



NATIONAL CONFERENCE
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GOVERNMENT TO GOVERNMENT
MODELS OF COOPERATION
BETWEEN STATES AND TRIBES



Government to Government
Models of Cooperation
Between States and Tribes

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- To improve the quality and effectiveness of state legislatures.
- To promote policy innovation and communication among state legislatures.
- To ensure state legislatures a strong, cohesive voice in the federal system.

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ABOUT THE AUTHORS

This book was originally written by Susan Johnson and Jeanne Kaufmann, former staff at the National Conference of State Legislatures, and John Dossett and Sarah Hicks of the National Congress of American Indians.

The second edition was updated by Sia Davis of the National Conference of State Legislatures' State-Tribal Institute.

PREFACE TO THE SECOND EDITION AND ACKNOWLEDGMENTS

This book is the companion to *Government to Government: Understanding State and Tribal Governments* both published by the National Conference of State Legislatures (NCSL)/National Congress of American Indians (NCAI) Project on Tribal-State Relations. This joint effort was initially established to promote intergovernmental cooperation between states and tribes by researching, assessing and disseminating information about how devolution of federal programs to state, tribal and local governments affected Indian tribes and the state-tribal relationship. The first publication, *Government to Government: Understanding State and Tribal Governments*, provides basic information to help promote understanding of tribal and state governments and the increasing need for cooperation between states and tribes. (Contact NCSL at state-tribal-info@ncsl.org to obtain a copy of this publication.)

This book has been updated and is intended to examine existing models of state-tribal cooperation on a broad range of issues. Thousands of state and tribal laws, agreements and institutions help to facilitate tribal-state relations across the country; this book does not attempt to catalogue all of them. State and tribal leaders have generally expressed a view that, because of the unique relationships and history in each state, it is not helpful to try to directly emulate the experiences of other states. Instead, in recognition that the process of relationship building is as important as the relationship, this book highlights some of the broad strategies and institutions that tribes

and states have used to build communication and respect between their governments. In addition, some key issue areas of tribal-state relations are highlighted in an attempt to develop a general understanding of how state and tribal governments in various states have been able to find common ground on these issues.

Much of the data in the first edition of this book was collected during NCAI and NCSL project activities in 2000 and 2001. At that time an advisory council to this project met several times and provided ideas and editorial comments on the book. Membership on the advisory council has since changed, and we wish to thank current members who have shown their continued commitment to improve communication and cooperation between state and tribal governments.

W. Ron Allen, Jamestown S’Klallam Tribe; The Honorable Shannon Augare, State Representative, Montana; The Honorable Jim Battin, State Senator, California; Dennis Bercier, Turtle Mountain Chippewa Tribe; Robert Chicks, Stockbridge-Munsee Community of Wisconsin; Joseph Day, Minnesota Department of Corrections; The Honorable John Heaton, State Representative, New Mexico; Chief Kelly Haney, former State Senator, Oklahoma; LaDonna Harris, Americans for Indian Opportunity; The Honorable Tom Katus, State Senator, South Dakota; The Honorable Reggie Joule, State Representative, Alaska; Leslie Lohse, Paskenta Band of Nomlaki Indians; David Lovell, Wisconsin Legislative Council; The Honorable John McCoy, State Representative, Washington; Arlan Melendez, Reno Sparks Indian Community; Lana Oleen, Lana Oleen Consulting Services, LLC; The Honorable Tim Sheldon, State Senator, Washington; The Honorable Deborah Simpson, State Senator, Maine; and Edward Thomas, Tlingit and Haida Indian Tribes of Alaska.

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EXECUTIVE SUMMARY

There are many remarkably successful new developments in state-tribal relations to consider. As Indian tribes improve governmental capacity and more frequently exercise their powers of self-government, tribal and state governments are increasingly finding areas of mutual interest and discovering ways to set aside jurisdictional rivalry in favor of cooperative government-to-government interactions. Tribes and states have been creating entirely new structures for communication and collaboration, solutions and agreements have been created for the ever-changing range of issues, and older tribal-state institutions have been strengthened and revived.

At the same time, the development of positive intergovernmental relationships between states and tribes has been uneven. In one state there may be development of improved communications and a building sense of trust between state and tribal officials, while in a neighboring state the parties will rarely speak to each other. Within the same state, there may be a great deal of cooperation on one issue but very little on another. Finally, it is common to find a creative and mutually beneficial solution for a particular policy issue in one state, while many other states and tribes continue to struggle—without resolution—with essentially the same issue.

The antagonistic history of state-tribal jurisdictional battles, the lack of understanding about navigating respective government bureaucracies, and a lack of widespread dialogue about the potential benefits of governmental cooperation are factors that consistently underlie attempts at establishing state-tribal relations. Specifically, state-tribal relationships may be influenced by state-perceived

negatives, such as the loss of jurisdictional control, tax base and land. Tribes also may approach the relationship with trepidation as their history with the federal government may hamper tribal motivation to work with state government.

Sometimes, rather than actively opposing each other's positions on issues, states and tribes may simply avoid one another, choosing instead to ignore their neighboring government and any opportunity to cooperatively address mutual interests. These dynamics often may lead states and tribes that are attempting to develop working relations to feel as though they are sailing uncharted territory.

By recognizing some guiding principles in effective state-tribal relations and highlighting examples of successful cooperative government, this book is intended to assist tribes and states as they explore new avenues in their continuing efforts to improve governmental service for the citizens of both tribes and states.

1. INTRODUCTION: THE RELATIONSHIP BETWEEN TRIBES AND STATES

Numerous barriers exist to effective state-tribal relations. Outdated and inaccurate perceptions of American Indian tribes continue to prevail in non-Indian communities, and state officials may not understand that tribes are functioning governments. Sometimes, when state officials do recognize tribes as governments, they assume that tribal governments do not have the capacity or jurisdiction to relate to state government on a government-to-government basis. Tribes, on the other hand, may be hesitant to form working relationships with state governments because of tribes' constitutional and direct relationship with the federal government and constitutional recognition. Tribes have considered whether interacting and building relationships with state governments could mitigate or diminish the federal trust responsibility and federal government-to-tribal government relationship.

As any government at any level in the United States finds today, relationships between political units can be challenging and complex. Against the intricately woven backdrop of federal, tribal, state and local laws and regulations, multiple interconnections and interdependence complicate these dynamic and vital relationships. But as Jemez Pueblo Governor Raymond Gachupin reminded New Mexico legislators, "We are your neighbors. We are your friends ...

We are your constituents. And, most importantly, we are your fellow New Mexicans.”

There are many good reasons to strive for cooperation. Any two or more neighboring governments, as a practical matter, share aspects of their respective economic and social systems and are connected through political and legal relationships. These connections create an inevitable interdependence. Former Wisconsin Representative John Ainsworth, whose district neighbors are the Stockbridge-Munsee and the Menominee reservations, recognizes the tribal, state and local governments “sink or swim together.” At the 2000 Indian Day at the New Mexico Legislature, Sara Misquez, of the Mescalero Apache Tribe, suggested state lawmakers “... set aside old stereotypes and begin a new chapter in our governmental relations. Our futures, whether we realize it or not, are most assuredly intertwined.”

Mutual interests are clear and governmental goals are the same. Both states and tribes want to use resources effectively and efficiently, provide comprehensive services and a safe environment for citizens, protect natural environments, and sustain healthy economies.

Effective state-tribal government relations can reduce the unintended consequences of state legislative and administrative actions on tribal governments and, likewise, the consequences of tribal actions on surrounding areas. Even where the parties truly desire to cooperate, it is much more expensive and difficult to change a decision after it has been made. Increased state-tribal dialogue can sensitize governments to the interests of each party and provide a forum for discussion about the potential effects of specific governmental actions on neighboring governments before decisions are made.

Overall, it seems that successful intergovernmental relationships are forged when individuals on both sides have invested leadership and good will in reaching out to find solutions. Former Senator Lana Oleen, Kansas Senate majority leader stated, “I, for one, do believe that cooperation, not confrontation, is the way not only to resolve differences, but also to heighten awareness of our respective responsibilities as elected leaders.”

Most current interaction between Indian tribes and states are not controversial. The reality is that, at the local level in and around tribal lands, tribes, states and local governments cooperate daily and share responsibilities for government services on a broad range of issues. Tribes have jurisdiction over some matters, states have jurisdiction over others, and in many areas jurisdiction is shared or undetermined.

Smart for States, Smart for Tribes

State-tribal relationships can be mutually beneficial, helping neighboring governments generally to do their jobs more effectively and also yielding specific benefits. Effective state-tribal relationships, for example, help states better serve their tribal citizens because all tribal members also are citizens of the state and all tribal lands lie within state legislative districts. As such, tribal members are eligible for state services and programs, just as any other state citizens. The difficulty for states in serving these particular citizens, however, often lies in cultural differences or the remoteness of populations. By working together, state and tribal governments can find the best way to provide services to these unique populations without wasting valuable resources on ineffective programs.

Building state-tribal relationships can create an opportunity for tribal governments to contract for the administration of some state programs on Indian lands. In addition to relieving the state of its obligation to provide services to a particular group of state citizens that frequently may be “hard-to-serve” because they reside on-reservation in a remote, rural area, tribally administered programs also can benefit both governments by meeting the specific needs of tribal citizens and using their particular cultural philosophies in the design of their programs. This can be done for managing natural resources, sustaining a healthy environment, or providing assistance to tribal members in a culturally appropriate manner and environment. Exercising tribal self-determination by interacting with state governments on the basis of inherent governmental authority also can serve to reinforce tribal sovereignty, rather than to diminish it, as some tribal leaders feared.

Positive tribal-state relations also can reduce legal problems. Both tribes and states have erred in first seeking a conclusive legal opinion about what government has jurisdiction over a particular matter. Given the unclear state of federal Indian law, this formula can result in time-consuming, expensive litigation that may produce unpredictable and undesirable results for all parties. The citizens who live in and around Indian reservations have a right to expect that the state and tribal governments first will seek to cooperate wherever possible to provide the best possible government services. The Alaska Commission on Rural Governance and Empowerment noted, “Collaborative arrangements among municipal, tribal, regional, state and federal governments, institutions and agencies provide the means for strengthened local self-governance. Increased participation in decision making, more efficient service provision, and more effective management of environmental, land, and fish and game resources are results of cooperative efforts.” State-tribal cooperation can be key to achieving improved government services.

Economic development often can be enhanced by effective tribal-state partnerships. Collaborative economic development helps infuse resources into the tribal economy, allowing for greater development of human capital, providing jobs on reservations, and assisting tribes to become self-sufficient. State governments also benefit from tribal economic development, both directly (taxation and gaming compact payments) and indirectly (increased tribal revenue and spending, purchase of goods and services from surrounding, off-reservation businesses). Studies consistently show that tribal economic growth contributes significantly to surrounding communities.

Open communication about economic conditions and opportunities can potentially can increase economic benefits and decrease economic risks for both governments. States also may realize the importance of federal money that is provided to tribes through various grants. Ultimately, those funds reach the shared economy. Finally, state governments benefit from jobs on tribal land because many non-Indians work for businesses owned by tribal governments and that income is taxable for state income taxes. W. Ron Allen, chairman of the Jamestown S’Klallam Tribe in Washington has recognized,

“As the Indian communities become healthy, so does the state. Automatically.”

The Devolution Factor

The transfer of federal resources and responsibilities to state, local or tribal governments—often through federal block grants or other funding mechanisms—is commonly referred to as devolution. This shift of authority away from the federal government administration of programs is intended to make government more responsive to local needs. In recent years, a variety of governmental functions have been devolved from the federal government to states and, to differing degrees, to tribal governments. This trend is likely to continue across a broad range of federal programs.

The devolution of federal authorities and resources to state, tribal and local governments has increased the opportunity for and the benefits of enhanced state-tribal relations. More than ever, states and tribes find themselves with parallel or overlapping responsibilities and many incentives for cooperation. According to Stephen Cornell, the director of the Udall Center for Studies in Public Policy at the University of Arizona, and Jonathan Taylor of the Udall Center and the Harvard Project on American Indian Economic Development:

[T]ribes and states are in relationships that are much more complex and uncertain than ever before. . . . The evidence is compelling that where tribes have taken advantage of the federal self-determination policy to gain control of their own resources and of economic and other activity within their borders, and have backed up that control with good governance, they have invigorated their economies and produced positive economic spillovers to states.

Devolution is bringing policymaking to the local level, which provides opportunities for communities to have more influence over policies that will affect them. For state, tribal and local policymaking to be successful, however, neighboring governments will have to consider collaborating and, at least, coordinating the making of policy and administration of programs.

2. GUIDING PRINCIPLES IN STATE-TRIBAL RELATIONS

Most of the time and energy dedicated to tribal-state relations is spent on specific issues, such as fishing rights or health care reimbursements. However, underlying factors contribute greatly to success on the specific issues and relationships in general. Of all the state-tribal relationships, institutions and agreements in various states, one particular mechanism does not appear to be inherently better than another. Instead, general principles and functions have been shown to lead to better working relationships. For example, why does a particular legislative “Committee on Indian Affairs” obtain positive and successful results? Perhaps because it provides a well-accepted forum for both legislators and tribal leaders to work out issues, and it facilitates the sharing of information on a regular basis. Is a “Committee on Indian Affairs” the only mechanism available to do this? Many state commissions and intertribal councils serve a similar function. It is the function that matters, not the specific mechanism that might be used to achieve that function. The principles that

provide the basis for these functions are cooperation, understanding, communication, process and institutionalization. State legislators and tribal leaders can use these principles in their work together, as well as in their oversight of the administrative branches of their governments.

**Principles That Guide
Good Working Relationships**

- Cooperation
- Understanding and Respect
- Communication
- Process
- Institutionalization

A Commitment to Cooperation

Public attention often is focused on the conflicts found in the state-tribal relationship, and certainly there have been many conflicts in areas such as land claims, water rights, hunting and fishing, taxation and gaming. Perhaps because of these high-profile conflicts, a common view of state-tribal relations is that they consist solely of competition for control. This view is not so much wrong as it is incomplete. As mentioned earlier, most interaction between Indian tribes and states is not controversial.

State and tribal leaders may understand, in theory, why cooperation makes sense. Benefits could be the resources saved by avoiding litigation and duplication of services. For relations to be successful, however, all involved need to make a genuine commitment to relationship building and cooperation. “Both sides must be willing to go more than halfway,” said former Senator Lana Oleen. “You must be willing to reach out if you want to come to an agreement. Reaching an agreement is worth the extra effort because the solution will last much longer and we can tailor the agreement to meet our specific needs.”

Mutual Understanding and Respect

Although it may seem obvious that any relationship must be based on mutual understanding and respect, this is an especially distinct concern in tribal-state relations. Many individual legislators and other state government officials often do not have enough familiarity with tribal issues to sufficiently understand the sovereign government status of Indian tribes. Public education does not teach that tribes are governments, and many adults—including state legislators—perceive tribes and tribal members as minorities or special interest groups.

Tribal understanding and respect of state governments also is needed. Many tribal leaders may have mistrust toward state government based on historical dealings between the state and the Indian population. Building trust through a course of forthright

relationships will be the only way to repair that trust. In addition to understanding that statehood and state sovereignty are important cultural factors for many state officials, some tribal leaders may not be well informed about how state government functions. Multi-layered state bureaucracy can make “navigating the state system almost impossible,” says Steve Gobin, governmental affairs liaison for the Tulalip Tribes in Washington. Successful state-tribal relations must include an education mechanism to help to establish this mutual understanding, acceptance and credibility both in terms of general understanding of the intergovernmental dynamic and understanding of the parties’ concerns about specific issues.

W. Ron Allen, chairman of the Jamestown S’Klallam Tribe in Washington, put it this way: “It is very difficult to accomplish anything with the state if every time you meet with someone you have to justify who you are and why you have a right to be involved. Tribes have treaties with the federal government and we are recognized in the U.S. Constitution, but we often have to teach that to every state official we meet. How are we supposed to get into the details of an issue on fisheries or taxes, if we can’t get past the ABCs?”

In speaking to a group of state legislators and staff, Stephen Pevar, senior staff counsel for the American Civil Liberties Union, recognized that understanding and respect goes both ways: “Indian tribes should spend time in their state legislatures, getting to know their legislators and to understand how the policymaking process works. Likewise, legislators should gain a better understanding of their neighboring tribes, getting to know the tribal leadership and community. Legislators should listen to what tribes have to say, even if it is very different—particularly if it is very different—from the way that legislators traditionally think about and look at things.” The Alaska Commission on Rural Governance and Empowerment echoed, “Native cultures bring a valuable non-Western viewpoint and strength to society and government. Many of the environmental, social and political problems facing our society have not been solved through traditional Western solutions. Native perspectives offer alternative and possibly more effective ways to handle these issues.”

Consistent and Early Communication

Too often, tribes and states do not communicate regularly. Frequently, contact between the two is made only after a conflict occurs. This is not a healthy dynamic for any relationship. Many conflicts may be based on a simple misunderstanding or oversight. By the time a conflict boils over, however, the two sides may be locked into their positions, and the situation becomes more difficult to resolve. In addition, once an issue or crisis has escalated, it is time-consuming to determine who to talk to and difficult to establish relationships and build the necessary trust to work out solutions. It is better if working relationships can be established before an issue arises.

The most effective state-tribal relationships include mechanisms that create and encourage ongoing communication between appropriate parties so that issues can be addressed in a timely manner. Indian law professor and tribal judge, Frank Pommersheim noted in his 1995 book, *Braid of Feathers*, “One of the principal problems of tribal-state relations is the absence of forums—both formal and informal—in which Indians and non-Indians and tribal and state officials come together to discuss important issues. Given this lack, the resulting gulf in communication is all too easily filled with pernicious gossip and relentless stereotypes.” Former Washington Representative Val Ogden agreed. “We need to know how bills will affect Indian tribes. We need a process to communicate on an ongoing basis, not just in a crisis.”

Process and Accountability for Addressing Issues

The resolution of issues between tribes and states often is hindered by a lack of attention and follow-through. Processes that address these needs include 1) regular meetings, activities and communication between tribal governments and the branches and agencies of the state and other governments as appropriate; 2) a regular review and assessment of policies on issues related to tribal-state relations and provision of services; and 3) the provision of recommendations for improvements. It is also important to ensure that the issues those involved deem important are addressed and that issues are not over-

generalized or linked to other, disparate issues. Sometimes, both states and tribes express a desire to include a broad sweep of issues within a single discussion or negotiation. As appealing as it might be to attempt to resolve a large number of issues at once, this more often than not can lead to an impasse on all issues. State officials might consider that wide differences among tribes in their priorities, cultures and resources prevent generic solutions. Likewise, tribal leaders may fail to understand state bureaucracy and its inherent limitations. Individual legislators, for instance, are part of a larger body and may not be able to immediately resolve an issue, and state agency officials have authority in only one general area.

Successful state-tribal relationships include mechanisms to address these issues. In particular, for a mechanism to effectively meet these needs, adequate staff and resources must be committed by all. Coordination among the various state and tribal branches, agencies and entities also is important to avoid duplication and intra-party conflict. For instance, if an office of Indian affairs is housed in the governor's office, the legislature may not be adequately included and tribes may find it necessary to duplicate their efforts in the legislature.

Institutionalization of Relationships

Finally, state-tribal relationships are influenced by mechanisms that institutionalize or preserve the relationship. Institutionalization—the creation of a permanent relationship method—provides certainty for both governments regarding the forum for intergovernmental relations and the process through which issues are addressed. Institutionalization also affects the ability of the intergovernmental relationship to withstand changes in tribal and state leadership and in political parties. This frequent and often large turnover in legislative and tribal council membership in general “... discourages a grasp of the larger (intergovernmental) issues,” according to Washington Senator Tim Sheldon. Effective relationship mechanisms must be institutionalized to preserve the structure and gains of the relationship and to establish a base for further intergovernmental work. One way for institutionalization to occur is through the legislative process. Proposed federal legislation would require consultation

with tribal governments when a federal action could implicate tribal sovereignty, tribal reliance on government programs, or policies and legislation that could affect tribes. Some states have considered similar legislation.

Government-to-Government Relationships

Legislators and tribal leaders have asked for a practical definition of a government-to-government relationship. How can a tribe or numerous tribes have an intergovernmental relationship with a state legislature, when there is constant turnover and substantial diversity within both groups?

A successful government-to-government relationship between a legislature and one or more tribes involves several areas of understanding and cooperation.

- There is a mutual—and ongoing—understanding between both parties that each is an independent government that works for respective constituencies. As such, the state-tribal relationship is fundamentally an intergovernmental relationship.
- Both states and tribes understand that the relationship is unique, not only because all tribal citizens are state citizens and legislative constituents, but also because of the nature of the tribal-federal relationship.
- One or more mechanisms exist that facilitate the intergovernmental relationship between the state legislature and tribal leaders. Such mechanisms allow the states and tribes to maintain their respective governmental roles and responsibilities and to collaborate when appropriate.
- Both sides try to reach agreement on common issues, but recognize that there will always be some areas of conflict. These areas of conflict should not be allowed to influence the entire intergovernmental relationship.

3. LEGISLATIVE AND TRIBAL ROLES AND RESPONSIBILITIES

The State Legislative Role

Legislatures and individual legislators can fulfill their roles in state-tribal relations in many ways. The most obvious is to address issues of shared governance in state policy through informed legislation. Under state constitutions, legislatures have general lawmaking powers. Although they may agree that governors will make policy decisions in specific areas, legislatures, rather than executive branch agencies, generally make the initial political decisions that balance competing interests. Every year, legislatures consider hundreds of bills that specifically affect American Indians, and many of these bills become law. These statutes address topics such as economic development, natural resources, health and human services, gaming, education, taxation and cultural issues. Legislatures also establish mechanisms for state-tribal relations such as those discussed in this book.

State legislatures do not operate in a vacuum. Legislative policy decisions are implemented—and often are proposed—by the executive branch, including the governor. Many governors have taken the lead in initiating a formal state-tribal relationship but gubernatorial efforts may not outlast the administration in which they were created. Likewise, many state agencies have taken innovative steps in relating to tribes without waiting for specific

statutory authorization. However, legislative support—in the form of funding and statutory authority—will guarantee that such innovative steps will be more permanent and far reaching. Successful agency programs—including state-tribal agreements and other services to tribal communities—can be codified into permanent requirements that outlast administration changes. Although many state-tribal relationships are acted out between state and tribal agency staff with regard to particular programs, the legislative role is crucial in regard to agency operations. Enacting enabling legislation, establishing specific program authority, controlling the makeup and operation of rulemaking entities, and overseeing rulemaking are typical functions within the legislative purview.

Many legislatures have passed legislation to encourage, require or ratify specific state-tribal agreements or to provide a framework for the state to enter into agreements with tribes—both in general and in specific issue areas. Montana (§18-11-101 to 18-11-112), Nebraska (§13-1501 to 13-1509), North Dakota (§54-40.2-01 to §54-40.2-09), and Wisconsin (§66.0301(2)), for instance, have similar comprehensive legislation that authorizes state agencies or political subdivisions to enter into agreements with tribes to perform virtually any government function. Many of these laws provide a framework for what should be included in agreements and establish processes for entering into, finalizing and revoking agreements. Oklahoma law (§1221) simply allows the governor and political subdivisions to enter into cooperative agreements “on issues of mutual interest,” and directs that the agreements become effective upon approval by the legislature’s Joint Committee on State-Tribal Relations. Many states have subject-specific agreement authorizations. Gaming, taxation, fish and wildlife, human services and other issues all are subjects of state laws that authorize agreements with Indian tribes.

Although both state agencies and governors have substantial roles in proposing state budgets, state legislatures appropriate all state spending, which has powerful implications both for a state’s relationships with tribes and for tribal government functions. Expenditures from federal funding, fees, general state funds and other sources must be legislatively approved. The state legislature’s budget or appropriations committees also set substantive policy through

performance-based budgeting. This trend increases the potential for legislative involvement in agency priority setting.

Another legislative role in state-tribal relations involves constituent services. Tribal members are state citizens, so individual legislators are directly accountable to tribal members in their districts and have a responsibility to be informed about and be accessible to those constituencies. This includes understanding what it means to have a tribal government in one's district and the implications of these intergovernmental relationships. Such understanding also is helpful in responding to concerns of non-Indian constituents, who may not understand tribal governments. As discussed in more detail in chapter 4, there are many ways legislators can work with American Indian constituents and the unique tribal communities to which they belong.

The Tribal Government Role

Tribal governments share with state governments the responsibility for building successful working relationships. Tribal government leaders have a responsibility to be informed about state legislatures and their decision-making processes. Tribes monitor legislative activities, provide input into legislative processes, and often take the initiative to make specific legislative proposals. Tribal councils also pass tribal laws that authorize cooperation with the state and with state programs.

Tribal governments also are responsible for building relationships with state elected officials. All Indian lands fall within established legislative districts. Legislators who represent districts that include tribal lands often have a smaller official to constituent ratio and, thus, an opportunity to develop closer constituent relationships and gain a greater sense of local conditions. Many tribal leaders find it helpful to take their state legislators on a tour of the reservation and the government services that the tribe provides. Such activities help state officials understand the tribe's goals and needs.

Tribal governments also participate in existing state-tribal forums, such as legislative committees and commissions. When tribal

governments actively participate and take a role in bringing issues to the table, the utility and benefit of such forums to both governments are enhanced. Tribal governments also participate in consultation processes with state governments. For instance, tribes may consult with state government on issues of mutual concern in the state budget development process. Such consultation may help to prevent disputes and, in general, can lead to better relations. In order to make their positions known and contribute to the development of sound policy, tribes should attend consultation sessions, educate decision makers and provide constructive testimony.

Tribes can be involved in legislative processes either directly or indirectly. Tribal government officials, staff or tribal members may represent tribes in the state legislative process. Tribes also sometimes work collectively through an intertribal association. As an alternative, an attorney or lobbyist—who can assist in tracking state legislative processes and advocate for legislative proposals that benefit tribal governments—may represent tribes. Lobbyists may provide useful services in monitoring legislation, building relationships with legislators, and providing input into legislative processes, but tribal lobbyists may need to work to overcome a general perception that lobbyists represent “special interests,” as opposed to tribal governments.

4. MODELS FOR COOPERATION

Recently, tribal and state governments have demonstrated a growing interest in creating institutions that facilitate improved tribal-state relations. A variety of mechanisms can contribute to improved intergovernmental relationships; these models have evolved differently

Ten Mechanisms or Institutions That Can Facilitate Improved Intergovernmental Relationships

- State Legislative Committees
- State Commissions and Offices
- State-Tribal Government-to-Government Agreements and Protocols
- Tribal Delegates in State Legislatures
- Intertribal Organizations
- Dedicated Indian Events at the Legislatures
- Individual Legislator Efforts
- State Recognition of Native Cultures and Governments
- Training for Legislators and Tribal Leaders on Respective Government Processes
- Other Potential Legislative Mechanisms

in various states. Because of the diversity of state and tribal histories, resources and current circumstances, different models may best suit the needs of different states and tribes. In other words, although a variety of models exist, no one model works best in every situation. States and tribes that are interested in developing and maintaining intergovernmental relationships will want to consider the mecha-

nisms as tools in a tool box, all of which may serve different functions in the relationship, none of which are mutually exclusive and most of which are mutually reinforcing.

Summarized here are 10 mechanisms or institutions—and some examples—that may serve to facilitate improved intergovernmental relationships.

Section 1. State Legislative Committees

Approximately 15 states have legislative committees to address Indian issues. Although many states have created Indian affairs committees in the past several years, some states have had these forums for decades. A legislative committee—standing, interim or study—can act as a liaison between the legislature and tribal governments and can address issues of state-tribal relations in general. Legislative committees study specific issues and may propose, review or introduce legislation. A legislative committee on Indian affairs or state-tribal relations with authority to vote on legislation certainly could substantially affect the lawmaking process and exert political clout with agency directors and staff.

Whether such committees are effective depends first of all upon strong, proactive committee leadership, as well as on adequate staff support, member participation, and the powers and jurisdiction of the committee. Effective membership is representative of both the state population and the tribal population where there are tribal members on the committee, and that representation should survive state legislative and tribal leader turnover or administration changes. Some form of tribal participation also is crucial. It has proven counterproductive if the tribes are not involved in discussions about issues that affect them. “We never knew why they were gathering, it never came back to us,” said former Blackfeet Chair Earl Old Person of the Montana Senate Committee on Indian Affairs, which has since been replaced by the State-Tribal Relations Committee.

Although legislative committees are instruments of the state, some legislatures have found it beneficial to make the creation and operation of the committee a joint undertaking between the state and the tribes. This ensures that committee action is based on both mutual commitment and mutual needs, and parties feel free to discuss relevant issues. Some important points to consider when establishing such a committee:

- Indian issues cut across party lines, so it may be helpful to establish bipartisan leadership or alternating leadership between political parties.

- Flexibility in committee operation is important, so that formal procedures do not create barriers to full participation.
- Alternating meeting locations between the state capitol and sites on Indian lands will build a shared commitment to the functioning of the committee.

A partial listing of state legislative committees follows. A full listing is available at www.ncsl.org/programs/statetribe/stlegcom.htm.

Idaho's Council on Indian Affairs

Established in 1999, the 10-member council consists of state legislators, a representative of the governor's office and one member each from the Coeur d'Alene, Kootenai, Nez Perce, Shoshone-Bannock and Shoshone-Paiute tribes. The council meets twice a year and, as of 2007, has addressed commerce, fuel tax agreements and Indian education.

Kansas' Joint Committee on State-Tribal Relations

This joint House and Senate committee was created by enactment of House Bill 2065 in 1999. The committee holds public meetings on proposed gaming compacts, conducts hearings and makes recommendations on issues concerning state-tribal relations, and introduces any legislation necessary to perform its functions. The committee consists of five senators, five state representatives and representatives from both the Governor's and Attorney General's offices.

In 2004, the committee sponsored legislation to address jurisdiction of law enforcement officials. The enacted law gave tribal officers the same powers and duties as state agencies when assisting state law enforcement officials. A 2007 bill was passed that also addressed law enforcement jurisdictions and responsibilities both on and off tribal lands for tribal law enforcement officers.

Montana's State-Tribal Relations Interim Committee

This committee of eight legislators acts as a liaison with tribal governments in Montana; encourages state-tribal and local government-tribal cooperation; conducts interim studies as assigned; proposes legislation; and reports its activities, findings or recommendations

to the Legislature. In early 2008, the committee met with tribal members to discuss several issues, including water compacts, Indian education, law enforcement treatment of Indians, recognition of Indian arts and crafts, and Medicaid eligibility.

Nebraska's State-Tribal Relations Committee

Created during the 2007 legislative session, the seven-member Nebraska State-Tribal Relations Committee was formed to consider, study, monitor and review any legislation that might affect state-tribal relations and to present draft legislation and policy recommendations to the appropriate standing committees of the Legislature.

North Dakota's Tribal and State Relations Committee

The North Dakota committee studies government-to-government relations, delivery of services, case management services, child support enforcement and issues related to increasing economic development. The six committee members represent both the House and the Senate.

In 2005, the committee reviewed all enacted legislation regarding Native Americans and addressed some problems facing North Dakota tribes, including water issues, methamphetamine and education. During the 2007 session, legislation was enacted to extend the committee to July 31, 2009.

Oklahoma's Joint Committee on State-Tribal Relations

Established in 1988, the committee is made up of five senators and five representatives who oversee agreements between tribal governments and the state. In a 2004 collaboration, the committee helped to pass a bill that authorized peace officer certifications to tribal officers.

South Dakota's State-Tribal Relations Interim Committee

This committee, created in 1993, does not propose legislation. It provides a forum within state government for discussion by Indians and non-Indians regarding issues that affect the Native American community. The committee consists of 10 members—five from each house—who serve two-year terms.

Utah's Native American Legislative Liaison Committee

The committee's main purpose is to work with Utah tribes to formulate solutions to problems, then propose appropriate bills to the Utah Legislature. The committee reviews operations of the Division of Indian Affairs and other state agencies that work with tribes. The committee consists of 11 legislators and sponsors meetings and other opportunities for discussion with the American Indian population. In February 2007, the committee hosted an Indian Caucus Day where tribal leaders were introduced to the House and Senate and met with leaders.

Wisconsin's Special Committee on State-Tribal Relations

The Wisconsin Special Committee on State-Tribal Relations dates to 1955, when it was formed as the committee on Menominee Indians, the purpose of which was to address issues related to "the termination" of the Menominee Indian Tribe. Today, the committee is made up of 11 legislative members and nine tribal representatives. The committee serves an oversight function by reviewing selected executive branch actions regarding state-tribal relations and by facilitating communications between state and municipal agency officials and tribal officials. A technical advisory committee of representatives from seven state agencies assists the committee in its functions.

Over the years the committee has had difficulty securing consistent attendance from both legislators and tribal members, but it has had many successes during the last few decades regarding issues such as county-tribal cooperative law enforcement programs, establishment of full faith and credit in state courts for the actions of tribal courts and legislatures, protection of human burial sites, economic development on Indian reservations and Indian health issues.

The committee provides for a strong tribal role and tribal leaders help set the agenda by bringing certain issues to the attention of the committee. In March 2001, the committee co-hosted the Wisconsin Leadership Conference on State-Tribal Relations. The conference offered an opportunity for tribal and state leaders to hear what other states are doing to improve relationships with tribal governments and to discuss priorities and ideas for Wisconsin. Largely as a result

of this conference and the ongoing involvement of the committee, several bills were introduced in the 2001-2002 session to deal with state-tribal relations.

During the 2007 legislative session, the committee introduced legislation to address tribal law enforcement officer liability, law enforcement authorization for conservation wardens and improved benefits to tribal schools. Assembly Bill 198, which gave conservation wardens employed by the Great Lakes Indian Fish and Wildlife Commission authority similar to that of state wardens, was enacted during the session. Passage of the bill allowed the wardens to enforce off-reservation code violations and enabled them to assist state and local law enforcement agencies.

Wyoming's Select Committee on State-Tribal Relations

The Wyoming Select Committee on State-Tribal Relations is an example of a committee that is focused on establishing communication. The Legislature's Management Council created it in 2000 to "establish a process for better state/tribal relationships." The purpose of the committee, which consists of three senators and three representatives, is to act as a liaison between the Legislature and Indian tribes in the state. According to then chairman, Representative Harry Tipton, before the committee was established the tribes were presenting their points of view to the media. Since the formation of the committee, however, the tribes are coming to the legislators and the committee members to talk about issues.

In 2003, the committee successfully sponsored two bills that were enacted. The first allowed the Eastern Shoshone and Northern Arapaho tribes to participate with the state in joint power boards and specifically directed the Wyoming Water Development Commission to consult with the tribes on development of water projects. The second bill established a tribal liaison in the governor's office to advise the governor on state-tribal relations, including coordination of programs and other activities.

In 2007, the committee sponsored enacted legislation that provided continued funding for educational programs on the Wind River Indian Reservation to address unemployment and poverty among resi-

dents. In the fall of 2007, the committee hosted a state-tribal summit that allowed state legislators, state agencies and tribal agencies to participate in discussions on water resources, telecommunication infrastructure, natural gas delivery, and health and family services. The summit included a tour of the Wind River Reservation, specifically the reservation's water projects.

Some legislatures have created issue-specific committees to address substantive aspects of tribal and state government coordination efforts.

Arizona's Study Committee on State Funding of Hospitals and Senior Centers Operating on Indian Reservations

This study committee was formed in 2000 to examine the allocation of funds to the state's Indian reservations including the delivery of hospital and other health services, the delivery of senior services and the construction of senior centers and issues related to providing duplicate services by federal, state and tribal agencies. The committee consists of three members each from the house and senate, three representatives from the Navajo Nation, the Native American liaison from the state Department of Health and several representatives from non-profit hospital organizations. The committee expires in 2009.

California Assembly's Select Committee on Native American Repatriation

Although it has not been as active in recent years, the California Assembly Select Committee on Native American Repatriation, formed in 1999, is an example of a committee formed to discuss a discrete issue that ultimately served as a forum to discuss broader issues. Ten Assembly members made up the committee, which was originally formed to determine the disposition of the brain of Ishi, the last member of the Yahi Indian Tribe of California. Then-chairman of the committee, Assemblyman Darrell Steinberg, stated that, "Select committees can really have value and this is an example where it has. The nice thing about this type of committee is that you can take one idea and, over the course of a year or so, make a difference because you can focus on that issue and it will receive more attention." Stein-

berg had never worked with tribes or repatriation concerns and was astonished at the magnitude of the issue. Ishi's brain subsequently was buried with the rest of his remains in northern California, but the committee continues to deal with other Native American issues.

Assemblyman Steinberg then was approached by the Barona Band of Mission Indians, which invited him and other interested parties to southern California to discuss, on a larger scale, the repatriation issue. A bipartisan bill (Assembly Bill 978), which became law in October 2001, expedited compliance with the federal Native American Graves Protection and Repatriation Act of 1990 and ensured enforcement of the return of remains and objects. This state version of the federal act also created the Repatriation Oversight Committee and included penalties for noncompliance with the law.

Assemblyman Steinberg said the bill has "sensitized members of the Legislature to an issue few were aware of" and extends beyond committee members to academics and professionals as well as to the general public. David Baron, government affairs liaison for the Barona Band of Mission Indians, who also worked in the Assembly, was encouraged by support for the bill because there were "more co-authors on this bill than any I've ever seen." Baron also is encouraged by the people he has met in the Legislature and during the committee hearing on repatriation. "They [the tribes] have shown legislators that the tribes are interested in issues, and legislators now are more aware of tribal commitment and involvement."

New Mexico's Joint Committee on Compacts

A very different example of an issue-specific committee arose in New Mexico to address the serious controversy over Indian gaming. Indian gaming in New Mexico began in 1984 with high-stakes bingo games in the Acoma Pueblo's community gym. Since then, Indian gaming in New Mexico has grown substantially, but the road has not been smooth. The federal Indian Gaming Regulatory Act, passed in 1988, instructs states and tribes to enter into compacts for Indian gaming. The law does not define which branch of the "state" government is responsible for the negotiating and decision making on behalf of the state; all three branches of the New Mexico state government have been involved in the issue. Former Governor

Gary Johnson signed several compacts with the tribes in 1995, but the New Mexico Supreme Court quickly struck down the compacts (*New Mexico ex rel. Clark vs. Johnson*, 1995), holding that the governor had performed a legislative function.

Years of confusion and controversy set the stage for the Legislature to create the permanent Joint Legislative Committee on Compacts in 1999 (N.M. Stat. 11-13A-1 to 11-13A-5). The committee, comprised of eight members from the House and eight members from the Senate, equally represented Democrats and Republicans. Leadership considered appointing legislators who were Native American or who represented a district in which a “significant percentage” of voters were Native American.

The committee met as needed to review proposed compacts or amendments after they had been negotiated by the governor with the tribes. Changes recommended by the committee are renegotiated with the tribes by the governor’s office. The lasting outcome of the joint committee is that once the committee approves a compact, the Legislature as a whole then must approve it before the governor can execute it. The Legislature, however, can only approve or reject the proposed compact but cannot amend it.

The process has been successful. The series of committee meetings during two years brought together tribal leaders and legislators who otherwise might not interact and promoted government-to-government interactions. In 2001, the committee agreed to 11 new identical compacts with 11 gaming tribes during the 2001 legislative session, and the compacts were approved by the Legislature. The new compacts, which lowered the rate of revenue-sharing payments tribes would pay to the state, was signed by former Governor Johnson and approved by the U.S. Department of Interior that same year. Former Senator John Arthur Smith believed the committee provided a good opportunity for communication. “It kept the door open for talking. Even if we didn’t always get our way, the door was still open.”

In early 2007, New Mexico Governor Bill Richardson was negotiating with 10 New Mexico tribes regarding a new gaming compact that would increase the amount of revenue sharing to the state in exchange for extending the compacts from 2015 to 2037.

Section 2. State Commissions and Offices

Approximately 34 states have an executive branch office or commission dedicated to Indian affairs (for a complete listing, visit www.ncsl.org/programs/statetribe/stlegcom.htm). These offices and commissions generally are established to serve as a liaison between the state and tribes, and are concerned with interests specific to American Indians and tribes. Although these offices and commissions vary in their structures and specific roles, typical duties include reviewing and facilitating tribal comments on proposed legislation and other state policies; assessing the needs of the state's American Indian population; facilitating cooperative projects and programs between the state or local governments and the tribes; and serving as a clearinghouse for information about tribal-state issues. These commissions generally do not have significant decision-making authority but, instead, act as a vehicle for tribal input into state processes. Like the legislative committees, these commissions also can be subject-specific.

Many of these offices are called "Governor's Office of Indian Affairs." Several were created after World War II, when the federal government was pursuing a policy of terminating relationships with Indian tribes and states were beginning to play a greater role in law enforcement and relocation efforts on reservations. The "Governor's Office" model can be effective if the governor is committed and the office is well-staffed with people who are willing to reach out to the tribes and to the state legislature and the state agencies. Over time, however, these offices have become inconsistent in their effectiveness. New governors may not have the same commitment to the office, which limits the outreach abilities of the staff. Such offices also have often been targeted for budget cuts. The ensuing isolation within the governor's office limits the ability of the office to play an effective facilitation or liaison role.

Most commissions are established through legislation. Commission members generally are appointed by governors and tribes; in some instances, legislative members are appointed by legislative leadership. Membership often is a combination of Indian and non-Indian members, although in most, Indian members constitute a majority. Non-

Indian members typically include legislators, governor and attorney general representatives, and representatives of various state agencies. Commission leadership is elected or statutorily appointed. Commission staff usually includes, at the very least, an executive director and, because these bodies are state entities, commission or office staff are state employees. In Idaho, however, the state and tribes share staffing responsibilities. Commission and office operation usually are funded through the state's general fund, although publication sales and federal grants also may add to their budgets.

As in the case of legislative committees, commission effectiveness varies, based on several factors. Some suggestions follow for successful commissions.

- Ensure that members are representative of their communities, are committed to the process, and have some measure of independence from the governing bodies of the state or tribes (governor, legislative leadership, and tribal leadership).
- Commit adequate staff who are well-suited to the broad range of issues and the high demand for outreach, facilitation, networking and information sharing.
- Establish bipartisan commission leadership or alternate between parties.
- Ensure that commission procedures are conducive to full participation by all members.
- Base creation and operation of the commission on mutual needs and mutual commitment of the state and tribes.

Barbara Warner, executive director of the Oklahoma Indian Affairs Commission, offered this advice.

You need to have an Indian affairs office that is viable and is funded if you want to have available that kind of assistance to work out some of the problems you have ... Tribal issues are so broad it's just unfathomable at times. You need to have someone

who can understand all those things, and how different things affect tribes and the state. You need to have someone who can really communicate, not only with your legislature, your executive branch and your tribes, but who also can help facilitate that communication so that everybody is reading from the same page in the same hymnal ...

Sometimes our legislators don't understand that, although state legislation cannot directly affect the tribes, it can inadvertently do so and create problems in the long run. We're there to take a look at the legislation and figure out how it would affect the tribes, if at all, and communicate that to the tribes so they, in turn, can do their own lobbying.

Minnesota Indian Affairs Council

Minnesota was the first state in the nation to establish an Indian affairs agency in 1963. Former Minnesota Governor Luther Youngdahl expressed the need to improve communications with and services to the American Indian community at a 1949 Governors' National Conference and proposed that states establish Indian affairs commissions to meet that need. The Minnesota Indian Affairs Council (MIAC) is the official liaison between the state of Minnesota and the 11 tribal governments within the state. The MIAC executive board is composed of the 11 tribal chairs or executive officials, two at-large members (who live in Minnesota and run for election), three senators and three representatives (appointed by the respective majority parties), and the governor's nine cabinet members. The MIAC plays a central role in the development of state legislation and administers four programs designed to enhance economic opportunities and protect cultural resources for the state's American Indian constituencies. It also monitors programs that affect the state's American Indian population and tribal governments. Unemployment, education, housing and health issues are a few of the issues addressed by the council.

In addition to working directly with the 11 tribal governments, MIAC provides a forum for and advises state government on issues of concern to urban Indian communities. The Urban Indian Advisory Council (UIAC), appointed by the MIAC board of directors, is

an active subcommittee of the Indian Affairs Council. The purpose of the UIAC is to advise the MIAC board on the unique problems and concerns of Minnesota Indians who reside in urban areas within the state. UIAC members include five Indians enrolled in Minnesota-based tribes, with at least one who resides in each of the following cities: Minneapolis, St. Paul and Duluth. The UIAC meets every other month in various urban areas.

Former Governor Jesse Ventura held several meetings with tribal governments during his term in office. He spent an entire day on the Fond du Lac reservation visiting preschool children, touring community development sites and meeting with tribal elders. Establishing a good working relationship with the governor has been paramount for the MIAC.

In 2001, the MIAC hosted a tribal summit for county commissioners that featured a presentation entitled Everything you wanted to know about Indians but were afraid to ask. A panel of tribal leaders and attorneys were present to answer questions about treaties, tribal governments, and state and tribal relations. After four hours of frank discussion, county and tribal participants in the summit, realizing their common interests, spontaneously decided to visit the state Legislature together.

In 2007, Governor Tim Pawlenty signed into law the Agriculture and Veteran's Affairs Omnibus Bill that, among other things, created tribal veteran service offices on reservations to help American Indian veterans apply for benefits. Current MIAC Executive Director Annamarie Hill was instrumental in scheduling meetings between the tribes and the Minnesota Department of Veteran's Affairs, was pleased that the Legislature and governor included American Indians in the bill.

According to former MIAC Executive Director Joe Day: "Minnesota and tribal governments have institutionalized many programs specifically to meet the needs of Indian tribes. We have compacts and agreements that meet the needs of both parties. The challenge for us is protecting the sovereignty of tribes. We've been around for quite a while and accomplished a lot. We have cross-deputization between

tribal and county law enforcement, low-interest housing loan programs, and scholarships for post-secondary education since 1955. We provide a forum for states and tribes to get together and get tribes more involved in policymaking. We've been doing it for 15 or 20 years. The challenge is not to slip into complacency.”

Oklahoma Indian Affairs Commission

Oklahoma is home to 38 federally recognized tribes, representing a population of more than 500,000 American Indian citizens. The Oklahoma Indian Affairs Commission was created in May 1967. The commission's mission is set by statute to serve as the liaison between the Indian people of the state, tribal governments, private sector entities, various federal and state agencies, and the executive and legislative branches of the Oklahoma state government.

The commission is made up of 20 members; nine are tribal members appointed by the governor with the consent of the Senate, and 11 are non-voting, ex-officio members. A 15-member advisory committee comprised of individuals with expertise not otherwise represented by the commission board play an important role in short- and long-term planning. Four of the appointed members are from tribes represented by the Bureau of Indian Affairs' Muskogee Area Office, four are from tribes represented by the Bureau of Indian Affairs' Anadarko Area Office, and one member serves at-large. The 11 non-voting, ex-officio members represent various state elected officials and state agencies.

The four primary goals of the Oklahoma Indian Affairs Commission are to:

- Develop state and federal legislation;
- Maintain an advisory committee;
- Develop and implement research projects and reports; and
- Develop cooperative programs between tribes and state, federal, local and private entities; health organizations; educational agencies; and economic development and tourism entities.

The commission pursues these goals through activities such as legislative development and tracking, written reports and publications, sponsorship of various forums, and regular meetings with tribal lead-

ers. In addition, the Oklahoma Indian Affairs Commission responds to inquiries from the general public and serves as an information conduit between the tribal governments and local, state, and federal governments and agencies.

“One of our primary jobs is to encourage government-to-government relationships,” says Commission Executive Director Barbara Warner. “That type of relationship lies within the executive branches of both state and tribal governments, and it is at this level that we maintain that any issues can be addressed and ultimately resolved. Using this top-level approach rather than a bottom-up approach has resulted in more expedient results while maintaining the government-to-government relationship process.”

“We’re viewed as the single point of contact between the state and tribes,” Warner comments, “We are also considered somewhat of an authority on state and tribal issues and are often called upon to present testimony or provide insight from the tribal perspective, which is information that we gather directly from tribal leaders. A lot of what we do involves educating the state and public about American Indian issues, tribal government, and culture, a task that is never-ending.” On the other hand, the commission also helps tribes to navigate state policymaking processes by keeping them informed of legislative activities. Warner feels that high levels of communication and accurate, factual information are some of the keys to the commission’s success. “We take our role very seriously when it comes to providing as much accurate and factual information as possible in order to bridge the gaps of misunderstanding that may exist for Indian and non-Indian audiences alike—and people can count on that,” Warner concludes. (For more information on the Oklahoma Indian Affairs Commission, see <http://www.state.ok.us/~oiac/>.)

Oregon Legislative Commission on Indian Services

In 1975, the Oregon Legislative Commission on Indian Services (CIS) was statutorily created to improve services to Indians in Oregon. Its 13 members are appointed to two-year terms jointly by the Senate president and the speaker of the House. CIS consists of one member from the Oregon Senate, one member from the Oregon House of Representatives, representatives from each of the nine

federally recognized tribes, and two representatives from the urban Indian population in Oregon.

CIS has the following responsibilities: 1) to compile information about services for Indians; 2) to develop programs to inform Indians about services available to them; 3) to advise public and private agencies about the needs and concerns of the Indian community; 4) to assess programs of state agencies operating for the benefit of Indians and recommend program improvement; and 5) to report biennially to the governor and the Legislative Assembly on all matters of concern to Indians in Oregon.

“Prior to the establishment of CIS, there was no mechanism in state government to consider Indian concerns directly,” says Karen Quigley, CIS executive director. “CIS serves as the main forum in which Indian concerns are considered. It serves as a conduit through which concerns are channeled to the appropriate entity; it serves as a point of access for finding out about state government programs and Indian communities; and it serves as a catalyst for bringing about change where change is needed.”

Indiana Native American Indian Affairs Commission

One of the more recently established commissions is the Indiana Native American Indian Affairs Commission. Created by executive order in 2003 by former Governor Frank O’Bannon, the commission will study problems common to Indiana’s American Indian population related to employment, education, civil rights, health and housing. The commission also will address cooperation and understanding among native and non-native communities, cultural barriers in education, stereotypes about native people, workforce development and promotion of native-owned businesses.

The commission held its first official meeting in March 2006. The 15-member group consists of at least eight Native Americans who serve four-year terms. The commission conducted regular meetings during 2006 and 2007, and its accomplishments to date include receiving budget support from the legislature, commissioning a study of health disparities that afflict the state’s native population, holding

town hall meetings around the state every 60 days, and conducting research on the primary and secondary education systems.

In December 2007, Aleeah Livengood was named executive director of the commission. More information on the commission can be found at <http://www.in.gov/dwd/2533.htm>.

Section 3. State-Tribal Government-to-Government Agreements and Protocols

The establishment of guiding principles for a government-to-government relationship between state executive branches and tribes has been a significant development in recent years in state-tribal relations. The 1989 Washington Centennial Accord, discussed below, outlines a state-tribal relationship that “... respects the sovereign status of the parties, enhances and improves communications between them, and facilitates the resolution of issues.” The Oregon legislature codified the state’s government-to-government policy, which directs state agencies to develop tribal consultation policies to include tribes in the development and implementation of state programs that affect tribes.

Written policies also are found in Alaska, Michigan and New Mexico, although they vary in some respects in form and in content. The agreements provide mutual commitments of states and tribes, whereas executive orders address only the state’s role. What such policies and agreements have in common is respect for tribal government and a commitment to consult and coordinate on state actions that may significantly affect an Indian tribe or its members. Although these policies serve as a significant—and even historic—policy commitment, they are also intended to be only guiding principles, not legally enforceable commitments.

The state-tribal policies trace their origins to the long-established relationships between Indian tribes and the federal government. The terminology of a “government-to-government” relationship that is based on a consultation process originated in the 1970s as part of the Tribal Self-Determination Policy initiated by President Nixon. This federal-tribal relationship is embodied in a series of federal policy

documents begun by President Reagan in 1984 and expressed most recently in Executive Order 13175, signed by President Clinton on November 6, 2000, entitled “Consultation and Coordination with Indian Tribal Governments.”

Centennial Accord Between the Federally Recognized Indian Tribes in Washington State and the State of Washington

The Centennial Accord in Washington was signed in 1989 by Governor Booth Gardner and by the leaders of 26 of the state’s 29 tribes. The accord was conceived as the result of a controversial debate over treaty fishing rights in the 1970s and 1980s. The disagreements over treaty fishing were public and contentious and at times affected issues that were unrelated to fishing, such as health care and child services. According to Mel Tonasket, who was chairman of the Confederated Tribes of the Colville Reservation at the time, “We needed to find a way to work together and establish that we could disagree on some issues, and still find ways to cooperate on other issues. The bad blood between the state and the tribes was causing too many good opportunities to be lost for both sides. The Centennial Accord was an effort to establish cooperation where we had common interests.”

The Centennial Accord primarily focuses on establishing respect for the governing authorities of both the tribes and the state, without attempting to define exactly what those authorities are. It also focuses on the mutual responsibilities that both the state and the tribes have for making the relationship work. The accord establishes an annual meeting between the governor and the tribal leaders. Finally, the Centennial Accord has a strong focus on providing information to those in state government about Indian tribes and their status as independent governments. The accord does not specifically address relationships between the tribes and the state legislature; those parties have recently been considering several proposals for the development of a legislative committee that would address tribal issues.

In practice, the document serves as an important historical touchstone for an improvement in the tribal-state relationship after the treaty fishing “wars.” Primarily, the document serves the need to establish respect for tribal governments. According to Chairman W.

Ron Allen of the Jamestown S'Klallam Tribe in Washington, "Prior to the Centennial Accord, anytime we went into a state agency or office, tribal leaders almost always had to explain the very basics of who we were, the federal treaties, and why we had a right to be involved in that particular issue. It was like we were always starting from zero, so it was very difficult to resolve anything. The Centennial Accord helped to fix that, so that the state people at least began to understand who we are and why our government-to-government relationship is important."

In addition to the training component of the Centennial Accord (discussed in section 9), an annual meeting between the governor and the tribes has been established. This annual meeting, which has taken place every year since 1989, is seen as a positive step in building communications between the tribes and the governor. However, it was clear that the annual meeting alone was not enough; some tribal members voiced frustration at the lack of regular communication and follow through. The complaints resulted in a commitment to better institutionalize the Centennial Accord. The new agreement, *Institutionalizing the Government-to-Government Relationship in Preparation for the New Millennium*, focused on concrete actions to build channels of communication, institutionalize government-to-government processes that would promote resolution of issues, and implement a consultation process.

The Centennial Accord is generally regarded as a successful policy that is respected by both state and tribal officials. In 2005, current Governor Christine Gregoire signed a proclamation reaffirming the Centennial Accord and the New Millennium Agreement. Information about the accord is available at www.goia.wa.gov/Government-to-Government/CentennialAgreement.html.

Alaska Millennium Agreement

The governor of Alaska and 63 tribal leaders signed the Millennium Agreement between the Federal Recognized Sovereign Tribes of Alaska and the State of Alaska in April 2001. This agreement creates a framework for government-to-government relations between tribal governments and the state and builds upon an executive order that recognized the sovereignty of Alaska's tribes.

Tribal government leaders from Alaska began a discussion with Governor Tony Knowles in 1999 about the possibility of creating a government-to-government relationship between the State of Alaska and the Alaska Tribes. According to Mike Williams, the chairman of the Alaska Inter-Tribal Council, the intent was to improve the communications and the atmosphere, so that the tribes and the state could begin to work on the problem areas. “Our state and our Native communities have very real problems that must be addressed, and the state needs the tribal governments at the table in order to tackle these issues. There is a great need for coordination to address issues such as the decline of subsistence fisheries and the need for economic development, and basic services such as education, health care, substance abuse treatment and law enforcement. The tribal governments and the state have common interests in addressing these issues, but we needed a way to set up a more constructive dialogue before we could start.”

Governor Knowles responded at the December 1999 Annual Meeting of the Alaska Inter-Tribal Council (AITC) by offering to begin a process of negotiations to create a written agreement for government-to-government relations in Alaska. Tribal leadership in Alaska considered this offer at a meeting in Anchorage in February 2000 and agreed to form a negotiating team of 46 tribal leaders to represent the various tribes from different regions of the state.

The first achievement of the negotiating team was Administrative Order 186, which was signed by Governor Knowles on Sept. 29, 2000. That order directed state agencies and officials to “recognize and respect” the 227 federally recognized tribes in Alaska. The order was the first step in the governor’s efforts toward a more cooperative relationship between Alaska’s tribal governments and the state. The order also rescinded a 1991 executive order signed by former Governor Hickel that denied the existence of tribal governments in Alaska. After this order was signed, the negotiating team turned its energy toward the Millennium Agreement.

The Millennium Agreement set out the assumption of mutual respect between the state the tribes and also sets a framework for future communications. One of the most positive aspects was the decision

to form working groups or committees that would meet regularly to discuss specific issues in greater depth. This mechanism offers the opportunity to build long-term relationships and networking between state and tribal officials that would help to address issues. However, the agreement does not address any substantive issues; those are to be addressed in the future through the communications processes set up under the agreement.

The governor's office immediately began to work with the commissioner of each state department to develop the key contacts and the internal policies. The working groups also met to work on some of the longstanding problems and those meetings significantly augmented communication. One goal of the agreement was to develop a permanent institutional structure for the state-tribal relationship. The structure committee was formed and made a recommendation for a permanent office within the state administration. The state and tribes have had to work together on the issue of funding this office. The challenge will be to implement the communications mechanisms in the Millennium Agreement and sustain them over a long period of time, particularly through changes in administration.

Another significant challenge has been gaining participation by the tribes in the policy building process. There are 227 federally recognized tribes in Alaska, and the large number of tribes, in addition to their remoteness and diversity of challenges, can make communication difficult. Adequate participation at routine meetings is difficult to arrange, and most of Alaska's tribes have few resources to contribute.

Finally, the Millennium Agreement serves as a strong foundation with the governor's office, but it does not address the relationship with the state Legislature. More work will be necessary to begin the communications process between the tribes and the state Legislature. The Alaska Inter-Tribal Council plans to step up its efforts to meet with legislators and hopes to build the same kind of focus found in the Millennium Agreement: meeting the needs of native and non-native citizens, building communications and finding possible areas of cooperation in lieu of jurisdictional battles.

Oregon Statute and Executive Order on Tribal-State Relations

In a first-of-its-kind development, the Oregon legislature, in 2001, passed a bill (S.B. 770) addressing the state-tribal relationship in Oregon. The law requires state agencies to promote communication and government-to-government relations between the state executive branch and the tribes. Like the Centennial Accord in Washington, the Oregon policies build respect for and knowledge about tribal governments and urge cooperation. The Oregon policies go further in that they direct each state agency to develop its own specific policy on state-tribal relations and to report annually to the governor and the commission. Specifically, the law requires state agencies to develop policies to:

- Identify programs that affect tribes and the state employees who are responsible for those programs;
- Establish a method to notify state employees about the policy; and
- Promote “positive government-to-government relations” and communications between the agencies and tribes.

Other provisions of the law include:

- Encouragement to use agreements between states and tribes, authorized under a separate statute (ORS 190.110.);
- Direction to the Oregon Department of Administrative Services to provide annual tribal issues training to state agency managers and employees who have regular communication with tribes;
- Direction to the governor to convene a meeting once a year where the state agencies and the tribes can work together to achieve mutual goals; and
- Requirements that state agencies are to submit an annual report on their activities under the statute.

While the Oregon law is relatively new, it is based on Executive Order 96-30, which was signed by Governor Kitzhaber in 1996. In turn, the drafters in Oregon cite the Executive Memorandum on Government-to-Government Relations signed by President Clinton in 1994 as the template for the Oregon executive order. The executive order contains the same four basic elements as the new law: an annual summit of tribal and state agency leaders, training for key state employees, designation of key contacts, and a general requirement for intergovernmental cooperation to work together on mutually agreeable goals and solutions. The Oregon Legislative Commission on Indian Services, discussed in section 2, serves a key role in implementing the statute and the executive order.

One innovative tool for implementation of the order is the “clusters groups” that have been developed by the tribes and the state of Oregon. The cluster groups are state/tribal workgroups that are set up in six broad topic areas:

- Natural Resources,
- Cultural Resources,
- Public Safety and Regulation,
- Economic and Community Development,
- Health and Human Services, and
- Education.

The groups meet three to four times per year and there is a deliberate effort to encourage consistent representation by state key contacts and tribal counterparts. The experience in Oregon has been that regular meetings in the cluster groups have been successful in creating the permanent, ongoing communication and relationships that are necessary to address issues in the early stages of policymaking and move away from the reactive, crisis-to-crisis mode of intergovernmental relations that has been predominant in state-tribal relations.

Minnesota Executive Order on Indian Tribal Governments

Executed in 2003, this order signed by Governor Tim Pawlenty affirmed that the 11 federally recognized tribes in Minnesota are sovereign entities who play a key role in serving all citizens of the state and are entitled to their right to existence, self-government and self-de-

termination. The order directs state agencies to recognize the unique legal relationship between the state and the tribes, respect the fundamental principles that establish the relationship, and afford tribal governments the same respect given to other governments. The state also has entered into a transportation agreement that includes the state Department of Transportation, the Federal Highway Administration and the Minnesota tribes.

Wisconsin/Indian Tribal Governments Executive Order
Wisconsin Governor Jim Doyle signed an executive order in 2004 that affirms a government-to-government relationship with the state's 11 federally-recognized tribes. The executive order directed cabinet agencies to recognize this relationship when planning and implementing policies that directly affect the tribes and their members and to consult tribal governments when state action or proposed action on policies is anticipated.

Section 4. Tribal Delegates in State Legislatures

Maine

Maine currently is the only state with tribal delegates—who are not elected as part of the general legislative districts—in the state Legislature. In fact, there have been tribal delegates in the Maine Legislature since 1820, although American Indians in Maine did not have the right to vote in state elections until 1967. In Maine, the two delegates are provided for in the legislative rules. Penobscot Representative Wayne Mitchell and Passamaquoddy Tribal Delegate Representative Donald Soctomah currently are granted seats on the floor of the House. The delegates are elected by their tribes, are entitled to per diem and expenses for each day's attendance during session (3 MRSA §2), and are not subject to term limits as are other Maine representatives. They participate in committee processes and floor debate, but they have no vote in committee or on the House floor. Tribal delegates can introduce legislation on tribal issues and co-sponsor any legislation. The Legislature recently amended House rules to allow the delegates to offer floor amendments to the legislation they introduce. During the 2009 legislative session, the names of tribal representatives were, for the first time, officially recognized with all other legislators on the roll call board.

The presence of the delegates in the House provides a general education to other legislators. “It absolutely helps other legislators become educated on Indian issues. They admit that themselves,” former Representative Donna Loring recognized. “Even when we’re losing (on a particular bill), we’re still up there on the policy level educating legislators and everybody else.”

Maine House Rule 525

Penobscot and Passamaquoddy Tribe. The member of the Penobscot Nation and the member of the Passamaquoddy Tribe elected to represent their people at the biennial session of the Legislature must be granted seats on the floor of the House of Representatives; be granted, by consent of the Speaker, the privilege of speaking on pending legislation; must be appointed to sit with joint standing committees as nonvoting members during the committees’ deliberations; and be granted such other rights and privileges as may from time to time be voted on by the House of Representatives.

Maine Legislature’s Joint Rule 206(3)

Indian Representatives. The member of the Penobscot Nation and the member of the Passamaquoddy Tribe elected to represent their people at each biennial Legislature may sponsor legislation specifically relating to Indians and Indian land claims, may offer floor amendments to this legislation, may cosponsor any other legislation; and may sponsor and cosponsor expressions of legislative sentiment in the same manner as other members of the House.

In addition to dramatically improving communication between state legislators and tribal leaders, the delegates lend a new and unique perspective to the political debate in the Legislature. The system also provides an avenue for tribal members to learn about the state Legislature. The Maine delegates send a newsletter to their tribes that contains information about the legislative process and bills they are sponsoring and cosponsoring.

The delegate model also lends itself to early tribal involvement in legislative processes, since tribes are not waiting for legislators, staff or their lobbyists to inform them of legislative proposals, but are present when legislative measures

are proposed and debated. Although the two delegates cannot attend every committee hearing on bills of interest, they generally are made aware of relevant bills through an informal network.

The lack of a vote for the delegates has been discussed in the past few years. The state attorney general has opined that allowing the delegates to vote would be unconstitutional and would violate the “one person, one vote” principle, which the U.S. Supreme Court has defined as “... the vote of any citizen is approximately equal in weight to that of any other citizen in the State.” (*Reynolds vs. Sims*,

377 U.S. 533, 579 (1963)). Representative Loring lamented, “If you can’t vote, you’re tied—you don’t have the cards to play like the others, but you just still need to work to convince people. It’s like if you lose one of your senses, you compensate with another.”

Future issues may be discussed, including potential tribal representation in the Maine Senate and adding representation from the Micmac and Maliseet tribes in the Legislature.

Wisconsin

For several years, state legislators and tribal leaders in Wisconsin have debated including tribal delegates in the state Legislature. Former Senate Majority Leader Chuck Chvala, speaking in favor of the proposal, noted that, “Speaking on the floor is a very powerful role . . . Native Americans will be in a unique position to influence policy and public opinion.” In addition to how many tribal delegates there should be (since Wisconsin has 11 tribes), the issue of whether the delegates would vote has been debated. Some observers are concerned that giving tribal delegates a vote could pose constitutional challenges of double representation because tribes already are part of the constituencies that other elected legislators represent (the “one person, one vote” issue). Others are concerned that the lack of voting privileges would relegate the Indian delegates to a token position where they are involved in a process in which they have no voice. Still others conclude that the positions would be what the individuals make of them.

Many agree that, even without voting privileges, the tribal delegate model could provide meaningful representation, give tribes a voice early in the legislative process, provide fuller tribal involvement, and facilitate a deeper legislative understanding of issues that affect tribes. Some Wisconsin legislators believe it would be helpful to have tribal representatives involved in the process so tribal positions would be aired about issues that are raised. Legislation introduced in both the Senate and Assembly to create tribal delegates has not passed.

South Dakota and Virginia

The South Dakota and Virginia legislatures also were unsuccessful in their attempts to pass legislation that would allow tribal delegates

in the legislature. In the process, many practical questions about the delegate model were raised: How would tribes decide to select delegates? Who would the delegates represent—their own tribe, a caucus of tribes, or all tribes in the state? Should there be qualifications a person must meet to serve as a tribal delegate? Should tribes have some sort of intertribal forum to advise the delegates? In addition to these questions is the concern about access to legislative staff and a budget, which are considered critical to the success of the delegate model. Finally, all legislatures have numerous committees. What would be a tribal delegate's role in committee and in which committees could the delegates participate? These questions raise fundamental—including constitutional—issues. All concerns identified would require careful consideration by any state and tribe interested in this option.

Section 5. Intertribal Organizations

State legislators may wish to address the tribal leaders in their state at an intertribal organization meeting where tribal leaders may be gathered to discuss common interests. Intertribal organizations are membership organizations that may represent all or some of the tribes in a state or a wider region. Although intertribal organizations are not a substitute for intergovernmental relationships with individual tribes, they can perform many useful functions, such as assisting in the dissemination of information to tribal governments. Depending on resources and staff, intertribal organizations may perform a variety of other functions, including tracking legislative activities and facilitating tribal input into legislative processes.

Regional and issue-focused intertribal organizations also may exist within a particular state. The Midwest Alliance of Sovereign Tribes and the Montana/Wyoming Tribal Leaders Council are examples of regional intertribal organizations that represent the interests of member tribes. The California Indian Manpower Consortium, the Northwest Portland Area Indian Health Board, and the Northwest Indian Fisheries Commission are state or regional issue-focused intertribal organizations.

Great Lakes Intertribal Council

The Great Lakes Intertribal Council (GLITC) is a consortium of federally recognized Indian tribes in Wisconsin and Upper Michigan. Started in 1963 as a community action agency, it was a vehicle for delivery of services and programs to its member reservations and the rural Indian communities of Wisconsin. With the increase of local tribal government authority and capacity, the member tribes have assumed more responsibility for administration of services to their own communities. Consequently, the role of GLITC has changed from one of direct service provider to one of assisting the member tribes in a delivery system of services and programs to support and supplement the tribes' own service capacity.

The tribal chairman or the chair's designated representatives of each member tribe comprise the GLITC board of directors. The board conducts its business at monthly meetings held on a rotating basis at one of the 11 tribal government headquarters. Day-to-day business of the organization is conducted from the central office located in Lac du Flambeau, Wisconsin.

State legislative staff David Lovell finds GLITC is useful in providing a point of contact and an entry into tribal government communication. Lovell says, "GLITC is useful in helping me to make communication with tribal governments. GLITC staff have deeper personal relationships with tribes. They can identify the people at each tribe that I should be talking to." "On the other hand," Lovell notes, "intertribal organizations are a two-edged sword. The danger is that state officials may rely too heavily on intertribal organizations, substituting relationships and consultation with intertribal organizations for true government-to-government relationships with individual tribes."

Robert Chicks, chairman of the Stockbridge-Munsee Tribe, echoes Lovell's comments. "This is a government-to-government relationship between the individual tribe and the state. But GLITC plays an important role because the Wisconsin tribes have a lot of common interests as well. I think GLITC plays a big role in helping state legislators to understand the lay of the land, and they are a good source of technical information. For the tribes, our intertribal organization

can help us work collectively and mobilize to participate at the critical moments, assisting tribes in responding to the state process.” (For more information about the Great Lakes Inter Tribal Council, see www.glitc.org.)

Inter Tribal Council of Arizona

The Inter Tribal Council of Arizona (ITCA) was established in 1952 to provide a united voice for tribal governments located in the state of Arizona to address common issues of concerns and ensure the self-determination of Indian tribal governments through their participation in the development of the policies and programs that affect their lives. On July 9, 1975, the council established a private, nonprofit corporation, Inter Tribal Council of Arizona Inc. under the laws of the state of Arizona to promote Indian self-reliance through public policy development. The corporation’s purpose is to provide the member tribes with the means for action on matters that affect them collectively and individually, to promote tribal sovereignty and to strengthen tribal governments.

The members of ITCA are the highest elected tribal officials: tribal chairpersons, presidents and governors. These representatives are in the best position to have a comprehensive view of the conditions and needs of the Indian communities they represent. As a group, the tribal leaders represent governments that have a shared historical experience. Consequently, the tribes have a common governmental status in addition to similar relationships with federal and state governments.

ITCA Executive Director John Lewis has worked for many years to improve the relationship between the 21 Arizona tribes and the state of Arizona. Lewis notes, “It’s challenging work. The people change, on both the state and tribal sides. We work toward pro-Indian policies with the different state agencies. Relationships with some agencies are better than with others.” Regarding their relationship with the state Legislature, Lewis adds, “Our work has been not so much passing [pro-tribal] bills as stopping [anti-tribal] bills. The Legislature did, however, establish a Tribal Nations Day at the state Capitol.”

Lewis believes intertribal organizations have a unique role in tribal-state relations. “Often, tribes need to have a united effort in going to the Legislature to make things happen. Agencies are subject to budgets and directives set by the Legislature. Tribes and intertribal organizations, as an outside force, can get things done. We can work with the executive branch and legislative branch on issues in a way that is mutually reinforcing.” (For more information on the Inter Tribal Council of Arizona, see <http://www.itcaonline.com/>.)

Section 6. Dedicated Indian Events at the Legislatures

Several states—such as Arizona, Maine, New Mexico, Oklahoma, Oregon and South Dakota—designate specific days during their legislative sessions for interaction with tribal governments. Some of these events are institutionalized in statute. During these “Indian days,” tribal leaders and members come to the capitol to engage in various activities aimed at building relationships with the legislators and communicating their legislative priorities. Tribal leaders may address one or both houses of the legislature. Some states, in fact, host an annual or biennial “state of the tribes” address, in which one or more tribal leaders formally address a joint session.

During dedicated Indian days in the legislature, tribal leaders may meet with committees or individual legislators. Tribal governments also may set up information booths in the capitol rotunda, give speeches, or provide dancing and craft exhibitions. Tribal leaders or elders also may be given an opportunity to offer a blessing or invocation at the commencement of the senate or house sessions for one or more days.

These days may coincide with social events, such as annual dinners or receptions. Social events can effectively build relationships, so long as both tribal leaders and legislators participate. The effectiveness of these events varies. Although ceremony is important for mutual respect, cultural understanding and formality, dealing with the real issues—and having an accountable process for doing so—is crucial. Events should include some opportunity to discuss specific proposals or issues. One tribal official says that tribal leaders may not par-

ticipate if they think it is all simply for show and no real legislative efforts will result. Likewise, some legislators may not participate if tribal leaders discuss only generally such issues as tribal sovereignty and offer no specific proposals or projects that legislators can actually work on during the session.

Arizona Indian Nations and Tribes Legislative Day

Indian Nations and Tribes Legislative Day requires “The Arizona Commission of Indian Affairs, in cooperation with representatives from the State’s Indian Nations, shall annually facilitate an Indian Nations and Tribes Legislative Day. The commission shall invite the legislature, governor and other elected officials to pay tribute to the history and culture of the American Indian peoples and their contributions to the prosperity and cultural diversity of the United States. The commission shall schedule activities and discussions between state and Indian nations and Tribal Leaders on issues with the State and Indian nations and tribes share a common interest or jurisdiction.” (Statute 41-544).

Several components characterize this event. The main event, held at the Legislature, provides an opportunity for legislators to gather in joint session to hear tribal leaders address issues. Further, tribal leaders are sponsored by various members of the Legislature and attend session on the floor. Additional tribal leaders, along with elders and youth, can watch proceedings from reserved public viewing rooms. The morning session at the Legislature is followed by a community lunch, after which various state agencies host informational sessions to address shared state and tribal issues. In addition, more than 30 vendors—representing state agencies, community service organizations, university programs, arts and crafts, and food—participate.

In recent years, participation has grown rapidly and the event is widely attended by tribal leaders and tribal members from 18 of Arizona’s 22 tribes. In 2008, the Indian Nations and Tribes Legislative Day, hosted by the Arizona Commission of Indian Affairs, registered more than 900 attendees.

Oklahoma American Indian Business Day at the Capitol

The Oklahoma Indian Affairs Commission co-sponsored the first American Indian Business Day at the Capitol in March 1999 with the American Indian Chamber of Commerce; the event has continued each year since. The goal of the event is to heighten awareness of American Indian businesses in Oklahoma through exhibits and interaction among vendors and legislators. A diverse pool of about 30 American Indian and tribal businesses from across the state set up booths in the Capitol rotunda, and legislators are encouraged to visit the booths and meet with various business owners.

The event provides an opportunity for legislators, tribal leaders and tribal business people to make contacts and obtain information and to show how much Indian and tribal businesses contribute to the state. Although space in the Capitol is limited, the commission hopes to expand the event in the future to enable more businesses to attend and perhaps to eventually include other Indian organizations.

Section 7. Individual Legislator Efforts

Individual legislators can make efforts to address tribal issues, either in their general capacity as state officials or in their responsibilities to constituents.

- Legislators can organize and sponsor issue-specific roundtable meetings or hearings with tribal leaders, as some Nebraska legislators have done to address the issue of tribal gaming.
- If sufficient resources are available, a legislator may hire specialized staff to advise him or her about Indian issues.
- Legislators can meet with tribal leaders in their district on a regular basis or can provide constituent services as for any other citizen, such as intervening if there are particular problems with a state agency.

- Legislators can participate in committees that are of interest to tribal constituents and in established state-tribal institutions.
- Legislators also can introduce bills that benefit tribal constituencies and ensure that tribal governments are aware of bills that may affect them.

American Indians, Alaska Natives and Native Hawaiians who are elected to state legislatures can provide representation for their unique community needs, although they do not directly represent their specific tribal government. In 2008, 80 self-identified American Indian legislators held office in 16 states. Oklahoma's delegation was the largest at 25, followed by Montana with 10 and Alaska with eight. Ten Native Hawaiians serve in the Hawaii Legislature. Many Native state legislators say they feel they have a dual role: To serve as an official for the good of the entire state and to attempt to protect the unique interests of their tribal communities. Similar to the Maine tribal delegates, these legislators are able to educate their colleagues, about tribal governments and Indian issues and dispel stereotypes.

Wisconsin Representative Frank Boyle

Individual legislators can provide leadership to promote communication and good relations between states and tribes. The chair of a legislative committee with appropriate jurisdiction can use that position to address difficult issues and to foster improved relations. One example comes from the Wisconsin Legislature's Special Committee on State-Tribal Relations (formerly the American Indian Study Committee).

In 1990, at the height of the often violent controversy over the off-reservation spearfishing rights of the Lake Superior Chippewa Bands, Representative Frank Boyle, then the committee's chair, held a public hearing of the committee in the affected area of the state to allow Indians and non-Indians to discuss the issue and to express their feelings and frustrations. Representative Boyle prefaced the hearing by saying that he would rather that unhappy citizens hurl epithets at the committee than hurl rocks and bottles at the boat landings. The hearing lasted seven hours and included testimony from invited

dignitaries, including the six Chippewa tribal chairs and the state attorney general, and more than 30 members of the public. The testimony was frank on the part of all participants, but the proceeding was more dignified than many other discussions of this topic. Representative Boyle held another hearing the following year, with similar results.

Representative Boyle followed up on these hearings by organizing a fact-finding trip to Washington in 1991. A delegation of leaders from the legislative and executive branches of state government (led by the speaker of the Assembly), and from the six Chippewa band governments met with their counterparts in Washington to hear how conflicts over the use of fish resources were resolved. The purpose of the meetings was to find ways to bring similar resolution in Wisconsin. This trip, in turn, led to the formation of a State-Tribal Natural Resource Task Force, chaired by Representative Boyle and charged to develop projects for the cooperative management of natural resources by the state and tribal governments for the mutual benefit of all citizens. The task force met for more than a year and developed nine separate project proposals.

These activities—the hearings, the fact-finding trip and the task force—did not by themselves resolve all the conflicts relating to spearfishing, but they did contribute to the resolution. In particular, they fostered communication between citizens and between governments. They gave state and tribal government officials at all levels—from resource managers working in the field to top policymakers—experience in working together to solve common problems. They also helped to forge working relations—many of which remain in place today—between those government officials. What is more, they were the result of the leadership of one legislator.

Oklahoma Senator Kelly Haney

Former Senator Enoch Kelly Haney, a Seminole tribal chief, has been key to state-tribal relations in Oklahoma. As one of the few American Indians serving as a state legislator at the time, he worked diligently to promote communication and cooperation between the state of Oklahoma and the tribal governments located within the

state. His most notable accomplishments were in the areas of state-tribal agreements, economic development and cultural preservation.

In 1988, Senator Haney became the first chairman of the Joint Committee on State and Tribal Relations, which was established to allow legislative approval of state and tribal agreements. Since its inception, the joint committee has played an important role in the development of agreements in gaming, cross deputization and social welfare, among others. In 1994, Senator Haney authored legislation creating the Oklahoma State-Tribal Economic Development Task Force, designed to evaluate various resources that are available for economic development, identify jurisdictional barriers that may hinder economic development efforts, recommend methods to develop joint state-tribal economic activities, and report findings and legislative recommendations to the governor.

In addition to his accomplishments, Chief Haney is considered the founding father of the current National Caucus of Native American State Legislators, which originated in the early 1990s. As of 2008, the Caucus consists of 80 legislators from 16 states who meet several times a year to provide a forum for discussion and increased communication among Native American legislators. The goals of the Caucus are to:

- Increase awareness of the diverse Native American cultures in the United States;
- Support the establishment and maintenance of state-tribal communications to encourage open dialogue, understanding and cooperation; and
- Act as an advisory body for the National Conference of State Legislatures (NCSL) on issues that affect Native Americans, Alaska Natives and Native Hawaiians.

The Caucus has formed seven policy committees, which include:

- Community Wellness and Criminal Justice;
- Economic Development;
- Education;
- Environment, Water, Natural Resources and Energy;
- Health and Human Services;

- Transportation; and
- Tribal Relations and Trust Responsibility

More information about the National Caucus of Native American State Legislators is available at www.nativeamericanlegislators.org.

Section 8. State Recognition of Native Cultures and Governments

States, through their legislatures, have acknowledged or recognized American Indians as individuals or groups in many ways. Such recognition is frequently independent of the task of addressing particular issues. This approach allows states and tribes to put aside contentious issues to focus on building relations.

State legislatures recognize and acknowledge native cultures through the passage of a variety of bills and resolutions. Bills have been introduced in the states that, among other things, have honored specific American Indian tribes; created days, weeks and/or months to acknowledge native contributions made to the states; and removed offensive terms from geographic sites. Approximately 30 states observe days, weeks or months commemorating American Indians and, in some cases, these dates are considered state holidays where public schools and other organizations are encouraged to commemorate American Indians through appropriate activities such as educational and cultural exhibits.

Some states also have enacted legislation that prohibits the use of the term “squaw” and requires its removal from geographic features. States have required the term to be removed from maps, signs and markers as they are updated; created a council or group to develop replacement names; or simply prohibited the use of all offensive names.

State Recognition of Indian Tribes

Alabama, Connecticut, Delaware, Georgia, Louisiana, Maine, Massachusetts, Michigan, New Jersey, New York, North Carolina, Ohio and Virginia have officially recognized more than 40 American Indian tribes as separate and distinct governments within their bor-

ders. In several of these states, the recognition has occurred through legislative action. The main reason tribes have petitioned for state recognition is to receive acknowledgment and recognition of tribal existence and to foster a continued government-to-government relationship with the state.

State-recognized tribes and members of those tribes are generally eligible for federal government support programs and programs provided to individuals based on their “Indian” status. However, state-recognized tribes receive protection under the federal Indian Arts and Crafts Act of 1990—under which tribal members may proclaim their Indian status on their art work—and under the federal Native American Free Exercise of Religion Act of 1993. State-recognized tribes also can apply for limited federal programs such as education, job training and housing assistance; however, the services of the Bureau of Indian Affairs (BIA) and the Indian Health Services (IHS) are not available to them. Other Indian-specific services are at the discretion of each state. Alabama, Connecticut, Louisiana and North Carolina, for instance, may allow application for programs and services; provide funds for education, entitle membership on commissions established to address American Indian affairs, and allow input on state Indian policy, issues and legislation.

Just as there are a variety of Indian-specific services for members of state-recognized tribes, there also are a variety of guidelines and procedures states use to determine recognition of tribal sovereignty. The state’s criteria may be based on those used for federal recognition, or the recognition may consist of a simple legislative proclamation. Alabama, North Carolina and Virginia have a commission or council on Indian affairs that has the authority to officially recognize the sovereignty of tribes within their state.

Director Richardson of the North Carolina Commission on Indian Affairs comments that, “There is a lack of understanding why the state recognition process is important and needed.” Some state officials fear that recognition of a tribe will lead to the establishment of casinos within their state boundaries. For tribes to conduct gaming activities, however, they must be federally recognized, according to the Indian Gaming Regulatory Act of 1988.

Finally, petitioning for recognition as a sovereign entity does not ensure that it will be granted. It takes time to gather supporting documentation to meet the criteria and it also takes time to review the information once an application has been submitted. In some cases, applicants do not qualify and are denied recognition.

American Indian Artwork in the Statehouses

Displaying Indian artwork in statehouses does not directly address specific policy issues, but it is important in educating, creating good will and building relationships. States can recognize the contributions of Native cultures and individuals through displays or permanent fixtures. In one example, the Oklahoma state Capitol displays a 17-foot statue of an American Indian warrior called The Guardian. Sculpted by former Senator Kelly Haney, the bronze statue sits atop the Capitol's dome. "I think it represents Oklahoma," reflected the former senator. "The story of the native people in Oklahoma is really the story of the history of Oklahoma." The Kansas state Capitol also displays a bronze sculpture atop its dome. The statue of a Kansa warrior is a multicultural representation of the people of Kansas.

In California, the Legislature is placing a commemorative seal that honors American Indians—and that was created by an American Indian—on the front steps of the state Capitol. The Wyoming Legislature erected a statue of Chief Washakie in the Capitol rotunda. Utah has a statue of Chief Massasoit at the front steps of the Capitol building. In Wisconsin, a portrait of Chief Blackhawk, a 19th century Sac and Fox tribal leader, hangs in the Assembly parlor. Although it is not on the statehouse grounds, Nevada voted to allow a statue of Winnemucca, a Paiute activist and educator in the late 1800s, to be included in the U.S. Capitol Statuary Hall.

Section 9. Training for Legislators and Tribal Leaders on Respective Government Processes

Both state legislators and tribal government leaders benefit from training about the structure of one another's governments and the respective decision-making processes. Not many states or tribes have instituted this important function, although a few states have

produced materials, as discussed below. Tribal leaders feel that the lack of understanding about tribal governments is one of the most significant stumbling blocks to better tribal-state relations. The reverse is also true, however. State bureaucracies—including the state legislative process—can appear convoluted and confusing. It also is important that tribal leaders understand state government processes. Whether the tribes or the state provides the training for tribal leaders, and whether the state or the tribes provide the training for legislators, some institutionalized educational process is crucial to good relations.

A variety of training tools and processes can be useful for this purpose.

- General materials, such as the NCSL and NCAI publication, *Government-to-Government: Understanding State and Tribal Governments*, are helpful to provide background on the issue.
- State- and tribe-specific information also is important because states—and, especially, tribes—vary widely in government structure and process.
- Training need not be limited only to written materials. Workshops or training sessions, however brief, often are helpful to relay information.
- Training could be included in new legislator orientation and in an equivalent session for tribal leaders.
- Training could be combined with an annual social function for legislators and tribal leaders, providing a more relaxed, less formal atmosphere that also would encourage interaction between state and tribal officials.
- Finally, training also may be provided for legislative and tribal leader staffs, who often conduct research on particular issues.

State Training Materials

Two state legislative staff offices have produced handbooks on tribal issues. The Montana Legislative Council published *The Tribal Nations of Montana: A Handbook for Legislators* in 1995. This book includes sections on many major state-tribal relations issues, including Montana's Indian tribes, principles of state-tribal relations, tribal sovereignty and state power, civil and criminal jurisdiction in Indian country, economic development, Indian gaming and others. "When the Handbook was first written, every legislator was given a copy. We also distributed copies to the Montana Office of Public Instruction, school libraries—K-12 and higher education—every state agency, every state elected official, and tribal governments.

Once people knew the handbook was available, we had numerous requests for copies from all sorts of folks, including many law school libraries all across the country. We've tried to get them into the hands of as many legislators as we can as new ones are elected," explains Connie Erickson, a research analyst with the Montana Legislative Services Division. Although they have printed the popular handbook three times, it is not routinely used in new legislator orientations, nor is there any formal policy to ensure all new legislators receive a copy. This needs to be done, Erickson agrees, "With term limits, we are experiencing tremendous turnover in our Legislature, so we probably should provide copies to every new legislator."

Research analysts in the Research Department of the Minnesota House of Representatives have produced *Indians, Indian Tribes, and State Government* (2d ed. 1998). Intended as a reference document for anyone who needs it, it originally was produced in the early 1990s when legislative staff "... realized that Indian tribe-state relationships were coming up constantly," recalls Joel Michael, legislative analyst in Minnesota's House Research Department. The document is not distributed to all legislators, however, nor is it used in legislator orientations. Legislative staff do give various sections of the document, which are similar to the Montana handbook, to members of specific committees or to legislators who are interested in specific issues. The section on natural resources, for instance, might go to the Environment and Natural Resources Committee. Both Minnesota

and Montana update these publications periodically to keep up with changes in Indian law, tribal capacities and state-tribal relationships.

Finally, as discussed in section 3, Washington's 1989 Centennial Accord directs the Governor's Office of Indian Affairs (GOIA) to provide training to state agencies and other interested groups on state-tribal relations and Indian perspectives. Training is held twice monthly in Olympia and once a month in an outlying community. The one-day training session covers a tribal historical perspective, legal issues, tribal sovereignty and tribal government. Attendees are provided with a user-friendly reference book, *State-Tribal Relations Training*, which contains sections on federal policy, culture, governments and economies. The manual was produced by the GOIA and has been revised four times since 1991. According to GOIA staff, the training increases the level of awareness among state employees about Indian tribes and the Centennial Accord and increases understanding of and sensitivity to tribal issues.

Section 10. Other Potential Legislative Mechanisms

Other potential mechanisms discussed by various state legislators and tribal leaders to improve relations between state legislatures and tribes have not yet been implemented.

For instance, staff positions could be created, with appropriate input from the tribes, in one or both legislative houses to act as tribal government advisors or liaisons. This person would establish and maintain a communications network with tribal leaders and intergovernmental relations staff regarding both upcoming legislative proposals that would potentially affect tribes and legislative schedules and hearing dates. This staff member ideally would be nonpartisan, could advise legislators and other legislative staff about how proposed legislation or ideas might affect tribes, and could arrange meetings between legislators and tribal leaders upon request. Accountability to both the state and the tribes would be important. Although the position may be created in statute or legislative rules, funding, hiring and supervision could be jointly overseen by the state and the tribes.

Indian affairs commission or office staff in many states already perform some of these functions, but these staff generally are responsible for interacting with state agencies and others as well. A dedicated position in the legislature would meet a need that currently is unmet in most—if not all—state legislatures.

Another idea is to require “tribal impact statements” in bills that affect tribes or program administration to tribal communities. Similar to fiscal impact statements, the tribal impact statements would require bill drafters to consider and acknowledge the potential effects—financial ramifications, jurisdictional implications, and programmatic and service delivery changes—of any new legislation on tribal governments. Impact statements may consist of one or two sentences for bills with very low direct impact or could include longer statements and explanations for high-impact bills. At the minimum, fiscal impact statements that most states prepare for many bills could include the fiscal effect a bill would have on tribal governments. Other options would be to have the drafter note the bills that require an impact statement and also to assign the state Indian affairs commission to prepare the statement.

Bill drafters would almost certainly require training to understand tribal government processes and to recognize the potential effects of state legislation on tribes. Training might consist of a manual developed by tribal representatives and others with input from bill drafters, coupled with annual training sessions. Tribal government liaisons, Indian affairs commission staff or others could be available for consultation with bill drafters.

5. CONCLUSION

As one phrase states, “The devil is in the details.” If there are to be true collaborative working relations between all governments in a single territory, some key steps may need to be taken. State and tribal governments may need to work through the substantive details of specific issues ranging from taxation to sacred sites protection. As tribes continue to improve governmental capacity, it will be up to the states and the tribes to engage one another on policy development, and there is no way to shorten the hard work that is involved in these discussions. The goal of this book is to present some options for creating a favorable forum in which those discussions can take place.

Any mechanism employed in the process of improving state and tribal relations should be jointly developed and maintained, because it must be effective for both the states and the tribes. Both legislators and tribal leaders will want to encourage respective colleagues to become involved with these efforts. Individual states and tribes will need to decide what is realistic and practicable in their particular situation. Jamestown S’Klallam Chairman W. Ron Allen suggests an approach of “aggressive incrementalism” because the greatest progress often is made through small steps. Irrespective of how a collaborative plan is executed, a commitment to cooperation and early and regular information-sharing, education and relationship building are the keys to finding common ground in addressing the needs of all constituents—both Indian and non-Indian.

APPENDIX

This appendix includes a few examples of the many state-tribal agreements that exist to address various subject areas. Some are mentioned to show how these agreements have benefited the states and the tribes and some give information about how the agreements originated. The examples themselves make an impressive case for the value of cooperative agreements and hopefully will inspire state and tribal leaders who are involved with these types of policy issues.

Law Enforcement and Cross-Deputization Agreements

Law enforcement in Indian country can be a complicated issue, but the goal is straightforward—to protect public safety and “catch the bad guys.” The simplicity and urgency of this goal provides great opportunities for cooperation that are realized on a daily basis throughout the country.

There are a variety of scenarios where the federal government—Bureau of Indian Affairs (BIA)—the state, local and tribal governments or a variation of these have jurisdiction on tribal land and over tribal members. Law enforcement and cross deputization agreements between tribes; state, county and municipal police officers; and the BIA are becoming more common across the country. Because jurisdictions and boundaries often are blurred or nonexistent between tribal areas or reservations—which are often checkerboard—and local or state jurisdictions, the need for assistance from other law enforcement officers is steadily increasing. These agreements expand coverage and

services to all citizens in the area; therefore, people feel safer, there are shorter response times by officers to calls for help, and more law enforcement coverage is available without added expense to state, local or tribal departments.

Because crime rates are on the rise across the country—including on and near Indian reservations—the need for additional law enforcement personnel is essential. However, budget constraints prevent hiring new officers or adding extra patrols and, therefore, citizens are increasingly more vulnerable. These agreements generally contain procedures for emergency backup, pursuit of a criminal across boundaries, and arresting and issuing citations on another agency’s turf. Some areas are so large that dispatching an officer from another jurisdiction may be the quickest way to bring law enforcement to the scene of a crime.

To understand the following retrocession agreement in Montana and other key Indian Country states, an explanation of the federal law, Public Law 83-280 (more commonly referred to as PL 280) is necessary because Montana is one of the states that falls under the scope of this federal law. Public Law 280—passed in 1953 during the termination era of federal Indian policy and an active campaign of forced assimilation of Indians by the federal government—was subsequently amended in 1968. Public Law 280 effectively took away the shared jurisdiction between the federal government and tribes involving Indians in Indian country, and delegated to the states criminal jurisdiction over Indians on reservation lands, and opened state courts to civil litigation for disputes between Indians on Indian lands. The law placed a financial burden on the states because it failed to provide funding for enforcement.

Six “mandatory” states—Alaska (after statehood in 1958), California, Minnesota, Nebraska, Oregon, and Wisconsin—were required to assume jurisdiction, thereby allowing the federal government to relinquish its special criminal jurisdiction involving Indian perpetrators or victims. The tribes in these states were not consulted. However, the Red Lake Band of Chippewa Indians in Minnesota, the Confederated Tribes of the Warm Springs Reservation in Oregon, and the Metalkatla Indian Community in Alaska were able to successfully

demonstrate that they had satisfactory law enforcement mechanisms in place, strongly opposed being subjected to state jurisdiction and, therefore, were exempted from PL-280. Other tribes unsuccessfully tried the same approach.

To relieve the financial burden on the states for implementation and enforcement of PL 280, the 1968 Civil Rights Act gave the states that had assumed jurisdiction the option to return all or any measure of jurisdiction to the federal government and the tribes. The federal government would have final say over the retrocession and, again, Indians had no say in the matter. However, this would allow tribes the possibility—and, for some, the eventual reality—of re-obtaining jurisdiction over civil and criminal matters over Indians on their lands.

Ten “optional” states—Arizona, Florida, Idaho, Iowa, Montana, Nevada, North Dakota, South Dakota, Utah and Washington—elected to assume full or partial state jurisdiction over tribes after the 1968 amendments were in place. Some of these states consulted with the tribes within their borders and assumed jurisdiction of some with tribal consent.

Montana Highway Patrol/Flathead Indian Reservation Retrocession Agreement

Because Montana is one of the optional PL 280 states, the decision to return jurisdiction (in a process called “retrocession” under PL 280) to the Confederated Salish and Kootenai Tribes of the Flathead Reservation was requested by the tribes and, in 1994, the state Legislature agreed and retrocession became reality. The Flathead Reservation tribes were the only ones in Montana over which the state exercised PL 280 authority, and they requested retrocession concerning misdemeanors on tribal land. In September 1999, the Confederated Salish and Kootenai Tribes of the Flathead Reservation; the state of Montana; the counties of Missoula, Sanders and Flathead; and the local governments of Ronan, Hot Springs and St. Ignatius signed a renewal of the original 1994 law enforcement agreement.

The original retrocession agreement authorized the return of jurisdiction over misdemeanor crimes committed by Indians to the tribes

on the Flathead Reservation. It authorized law enforcement personnel (state highway patrol and local and tribal officers) to stop any vehicle for a traffic violation and enforce laws involving minors in possession of alcohol. Before retrocession, these offenses had been prosecuted in state court since the early 1960s under Public Law 280. However, the state retains its jurisdiction over felony offenses committed on the reservation.

This reciprocal agreement allows either tribal or nontribal officers to respond to calls when dispatchers call the nearest officer to respond or for officers to stop vehicles for suspicion of criminal activity, whether or not the suspect appears to be Indian. A suspect, if claiming Indian descent, must present proof that he or she is an enrolled member of a federally recognized tribe. The agreement requires the responding officer to detain the suspect and call the appropriate authorities once the suspect is identified as Indian. If the appropriate law enforcement officer is unable to respond to the scene, the responding officer—with the consent or granted authority of the appropriate authority or officer—may issue a citation or, upon arrest, transport the individual to the appropriate facility for processing.

Tribes will continue to retain concurrent jurisdiction with the state over felony crimes committed by Indians, but they may transfer prosecution of such crimes to the state and the state may transfer prosecution to the tribes if warranted. The retrocession agreement was renewed in September 2007.

Omaha and Winnebago Tribes/Nebraska State Patrol Cross-Deputization Agreement

In 2005, Nebraska Governor Dave Heineman signed cross-deputization agreements with both the Omaha and Winnebago tribes to clarify the law enforcement authorities of the Nebraska State Patrol in Thurston County. Although the agreement with the Omaha tribe was new, the agreement with Winnebago renewed a previous agreement that has been in effect since 1986. Both agreements allow 1) deputized members of the state patrol to make arrests, regardless of where the crime occurs or the race of the offender and 2) deputized tribal officers to do the same on tribal lands.

Kansas Law Enforcement Officers Agreement

In 2004, the Kansas Legislature's Joint Committee on State-Tribal Relations introduced (and the governor signed) a bill that would grant tribal law enforcement officers the authority to enforce state law within the boundaries of the reservation. The law allows law enforcement officers employed by Native American tribes to "exercise powers of law enforcement officers anywhere within the exterior limits" of the tribe's reservation subject to conditions. The law requires that the tribes secure liability insurance coverage for damages assessed in state or federal court arising from any acts, errors or omissions of a tribal law enforcement officer while on duty. Any claims brought against the tribal law enforcement agency are processed as if the tribes were the state, pursuant to the Kansas Torts Claims Act.

The tribes must waive their sovereign immunity to the extent necessary to permit recovery under the liability insurance. If tribal law enforcement officers are called upon to assist local or state law enforcement officers, the tribal officer is considered an officer of the agency requesting assistance and is granted the same powers and duties. The law confers the rights and obligations of any law enforcement officer in the state of Kansas to tribal law enforcement officers from the Prairie Band of the Potawatomi Nation, the Kickapoo Tribe in Kansas, the Sac and Fox Nation of Missouri, and the Iowa Tribe of Kansas and Nebraska.

At a committee meeting in September 2006, the major concern of both state and tribal leaders was the liability insurance requirement mandated in the law. A representative from the Kansas attorney general's office explained that they do not know which tribes currently carry the proper amount of liability insurance as defined in the statute. Criminal justice also was a concern, since a person could challenge the tribal police authority if the tribe does not follow the liability insurance provision in the statute.

Other than the issue of tribal law enforcement liability insurance, the agreement has created a positive environment for cooperation between county and tribal law enforcement officials. During the 2007 legislative session, a new law passed to amend the liability insurance

provisions in the statute. The amendments require an aggregate loss limit of \$2 million and would require insurance carriers that provide the tribe with liability insurance to notify the Kansas attorney general's office that the tribe holds sufficient liability insurance coverage.

Wisconsin County-Tribal Law Enforcement Grant Program

In a unique program that encourages state-tribal cooperation, the Wisconsin Legislature enacted legislation in 2005 that modified the Wisconsin County-Tribal Law Enforcement Grant Program. The program encourages counties and tribes to develop joint law enforcement programs for tribal reservations. Once the plans are developed, they are submitted to the state Department of Justice for funding. The grants have been used to pay costs associated with investigations, crime prevention and costs of patrol, among other things.

The initial legislation was enacted in 1983 and two pilot county-tribal programs were funded—the Red Cliff-Bayfield County Cooperative Law Enforcement Program and the Stockbridge Munsee-Shawano County Cooperative Law Enforcement Program. Over the years, the program has been modified, and several counties have partnered with tribes and received program funding. Currently, each county and tribe that requests grant funds must annually submit its joint plan by December 1 of the year prior to the year for which funding is requested. In turn, the Department of Justice submits an annual report to the Legislature and the governor detailing the allocation of funds to each recipient.

Washington Peace Officer Agreement

In 2008, Washington enacted legislation that authorizes tribal police officers to serve as general authority Washington peace officers. Under the law, tribal police officers have the same powers as other general authority peace officers, including the authority to arrest non-Indians.

Environmental Agreements

Indian tribes have been given increasing authority by Congress to administer environmental programs under federal environmental

protection statutes. Tribes benefit from environmental regulatory authority—they can set their own priorities concerning the balance between development and natural resource protection and can find the most culturally appropriate ways to manage resources and protect the environment. These recently (relative to state programs) developed tribal environmental programs, however, often cause concern for state regulators as well as for pollution sources.

For example, tribes can set air or water quality standards that vary significantly from state standards, which can cause difficulty for either government to effectively implement their programs, and also can cause difficulty for regulated sources to comply. Air and streams flow freely between one jurisdiction and another. That is also the reason that environmental and natural resources management provide good opportunities for collaboration—pollution and natural resources respect no political boundaries. These are shared resources that all governments have a stake in protecting. As such, some states and tribes have decided to work together to accomplish these goals rather than add to the rich history of environmental litigation over such issues.

Southern Ute Indian/State of Colorado Environmental Commission Agreement Concerning Air Quality

Under the federal Clean Air Act, Indian tribes can operate their own air quality control programs within “exterior boundaries” of the reservation. The Southern Ute Tribe’s 680,000 acre reservation, located in southwest Colorado, is “checkerboarded”—private land holdings dot the area within the exterior boundaries of the reservation. Natural gas and oil production is a primary air pollution source. The tribe applied in July 1998 for authorization to administer the air quality control program on the reservation, including the non-Indian owned land within the exterior boundaries of the reservation. The state of Colorado objected on that issue. The tribe and state had been arguing over air quality authority on the reservation for more than 10 years and may have been headed to court, but they decided to discuss, not litigate, according to John Cyran with the Colorado Attorney General’s Office, who helped negotiate the agreement.

An agreement was finalized to establish a single collaborative authority—the six-member Southern Ute Indian Tribe/State of Colorado Environmental Commission—to promulgate rules and regulations for the reservation air quality program. The commission of three members appointed by the governor and three appointed by the tribal council is the policymaking and administrative review authority.

Former Colorado Governor Bill Owens signed the agreement for the state, but it needed legislative approval. The Colorado legislature provided the framework and authorization for the state to enter the agreement. The Southern Ute Tribal Council also approved the agreement. The tribe will include the air quality standards set by the commission as part of its application to the U.S. Environmental Protection Agency for delegated authority to administer an air quality program.

The parties still do not agree about who has regulatory jurisdiction over these lands, but this is not relevant in light of the agreement they reached. The real issue to be resolved, said Cyran, was how best to regulate air quality in a checkerboarded area. Nothing in the agreement affects state or tribal sovereignty or constitutes a waiver of state or tribal immunity for any purpose.

As the parties recognize in the text of the agreement, “[t]he State and Tribe, as governments that share contiguous physical boundaries, recognize that is in the interest of the environment and all the residents of the Reservation and the State of Colorado to work together to ensure consistent and comprehensive air quality regulation on the Reservation without the threat of expensive and lengthy jurisdictional litigation.”

Intergovernmental Accord between Michigan Indian Tribes and the Governor Concerning Protection of Shared Water Resources

To affirm its commitment to the preservation, restoration and enhancement of the Great Lakes ecosystem, the state of Michigan signed an intergovernmental agreement with the 12 federally recognized Indian tribes in the state. Signed in 2004, the agreement requires the parties to work together to mitigate future damage to

water resources and pledge to clean up pollutants and maintain diverse water resource habitats.

Montana/Flathead Reservation Fishing and Hunting Agreement

Originally negotiated in 1990, this state-tribal agreement has been extended to 2010. It outlines the management of fishing and bird hunting practices on the Flathead Reservation. The agreement has maintained access to public bird hunting and fishing and has increased cooperation between the state and tribes. The relationship led to adoption of a fisheries management plan for Flathead Lake after years of contention.

Tax Agreements

A tax agreement is an arrangement between two governments that addresses specific jurisdictional issues in taxation. Such agreements require government-to-government discussions between tribal and state officials. The administration of state and tribal taxes on tribal lands has caused a great deal of misunderstanding and litigation over the years, but it also has proven to be a fertile ground for states and tribes to reach compacts and agreements. Nearly every state that has Indian lands within its borders has reached some type of tax agreement with the tribes. More than 200 tribes in 18 states have created successful state-tribal compacts that are mutually satisfactory to both parties. As tax laws, and economic conditions inevitably change in the future, this is an area that will require continuing attention by both state and tribal governments.

Tribal governments have the authority to collect taxes on transactions that occur on tribal lands, and tribal government revenues are not taxable by state governments. In addition, states cannot tax tribal citizens who live on and derive their income from tribal lands, but those who work or live outside tribal lands generally are subject to state income, sales and other taxes. Like state and local governments, tribal governments use their revenues to provide services for their citizens and develop government infrastructure. Unlike state governments, tribal governments most often are not in a position to levy property taxes due to the high percentage of land on Indian res-

ervations that is held by the U.S. government. Income from natural resources, tribal businesses, and sales and excise taxes are most often the only non-federal revenue source for tribal revenue departments.

The more complex rule regarding state taxation sales between Indian sellers and non-Indian buyers is the source of most of the misunderstandings in this area. The Supreme Court has held that state governments can collect excise taxes on sales of imported products to non-members that occur on tribal lands, so long as the tax does not fall directly on the tribal government. In practice, this rule creates difficulties in administration because it depends upon the identity of the purchaser, rather than on the jurisdiction where the transaction takes place. Tribal governments also disagree with this ruling because it results in the inequity of dual taxation, where tribes are prevented from collecting their own sales taxes because of the resulting double tax burden, and the tax revenue flows off-reservation.

States and tribes have developed a variety of methods for addressing these issues, often through intergovernmental agreements or through state statute. Some states have exempted such sales from state taxes altogether. Others have entered into agreements for the collection and distribution of taxes, which can take the form of intergovernmental compacts or state statutes.

Several states have entered into agreements with tribes under which the tribe adopts the same tax rate and collection methods as the state. In some cases, a revenue distribution system is agreed upon wherein the tribe takes the tax revenues attributable to on-reservation sales to Indians, and the state takes the revenues attributable to sales to non-Indians. In other cases, states have agreed that tribes may keep all the tax revenues from the “single tax,” whether the on-reservation sales are to Indians or non-Indians. This system treats on- and off-reservation sales to non-Indians equally, eliminating double taxation by the state and tribes that would create a disadvantage for economic activity on reservations. Unlike the tax sharing approach, this type of agreement allows tribes to retain all tax revenues from on-reservation sales, whether to Indians or non-Indians, just as the state retains revenues from off-reservation sales, regardless of whether the consumer is Indian or non-Indian.

With growing frequency, states are turning to pre-collection of taxes at the wholesale level, before the product ever reaches retailers. In the case of motor fuels, for example, a majority of states have shifted to taxing at the “terminal rack”—the point where barges and shiploads of motor fuels are transferred into truck-size tankers. About 1,300 such terminal racks exist in the United States. Of the 33 states that have federally recognized tribes, at least 27 states have enacted terminal rack or first sale from distributor collection laws. These new laws often have necessitated renegotiation of tribal-state tax compacts.

A number of states have exempted all on-reservation sales from state taxation. These states avoid double taxation of a transaction by both a tribe and a state and recognize such sales as an important source of income for tribes. This approach acknowledges to the fullest extent possible the need for any government to make its own taxation decisions in order to fund governmental services and/or to encourage economic development.

Several examples follow of the many effective tax agreements currently in place between state and tribal governments that seek to balance tribal sovereignty and the need for a tribal tax base against the state’s legal right to tax sales to non-Indians.

Motor Fuel

Many states and tribes have adopted approaches to fuel taxation on Indian lands. Most attempt to ensure that tribal governments and tribal members are not taxed by the state, often through a refund of taxes to tribal governments or individual members. Other agreements provide for tribes and states to share the proceeds of fuel that is taxed on Indian land.

- In Iowa tribal members who purchase fuel for use on a reservation are issued tax refunds from the state. The refunds are issued to tribes as a convenience to members, although individual Indians can apply for a refund permit and receive a refund directly from the state.
- The Winnebago Tribe of Nebraska and the state ended a gas tax dispute with a precedent-setting agreement. “This is the first

opportunity when I saw a representative of the state actually come to the tribe and want to help,” said Shawn Bordeaux, vice chairman of Ho-Chunk Inc., the Winnebago tribe’s business corporation. Janet Lake, the state’s motor fuels division administrator at the time, explained that “... one of the things Governor Johanns has always supported is that we have a government-to-government relationship” with tribes. The compact specifies that the tribe and state agree to a revenue-sharing process, with the tribe collecting 75 percent of taxes from reservation-based gas sales. It then sends a quarterly check to the state for the state’s 25 percent share.

- Two New Mexico pueblos entered into gasoline tax sharing agreements with the state. The agreement permits a tribal distributor owned by the pueblo to receive 40 percent of the gasoline tax revenue paid on 2.5 million gallons per month. In exchange, the distributor cannot deliver gasoline for resale outside the reservation and cannot claim any deductions.
- Oklahoma applies a rack tax to all fuel sales in the state. It has set aside 4.5 percent of the total taxes collected in the state as the tribal share. In order to gain access to their share of these funds, tribes sign compacts individually with the state. Each tribe receives \$25,000 from the tribal share reserved by the state, and tribes that operate gas stations receive a rebate based on the number of gallons sold. The remainder of the reserved tribal share is divided among the tribes based on each tribe’s resident population in Oklahoma. Disparate points of view exist in the state on this arrangement, and not all tribes have entered into a compact with the state.
- Wisconsin does not impose fuel excise taxes on American Indians if the fuel is delivered to them on the reservation, unless the fuel is purchased for resale to non-Indians. Gasoline and diesel fuel are purchased tax-paid, and the state issues 100 percent refunds to tribal governments on sales to resident tribal members.

Tobacco

Some states and tribes have entered into agreements that simply exempt Indian purchasers on reservations from paying cigarette, motor fuel or other sales taxes. Utah has an agreement with the Ute Tribe exempting all cigarette sales to tribal members from state taxes. Wyoming has the same type of agreement with the tribes in that state. Other states have accomplished the same result by reaching agreement with tribes for an allocation of the product to be taxed (usually tax-free cigarettes) to on-reservation retailers, set by a per capita consumption formula reflecting the number of Indians (or tribal members) residing on the reservation. Under these agreements, tax-free cigarettes can be sold to Indians or tribal members, and state taxes must be collected on sales to non-Indians.

- Montana Indian reservations have quotas of tax-free cigarettes, and taxes are precollected on all cigarettes that enter tribal lands. Cigarette wholesalers apply for refunds or credits on tribal sales.
- All Nevada state sales and excise taxes are waived for the purchase of any product sold on an Indian reservation, provided that a tribal tax that is equal to or greater than the comparable state tax is applied. This applies to all sales made on Indian reservations (from cigarettes to toilet paper to a loaf of bread), with the exception of gasoline. This arrangement ensures that the 17 tribes in Nevada will have an adequate tax base and recognizes that the services the tribes provide on their reservations will benefit not only tribal members but all who enter the reservation. This method of addressing tobacco taxation was created by statute. Tribal governments were included in developing and implementing the legislation.

State officials indicate that all the tribes in Nevada that sell cigarettes or other tobacco products impose their own tribal tax and have filed cigarette tax ordinances with the state. The tribes then receive cigarettes with special stamps, indicating that the cigarettes are for on-reservation sales.

- In recognition of the sovereignty of each Oklahoma tribe, Oklahoma has reached individual agreements on a government-to-government basis with tribes in the state. For purposes of tobacco sales in the state of Oklahoma, tribes with compacts can sell to any party, tribal member or not, and agree to remit a flat share of their proceeds to the state in lieu of taxes. The agreements make clear that there is no admission of a right for the state to tax the tribe's sales.
- Tax agreements between South Dakota and four tribes in the state provide for the state to administer and collect both the state sales taxes and parallel tribal taxes that are identical to state taxes. The state and tribes agree to allocation of the collections on each reservation.
- Washington laws specifically identify tribes with which the governor is authorized to negotiate cigarette-only sales tax agreements. Eleven tribes in Washington already have entered into sales tax agreements with the state. Washington encourages collection of a tribal government tax in lieu of a state tax. For the first year the measure was in effect, the tribal tax was no less than 80 percent of the state taxes and by the third year the tribal tax was equal to or greater than the state tax.

Human Services Agreements

Foster Care Programs

State-tribal cooperation on foster care is vital for the thousands of American Indian and Alaska Native children who are over-represented in state and tribal child welfare systems. Of the more than 400,000 Indian children that live on or near reservations, about 6,500 will be placed in substitute care every year. Although Indian tribes prefer to retain custody of Indian children and care for these tribal members in tribal child welfare systems and programs, this is not always possible due to the lack of direct funding provided to tribes for foster care, maintenance payments to foster families and administrative support for state foster care programs.

Title IV-E is an important funding source for the foster care and adoption of children and, although thousands of Indian children meet the eligibility standards for foster care and adoption assistance under Title IV-E, tribes are not authorized to receive Title IV-E funds directly.

One way states and tribes have worked cooperatively on this issue is to develop state-tribal agreements that allow states to pass federal foster care funding to tribes. Approximately 71 Indian tribes nationwide have negotiated Title IV-E foster care agreements. Although no standard Title IV-E agreement exists, in general these agreements increase the ability of states and tribes to provide culturally appropriate services and allow tribes to exercise their sovereignty by implementing their own programs.

Three of the largest tribes in Washington, for example, have signed agreements with the state Department of Social and Health Services, Children's Administration, empowering each tribe to operate foster care programs funded under Title IV-E of the Social Security Act.

In 2004, the Washington Department of Social and Health Services contracted with the National Indian Child Welfare Association to provide consultation on tribal licensing of foster homes. This state-tribal agreement provides that the state and tribes jointly recruit, license and approve Indian foster and adoptive homes and allows them to help potential homes comply with tribal or state licensing standards.

Arizona and the Navajo Nation have a Title IV-E intergovernmental agreement that allows the state to reimburse the tribe for foster care of Navajo children. Relatives of foster children will be trained and licensed under the agreement. The Navajo Nation has a similar agreement with New Mexico. As a result, approximately 99 percent of tribal foster children have been placed with relatives since 2002.

*Oklahoma/Cherokee Nation Joint Agreement
for Licensing and Monitoring of Child Care Centers*

The Cherokee Nation collaborates with the state to share responsibilities for licensing and monitoring certain child care centers located in both urban and rural areas. The state provides training to tribal licensing case workers and supervisors. Joint meetings are held periodically that include staff from the state of Oklahoma and Child Care and Development Fund staff from the Cherokee Nation.

Temporary Assistance for Needy Families (TANF)

- Although it is not administered through an official agreement, the Osage Nation of Oklahoma's tribal TANF program has access to the state's computer information system to obtain client data regarding tribal welfare services and state assistance in the form of food stamps, child care, medical services and/or child support enforcement services. State employees also have provided training for tribal TANF staff. Oklahoma matches approximately 37 percent of the Tribal Family Assistance Grant funds that the Osage Nation receives to operate its program. The tribal TANF program employs a job developer, case manager, information specialist, mobility manager and director to provide culturally relevant services to needy Native American families.
- The Washington state Department of Social and Health Services has entered into compacts with various Washington state tribes that allow tribal administration of the TANF program. Exemplifying the devolution process, the state received block grant funds from the federal government and contracts with tribes to provide social welfare services in their communities. The agreements address collection of child support payments, operation of the TANF program, and information/data sharing between the state and tribes. The department also has entered into agreements with tribes that are located on the Washington border, that have tribal members who reside in Washington. The Nez Perce Tribe of Idaho, for example, has signed an agreement with the department to collect child support on its reservation for de-

pendent Nez Perce children who live in Washington and receive state assistance.

Transportation Agreements

A government-to-government accord between Minnesota's 11 federally recognized tribes and the state Department of Transportation was signed in April 2002. Objectives of the agreement include improving coordination and understanding among all parties on transportation planning, development and maintenance projects. In addition to improving transportation systems, the agreement looks to increase job and training opportunities for both Indian and non-Indian communities throughout the state.

The Indian tribes in Wisconsin and the state Department of Transportation have a government-to-government relationship that aims to move "...beyond the Agency mindset of simply consulting with Indian Nations as a legal requirement, but instead, working with Indian Nations as equal partners focused on people, economics, natural and human environments to improve the quality of life for all people." The parties have formed a task force, hold regularly scheduled meetings, and distribute a directory of department and Indian tribe contacts.

In February 2003, the Washington state Department of Transportation established the Tribal Transportation Planning Organization to promote tribal transportation planning in the state and foster intergovernmental cooperation. This agreement provides a forum for sharing skills and knowledge among transportation professionals employed with Indian governments. The agreement also encourages cooperation between transportation agencies at the local, regional, state and federal levels.

Cultural Resources Agreements

Several types of cultural resources agreements exist between Indian tribes and states. Most of these agreements focus on the discovery—often during construction of buildings, bridges and roads—of human remains or burials on ancestral lands and sites that are attrib-

uted to American Indians. A series of federal laws—the National Historic Preservation Act of 1966, as amended; the Archaeological Resource Protection Act of 1979; and the Native American Graves Protection and Repatriation Act of 1990—require contact and consultation with Indian tribes in the event of such a discovery and before intentional excavation or removal of remains and/or cultural items. State agencies that are responsible for construction projects are required to comply with federal laws when any federal money is involved with the projects.

The National Historic Preservation Act also allows federally recognized Indian tribes to assume any or all of the functions of a state historic preservation office with respect to tribal land. The decision to participate and create a tribal historic preservation office is up to the individual tribes. In addition, federal agencies are required to consult with Indian tribes that attach religious or cultural significance to historic properties, regardless of their location on or off tribal land.

Rhode Island Department of Transportation Monitoring Agreement with the Narragansett Indian Tribe

In October 1998, a unique 10-year memorandum of understanding was signed between the Rhode Island Department of Transportation (RIDOT) and the Narragansett Indian Tribal Historic Preservation Office (NITHPO). The agreement provides for RIDOT to hire tribal members as site monitors for federally funded construction projects throughout the state. Although RIDOT is still required to notify the tribe of finds of human remains and cultural artifacts, it also is paying tribal members for monitoring excavations of these burial and historic sites.

Specifically, the monitoring agreement provides for NITHPO to observe archaeological fieldwork conducted by professional archaeologists contracted by RIDOT at sites that are of Narragansett Indian significance, and for the monitors to submit their observations or comments to RIDOT on each project. Ed Syzmanski, chief transportation projects engineer at RIDOT, says that, by working together under this agreement, RIDOT and the tribe have opened lines of communication and, even though they do not agree on everything,

they are able to discuss the issues and the level of trust between them has increased a great deal since the signing of the agreement.

Once remains or cultural artifacts are discovered, they go to the state for investigation. Verification of human versus animal remains and the cultural affiliation of artifacts must be assessed prior to any return of such to the tribes. Once determination has been made, if the artifacts or remains can be attributed to particular tribes, they are contacted in compliance with federal laws and the remains and/or artifacts may be returned to the tribe.

In both 2000 and 2001, RIDOT signed two-year agreements with the Mashantucket Pequot Indian Tribe of Connecticut and the Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts that are similar to the Narragansett agreement.

Washington First People's Language/ Culture Certification Program

In 2003 and 2004, nine tribal governments in Washington signed a government-to-government agreement with the State Board of Education to administer a pilot program aimed at teaching tribal children their native language. The First People's Language/Culture Certification Pilot Program was a three-year program intended to contribute to the recovery, revitalization and promotion of the First People's language. Certified teachers include the language as part of the public school curriculum. They feel it leads to a successful educational experience for the students and raises cultural sensitivity. The program ended in 2006, and a decision is pending on whether it will continue.

In 2006, legislation was passed that encourages inclusion of Washington tribal history and culture in school curriculums. The legislation, introduced by Representative John McCoy, also encourages the Washington State School Directors' Association to convene regional meetings with tribal councils to learn more about one another. The State Board of Education would count knowledge of American Indian history as an important part of fulfilling general Washington history requirements for high school graduation.

Mutual Respect and Equal Status Agreements

Throughout the years, state legislatures have worked with Indian tribes on a variety of issues and have passed legislation requiring and defining the states' involvement and the extent of cooperative agreements between states and tribes. Recently, more local city and county governments have realized this need and the benefits of working with nearby Indian tribes as issues of mutual concern and jurisdictions continue to arise and overlap. A result of this realization is acknowledgment of Indian tribes as separate and equal governments within state and local boundaries, and the proclamation of such with spirit of cooperation and mutual respect agreements. In addition, these agreements respect the status of a tribal government as a government equal to the city, county or state. At the local level, the governments realize the need to work with tribal governments just as they work and coordinate with any adjacent county and city governments. These agreements recognize the need for and acknowledgment of trust and status at the local community level.

Tulalip Indian Tribes and the City of Seattle Government-to-Government Agreement

Four years in the making, this government-to-government agreement was signed in July 2000 by Seattle Mayor Paul Schell and Tulalip Chairman Stan Jones Sr. to "...better achieve mutual goals through an improved relationship between sovereign tribal government and local city government." Each party agreed to respect the sovereignty of the tribes and the decision-making authority of the city and share respect for the values and culture of the tribes. Of the several existing state-tribal agreements, this may be the first agreement of its kind in the nation where a local or city government and a tribal government agree to respect the other's governmental status.

The protocol agreement lays out the framework to deal with disputes that may arise between the tribe and the city on a number of issues, including environmental protection, cultural events, fisheries and habitat restoration. The agreement is designed to avoid future disputes by opening a continuous and permanent dialogue between the two governments rather than settling an existing problem (as most

agreements are developed or designed to do). Since the tribe and the city do not share physical boundaries, the agreement does not involve jurisdictional issues. The agreement resulted from a natural resource issue that arose when Seattle was constructing a water treatment plant on the Tote River. The city discovered Indian artifacts and contacted the tribe because they are historic area inhabitants. The city now calls to make the Tulalip aware of any construction of water or sewer lines. The city also invites tribal officials, singers and drummers to present cultural segments at functions for foreign dignitaries and other visiting officials.

The Tulalip Tribe hopes that the agreement will be helpful in dealings with other cities with which they share boundaries. Some cities, according to McCoy, do not view the tribe as a legitimate government and will not work with the tribe. Conrad believes that the agreement can be used by the City of Seattle to work with other tribes in the area and that it has set a precedent that shows the city is willing and able to work with other tribes. He states that the agreement has been successful "...because it sets a tone, provides a mechanism to talk and makes sure the two governments talk." The tribe, city and state currently are successfully collaborating on salmon and watershed conservation and productivity in Puget Sound.

REFERENCES

- Alaska Commission on Rural Governance and Empowerment. *Final Report to the Governor*. Juneau: Commission on Rural Governance and Empowerment, June 1999.
- American Indian Law Center. *Tribal-State Intergovernmental Agreements: Analysis of State Enabling Legislation* (2nd ed.). Albuquerque: AILC, 1991.
- American Indian Law Center. *Tribal-State Intergovernmental Agreements: Analysis of State Enabling Legislation* (1st ed.). Albuquerque: AILC 1986.
- Brown, Eddie, et al. *Tribal/State Title IV-E Intergovernmental Agreements*. Portland: National Indian Child Welfare Association, December 2000.
- Clark, Sue Campbell. *A Study on State Indian Commissions*. Phoenix: Arizona Joint Legislative Budget Committee, 1988.
- Commission on State-Tribal Relations. *Block Grants and the State-Tribal Relationship* (draft report). Albuquerque: American Indian Law Center, 1983.
- Commission on State-Tribal Relations. *State-Tribal Agreements: A Comprehensive Study*. Denver: National Conference of State Legislatures, 1981.

- Commission on State-Tribal Relations. *Handbook on State-Tribal Relations*. Albuquerque: American Indian Law Center, 1980.
- Cross, T.A.; D. Simmons; and K.A. Earle. "Child abuse and neglect in Indian Country: Policy issues." *Families in Society: the Journal of Contemporary Human Services* 81, no. 1, (2000): 49-58.
- Erickson, Connie. *Indian Affairs Commissions in Other States*. Helena: Montana Legislative Services Division (for the Law, Justice and Indian Affairs Interim Committee), 1999.
- Getches, David H. "Negotiated Sovereignty: Intergovernmental Agreements with American Indian Tribes as Models for Expanding Self-Government." *Review of Constitutional Studies* no. 1 (1993): 121.
- Gover, Kevin, and James B. Cooney. "Cooperation between Tribes and States in Protecting the Environment." *Natural Resources & Environment* 10, no. 3 (1996): 78.
- Hammond, Sarah, et al. *Criminal Justice in Indian Country: State-Tribal Intergovernmental Strategies to Reduce Crime and Promote Community Wellness*. Denver: National Conference of State Legislatures, September 2007.
- Johnson, Susan. *Native American Issues: 1998 State Legislation*. Denver: National Conference of State Legislatures, January 1999.
- Johnson, Susan, et al. *Government to Government: Understanding State and Tribal Governments*. Denver: National Conference of State Legislatures and National Congress of American Indians, June 2000.
- Kaufmann, L. Jeanne. *Native American Issues: 1999 State Legislation*. Denver: National Conference of State Legislatures, March 2000.
- . *Native American Issues: 2000 State Legislation*. Denver: National Conference of State Legislatures, December 2000.

- . *Native American Issues: 2001 State Legislation*. Denver: National Conference of State Legislatures, 2002.
- . “State Recognition of American Indian Tribes.” *Legisbrief* (National Conference of State Legislatures) 9, no. 1 (January 2001).
- Minnesota House Research. *Indians, Indian Tribes and State Government*. St. Paul: Minnesota House Research, 1998.
- National Congress of American Indians. *A Compilation of Papers on Tribal-State Partnerships: Models of Cooperation in Government*. Washington D.C.: NCAI, June 2000.
- Native American Rights Fund. *State Tribal Taxation and Summary Documents*. Boulder: NARE, 1998.
- Oklahoma Indian Affairs Commission. *Oklahoma Indian Nations Information Handbook*. Oklahoma City: OIAC, 2000.
- Pommersheim, Frank. *Braid of Feathers: American Indian Law and Contemporary Tribal Life*. Berkeley: University of California Press, 1995.
- Quigley, Karen. *Oregon’s Three-Point Approach to State/Tribal Relations*. In National Congress of American Indians. *A Compilation of Papers on Tribal-State Partnerships: Models of Cooperation in Government*. Washington D.C.: NCAI, 2000.
- U.S. House of Representatives. *1998 Green Book: Background material and data on programs within the jurisdiction of the Committee on Ways and Means*. Online at <http://aspe.os.dhhs.gov/98gb/11cps.htm>, 1998.
- Wilkins, Andrea. *States and Tribes: Building New Traditions—Welfare Reform on Tribal Lands*. Denver: National Conference of State Legislatures, 2004.

Wilson, Sara, and Paula Quenemoe. *Government to Government Relations—Indian Tribes and the States*. Salt Lake City: Office of the Governor and the University of Utah, 1991.

Zelio, Judy. *States and Tribes: Building New Traditions—Piecing Together the State-Tribal Tax Puzzle*. Denver: National Conference of State Legislatures, 2005.

WEB RESOURCES

First Peoples' Language/Culture Certification Program
[www.pesb.wa.gov/Publications/reports/2007/
FinalFPLCreport_2.15.07.pdf](http://www.pesb.wa.gov/Publications/reports/2007/FinalFPLCreport_2.15.07.pdf)

Inter Tribal Council of Arizona
www.itcaonline.com/

Minnesota Department of Transportation
www.dot.state.mn.us/mntribes/handbook/agreements.html

Wisconsin State Tribal Relations Initiative
<http://witribes.wi.gov/>

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