of Katherine A. Spilde, Ph.D.
Research Fellow
Harvard Project on American Indian Economic Development
Kennedy School of Government
Harvard University

Testimony
Before the Select Committee on Indian Affairs
United States Senate

Hearing on S. 519
The Native American Capital Formation and Economic Development Act of 2003
July 21, 2004

Mr. Chairman and distinguished members of the Committee, good morning. My name is Katherine Spilde and I am a Research Fellow with the Kennedy School of Government, Harvard University. Prior to my appointment at Harvard, I served in a number of research and policy positions here in Washington, D.C., including work with the Congress' National Gambling Impact Study Commission (NGISC) and the National Indian Gaming Association (NIGA). My background includes a Ph.D. in cultural anthropology, which frames my research on Indian policy and economic development. I am honored to be here today to participate in this discussion of the opportunities that could potneitally be realized through the creation of a tribally-owned development corporation.

I commend you for undertaking the what I consider to be a complicated two-fold task: first, identifying obstacles to economic development in Indian Country, including systemic issues, with an eye toward addressing or eliminating them; and second, identifying existing opportunities that can be maximized and exploited for the benefit of Native people. After assessing both obstacles and opportunities, I believe it will be clear that the creation of a tribally-owned development corporation, as envisioned in S. 519, could be an effective effort in addressing the on-going challenge of supporting sustainable economic development in Indian Country.

I am here today to comment generally on the need for a more cogent federal economic development model rather than to respond directly to points in S. 519. I am honored to be here today to offer some insights from my research on Indian policy in general and Indian gaming in particular. I have had the privilege of doing research on Indian gaming for over ten years. My research has taken me to over 125 Indian reservations and I have met with countless tribal leaders and developers about investment of gaming revenues and broader questions of economic development. Because much of my research was policy-oriented, my broader agenda was aimed at addressing the bigger questions, "Is Indian gaming working?" and "How can tribal governments maximize their gaming successes and diversify their economies?"

In sum, my research strongly argues that Indian gaming *is* working and its success is built upon four key features: 1) Tribal governments initiate Indian gaming rather than

having it imposed upon them; 2) Indian gaming recognizes tribal sovereignty and encourages tribes to exercise their sovereignty as a development resource; 3) Indian gaming creates a tribal tax base, allowing tribal governments to fund their social programs; 4) Indian gaming supports "nation building" activities, encouraging the creation of strong institutions of self-governance and partnership building for diversification.

Indian gaming works because it recognizes that creating an economy and building a nation are mutually reinforcing activities. Harvard research finds that when tribes make their own decisions about what approaches to take and what resources to develop, they consistently out-perform non-tribal decision makers. Tribal governmental gaming has created a historical moment where tribal decision-makers are playing a more prominent role in Indian country than ever before, making Indian gaming the most successful nation- and economy-building strategy in American history. For that reason, I think it is important to extract lessons from Indian gaming that could facilitate the creation of a successful tribally-owned development corporation.

I am optimistic that the creation of a tribally-owned development corporation could mirror the successes that we have already seen at the tribal level. A tribally-owned development corporation similar to that described in S. 519 could potentially represent the extension of gaming's benefits to more tribes in the United States, allowing gaming to act more as a federal program in spite of its 'opt-in' features. However, in order to be successful, any federal initiative would more likely succeed if it mirrored Indian gaming policy in at least one critical way: first, it should be initiated and considered on a case-by-case basis at the tribal level rather than be imposed.

Why Indian Gaming Works

American Indians, both on and off reservations, have seen enormous improvements in their economic circumstances over the past two decades. Much of this improvement is attributable to Indian gaming. Just last week, the National Indian Gaming Commission (NIGC) revealed that national 2003 gross gaming revenues for Indian gaming facilities topped $16.7 billion, an increase of $2 billion or 13.7 percent over 2002 gross gaming revenues. Indian gaming has created a significant ripple effect through Indian Country by generating jobs, stimulating tribal institution-building, and facilitating diversification projects.

Not surprisingly, the gains from Indian gaming are not being realized on an equal basis across Indian Country. Approximately two-thirds of all tribal governments are not involved in gaming at all, and many tribes that do offer gaming have small facilities or are limited by the permitted scope of gaming in the state.

The fact that Indian gaming revenues are not evenly distributed across the tribes is often raised as evidence that Indian gaming is not "working." Of course, the 1988 Indian Gaming Regulatory Act (IGRA) was not intended to act as a federal program, such as Indian programs funded by tax dollars, and IGRA's framers clearly noted that, "not all tribes can engage in profitable gaming operations." Rather, IGRA provides a framework for regulating gaming on Indian lands for those tribes that have meaningful markets and chose to pursue gaming. This feature—tribal initiative for opting in or out of gaming---makes Indian gaming an *option* for tribal governments, but one they must fully fund and develop, assuming all costs and risks themselves.

While it is clear that Indian gaming works for many tribes, there are also many obstacles to obtaining financing. We are all familiar with the fantastic success of handful of tribes with access to substantial gaming markets. These tribes have had very little trouble gaining access to capital once Indian gaming's legal and regulatory issues are clarified. However, these large operations are unusual and represent about 10% of all tribes in the United States. Rather, the majority of the smaller and mid-size projects are difficult to finance and could benefit from access to capital and expertise. Even when these projects do get financed, tribal governments are not always in a position to command terms that they may find desirable. There is certainly a need for additional vehicles for tribal financing, for gaming and otherwise, and I find the Committee's efforts on this issue to be laudable.

A Tribal Initiative Not a Federal Program

In its 1999 Final Report to Congress and the President, the National Gambling Impact Study Commission (NGISC) stated, "There was no evidence...suggesting any viable approach to economic development across the broad spectrum of Indian country, in the absence of gambling." While the NGISC did not address the complex reasons why Indian gaming is the only approach to work, it seems clear that one of the characteristics most responsible for Indian gaming's viability is the fact that it a tribally-driven initiative and not a federal program. Until recently, economic development in Indian Country was largely dictated by federal funding initiatives which were often splintered, uncoordinated and ineffective. When tribal governments began exercising their jurisdiction over gaming activities and developing the suitable governmental institutions to do so, Indian gaming quickly became an economic development engine. According to sociologist Stephen Cornell, the fact that Indian gaming was tribally-driven may be the primary reason for its success; he writes, "As long as the Bureau of Indian Affairs or some other outside organization carries primary responsibility for economic conditions on Indian reservations, development decisions will tend to reflect outsiders' agendas. Transferring control over decisions to tribes does not guarantee success, but it tightens the link between decision making and its consequences."

There are a host of reasons why it is critical for tribal governments to make their own development decisions, including the decision of whether (and *how*) to pursue gaming as an economic development strategy. The choice to pursue gaming rests upon a number of community-based considerations, ranging from cultural beliefs to market limitations. For a few tribes, Indian gaming represents the diversification of an existing economy that previously relied upon natural resource extraction or tourism; for others, gaming's high profit margins created their first opportunity to attract developers willing to invest on-reservation and bankroll the infrastructure necessary to support large-scale development; for still others, Indian gaming is a strategy for job creation rather than solely an avenue to generate a revenue stream for tribal programs. Or course, the bulk of the 561 federally-recognized tribes in the United States do not engage in gaming at all. What seems clear is that those tribes that pursue gaming are in a position to create both an economic enterprise and governmental structure that is appropriate and functional for their particular tribal community. This feature---control over whether and how to develop appropriately---sets Indian gaming apart from any other economic development strategy to date. Indian gaming is a development tool available to tribal governments but not

imposed upon them, transferring the development decision to the tribal governments and citizens who are the closest to the impacts of that decision and therefore more likely to make the right choice for themselves.

Indian Gaming Recognizes Tribal Sovereignty

When Congress passed the Indian Gaming Regulatory Act (IGRA), tribal governments had already initiated gaming on Indian lands as a way to generate much-needed governmental revenue. IGRA was intended to balance the interests of the various governments (tribal, local, state and federal) while also acknowledging that, in the words of Senator Inouye (D-HI), "Indian tribes are quite capable of managing their own affairs." IGRA created a new federal agency, the National Indian Gaming Commission (NIGC), to oversee tribal regulation of gaming and assist in certain aspects of casino operations, including management agreements and licensing. IGRA also granted new rights to state governments by developing a tribal-state compacting requirement for class III gaming and allowing state officials to play a role in approving off-reservation land acquisitions. (IGRA included provisions for local governments to consult on land acquisitions as well.) Tribes were openly opposed to these provisions in IGRA and two tribes filed suit claiming that these new intrusions into tribal affairs were unconstitutional.

In spite of the creation of new roles for other governments with an interest in Indian gaming, IGRA's framers were clear in their recognition of fundamental aspects of tribal sovereignty. Indeed, IGRA reiterates that states cannot expect to directly benefit from Indian gaming through assessing a tax or fee on any Indian tribe as a condition of negotiating a tribal-state compact (or for any other reason.) In the Senate Committee Report generated for IGRA, Sen. John McCain (R-AZ) underscores the point that, "Tribes have been and will continue to be permanent governmental bodies exercising (those) basic powers of government...to fulfill the needs of their members. Under our constitutional system of government, the rights of Tribes to be self-governing and to share in our federal system must not be diminished." McCain's reminder reflects the point memorialized in IGRA's findings: "a principal goal of Federal Indian policy is to promote tribal economic development, tribal self-sufficiency, and strong tribal government."

Indian gaming rights are a clear expression of retained jurisdiction and tribal sovereignty. While some gaming opponents portray Indian gaming rights as a "loophole," this portrayal overlooks the clear confirmation of tribal regulatory authority in a succession of Indian gaming court decisions, culminating in the Supreme Court's 1987 ruling in *Cabazon*. The fact is that states' jurisdiction over Indian nations is limited to what has been expressly delegated to them by Congress. Meanwhile, tribal sovereignty is inherent, meaning that tribal governments are assumed to retain jurisdiction unless expressly limited by Congress. These differing sources of power are significant and clearly upheld in IGRA and other federal laws affecting tribal governments.

Indian Gaming Creates a Tax Base

Economists agree that one of the fundamental reasons for the success of Indian gaming is that it allows tribal governments to break free of federal planning models to create an export-based economy (attracting people to Indian lands to gamble constitutes

"exporting" gambling.) It can be argued that the primary economic development component of Indian gaming is its ability to generate a reliable tribal tax base for tribal governments, often for the first time. The NGISC reported its findings on this feature of Indian gaming as follows: "As was IGRA's intention, gambling revenues have proven to be a very important source of funding for many tribal governments, providing much-needed improvements in the health, education, and welfare of Native Americans on reservations across the United States."

When IGRA was being debated in Congress, over 100 bingo games had already been started on Indian lands, generating $100 million annually. The fact that this revenue was already having a positive impact on tribal governments is clear in IGRA's legislative history, which notes that, "Bingo revenues have enabled tribes, like lotteries and other games have done for State and local governments, to provide a fuller range of government services to their members than would otherwise have been possible...the income often means the difference between an adequate governmental program and a bare bones program which is totally dependent on Federal dollars."

Tribal governments have historically faced crushing budget deficits. Indian gaming revenues allow many Indian nations to create and maintain basic tribal services ranging from law enforcement and health care to education and housing. With regard to social programs, the NGISC found that, "all these programs have historically suffered from significant neglect and under-funding by the federal government. Although the problems these programs are aimed at reducing continue to plague Indian communities at significant levels, gambling has provided many tribes with the means to begin addressing them."

The available evidence on social conditions in Indian country provides a long list of alarming comparisons between tribal social conditions and U.S. national averages. Since the passage of IGRA in 1988, tribal governments are obligated by federal law to invest gaming revenues in ways that improve tribal welfare. Section 11 of IGRA requires that net revenues from "any tribal gaming" be used for 5 primary purposes (See figure 2). Generally speaking, all revenues are earmarked for governmental activities or public investment. Tribal governments make a host of investments in their own—and surrounding---communities. As one tribal leader remarked, "sovereignty ain't cheap."

Indian Gaming Triggers 'Nation Building' Activity

In keeping with the federal goal of tribal self-determination, tribal governments invest heavily in community-based projects and balance the need for a revenue stream to support the tribal budget with the goal of reforming institutions inherited from centuries of federal government intrusion. In addition to funding essential tribal social programs, tribal governments are investing in what are often called "nation building" projects, ranging from governmental institution building to cultural revitalization. IGRA reflects the related strategies of strengthening both tribal economies and tribal nations in its two relevant, primary stated goals: to promote economic development for Indian nations and to strengthen tribal governments. Most analysis of tribal governmental gaming focuses on the economics of Indian gaming, claiming that Indian gaming is only "working" when tribes generate significant revenue streams. However, considering Indian gaming as solely an economic activity overlooks the second, perhaps even more critical, goal of IGRA: that of strengthening tribal governments through nation building.

In virtually all tribal governments, the provisions of IGRA itself have triggered nation-building activity. For example, I GRA requires that tribal governments create a gaming commission before they open a gaming facility. Because tribal governments differ widely in form and tradition, IGRA does not require that tribes adopt any particular structure for their commissions, although NIGC bulletins suggest that tribal gaming commissions be formed as independent bodies. Therefore tribes have had to determine for themselves how to create a gaming commission that simultaneously "matches" their cultural prerogatives and current governmental structure while it also fulfills its prescribed functions of regulatory oversight and compliance. For some tribes, this process of institution-building triggers a full-scale assessment of the cultural underpinnings of the tribal government structure and prompts further discussion of how to balance the tribe's growing business needs with the need to effectively govern and fund existing and anticipated tribal social programs.

What has emerged in this "creative moment" sparked by Indian gaming is a range of innovative institutions self-governance unrelated to IGRA. For example, many tribes have chosen to separate their business and governmental functions through the creation of separate b usiness b oards. T hese b oards t ake m any f orms a nd h ave m any names (e.g. development corporations, corporate commissions or business authorities) but they seem to share some common goals: to facilitate relationship-building with investors and developers, to streamline business transactions, to provide a degree of insulation between tribal businesses and tribal politics, to develop institutional memory, to provide a clear tribal voice when addressing issues related to consultants or other contractors and to create a stable environment in which investors feel secure.

Harvard research on economic development has observed that the separation of business and government functions facilitates economic development in non-gaming contexts. Tribal governments are demonstrating just how successful that process can be in a gaming environment as well. One key indicator of successful nation building activity is the growing trend of economic diversification across Indian country. Because economic diversification often relies upon the creation of new tribal governmental institutions to facilitate partnership building with outsider investors or managers, examining the scope of diversification provides a unique framework for evaluating the ways that IGRA's twin goals are being realized in many parts of the United States.

Indian Gaming Facilitates Economic Diversification and Partnerships

Economic diversification takes many forms, but there is a general pattern of diversification that can be observed across Indian country. Most post-gaming diversification in Indian Country provides direct support for the core business, the Indian gaming facility. In keeping with common business strategy, tribal governments create businesses that enhance their main economic engine by building ancillary hotels, restaurants, gift shops and other amenities that add value to the business in at least two ways: by generating additional revenues through the amenities themselves and by increasing gaming revenues by making the gaming environment more attractive and convenient for players.

After enhancing the gaming environment, some tribes extend beyond gaming into other tourist-related areas in order to take advantage of visitors to the reservation, whether they intend to gamble or not. Developing other tourist-related activities on the

reservation allows tribes to capitalize on their hospitality expertise while also appealing to a wider customer base. For example, while many families may not visit an Indian gaming facility, there is a strong demand for water parks, golf courses, museums, outlet malls, and other activities that may appeal to the gambler's family or the non-gambler. Tourism development based on a variety of different resources also has the potential to support the core business by simply bringing people to the reservation in the first place.

Another phase of diversification departs from gaming and tourist development but nonetheless relies upon tribal capital and natural resources which, prior to gaming and nation building, were absent or under-developed. For example, some tribes now have the capital to invest in water bottling plants, fruit companies or ranches that allow them to export their products to off-reservation markets. Additionally, some tribal governments are investing capital in off-reservation ventures such as urban hotels and restaurants, which allow them to cross-market their on-reservation facilities and expand their tribal resumes.

For some tribes, Indian gaming has generated sufficient capital for economic diversification. For others, Indian gaming has provided valuable experience in hospitality and tourism that can be translated into future business ventures, even while current revenues are not sufficient for substantial diversification efforts. What nearly all tribes have in common is that success in Indian gaming—both economic and governmental success—has given tribes an established track record in business and management that makes them more attractive to outside investors. Just as a number of tribes initially created partnerships or hired consultants to learn the gaming business, some tribal governments engaged in diversification are building relationships with outside experts or investors in other industries, resulting in additional non-gaming jobs while also allowing tribes to assert their sovereignty and create a larger pool of political supporters.

It is for these reasons that a tribally-owned development corporation could contribute to and facilitate the extension of Indian gaming's benefits to Indian Country. Regardless of which form the entity takes, I support the Committee in its goals of creating a unified economic development model that incorporates research, best practices and measurable outcomes among its key features. Additionally, my research confirms that encouraging tribal participation on a case-by-case basis would greatly improve this entity's chances of success.

Thank you for the opportunity to present my ideas with you today.

SOUTHERN UTE INDIAN TRIBAL COUNCIL

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September 30, 2004

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Hon. Ben Nighthorse Campbell
United States Senate
Committee on Indian Affairs
SR-380 Russell Senate Office Building
Washington, DC 20510-0605

Re: S.519

Dear Chairman Campbell:

I am writing in response to your request of September 9, 2004, to answer questions regarding S. 519. Before outlining my thoughts on the issues raised in your letter, I would like to thank you for giving the Southern Ute Indian Tribe an opportunity to provide input on this legislation.

The Southern Ute Indian Tribe (Tribe) is a recognized leader of economic development in Indian Country as a result of sound planning and implementation of its financial plans. As such, the Tribe has faced and dealt with many of the problems described in S.519's proposed findings. The Tribe agrees that cooperative efforts, calling upon the strengths of the federal, local and tribal governments, as well as the financial backing of the private sector, are needed to help Indian Country achieve sustainable progress and success in economic development.

The Tribe is not currently involved in any cooperative agreements for economic development with other Indian tribes. A tribal development corporation, as contemplated by S. 519, could provide the opportunity to develop such partnership, fostering cooperation that could help tribes share successful economic development strategies and ideas. A tribal development corporation could serve as an extension of the national Indian community and provide a forum for Indian leaders to access their counterparts, with the goal of creating the associations necessary to spur economic development throughout Indian country.

A tribal development corporation could also help the Tribe's economic development plans in the same fashion. Despite the ongoing success of this Tribe, many tribal members, like all other Indian people,

still face unemployment, poor health, substandard housing and the social ills associated with these problems. Regardless of this Tribe's economic success, a tribal development corporation would assist the Tribe in addressing the types of economic development that can, over the long term, sustain the growth that the Tribe has already enjoyed. The Tribe's economic development and diversification plans would be buoyed by the potential for help from a broad range of sources, all centered within the auspices of the development corporation created by S. 519.

A large part of the Southern Ute Indian Tribe's success story has been the insistence, by tribal leaders and tribal members, that each tribal venture is thoroughly investigated, planned and executed. Such diligent preparation and planning requires that the Tribe gather the best and most accurate data available. For example, when the Tribe considered the prospect of opening a gaming facility on the Reservation, a wide-ranging study regarding the potential impacts of such an operation was performed. The Tribe moved forward with its plans only after the study showed that a casino would have overwhelmingly positive impacts on the Reservation economy and tribal employment. The Tribe would therefore look forward to accessing detailed information regarding both economic development opportunities and the forecasted results of any such development that would be available through the tribal economic development corporation proposed by S.519.

Another factor that continues to contribute to the economic progress of the Tribe is the predictability afforded to outside investors by the Tribe's legal codes and Tribal Court. The Enforcement of Secured Transactions Code, for example, was initially adopted by the Tribe in 1980 and has since been revised twice to provide for more effective implementation and application of the Code. Many other titles of the Southern Ute Indian Tribal Code address business issues within the Reservation, such as the Employment Rights Code (Title 17), the Severance Tax Code (Title 21), the Excavation Code (Title 22), the Sales Tax Ordinance and Ordinance No. 86-01 for the Regulation of Oil and Gas Development Activities. With tribal business codes like these, and the assurance of a well-established, stable and competent Tribal Court, outside investors and businesses are encouraged to participate in the Tribe's economic growth and development. While S. 519 will play a significant role in assisting other tribes in their development of similar codes, it is important to remember that the most effective tribal codes are those that are organic to the tribal community that they protect. Thus, while technical expertise and business acumen will become available to tribes through S.519, each tribe would still need to independently draft and implement effective business and financial codes tailored to their particular tribal environment.

As for the concepts contained in Title VI of S. 519, Indian Country has seen what may prove to be a catastrophic decline in federal appropriations for the Indian Health Service and other programs aimed at the well being of Native America. The Tribe hopes that the appropriations called for in Title VI of S. 519 will actually meet the needs of Native American financial institutions, but, in the current national economic and political climate, this hope may not be entirely realistic. Nonetheless, the spirit of Title VI is positive and Section 601 of S.519 emphasizes the importance of financial assistance to Native American financial institutions. The Tribe would like to see the spirit of Title VI translate into concrete federal financial assistance for Indian economic development.

In closing, let me again emphasize the Southern Ute Indian Tribe's view that this legislation will provide important economic development opportunities for all tribes. These opportunities will become increasingly critical to the continued successful, self-sustained development of Indian Country, especially in light of the current state of diminished federal funding. If properly implemented, the provisions of S. 519 will fulfill another aspect of the federal government's ongoing trust responsibility and provide a much-needed jump-start for economic development in Indian Country, and we appreciate the opportunity to provide our comments.

Sincerely,

SOUTHERN UTE INDIAN TRIBE

Howard D. Richards, Sr., Chairman

DEPARTMENT OF HEALTH & HUMAN SERVICES

ADMINISTRATION FOR CHILDREN AND FAMILIES
370 L'Enfant Promenade, S.W.
Washington, D.C. 20447

October 6, 2004

The Honorable Ben Nighthorse Campbell
Chairman, Committee on Indian Affairs
United States Senate
Washington, D.C. 20510-6450

Dear Chairman Campbell:

Thank you for the opportunity to share the programs and services provided by the Administration for Native Americans. Enclosed is the Administration for Native Americans response to the questions regarding S.519.

Please let me know if we can be of further assistance.

Sincerely,

for Quanah Crossland Stamps
Commissioner
Administration For Native Americans

1. IS THERE ANYWAY THAT ANA CAN UTILIZE OR IMPLEMENT S. 519?

The Administration for Native Americans (ANA), located within the Administration for Children and Families (ACF), implements and administers programs governed by the Native American Programs Act of 1974, as amended. ANA has a 30-year history in the award and administration of federal grants that promote the goal of social and economic self-sufficiency for Native Americans by providing social and economic development financial assistance, training, and technical assistance to eligible Tribes and Native American organizations that represent nearly 4.3 million individuals. ANA has developed long-term professional relationships with hundreds of tribal governments, Native American non-profit organizations, and other federal agencies that work with and have programs designed to meet the needs Native American communities.

ANA is the last discretionary program (approximately $45.4 million annually) to provide funding to Native Americans for community-based projects. Currently, ANA receives $100 million dollars in funding requests and 560 applications annually. ANA manages approximately 300 project grants and successfully administers and performs community impact evaluations for three national programs: Social and Economic Development Strategies; Language Preservation and Maintenance; and Environmental Regulatory Enhancement.

ANA programs are administered through a full time staff, an on-site contractor, and four multi-million dollar Technical Assistance contractors. Technical Assistance services are provided free-of-charge to federally-recognized American Indian Tribes and non-profit Native American organizations in all 50 states and the Northern Mariana Islands, American Samoa and Guam. Technical Assistance providers assist prospective ANA applicants with conceptualizing strategies for social and economic development projects, language preservation and environmental regulatory projects. Ninety-three percent of ANA applicants that receive ANA technical assistance consistently score within the funding range for ANA grant awards.

ANA is also responsible for the management and oversight of a $23 million dollar Native Hawaiian Revolving Loan Fund (NHRLF). The Native Hawaiian Revolving Loan Fund provides direct loans to Native Hawaiian individuals and Native Hawaiian businesses that are unable to acquire business capital from traditional lending sources. The NHRLF program is dedicated to increasing capital for business development, job creation, working capital, purchase of equipment, and education and training for Native Hawaiian entrepreneurs. The $23 million program is used to underwrite, secure, service, package and sell business loans.

ANA programs and technical assistance services focus on the creation of new jobs and the development of healthy communities; expansion of business enterprises and social service initiatives; establishment of new Tribal offices; formulation of environmental ordinances and training in the use and control of natural resources; enactment of new codes and management improvements to strengthen the governmental functions of Tribes and Native American organizations; and establishment of local court systems.

Currently, ANA tracks economic development components of ANA-funded projects. This provides information on whether the grantee met grant objectives and the level of impact the project had in Native American communities. ANA also works closely with the U.S. Small Business Administration and the affiliated Tribal Business Information Centers, and with federal agencies like the U.S. Department of Commerce, Economic Development Administration, on the outcomes of tribal economic development planning grants and projects.

2. WHAT ECONOMIC DEVELOPMENT PROJECTS IS ANA WORKING ON? CAN A TRIBAL DEVELOPMENT CORPORATION HELP WITH THESE PROJECTS?

In FY2003 ANA funded 82 new Native American economic development projects through the Social and Economic Development Strategies program, for a total of $13,688,052.00. ANA's project funding threshold ranges from $50,000 to $500,000. ANA's average grant award is approximately $138,000. The following are examples of the some of the projects funded in FY 2003:

- The development of multiple tribally-owned wireless telecommunications companies.
- To purchase equipment, expand the technical capacity, and provide renovation dollars for a tribally-owned manufacturing company that created over 200 new jobs.
- To establish a residential construction company as a component of an American Indian Regional Development Association; to improve quality housing through construction of new homes; and the rehabilitation of family owner-occupied existing homes.
- To plan and develop mixed use areas on reservations that will include infrastructure, commercial, and housing developments.
- To expand salmon and Aquatic Farming business and hatcheries.
- To expand the value-added process and marketing of Native American products such sheep wool and agricultural subsistence food products.
- To devise and implement programs, policies and resources needed to manage and operate credit unions.
- Development of Tribal business codes and zoning code enforcement procedures such as comprehensive Taxation Codes, Ordinances, and Taxation Use Plans for Tribes.
- The update and Implementation of financial accounting systems for Tribes.
- Training tribal council members on governmental responsibilities, duties and policy decision making skills.
- Planning on how to utilize undeveloped trust lands.

These ANA-funded projects reflect the importance of combining social, educational, and economic and governance development to achieve healthy families and self-sustaining communities.

3. IN YOUR EXPERIENCE, WHAT ARE THE BIGGEST BARRIERS TO ECONOMIC DEVELOPMENT IN INDIAN COUNTRY? WOULD AN ENTITY THAT FOCUSES ON TRIBAL ECONOMIC DEVELOPMENT BE HELPFUL TO REDUCE THESE BARRIERS?

As Commissioner of ANA, I have had the opportunity to review hundreds of social and economic development projects submitted by Tribes, Alaska Native corporations, and Native

American Non-profit organizations. I have also visited Native American communities across the United States and I have engaged with Tribal and community leaders on the subjects of comprehensive social and economic development strategies that support our Native children and families. Additionally, I am the Chairperson of the HHS Intradepartmental Council on Native American Affairs and work directly with the HHS agency Heads on coordinating funding, technical assistance, and other resources to meet the needs expressed by community and tribal leaders. The Tribal Consultation Process is another important tool that ANA uses to review recommendations from tribal and community leaders on community and economic development issues.

There are many barriers to economic development for Tribes and Native American communities. Some of the barriers are access to markets; lack of capital for business and industrial expansion; human resource development; the need for entrepreneurial education and training to increase micro-and small business development; infrastructure modernization for water, sewer, and telecommunications projects; limited and outdated tribal codes that deter venture capital and private investments; and appropriate long-term and short-term planning of economic development benchmarks that can realistically be carried out in Native American communities. Furthermore, it would be helpful if tribal and communities leaders were provided the training and technical assistance tools necessary to perform community business and economic assessments, manage multi-million dollar corporations, and negotiate large housing and economic development projects that are designed to create jobs and sustain private sector business development that is necessary for community capital formation.

4. IF S. 519 IS IMPLEMENTED, SHOULD IT BE PRIMARILY PRIVATE OR FEDERAL?

If the entity is primarily federal, or at a minimum under the oversight of a federal agency, it is more likely that other public and private sector resources can be accessed for tribal economic development projects. If the entity is located outside of the federal government, it may end up competing for resources with tribal governments.

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