S. HRG. 106–96

BUSINESS DEVELOPMENT ON INDIAN LANDS

HEARING

BEFORE THE

COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

ON

S. 613

TO ENCOURAGE INDIAN ECONOMIC DEVELOPMENT, TO PROVIDE FOR THE DISCLOSURE OF INDIAN TRIBAL SOVEREIGN IMMUNITY IN CONTRACTS INVOLVING INDIAN TRIBES

AND

S. 614

TO PROVIDE FOR REGULATORY REFORM IN ORDER TO ENCOURAGE INVESTMENT, BUSINESS, AND ECONOMIC DEVELOPMENT WITH RESPECT TO ACTIVITIES CONDUCTED ON INDIAN LANDS

MAY 19, 1999
WASHINGTON, DC

U.S. GOVERNMENT PRINTING OFFICE

56–898 CC WASHINGTON : 1999

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-058797-2

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

COMMITTEE ON INDIAN AFFAIRS

BEN NIGHTHORSE CAMPBELL, Colorado, *Chairman*
DANIEL K. INOUYE, Hawaii, *Vice Chairman*

FRANK MURKOWSKI, Alaska
JOHN McCAIN, Arizona,
SLADE GORTON, Washington
PETE V. DOMENICI, New Mexico
CRAIG THOMAS, Wyoming
ORRIN G. HATCH, Utah
JAMES M. INHOFE, OKLAHOMA

KENT CONRAD, North Dakota
HARRY REID, Nevada
DANIEL K. AKAKA, Hawaii
PAUL WELLSTONE, Minnesota
BYRON L. DORGAN, North Dakota

PAUL MOOREHEAD *Majority Staff Director/Chief Counsel*
PATRICIA M. ZELL, *Minority Staff Director/Chief Counsel*

CONTENTS

	Page
S. 613 and S. 614 text of	3
Statements:	
Anderson, Michael J., Deputy Assistant Secretary for Indian Affairs, Department of the Interior, Washington, DC	19
Campbell, Hon. Ben Nighthorse, U.S. Senator from Colorado, Chairman, Committee on Indian Affairs	1
Hester, Daniel, Esq., Legal Counsel, Confederated Tribes of the Umatilla Indian Reservation, Pendleton, OR	23
Horn, Dennis, Esq., Law Offices, Holland and Knight, Washington, DC	25
Orszag, Jonathan M., Assistant Secretary and Director of Policy, Department of Commerce, Washington, DC	18
Tovey, David, Executive Director, Confederated Tribes of the Umatilla Indian Reservation, Pendleton, OR	23

APPENDIX

Prepared statements:	
Allen, W. Ron, President, National Congress of American Indians (with resolution)	69
Anderson, Michael J.	31, 33
Horn, Dennis, Esq. (with attachments)	52
Orszag, Jonathan M. (with attachment)	35
Salway, Harold D., President, Oglala Sioux Tribe	75
Tovey, David (with letters)	41

S. 613, THE INDIAN TRIBAL ECONOMIC DEVELOPMENT AND CONTRACT ENCOURAGEMENT ACT OF 1999, AND S. 614, THE INDIAN TRIBAL REGULATORY REFORM AND BUSINESS DEVELOPMENT ACT OF 1999

WEDNESDAY, MAY 19, 1999

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

The committee met, pursuant to notice, at 10:30 a.m. in room 485, Senate Russell Building, Hon. Ben Nighthorse Campbell (chairman of the committee) presiding.

Present: Senator Campbell.

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

The CHAIRMAN. The committee will come to order.

The committee is aware of the economic problems faced by Native Americans in terms of unemployment, poverty, and, in many cases, hopelessness. After generations of failed Federal programs, Indian economies remain stagnant.

Today we will discuss important reforms that we can put in place to increase the level of business activity to attract jobs and investments in Native communities.

Section 81 of the U.S. Code requires the BIA to sign off on contracts that involve Indian lands. Over the years the committee has heard from many tribes, as well as private businesses, that the Bureau of Indian Affairs [BIA] approval process takes too long, is uncertain, and lacks the kind of predictability that both tribes and businesses must have.

S. 613 will require the Secretary to set out criteria for reviewing which contracts require approval, and will also put in place a time limit for those reviews. The bill also requires that the existence of a tribe's immunity from lawsuits simply be disclosed in the contract.

The other bill, S. 614, directs the Commerce Secretary to set up a Regulatory Reform and Business Development on Indian Lands Authority to identify legal and regulatory obstacles to greater economic activity on Indian lands. The Authority is required to submit its findings and recommendations to this committee within one

year of enactment of the act, and we will then consider these recommendations.

[Text of S. 613 and S. 614 follow:]

II

106TH CONGRESS
1ST SESSION

S. 613

To encourage Indian economic development, to provide for the disclosure of Indian tribal sovereign immunity in contracts involving Indian tribes, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 15, 1999

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

---

A BILL

To encourage Indian economic development, to provide for the disclosure of Indian tribal sovereign immunity in contracts involving Indian tribes, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Indian Tribal Eco-
5 nomic Development and Contract Encouragement Act of
6 1999".

1 **SEC. 2. CONTRACTS AND AGREEMENTS WITH INDIAN**
2 **TRIBES.**

3 Section 2103 of the Revised Statutes (25 U.S.C. 81)
4 is amended—

5 (1) by inserting "(a)" before "No agreement";

6 (2) in subsection (a), as designated by para-
7 graph (1) of this section—

8 (A) by striking ", or individual Indians not
9 citizens of the United States,";

10 (B) by striking "First. Such agreement"
11 and inserting the following:
12 "(1) Such contract or agreement";

13 (C) by striking "Second. It shall bear the
14 approval of the Secretary of the Interior and
15 the Commissioner of Indian Affairs endorsed up
16 on it." and inserting the following:
17 "(2) Except as provided in subsection (b), it
18 shall bear the approval of the Secretary of the Inte-
19 rior (referred to in this section as the 'Secretary') or
20 a designee of the Secretary of the Interior endorsed
21 upon it.";

22 (D) by striking "Third. It" and inserting
23 the following:
24 "(3) It";

25 (E) by striking "Fourth. It" and inserting
26 the following:

1 "(4) It"; and

2 (F) by striking "Fifth. It" and inserting

3 the following:

4 "(5) It";

5 (3) by inserting "(d)" before "All contracts";

6 (4) by inserting after subsection (a) the fol-

7 lowing:

8 "(b) Subsection (a)(2) shall not apply to a contract

9 or agreement in any case in which—

10 "(1) the Secretary (or a designee of the Sec-

11 retary) fails to approve or disapprove the contract or

12 agreement by the date that is 90 days after the date

13 on which the contract or agreement is filed with the

14 Secretary under this section; or

15 "(2)(A) the tribe notifies the Secretary in a

16 manner prescribed by the Secretary under sub-

17 section (c)(3) that a contract or agreement is not

18 covered under subsection (a); and

19 "(B) the Secretary (or a designee of the Sec-

20 retary) fails to inform the tribe in writing, by the

21 date that is 45 days after receipt of the notification

22 under subparagraph (A), that the Secretary (or des-

23 ignee) intends to review the contract agreement by

24 the date specified in paragraph (1).

1 "(c)(1) The Secretary (or a designee of the Sec-
2 retary) shall refuse to approve a contract or agreement
3 that is filed with the Secretary under this section if the
4 Secretary (or designee) determines that the contract or
5 agreement—
6 "(A) violates Federal law; or
7 "(B)(i) is covered under subsection (a); and
8 "(ii) does not include a provision that—
9 "(I) provides for remedies in the case of a
10 breach of the contract or agreement;
11 "(II) references a tribal code, ordinance, or
12 ruling of a court of competent jurisdiction that
13 discloses the right of the tribe to assert sov-
14 ereign immunity as a defense in an action
15 brought against the tribe; or
16 "(III) includes an express waiver of the
17 right of the tribe to assert sovereign immunity
18 as a defense in an action brought against the
19 tribe (including a waiver that limits the nature
20 of relief that may be provided or the jurisdic-
21 tion of a court with respect to such an action).
22 "(2)(A) The Secretary (or a designee of the Sec-
23 retary) shall not approve any contract or agreement that
24 is submitted to the Secretary for approval under this sec-

1 tion if the Secretary (or designee) determines that the con-
2 tract or agreement is not covered under subsection (a).
3 "(B) If the Secretary determines that a contract or
4 agreement is not covered under subsection (a), the Sec-
5 retary shall notify the tribe of that determination.
6 "(3) To assist tribes in providing notice under sub-
7 section (b)(2), the Secretary shall—
8 "(A) issue guidelines for identifying types of
9 contracts or agreements that are not covered under
10 subsection (a); and
11 "(B) establish procedures for providing that no-
12 tice.
13 "(4) The failure of the Secretary to approve a con-
14 tract or agreement under this subsection or to provide no-
15 tice under paragraph (2)(B) shall not affect the applica-
16 bility of a requirement under any other provision of Fed-
17 eral law.";
18 (5) in subsection (d), as redesignated by para-
19 graph (3) of this section, by striking "paid to any
20 person by any Indian tribe" and all that follows
21 through the end of the subsection and inserting
22 "paid to any person by any tribe or any other person
23 on behalf of the tribe on account of such services in
24 excess of the amount approved by the Secretary of
25 the Interior, may be recovered in an action brought

1 by the tribe or the United States. Such an action
2 may be brought in any district court of the United
3 States, without regard to the amount in controversy.
4 Any amount recovered under this subsection shall be
5 paid to the Treasury of the United States for use by
6 the tribe for whom it was recovered."; and
7 (6) by adding at the end the following:
8 "(e) Nothing in this section shall be construed to re-
9 quire the Secretary of the Interior to approve a contract
10 for legal services by an attorney.".

11 **SEC. 3. CHOICE OF COUNSEL.**

12 Section 16(e) of the Act of June 18, 1934 (commonly
13 referred to as the "Indian Reorganization Act") (48 Stat.
14 987, chapter 576; 25 U.S.C. 476(e)) is amended by strik-
15 ing ", the choice of counsel and fixing of fees to be subject
16 to the approval of the Secretary".

II

106TH CONGRESS
1ST SESSION

S. 614

To provide for regulatory reform in order to encourage investment, business, and economic development with respect to activities conducted on Indian lands.

IN THE SENATE OF THE UNITED STATES

MARCH 15, 1999

Mr. CAMPBELL (for himself and Mr. INOUYE) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs

---

A BILL

To provide for regulatory reform in order to encourage investment, business, and economic development with respect to activities conducted on Indian lands.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Indian Tribal Regulatory Reform and Business Development Act of 1999".

SEC. 2. FINDINGS; PURPOSES.

(a) FINDINGS.—Congress finds that—

(1) despite the availability of abundant natural resources on Indian lands and a rich cultural legacy

1 that accords great value to self-determination, self-
2 reliance, and independence, American Indians and
3 Alaska Natives suffer rates of unemployment, pov-
4 erty, poor health, substandard housing, and associ-
5 ated social ills to a greater degree than any other
6 group in the United States;

7 (2) the capacity of Indian tribes to build strong
8 tribal governments and vigorous economies is hin-
9 dered by the inability of Indian tribes to engage
10 communities that surround Indian lands and outside
11 investors in economic activities conducted on Indian
12 lands;

13 (3) beginning in 1970, with the issuance by the
14 Nixon Administration of a special message to Con-
15 gress on Indian Affairs, each President has con-
16 firmed the special government-to-government rela-
17 tionship between Indian tribes and the United
18 States; and

19 (4) the United States has an obligation to as-
20 sist Indian tribes with the creation of appropriate
21 economic and political conditions with respect to In-
22 dian lands to—

23 (A) encourage investment from outside
24 sources that do not originate with the Indian
25 tribes; and

1 (B) facilitate economic development on In-
2 dian lands.
3 (b) PURPOSES.—The purposes of this Act are as fol-
4 lows:
5 (1) To provide for a comprehensive review of
6 the laws (including regulations) that affect invest-
7 ment and business decisions concerning activities
8 conducted on Indian lands.
9 (2) To determine the extent to which those laws
10 unnecessarily or inappropriately impair—
11 (A) investment and business development
12 on Indian lands; or
13 (B) the financial stability and management
14 efficiency of tribal governments.
15 (3) To establish an authority to conduct the re-
16 view under paragraph (1) and report findings and
17 recommendations that result from the review to Con-
18 gress and the President.
19 **SEC. 3. DEFINITIONS.**
20 In this Act:
21 (1) AUTHORITY.—The term "Authority" means
22 the Regulatory Reform and Business Development
23 on Indian Lands Authority.

1 (2) FEDERAL AGENCY.—The term "Federal
2 agency" means an agency, as that term is defined
3 in section 551(1) of title 5, United States Code.
4 (3) INDIAN.—The term "Indian" has the mean-
5 ing given that term in section 4(d) of the Indian
6 Self-Determination and Education Assistance Act
7 (25 U.S.C. 450b(d)).
8 (4) INDIAN LANDS.—The term "Indian lands"
9 has the meaning given that term in section 4(4) of
10 the Indian Gaming Regulatory Act (25 U.S.C.
11 2703(4)).
12 (5) INDIAN TRIBE.—The term "Indian tribe"
13 has the meaning given that term in section 4(e) of
14 the Indian Self-Determination and Education Assist-
15 ance Act (25 U.S.C. 450b(e)).
16 (6) SECRETARY.—The term "Secretary" means
17 the Secretary of Commerce.
18 (7) TRIBAL ORGANIZATION.—The term "tribal
19 organization" has the meaning given that term in
20 section 4(*l*) of the Indian Self-Determination and
21 Education Assistance Act (25 U.S.C. 450b(*l*)).
22 **SEC. 4. ESTABLISHMENT OF AUTHORITY.**
23 (a) ESTABLISHMENT.—
24 (1) IN GENERAL.—Not later than 60 days after
25 the date of enactment of this Act, the Secretary, in

1 consultation with the Secretary of the Interior and
2 other officials whom the Secretary determines to be
3 appropriate, shall establish an authority to be known
4 as the Regulatory Reform and Business Develop-
5 ment on Indian Lands Authority.

6 (2) PURPOSE.—The Secretary shall establish
7 the Authority under this subsection in order to fa-
8 cilitate identifying and subsequently removing obsta-
9 cles to investment, business development, and the
10 creation of wealth with respect to the economies of
11 Indian reservations.

12 (b) MEMBERSHIP.—

13 (1) IN GENERAL.—The Authority established
14 under this section shall be composed of 21 members.

15 (2) REPRESENTATIVES OF INDIAN TRIBES.—12
16 members of the Authority shall be representatives of
17 the Indian tribes from the areas of the Bureau of
18 Indian Affairs. Each such area shall be represented
19 by such a representative.

20 (c) INITIAL MEETING.—Not later than 90 days after
21 the date of enactment of this Act, the Authority shall hold
22 its initial meeting.

23 (d) REVIEW.—Beginning on the date of the initial
24 meeting under subsection (c), the Authority shall conduct
25 a review of laws (including regulations) relating to invest-

1 ment, business, and economic development that affect in-
2 vestment and business decisions concerning activities con-
3 ducted on Indian lands.

4 (e) MEETINGS.—The Authority shall meet at the call
5 of the chairperson.

6 (f) QUORUM.—A majority of the members of the Au-
7 thority shall constitute a quorum, but a lesser number of
8 members may hold hearings.

9 (g) CHAIRPERSON.—The Authority shall select a
10 chairperson from among its members.

11 **SEC. 5. REPORT.**

12 Not later than 1 year after the date of enactment
13 of this Act, the Authority shall prepare and submit to the
14 Committee on Indian Affairs of the Senate, the Committee
15 on Resources of the House of Representatives, and to the
16 governing body of each Indian tribe a report that
17 includes—

18 (1) the findings of the Authority concerning the
19 review conducted under section 4(d); and

20 (2) such recommendations concerning the pro-
21 posed revisions to the laws that were subject to re-
22 view as the Authority determines to be appropriate.

23 **SEC. 6. POWERS OF THE AUTHORITY.**

24 (a) HEARINGS.—The Authority may hold such hear-
25 ings, sit and act at such times and places, take such testi-

1 mony, and receive such evidence as the Authority con-
2 siders advisable to carry out the duties of the Authority.
3 (b) INFORMATION FROM FEDERAL AGENCIES.—The
4 Authority may secure directly from any Federal depart-
5 ment or agency such information as the Authority con-
6 siders necessary to carry out the duties of the Authority.
7 (c) POSTAL SERVICES.—The Authority may use the
8 United States mails in the same manner and under the
9 same conditions as other departments and agencies of the
10 Federal Government.
11 (d) GIFTS.—The Authority may accept, use, and dis-
12 pose of gifts or donations of services or property.
13 **SEC. 7. AUTHORITY PERSONNEL MATTERS.**
14 (a) COMPENSATION OF MEMBERS.—
15 (1) NON-FEDERAL MEMBERS.—Members of the
16 Authority who are not officers or employees of the
17 Federal Government shall serve without compensa-
18 tion, except for travel expenses, as provided under
19 subsection (b).
20 (2) OFFICERS AND EMPLOYEES OF THE FED-
21 ERAL GOVERNMENT.—Members of the Authority
22 who are officers or employees of the United States
23 shall serve without compensation in addition to that
24 received for their services as officers or employees of
25 the United States.

1 (b) TRAVEL EXPENSES.—The members of the Au-
2 thority shall be allowed travel expenses, including per diem
3 in lieu of subsistence, at rates authorized for employees
4 of agencies under subchapter I of chapter 57 of title 5,
5 United States Code, while away from their homes or reg-
6 ular places of business in the performance of services for
7 the Authority.

8 (c) STAFF.—

9 (1) IN GENERAL.—The chairperson of the Au-
10 thority may, without regard to the civil service laws,
11 appoint and terminate such personnel as may be
12 necessary to enable the Authority to perform its du-
13 ties.

14 (2) PROCUREMENT OF TEMPORARY AND INTER-
15 MITTENT SERVICES.—The chairperson of the Au-
16 thority may procure temporary and intermittent
17 service under section 3109(b) of title 5, United
18 States Code, at rates for individuals that do not ex-
19 ceed the daily equivalent of the annual rate of basic
20 pay prescribed under GS–13 of the General Sched-
21 ule established under section 5332 of title 5, United
22 States Code.

23 **SEC. 8. TERMINATION OF THE AUTHORITY.**

24 The Authority shall terminate 90 days after the date
25 on which the Authority has submitted, to the committees

1 of Congress specified in section 5, and to the governing
2 body of each Indian tribe, a copy of the report prepared
3 under section 5.

4 **SEC. 9. EXEMPTION FROM FEDERAL ADVISORY COM-**
5 **MITTEE ACT.**

6 The activities of the authority conducted under this
7 title shall be exempt from the Federal Advisory Committee
8 Act (5 U.S.C. App.).

9 **SEC. 10. AUTHORIZATION OF APPROPRIATIONS.**

10 There are authorized to be appropriated such sums
11 as are necessary to carry out this Act, to remain available
12 until expended.

The CHAIRMAN. These are modest measures, and I would hope that the administration does support them or, if they do not, at least identify the reasons for not supporting them.

With that, I welcome the first panel, and would tell everyone who is testifying that all of your written testimony will be included in the record.

In this committee we use this light system here, and if you could confine your verbal testimony to about 7 minutes, we would appreciate it.

The first panel is Jonathan Orszag, Assistant Secretary and Director of Policy for the Department of Commerce, and Mike Anderson, Deputy Assistant Secretary for Indian Affairs, Department of the Interior.

We will go ahead and start with you, Jonathan, if you would proceed.

STATEMENT OF JONATHAN M. ORSZAG, ASSISTANT SECRETARY AND DIRECTOR OF POLICY, DEPARTMENT OF COMMERCE, WASHINGTON, DC

Mr. ORSZAG. Thank you, Mr. Chairman. My name is Jonathan Orszag and I am the Director of Policy and Strategic Planning at the Department of Commerce. In that capacity, I serve as Secretary Daley's chief policy advisor, and my office is responsible for coordinating policy development and implementation for the Department.

It is my pleasure to represent the Secretary today to discuss the Department's efforts to assist Native American communities and to represent the Department's views on two bills affecting Indian country that you have introduced.

Today, America's economy is the strongest in a generation. Unfortunately, as you know, the story for our Native American communities is not as bright. While we have made progress in recent years, there is still more work to do. The unemployment rate is still too high; the poverty rate is too high; the median family income of Native American families is far below that for all families. An astonishing 53 percent of Indian homes on reservations do not even have a telephone, compared to 5 percent for the entire United States.

President Clinton, Vice President Gore, and Secretary Daley believe strongly in the value that American does not have a person to waste—or a community that can be left behind. THus, as the President said in his State of the Union address,

> We must do more to bring the spark of private enterprise to every corner of America, to build a bridge from Wall Street to Appalachia, to the Mississippi Delta, to our Native American communities.

That is why Secretary Daley participated in the announcement by the President and Vice President of their New Markets Tour—a tour to these underserved areas—which will hopefully shine the spotlight on those areas of the country, including Native American communities, that have not fully benefitted from our economic prosperity. That is why the President held the first-ever White House Conference on Economic Development in Indian Country. That is also why the Department has been focused on promoting economic growth in Native American communities.

I am pleased to tell the committee that on June 4, the Department will open the San Manuel Band of Mission Indians Associate Office, a satellite office of an Export Assistance Center in California. Assisting local businesses in realizing their export potential, this Associate Office will be the first ever opened on Native American lands. For your information I have attached a list of programs and initiatives that the Department has undertaken to help business development on Native American reservations.

But despite our efforts and the efforts of the Department of the Interior, we know we have more to do. Mr. Chairman, you have advocated increased coordination of our programs to help Native American communities. Upon review of your recommendation, I am pleased to tell you that Secretary Daley has decided to hire a senior advisor to the Secretary who will be responsible for coordinating all of the Department's efforts to assist Native American communities. This person will serve as the point of contact for Indian economic development and will work with Commerce bureaus to increase tribal awareness of the wide array of programs that we offer.

I would like to turn now to the topic of today's hearing, S. 613 and S. 614. Since the Commerce Department is not directly affected by S. 613, we will respectfully defer to Interior.

As you know, we have a long history of working with tribes to promote and foster economic development. However, there remain many challenges to the ability of tribes to attract outside investment to stimulate economic development in Native American communities. Therefore the Department supports S. 614 and believes it is very important to identify Federal laws and regulations that affect investment and business decisions concerning activities conducted on Indian lands. The Department believes that we would fulfill the obligations laid out in the bill effectively and efficiently, as long as the necessary resources are made available. Of course, we would work closely with the Department of the Interior and other relevant Cabinet agencies to achieve the goals contemplated in the act.

Since the cost of the Authority could be significant, I believe it is important to emphasize that the Department cannot currently perform the work required by S. 614 within existing funds.

We look forward to working with the committee to find adequate appropriations within a balanced budget to carry out the task.

Thank you again for the opportunity to represent the Department and the Secretary's views, and I would be pleased to respond to any questions that you may have.

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

The CHAIRMAN. Okay.

Mike, why don't you go ahead.

STATEMENT OF MICHAEL J. ANDERSON, DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, WASHINGTON, DC

Mr. ANDERSON. Good morning, Mr. Chairman and members of the committee. I am pleased to present the views of the Department of the Interior on both S. 614 and S. 613, a bill amending 25 USC 81.

As my colleague, Mr. Orszag, has described, the administration supports S. 614. We appreciate the efforts of the committee in finding tools and ways to increase economic development in Indian country, something which the administration has placed a high priority.

Because the Department of Commerce has explained the views of the administration on S. 614, let me turn to our testimony on S. 613, a bill amending section 81.

We commend the committee for its efforts in reforming the deficiencies in section 81. As you know, section 81 requires the Secretary of the Interior to approve certain contracts by American Indian tribal governments and third parties. These contracts involve payments by tribes for services, in the words of the statute, "relative to their lands." Any contract that is subject to section 81 that is not approved by the Secretary is null and void, and payments made by the tribe to third parties may be recovered when such contracts are declared null and void.

This statute was passed by Congress in 1871 and was designed, in part, to prevent unscrupulous attorneys from signing unfair contracts from tribes when they filed land claims against the United States on behalf of the tribe.

In 1871, the level of sophistication, business acumen, and negotiation skills of tribes dealing with non-Indians were light years away from what they are today. Today, most tribes have a great deal of experience in negotiating contracts with third parties and attorneys, and they don't need the Secretary of the Interior to second-guess their decisions.

For that reason, the Department believes that the best answer to reforming section 81 is to repeal it entirely. Under the current version of section 81, the definition of contracts "relative to Indian lands" is overbroad. Since it is overbroad, contracts for the sale of vehicles to tribes, maintenance of buildings, construction of tribal government facilities, and even the purchase of office supplies are now routinely presented to the BIA for approval. No other government is subject to such paternalistic requirements, nor should they be. Tribal leaders and decisionmakers are not incompetent wards who need Bureau officials telling them that they are not paying a fair price.

We have some technical comments in our written testimony which we have shared with your staff.

In summary, some of our concerns regarding S. 613 as currently drafted include the problem that services "relative to Indian lands" is not defined, just as it was not defined in 1871. At least approval of routine contracts should be excluded.

Also, the timelines in the bill for automatic approval allow little time for tribal consultation on whether the deal that the tribes have bargained for is fair.

Additionally, the section requiring the Secretary to provide for remedies for non–Indians against the tribes forces the Bureau to play an essential role in every contract negotiation in which a tribe is involved.

Finally, the Department's major concerns with the proposed bill stems from the sovereign immunity provisions of S. 613. There is, in our opinion, an ample amount of case law that adequately ad-

dresses the subject of tribal sovereign immunity. The law, as it has developed and as it exists today, serves as more than adequate notice for anyone contemplating conducting business with an Indian tribe, that tribes enjoy sovereign immunity from suit in the absence of a clear and unequivocal waiver of immunity. Those seeking to do business with Indian tribes have the opportunity to protect their own interests through negotiation of waivers of immunity. Surely, in the spirit of self-determination, Indian tribes should not be forced by the United States to negotiate the waiver of their sovereign immunity with those with whom they would conduct business. Simply put, the Government should not dictate the waiver of tribal sovereign immunity as a condition of a tribe's right to enter into a contract.

Our written testimony includes further technical comments to S. 613. At this time we are prepared to offer any assistance or answer any questions that the committee may have.

Thank you.

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

The CHAIRMAN. Thank you.

Mr. Orszag, can you expand a little bit on your comments about the Department hiring a senior advisor? It went by me pretty fast. What will the duties of that senior advisor to the Secretary be?

Mr. ORSZAG. That person's duties would be to coordinate all our efforts. We have nine different Bureaus, ranging from NOAA to the Patent and Trademark Office, to EDA, to the Economic Statistics Administration, and this person would be responsible for bringing together all nine Bureaus and ensuring that all our policies are making sense, and then also in terms of being the point of contact for members of Native American communities at the Department—this would be the point of contact. This would be the person that, if somebody wanted to find out about all the programs that we offer, they could go to this person. This person will serve as the senior advisor and would be in the Office of Policy and Strategic Planning.

The CHAIRMAN. And that person would report directly to the Secretary?

Mr. ORSZAG. The person is within the Office of the Secretary. I guess technically they would be reporting to me, but it's sort of a diagonal to me, and to the Secretary, too.

The CHAIRMAN. And would part of that person's job responsibility be to also deal with tribes, as I understand you?

Mr. ORSZAG. Yes.

The CHAIRMAN. That won't be a statutory job, however?

Mr. ORSZAG. No; it will not be.

The CHAIRMAN. And what's to prevent the person, if he doesn't want to deal with the tribes, just simply not doing it?

Mr. ORSZAG. I think what would prevent the person from doing that would be their term of employment.

The CHAIRMAN. Yes; hopefully.

Having a senior advisor to the Secretary to increase tribal awareness of the Department's programs—I mean, it sounds good, but I need to ask you those questions, but if there is no institutional or statutory authority to actually coordinate the programs, it worries me a little bit. But I guess you just have to take it from a stand-

point that a person will do the job that you appoint him to do, and hopefully he would.

So the administration's position is that if we make the resources available, you would support the regulatory reform authority in S. 614?

Mr. ORSZAG. Yes; we would support the bill.

The CHAIRMAN. Okay.

Mike, in your testimony section 81 impedes economic development in Indian country; do I understand you right?

Mr. ANDERSON. That's correct.

The CHAIRMAN. And you would prefer just to repeal it altogether?

Mr. ANDERSON. Right.

The CHAIRMAN. Would that then set in place the accusation that we are somehow ducking our trust responsibility, if we repealed 81? Section 81 deals primarily with lands and, as I understand it, attorney contracts, too. Is that right.

Mr. ANDERSON. Right, "relative to lands." The lease statute actually deals with lands and the lease of lands. In 1870, or perhaps even in the early 1900's, that may have made sense because tribes, as we know, did not have the sophistication to deal with the western world and with business interests. Today, most tribes have had a long history of negotiating business leases and other attorney contracts. They have a lot of familiarity. There may be a few tribes that could use assistance from the BIA, but as a matter of Congressional policy or administration policy, it simply doesn't make sense in the modern world.

We do have other statutes that will continue to ensure the trust responsibility for land, but section 81 contracts are really contracts for things not related—or barely related—to land issues. So it just doesn't make sense to us anymore.

In the timeline, the requirement for a review, as we point out in our testimony, is really hard to define from the statute. Do we look at the thing to get the best deal for the tribes? Or are we just making sure that it's not unfair to the tribes? The standard for review is very unclear, too.

The CHAIRMAN. Well, you've known me for a long time, and I've always been concerned about some of the exorbitant fees that attorneys charge tribes. But the fact of the matter is, if you believe in sovereignty, they get to make their own mistakes, too, and if they want to pay that much—and I think they're getting ripped off sometimes, frankly, by some of the tribal attorneys—it's their deal. If they want to do it, I guess that's a mistake that we have to allow them to do.

But your Department agrees that attorney contracts should no longer be subject to Federal approval?

Mr. ANDERSON. Right. Actually, in the self-governance law they are no longer subject under self-governance compacts.

The CHAIRMAN. Are there any other statutes that should be modified or eliminated to encourage economic development in Indian country?

Mr. ANDERSON. At this time we don't have any other suggestions, other than section 81. That deals, really, most squarely with our role in terms of approving business deals. That's the one that we would really like to focus on most, specifically.

The CHAIRMAN. Okay. Well, if you have any others that you could share with the committee, I would certainly appreciate that, and I think the other members would, too.

Okay, I thank you. I have no further questions and I appreciate your appearing.

The CHAIRMAN. The second panel will be David Tovey, Executive Director of the Confederated Tribes of the Umatilla Indian Reservation, and Dennis Horn of Holland and Knight Law Offices.

Mr. Tovey, if you would like to go ahead and start? The same deal. You can submit all of your written testimony, and we can probably give you about 7 minutes to summarize.

STATEMENT OF DAVID TOVEY, EXECUTIVE DIRECTOR, CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION, PENDLETON, OR, ACCOMPANIED BY DANIEL HESTER, ESQUIRE, LEGAL COUNSEL

Mr. TOVEY. Great. Thank you, Mr. Chairman, good morning.

My name is Dave Tovey, and I welcome the opportunity to present testimony on behalf of the Confederated Tribes of the Umatilla Indian Reservation. We are located in northeast Oregon. I am here to focus my testimony on S. 613 before this distinguished committee. I am here on behalf of our Chairman, Antone Minthorn, who is the Chairman of our Board of Trustees, our governing board.

Currently and for the past year I have served as the Executive Director for the Umatilla Tribes, and prior to that, for about 10 years, I was the Director of Economic and Community Development for our tribe, and for the past 4 years, and currently, I serve as the President of the Affiliated Tribes of Northwest Indians Economic Development Corporation.

As I said, I've been involved with the tribe for about 12 years. Our tribe has in the last 4 years undergone quite a massive development in financing and development of our Wildhorse Resort, which includes a casino, a 100-room hotel, an 18-hole championship golf course, a 100-slip RV park, and, just as of last August, our Tamastslikt Cultural Institute. That was about $18 million.

Also appearing with me is Daniel Hester, who has served as the tribe's legal counsel for the past 15 years. Mr. Chairman, he comes from your home State of Colorado; and in spite of earlier comments, he is cheap and affordable—[Laughter.]

And really productive.

Mr. Chairman, you introduced S. 613 to amend 25 U.S.C. 81 so as to encourage tribal economic development, to eliminate excessive and unproductive bureaucratic oversight of tribal decisions, and to provide for disclosures on tribal sovereign immunity. The CTUIR is generally in agreement with the objectives of S. 613.

We have had considerable experience with Section 81 approvals in recent years. As I said, since 1995, we have had to do 33 separate documents receiving either outright section 81 approvals, or section 81 accommodation approvals. As a result of our experience, the CTUIR has concerns regarding section 81 as currently written. There are basically three concerns.

There is uncertainty about what transactions require Section 81 approval.

The section 81 approval process increases the transactional costs associated with the development and financing of tribal enterprises.

And finally, quite honestly, there is a lack of adequately trained and experienced BIA personnel to provide meaningful review of financial documents during the process.

With these concerns in mind, we would like to offer the following comments.

No. 1, the CTUIR wholeheartedly agrees with the amendment to section 81 that eliminates the need for BIA approval of contracts that tribes enter with their own legal counsel. This change is long overdue, and of course, we feel like we can make that selection on our own.

No. 2, S. 613 would create a new subsection (b) that would impose timelines on Secretarial approvals under section 81. While the CTUIR agrees that timelines for Secretarial action are essential, we believe that the 90-day period is a little too long. We would like to see that shortened to 30 days. Furthermore, the CTUIR suggests that the time period for the Secretary to inform a tribe of their intent to review an agreement that the tribe has stated is not subject to section 81 review should be reduced from 45 to 30 days. Of course, many times in a commercial setting, in business dealings, time is of the essence, and a prolonged period of Federal review can increase transaction costs or, even worse, render a project infeasible.

We would like to submit a letter from the Portland Area Office, from Portland Area Director Stan Speaks, that suggests a similar kind of 1-month turnaround on these kinds of approvals.

No. 3, the CTUIR urges the committee to revise S. 613 to provide that Secretarial determinations regarding whether section 81 approval is required for a particular agreement to be binding so as to remove uncertainty regarding Section 81 application to any agreement or transaction. I guess what we're saying is that we would like to make it clear that when the Secretary determines that Section 81 approval is not required—whether that determination is made by action or inaction—such determination is binding upon the parties to the agreement. By providing certainty on this issue—and of course, it's that certainty that our investment partners, banks, and others, are looking for—unnecessary transactional costs and potential loss of business opportunity can be avoided.

No. 4, S. 613 also imposes a requirement that any tribal agreement subject to section 81 approval must address tribal sovereign immunity in the agreement in order to receive section 81 approval. The CTUIR sees no need for these requirements in section 81. In our experience, the parties that we have dealt with are fully and completely aware of tribal sovereign immunity. If the objective of S. 613 is to put lenders and other contracting parties on notice regarding the existence and potential consequences of tribal sovereign immunity, our experience clearly indicates that no such notice is required.

No. 5, the CTUIR believes that S. 613 would benefit the section 81 review and approval process by further clarifying what agreements section 81 applies to. While S. 613 contains subsection (c)(3), which authorizes the Secretary to issue guidelines for identifying

which agreements section 81 does not apply to, we believe it would be useful to clarify the statutory language in the first paragraph of section 81 that requires section 81 approval for any tribal agreements that are "relative to tribal lands." And, of course, considerable time is spent trying to determine what that applies to as far as our lands, working through that ambiguous language.

Therefore, the CTUIR urges that section 81 approval only be required for tribal agreements that involve a contracting party receiving some possessory interest in tribal lands, such as an easement or lease.

Finally, the CTUIR urges that the committee recognize the importance of providing adequate BIA funding for the hiring of qualified personnel to provide meaningful section 81 review of the commercial and financial agreements that the tribes are increasingly entering. Of course, with recent reductions in BIA staffing at the Agency and Area Office level, the tribes' experience demonstrates that the BIA does not have sufficient staff to provide a timely and meaningful section 81 review. We have had tremendous cooperation—and we would like to note that—in the past 5 years of our economic development efforts with the Director of the Portland Area Office, Stan Speaks, and with the Umatilla Agency Superintendent, Phil Sanchez. We know that the expansion of tribal economic development initiatives and meaningful review of increasingly sophisticated tribal financial and commercial agreements will require additional professional expertise in the BIA field offices.

Also attached to my testimony is a letter from Jesse Smith. He is Vice President of Seattle Northwest Securities, and they served as the underwriter for our $17 million bond issuance, which more or less refinanced all the initial loans for our Wildhorse Resort development. And I believe Mr. Smith's letter, from a lender's perspective, supports many of our points.

Again, in closing, we would applaud the committee's leadership, and particularly yours, Mr. Chairman, in advancing these initiatives. I will close there.

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

The CHAIRMAN. Okay. Thank you.

Mr. Horn, why don't you go ahead.

STATEMENT OF DENNIS HORN, ESQ., LAW OFFICES OF HOLLAND AND KNIGHT, WASHINGTON, DC

Mr. HORN. Thank you, Mr. Chairman. My name is Dennis Horn. I am an attorney in the law firm of Holland and Knight. For the past 2 years I have been involved in managing the District of Columbia's regulatory reform project for the Washington, DC Control Board.

Before we started, Mr. Chairman, Mr. Tovey asked me why somebody who knows a lot about the District of Columbia would be testifying about regulatory reform for Indians, and it's a very good question. I think the answer is that there's a very close correlation between bureaucratic red tape and jobs. We found in the District of Columbia that businesses wanted to be here if you could eliminate the hassle of them doing their jobs and creating jobs. The regulatory reform project in the District of Columbia is all about creating jobs in the District of Columbia. Hopefully, that will be of some

use to Indian tribes who are going through the same kind of process.

With your permission, over the next 5 or 5 minutes I would like to tell you what regulatory reform is all about from the District's standpoint; why a city, State, or Indian nation should want to implement regulatory reform; and how we did it in the District of Columbia. I hope this experience is helpful to Indian tribes who are looking for a better way to boost their economies.

First of all, how. The goal of government is to protect its people by creating regulations that meet three tests. I call it the "UPC rule." Regulations should be understandable to the people that are being regulated. They should be predictable in the outcome, and they should be competitive in time and cost with the regulations in other jurisdictions.

Mr. Chairman, you mentioned two of these three goals in your opening statement, just to show that we're listening to you, also.

Second, we found that many regulations are historical deadwood; they no longer serve the purpose for which they were created. It does not serve anybody's interest to take 1 month to pass somebody's debt permit, when with computers you can have the information necessary to issue the permit in 30 minutes.

We found that there is no constituency for delay and for bureaucratic red tape. Most of the changes that we implemented, Mr. Chairman, were changes that everybody applauded. Nobody had a vested interest in the delay that was caused by the redtape.

The second issue is why. Why do we go through the trouble of regulatory reform? The best reason to do anything, Mr. Chairman, is self-interest. If the District or any Indian nation figures out how to cut the unnecessary redtape, it will have a competitive advantage over other jurisdictions in attracting businesses and jobs. So what we're talking about doing is investing in cutting the red tape, in exchange for competing with other people, other jurisdictions, in getting the jobs.

One of the first things business leaders ask is, does the area want me? Are they business-friendly? Can I do my business without a lot of hassle? Regulatory reform eliminates the hassle. It attracts businesses and jobs.

Let me take 1 minute, Mr. Chairman, and talk about the DC experience.

You may remember yourself—you've been in Washington a long time—you may remember when it was dangerous to walk around on Capitol Hill, the crime that this city experienced just a few years ago. You may remember how the child welfare services and the public housing services were taken over by the courts because the District couldn't do a good job of managing them. You may remember that the schools couldn't open on time a couple of years ago because they couldn't fix the roofs. The District of Columbia was a poster child for dysfunctional government.

Two years later, the District is on much sounder financial footing. Construction cranes are everywhere. In the first 2 months of 1999, the District has reversed the trend of losing jobs and population, and has added 6,800 new jobs in the first 2 months of 1999.

In addition, one of the accounting firms that studies municipal governments has just rated the District of Columbia number one

in processing the debt permit that I mentioned before, and five other categories of permits. Two years ago, they were among the worst in processing time; now the District is among the two best cities in the country in processing time.

Now, Mr. Chairman, you might say—and you would be right—that the District of Columbia has a long way to go. You might also say that the economy takes care of a lot of ills, that this would have happened anyway because the District is fortunate enough to be in a prosperous area where the tide is going up and all boats go up with it. But the fact is, Mr. Chairman, that in 1997 the District of Columbia was losing jobs to Virginia and Maryland. The economies in Maryland and Virginia were very strong 2 years ago, and the District was not enjoying the same prosperity.

What has made a difference, Mr. Chairman, is that we had—I'm sorry, should I stop?

The CHAIRMAN. Go ahead just for 1 minute. I'm interested in hearing you.

Mr. HORN. Okay. [Laughter.]

What made a difference, Mr. Chairman, is that Congress mandated the District of Columbia to change. The Washington, DC Control Board took the responsibility of figuring out what had to be changed, and the new Mayor took responsibility for implementing the change. Those three things made the difference, and as a result we have 6,800 new jobs in the first 2 months of this year.

Now, you can ask if these lessons would apply to Indian country. I don't know the answer to that. Regulatory reform is boring stuff. What I can tell you is that it will require Indian leaders to commit themselves to the program, to lead their tribes and their bureaucrats in cutting through this redtape. Regulatory reform started in the State of Washington, which has a lot of rural area, and it has been utilized in New York, in Philadelphia, and in Indianapolis, which are metropolitan areas. Regulatory reform has been successful in both municipal and in rural areas in creating jobs.

Two years ago, there were not many worse places in governments than the District of Columbia. Today we are translating these reforms into new jobs.

Nothing is free, Mr. Chairman. Regulatory reform requires a willing government. It requires an investment in people's training and in computers, and it takes a lot of work. But the payoff for the District—and hopefully for the Indian tribes—is faster, cheaper, better regulations that give the municipality or the nation a competitive advantage, and that competitive advantage leads to jobs and businesses.

Thank you for your attention, sir.

The CHAIRMAN. Thank you.

Since you are the last one to speak, let me tell you that the reason we asked you to testify is that I happen to think that tribes can learn from success stories and from models that have been put in place. And you're right, I've been here a few years, from the time when I was worried about going out at night, looking over my shoulder, to a time when it's a relatively safe community. This city went from 700,000 to 500,000 in about a 10-year period of time. People are coming back to Washington, DC. A lot of people are proud to live in Washington, DC again, and they are moving their

businesses back to Washington, DC, and that has certainly been for a number of reasons; clearly, the new Mayor has made a priority out of trying to encourage safety on the streets and new investment capital, and I think that's great.

I remember some years ago that, according to the Washington, DC Police, there were 80 known muggers who were just working Capitol Hill, if you can imagine that, 80 known muggers just working here on the Hill. It was not a safe place to raise your family, that's for sure. But I would point out, too, that just recently there was a Washington Post article about the renewed confidence in Washington, DC, and that Wall Street had boosted the city's credit rating, so they are no longer in the junk bond category. I think tribes can learn from that. And I think Wall Street will do that if you have a stable government, if you have good leadership, if you have a community that seems to be pulling together, and I think that in many cases that's the kind of thing that the tribe needs. They have to have investment capital, and in order to get it, they have to inspire confidence in the investment people, the people with the money.

So I did want you to tell about Washington, DC's experiences, which in my experience—especially since Mayor Williams has taken over—have been very good. You're right, there was so little confidence in Washington, DC's ability to run its own programs that the Congress stepped in, as you know, and they put in place a Washington, DC Oversight Board that pretty much reviewed the majority of the decisions in the last couple years of the former administration. That Washington, DC Oversight Board is now turning much of the activities back over to the city, since they seem to be back on track, and I just wanted to commend you for doing that. But I know that we can learn from that experience and using that as a model for tribes.

Let me ask just a couple questions to David Tovey. What is the unemployment rate of your tribe now?

Mr. TOVEY. It's hovering at about 17 percent.

The CHAIRMAN. That's relatively low for tribes.

Mr. TOVEY. I think it's real low. I think we're about the third lowest in the Portland area. Before we started the Wildhorse developments, we were hovering at about 42 percent.

The CHAIRMAN. So between Government jobs, Bureau, and so on, and your resort, that contributes to most of the jobs on your reservation?

Mr. TOVEY. Most of them. Between our resort and tribal government, we employ about 1,000 people with an annual payroll of about $26 million.

The CHAIRMAN. Is there a casino also in that hotel?

Mr. TOVEY. Yes; there is. We are the biggest employer in Umatilla County, which is a pretty big source of pride for our membership.

The CHAIRMAN. And did I understand you right to say that there were 33 separate documents that you had to fill out because of section 81?

Mr. TOVEY. Section 81 or accommodation approvals, yes.

The CHAIRMAN. What is your feeling about banks and financial institutions that do business with the tribe? Do you think they would also support the repeal of Section 81?

Mr. TOVEY. Oh, most certainly. It's hard for them to really understand "when and if," and being reasonable investors, they are wanting to protect every angle, so of course.

The CHAIRMAN. Okay.

I have no further questions. Several of the members of the committee who were going to be here did, however, particularly Senator Johnson of South Dakota, so we may be submitting some further questions to you in writing, if you could get back to us. Apparently he got tied up and couldn't get here.

And with that, I appreciate your being here, and this hearing is adjourned.

[Whereupon, at 11:07 a.m., the committee was adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF MICHAEL ANDERSON, DEPUTY ASSISTANT SECRETARY—INDIAN AFFAIRS, DEPARTMENT OF THE INTERIOR, WASHINGTON, DC

Mr. Chairman and members of the committee, I am pleased to be here today to present the views of the Department of the Interior on S. 613, a bill providing for amendments to Section 2108 of the Revised Statutes (25 U.S.C. Sec. 81).

We commend the committee for its interest and efforts in reforming the deficiencies of Section 81. As you are aware, Section 81 provides for Secretarial approval of certain contracts by and between Indian tribes and third parties. Due to the many uncertainties that attend compliance with Section 81, we oppose S. 613 which would amend the section. Instead, we are prepared today to advocate for the repeal of the statute. In the event Congress chooses to amend Section 81 rather than repeal the provision, we would encourage the committee to amend the statute in a different manner than the one proposed in S. 613.

I would like to take a few minutes to review the history of Section 81 and provide some information on the complications inherent in enforcing it. This particular law is one of a series of statutes designated as 25 U.S.C. Sec. 81–88, found under the statutory heading, "Subchapter II-Contracts with Indians." Included in this subchapter are some laws which are almost certainly obsolete, due to their express relation to contracts in effect in 1936, that is, sec. 81a and 81b. Other laws relate only to contracts involving money or property of the Choctaw, Chickasaw, Cherokee, Creek, or Seminole Tribes or their members, that is, sec. 82a and 86. What remains, sec. 82, 84, 85, and 88, should generally be considered in connection with Section 81.

It is probably safe to say that of all the individuals conducting business in Indian country today, no one is entirely comfortable in attempting to comply with 25 U.S.C. Sec. 81. It is extremely difficult even to determine when this law applies. Even when it does apply to a particular agreement, it isn't clear what criteria the Department should look at in determining whether to approve or disapprove the agreement. For example, it is unclear whether we should review the agreement to determine whether it is not unfair to the tribe or whether it is in the best interest of the tribe. The latter requires the Department to question the tribe's business judgment. We do not believe that it is appropriate for the BIA to be second guessing the decisions of tribes and their consultants over business decisions made by the tribes.

In essence, Section 81 requires that all contracts involving payments by tribes for services relative to their lands must be approved by the Secretary of the Interior. Any contract that is subject to the provisions of Section 81 and is not approved by the Secretary is null and void. The primary purpose of Section 81 was to ensure that tribes were not being taken advantage of by attorneys filing claims on behalf of the tribes against the United States for the taking of tribal lands. For decades, the BIA applied Section 81 solely to the approval of attorney contracts with tribes. . However, in the early 1980's with the advent of gaming on Indian lands, the scope of Section 81 began to change.

Many non-Indian gaming operators signed management agreements with tribes to operate gaming enterprises on tribal lands. Disputes arose between some of the tribes and their gaming operators. Ultimately, in litigation over the management contracts, the theory that the contracts were void because they had not been approved pursuant to Section 81 was asserted. The Department's Office of the Solicitor issued an opinion that Section 81 applied only to the approval of attorney contracts and, therefore, the gaming management contracts did not require approval by the Secretary. The Seventh Circuit Court of Appeals in *Wisconsin Winnebago Business Comm.* v. *Koberstein,* 762 F.2d 613 (1985) disagreed. It found that the management agreement at issue in that case involved a payment by the Winnebago Tribe for the manager's services and gave the gaming manager the absolute right to use tribal land during the term of the management agreement. The court found that this right to exclusive use was "relative to tribal lands," that the contract was subject to Section 81, and since it had not been approved by the Secretary (even though the Secretary had, in fact, said the contract needed no approval), that the contract was void. At least one other circuit has followed the Seventh Circuit Court's lead. See *A.K. Management Co.* v. *San Manuel Band of Mission Indians,* 789 F. 2d 785 (9th Cir. 1986); *Barona Group of the Capitan Grande Band of Mission Indians* v. *American Management and Amusement, Inc.,* 840 F.2d 1394 (9th Cir. 1987). The result has been that virtually everyone wishing to conduct business with an Indian tribe now demands a Section 81 approval of their contracts because of the uncertainty of the precise meaning of "relative to tribal lands."

Contracts for the sale of vehicles to tribes, maintenance of buildings, construction of tribal government facilities, and even the purchase of office supplies are now routinely presented to the BIA for review and approval. Even though many of these contracts are clearly not subject to Section 81, assurances by the Department are of little value since the Department's earlier opinion has been rejected in the *Koberstein* case and the consequences for not having an approved contract are extreme. If a contract is subject to Section 81 and is not approved by the Secretary, any citizen can bring a suit challenging the contract (this citizen suit provision of Section 81 has in recent years been somewhat limited by the courts) and if the contractor loses, all monies paid by the tribe to the contractor are refunded to the tribe while all benefits (that is, vehicles, buildings et cetera) of the contract(s) to the tribe are forfeited by the contractor. In addition, there are criminal penalties for violation of Section 81 in Title 18 of the United States Code.

Although there may have been good reason for such legislation in the 1870's, most of those reasons no longer exist today. Tribes are encouraged through the contracting and compacting provisions of Public Law 93–638 to make decisions and decide their political and economic futures for themselves. Public Law 93–638, in fact, has an express provision waiving the applicability of Section 81 in certain circumstances. See 25 U.S.C. Sec. 4501(b)(15) and 458cc (h)(2). However, because the Bureau's 12 Area Offices and the Solicitor's Regional and Field Offices apply Section 81 differently as a result of the uncertainly over the precise scope of Section 81 caused by decisions of various courts of appeals, these provisions have had little effect.

S. 613 proposes to remedy many of the deficiencies of Section 81 noted here today. In our opinion, however, the best remedy would be to repeal the statute. In the alternative, we would suggest amending the statute in a manner which clarifies the type of transactions for which Section 81 approval is required. For example, the statute should be, amended to clarify that contracts for matters such as the sale of vehicles or office supplies to tribes or routine maintenance contracts, would no longer require BIA approval.

One of our primary concerns with S. 613 lies with the bill's failure to define the meaning of the phrase "services related to their lands" found in the current language of Section 81. Should Section 81 not be repealed, a definition explaining this phrase would eliminate many of the problems encountered in interpreting the statute as it exists today. Indeed, simply defining this phrase would eliminate the need for most of the revisions to Section 81 proposed in S. 613.

We find the proposed timelines found in S. 613 objectionable because they do not allow sufficient time to permit consultation between tribes and the Department in order to facilitate contracts that are more protective of tribal interests. These timelines would work to allow otherwise illegal contracts that are not in the best interest of a particular tribe to be ratified simply because the review process extended beyond the time limitations set forth within this bill. We also note that approval of an agreement under Section 81 may require compliance with cross-cutting Federal statutes. The possible need for such compliance also argues against approval occurring within the timelines set forth in the bill.

Another of the Department's major concerns with the proposed bill stems from the sovereign immunity provisions of S. 613. There is, in our opinion, an ample amount of case law that adequately addresses the subject of tribal sovereign immunity. The law, as it has developed and as it exists today, serves as more than adequate notice for anyone contemplating conducting business with an Indian tribe that tribes enjoy sovereign immunity from suit in the absence of a clear and unequivocal waiver of immunity. Those seeking to do business with Indian tribes have the opportunity to protect their own interests through the negotiation of waivers of immunity. Surely, in the spirit of self-determination, Indian tribes should not be forced by the United States to negotiate the waiver of their sovereign immunity with those with whom they would conduct business. Simply put, the government should not dictate the waiver of tribal sovereign immunity as a condition of a tribe's right to enter into a contract. The, Department also objects to the provision requiring the Secretary to protect non-Indians by ensuring that they have remedies against a tribe. This provision would not only place the Secretary in a conflict of interest, but would also force the Bureau to play an essential role in every contract negotiation in which a tribe is involved.

This concludes my prepared statement on S. 613. I will be happy to answer any questions you may have.

PREPARED STATEMENT OF MICHAEL ANDERSON, DEPUTY ASSISTANT SECRETARY—INDIAN AFFAIRS DEPARTMENT OF THE INTERIOR, WASHINGTON, DC

Good morning, Mr. Chairman and members of the committee. I am here today to provide the Department of the Interior's position on S. 614, which provides for regulatory reform in order to stimulate investment, business and economic development on Indian reservations. We support S. 614.

As many of you on this committee know, life on most Indian lands is hard. There is widespread unemployment, poor health, substandard housing and associated social problems which can be directly related to a lack of opportunities on Indian reservations. Research has shown that when business and economic development opportunities appear in Indian country, these conditions and the resulting social problems tend to decrease.

With budgetary constraints severely limiting the availability of Federal funding for social and governmental programs, tribes nationwide must become more self-sufficient and focus their attention on developing their own economic growth to meet their community's needs.

Some tribal communities have flourished as a result of tribal gaming and other commercial business ventures. However, these examples are still scarce and most Indian communities remain impoverished, separate and distinct entities. Economic prosperity doesn't necessarily cross reservation borders any more than it does in urban areas where affluent and poor communities exist side-by-side.

On August 6, 1998 the administration held the first White House Conference on Indian Economic Development. At this conference, President Clinton directed the Departments of the Interior and Commerce, and the Small Business Administration to collaborate and develop, in consultation with other interested parties that includes tribal governments, a strategic plan for coordination of existing Federal economic development initiatives for American Indian and Alaska Native communities. Following this conference, agencies coordinated and developed a number of aggressive goals to increase business opportunities in Indian country, expand economic opportunities for tribes and individual Indians, and to encourage the non-Indian private sector communities to seek tribal business partners. The conference was an unqualified success and it is our challenge to see that the goals are achieved. Recently, the President and Vice President announced their New Markets Tour, which will highlight the administration's FY2000 budget proposals that will help generate new markets in economically distressed communities, including Indian country.

The proposed activities considered in S. 614 seek to remove obstacles to investment, stimulate business development, and create wealth on Indian reservations. We understand that an entity composed of 21 members would direct these efforts. Of these 21 members, 12 will represent Tribes from the Areas served by the Bureau of Indian Affairs [BIA]. An integral component in any comprehensive national effort must be tribal involvement and support. Representatives from each of BIA's 12 areas would provide for such involvement.

We recommend that the committee allow for the BIA to be represented as an active participant in this new authority. The BIA established the Office of Economic Development to coordinate, facilitate, improve and increase economic opportunities in Indian country. This office continues to work on addressing those related issues,

such as the barriers to economic development, land use, natural resources, employment, and job training, and would therefore be a logical member of this authority. The Interior Department's role as Trustee of Indian lands and resources requires that it be an integral partner with tribes in pursuit of economic success.

One of the best ways to improve economic development in Indian country is to ensure that every piece of legislation that provides economic development opportunities to state and local governments also permits tribal governments to participate on an equal basis. Just last week, this administration testified that tribal governments currently are not eligible for opportunities in SBA's HUBzone legislation. The administration will provide legislative language to ensure that tribal communities are eligible to apply. Legislative fixes such as this one can make a tremendous difference in Indian communities. The Administration is undertaking a review of all programs to ensure tribal eligibility for these opportunities.

Despite the important roles to be played by the BIA and other Federal agencies, tribes that wish to expand their economic base must do so by strengthening their own tribal institutions.

We hope that you will consider our recommendations. I will be happy to answer any questions the committee may have.

STATEMENT OF
JONATHAN M. ORSZAG
ASSISTANT TO THE SECRETARY AND
DIRECTOR OF THE OFFICE OF POLICY AND STRATEGIC PLANNING
U.S. DEPARTMENT OF COMMERCE
TESTIMONY BEFORE THE U.S. SENATE COMMITTEE ON INDIAN AFFAIRS
MAY 19, 1999

Mr. Chairman, Senator Inouye, and Members of the Committee, my name is Jonathan Orszag and I am the Director of Policy and Strategic Planning at the Department of Commerce. In that capacity, I serve as Secretary Daley's chief policy advisor and my office is responsible for coordinating policy development and implementation for the Department. It is my pleasure to represent Secretary Daley today to discuss the Department's efforts to assist Native American communities and to represent the Department's views on two bills affecting Indian country that the Chairman has introduced.

Today, America's economy is the strongest in a generation. The national unemployment rate is 4.3 percent, 18.4 million new jobs have been created since the beginning of 1993, homeownership is at an all-time high, real wages are rising, and inflation is the lowest in three decades.

Unfortunately, as you know, the story for our Native American communities is not as bright. While we have made progress in recent years, the poverty rate is still two-and-a-half times the national average. The unemployment rate for Native Americans is still in double digits. The median family income of Native Americans is less than two-thirds of the typical income for all families. And an astonishing 53 percent of Indian homes on reservations do not even have a telephone --compared to only 5 percent of homes in the entire United States.

President Clinton, Vice President Gore, and Secretary Daley believe strongly in the value that America does not have a person to waste – or a community that can be left behind. Thus, as the President said in his State of the Union address, "We must do more to bring the spark of private enterprise to every corner of America – to build a bridge from Wall Street to Appalachia, to the Mississippi Delta, to our Native American communities...."

That is why Secretary Daley participated in the President and Vice President's announcement of their New Markets Tour – which will hopefully shine the spotlight on those areas of the country, including Native American communities, that have not fully benefitted from our economic prosperity. The purpose of this tour will be to bring business executives to America's underserved areas, showing them the tremendous potential for growth.

That is why President Clinton held the first White House Conference on Economic Development in Indian Country. At the conference, President Clinton directed the Interior Department, the Commerce Department, and the Small Business Administration to develop --in consultation with other interested parties, including tribal governments --a strategic plan for coordinating existing Federal economic development initiatives for Native American and Alaska Native communities. And last December, we presented jointly our plan to the President.

That is also why the Department of Commerce has been focused on promoting economic development in Native American communities. I am pleased to tell the Committee that on June 4th the Department will open the San Manuel Band of Mission Indians Associate Office, a satellite office of an Export Assistance Center in California. Assisting local businesses in realizing their export potential, this Associate Office will be the first ever opened on Native American lands. For your information, I have attached the list of programs and initiatives the Department has undertaken to help increase business development on Native American reservations. (This extensive list was previously submitted into the *Congressional Record* by Dr. Phillip Singerman, the Assistant Secretary of Commerce for the Economic Development Administration, on April 21, 1999.)

Despite the efforts by our Department and the Department of Interior, we know that we have more work to do. Mr. Chairman, you have advocated increased coordination of our programs helping Native American communities. Upon review of your recommendation, I am pleased to tell you that Secretary Daley has decided to hire a "Senior Advisor to the Secretary" within my office who will be responsible for coordinating all of the Department's efforts to assist Native American communities. This person will serve as the point of contact for Indian economic development and will work with Commerce bureaus to increase tribal awareness of the wide array of Commerce programs.

I would like to turn now to the topic of today's hearing: S. 613 – the Indian Tribal Economic Development and Contract Encouragement Act; and S. 614 – the Indian Tribal Regulatory Reform and Business Development Act.

Since the Commerce Department is not affected by S. 613, the Department respectfully defers comment on this bill to the Department of Interior.

The Department of Commerce has a long history of working with tribes to promote and foster economic development. However, as you know, there remain many challenges to the ability of tribes to attract outside investment to stimulate economic development on Indian lands.

The Department supports the goals of S. 614 and believes it is very important to identify Federal laws and regulations that affect investment and business decisions concerning activities conducted on Indian lands. The Department believes that we would fulfill the obligations laid out in the bill effectively and efficiently, as long as the necessary resources were made available. Of course, we would work closely with the Department of Interior and other relevant Cabinet agencies to achieve the goals contemplated in the Act.

Since the cost of the Authority could be significant, I believe it is important to emphasize that the Department cannot currently perform the work required by S. 614 within existing funds. We look forward to working with the Committee to find adequate appropriations within a balanced budget to carry out the task.

Thank you again for this opportunity to represent the Department's views. I would be pleased to respond to any questions.

U. S. DEPARTMENT OF COMMERCE POLICY ON AMERICAN INDIANS AND ALASKA NATIVES

On March 30, 1995, Secretary Ronald H. Brown signed the first Departmental policy concerning American Indians and Alaska Natives. The policy:

- Recognizes Indian tribes' inherent sovereignty and right to self-government;
- Acknowledges the federal trust responsibility;
- Commits to a government-to-government relationship;
- Directs components to consult with and remove impediments to working with Indian tribes; and,
- Promotes economic development and self-sufficiency for Indian tribes.

On June 5, 1997, Secretary Daley and Secretary of the Interior Bruce Babbitt signed the Secretarial Order entitled, "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act". The Secretarial Order clarifies the responsibilities of the Commerce and Interior Departments when the implementation of the Endangered Species Act affects Indian lands, tribal trust resources, or the exercise of tribal rights.

DEPARTMENT OF COMMERCE ACTIVITIES IN INDIAN COUNTRY

Economic Development Administration (EDA)

EDA which was established in 1965 provides a series of building block tools for promoting economic development in distressed areas. EDA has an established history of focused assistance to Indian Country. Assistance intended to promote self-sufficiency through the local identification and implementation of strategic priorities that create jobs and promote investment by the private sector. EDA assistance and efforts on behalf of Indian Country include planning assistance, research studies, and implementation grants.

Planning Program

The EDA planning program, among other things, supports the formulation of economic development programs for Native Americans. The planning program helps create and retain full-time permanent jobs and income, particularly for unemployed and underemployed Native Americans. Over sixty tribes or tribal organizations are currently funded by EDA.

Research (Research and National Technical Assistance)

Pursuant to President Clinton's August 6, 1998 Directive, EDA is conducting a project designed to identify specific technology infrastructure needs in Indian Country, gaps in that infrastructure (including planning gaps), and how those gaps impede new technology development and adoption. EDA has commissioned an assessment of "Technology Infrastructure Needs of Native American and Alaska Native Communities" through a grant awarded in Fiscal Year 1999 to New Mexico State University. The final report is scheduled to be completed in early Summer.

EDA is examining the unique set of circumstances of successful reservation economic development through a study entitled, "Effective Economic Development Practices in Native American Economic Development". From a wide variety of successful economic development practices, the study will determine the principal success factors of projects, document the results in case studies, and disseminate results through publications and conferences, as appropriate. The National Congress of American Indians (NCAI) is conducting the research under an EDA grant approved in September 1998. In October of 1998, EDA co-hosted a session on economic development issues during the winter meeting of the NCAI. The final report will be completed by NCAI in the Fall of 1999.

In 1996, EDA funded a Native American research company to publish a comprehensive directory of American Indian Reservations and Trust Areas for the first time in 24 years. This 700 page document is an important tool for economic developers and potential investors in Indian Country. The document is currently available on the EDA Web site.

Implementation Grants

Since 1993, EDA has awarded 65 implementation grants that total $35.6 million to Native American and Alaskan Native Tribes or organizations for the implementation of locally identified economic development priorities. Examples include manufacturing plants, water and sewer infrastructure, access roads, construction of technical, trades, training or cultural facilities, and feasibility studies.

International Trade Administration (ITA)

ITA has long-recognized the importance of reaching-out to the traditionally under-served Native American community. The United States and Foreign and Commercial Service (USFCS) is actively engaged with programs and activities to assist Native Americans export their products. This year, USFCS introduced an initiative that forges new pathways between minority-owned businesses and opportunities in the global marketplace. The **Global Diversity Initiative (GDI)** capitalizes on America's diversity through trade by creating comprehensive programs that will:

- Increase the number of minority-owned firms exporting their services

and products abroad.

- Expand the capability of minority firms entering international trade.
- Enhance the nation's economy through increased trade by minority firms.

The GDI serves Native American businesses primarily through the nationwide Native American Team comprised of trade specialists from the Western Regional Office. Listed below is a review of some of the USFCS activities in Indian Country since 1994:

- RES'99: Reservation Economic Summit and American Indian Business Trade Fair, Phoenix, AZ, March 10, 1999
- CHIBI99, Milan Italy, January 22-25, 1999
- HUBZones Symposium, Albuquerque, NM, December 2-4, 1998
- Annual NCAI Conference Myrtle Beach, South Carolina, SC, October 18-23, 1998
- 5th Annual Southwest Indian Tourism Conference, Pinetop, AZ, October 13-15, 1998
- CHIBI'98, June 1998
- Tribal and Indian-Owned Enterprises: Global Business Opportunities, April 24, 1997, Albuquerque, NM
- National Indian Business Association (NIBA) Annual Meeting, June 1994
- All Indian Pueblo Council, Inc., Albuquerque, NM
- Southwest Design and Craft Show, Dallas, TX, 1994
- RES '98: Reservation Economic Summit and American Indian Business Trade Show, Denver, CO, April 7-9, 1998
- "Building Partnerships with Native Americans Trade Fair and Conference," Albuquerque, NM

The Tourism Industries Office in the ITA is co-sponsoring with private industry the American Pathways 2000 program, a component of First Lady Hillary Rodham Clinton's Millennium Program. American Pathways 2000 encourages the development of tour itineraries in the United States that will highlight diverse cultures and heritages of this country, including Native American cultures. U. S. tour operators, working with local partners, have submitted tour itineraries that include opportunities to visit and purchase from Native American Tribes. Itineraries that are designated as American Pathways 2000 may display the American Pathways 2000 logo for marketing purposes. Information on the designated itineraries will be included on a Web page operated by private sector partners and made available world-wide.

Minority Business Development Agency (MBDA)

In order to address the unique business needs of Native Americans, MBDA established the Office of Native American Programs (NAP). NAP consists of Native

American Business Development Centers (NABDC) and a Native American Business Consultant (NABC). NABDCs and the NABC provide management and technical assistance to the Native American business community. MBDA recently established the Access to Capital Task Force and the Minority Business Coordinating Council. Representatives from Native American organizations and entrepreneurs are represented on the Task Force and the Council.

National Oceanic and Atmospheric Administration (NOAA)

In April 1995, Commerce and the American Indian Science and Engineering Society (AISES) signed a Memorandum of Understanding which provides the cooperative framework for the Commerce/AISES "Project Partnership Program" (AISES Program). The AISES Program helps to increase employment opportunities at Commerce for AISES students and professionals. Furthermore, the AISES Program helps to increase educational opportunities offered by Commerce for AISES students and other American Indians and Alaska Natives.

National Telecommunications and Information Administration (NTIA)

Through its policy work and grants programs, NTIA is helping to extend the benefits of the Information Superhighway to American Indian and Alaska Native communities. For example, the Telecommunications and Information Infrastructure Assistance Program (TIIAP) provides matching grants to non-profit entities, tribal, state and local government. Since 1994, TIIAP has funded 18 tribal projects that are serving as models within Indian Country.

In addition, NITA's Public Telecommunications Facilities Program (PTFP) is bringing the public broadcasting system to Indian Country by providing matching grants to non-profit entities for the planning, construction, and replacement of outdated public radio and television equipment. PTFP-funded projects currently serve over forty tribal communities throughout the United States.

Patent and Trademark Office (PTO)

PTO, in consultation with tribal organizations, is exploring the possibility of conducting workshops customized for Native Americans on how to protect intellectual property through obtaining a patent or trademark. These workshops could be held in conjunction with the annual AISES conference and other national forums. PTO is also involved in several programs geared toward improving the educational opportunities for Native Americans. From 1994-1996, through its Lakatoa Program, PTO sponsored internships for students attending college on the Pine Ridge Reservation in South Dakota. In 1997, PTO sponsored college students through the AISES Program. In addition, PTO employees sponsor a mentor program for the children of the Piscataway Conoy Confederacy in Maryland.

TESTIMONY

**THE CONFEDERATED TRIBES
OF THE UMATILLA INDIAN RESERVATION**

OF

**DAVID TOVEY
EXECUTIVE DIRECTOR**

ON S.613

**BEFORE THE SENATE SELECT COMMITTEE
ON INDIAN AFFAIRS**

MAY 19, 1999

Good Morning Mr. Chairman,

My name is David Tovey, and I welcome the opportunity to present the testimony of the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) on Senate Bill 613 before this distinguished Committee. I serve as the Tribal Executive Director, a position I have held for the past year. Prior to that I served as Director of the Tribal Department of Economic and Community Development for 10 years. I have also served as the President of the Affiliated Tribes of Northwest Indians (ATNI) Economic Development Corporation for the past four years.

I have been directly involved in the development and financing of our Wildhorse Resort, which includes a casino, a 100-room hotel, a championship 18-hole golf course, a 100 slip RV park, as well as our Tamastslikt Cultural Institute. Also appearing with me this morning is Daniel Hester, who has served as the Tribe's legal counsel for the past 15 years and has been involved in the financing and development of each of these enterprises.

Mr. Chairman, you introduced S.613 to amend 25 U.S.C. Section 81 so as to encourage "tribal economic development," to eliminate "excessive and unproductive bureaucratic oversight of tribal decisions" and to provide for disclosures regarding tribal sovereign immunity in tribal contracts. The CTUIR is generally in agreement with the objectives of S.613. We have had considerable experience with Section 81 approvals in recent years. Since 1995, the development, financing, and the recent refinancing, of our resort enterprises has resulted in 33 separate documents receiving either outright Section 81 approvals, or Section 81 accommodation approvals. The Section 81 approval process has certainly added to the total costs associated with these financial transactions and has imposed a significant burden on the CTUIR, the lenders and contracting parties involved in these financial transactions, as well as the BIA, in reviewing and approving the various documents.

As a result of the recent CTUIR experience, the CTUIR has the following concerns regarding Section 81 as currently written:

- There is uncertainty about what transactions require Section 81 approval;

- The Section 81 approval process increases the transactional costs associated with the development and financing of tribal enterprises; and

- There is a lack of adequately trained and experienced BIA personnel to provide a meaningful review of financial documents during the Section 81 review process.

With these concerns in mind, the CTUIR has the following comments regarding S.613:

1. The CTUIR wholeheartedly agrees with the amendment to Section 81 that eliminates the need for BIA approval of contracts that tribes enter with their own legal counsel. This change is long overdue. This amendment is consistent with a 1994 amendment to Public Law 93-638 which removes the need for prior BIA approval for tribes to use 638 funds for legal services of tribal contracts with legal counsel performing legal services associated with 638 contract administration. 25 U.S.C. Section 450j-1 (k)(7).

2. S.613 would create a new subsection (b) that would impose timelines on Secretarial approvals under Section 81. While the CTUIR agrees that timelines for Secretarial action on tribal agreements are essential, the CTUIR believes that the 90-day time period under (b)(1) is too long. The CTUIR believes this time period in subsection (b)(2) should be shortened to 30 days. Furthermore, the CTUIR suggests that the time period for the Secretary to inform a tribe of their intent to review an agreement the tribe has stated is not subject to Section 81 review should be reduced from 45 days to 30 days. In many commercial settings, time is of the essence and a prolonged period of federal agency review of documents can increase transaction costs or even render a project infeasible.

3. The CTUIR urges the Committee to revise S.613 to provide that Secretarial determinations regarding whether Section 81 approval is required for a particular agreement to be binding so as to remove uncertainty regarding Section 81 application to any agreement or transaction. Under Subsections (b)(2) and (c)(2), the Secretary can determine that a tribal agreement is not subject to Section 81 approval. In many cases, lenders and other parties with whom tribes seek to contract demand Section 81 approvals, even in cases where tribal legal counsel and the BIA conclude no Section 81 approval is necessary. This demand is motivated by the lender or other contracting party's concern that a court may later determine Section 81 approval was required, and as a result of the lack of such approval, the agreement is null and void under the terms of Section 81. Accordingly, the CTUIR suggests that subsections (b)(2) and (c)(2) be amended to make it clear that when the Secretary determines that Section 81 approval is not required, whether that determination is made by action or inaction, such

determination is binding upon the parties to the agreement. By providing certainty on this issue, unnecessary transactional costs and the potential loss of a business opportunity can be avoided.

4. S.613 also imposes a requirement that any tribal agreement subject to Section 81 approval must address tribal sovereign immunity in the agreement in order to receive Section 81 approval. The CTUIR sees no need for these requirements in Section 81. In our experience, the parties we have dealt with are fully aware of tribal sovereign immunity. Each of our agreements squarely address the remedies available to both parties in the event of a breach, the existence of tribal sovereign immunity, and the extent to which the Tribe has consented to the waiver of that immunity, consented to the jurisdiction of a particular court for addressing any breach of contract and damages associated with such breach. If the objective of S.613 is to put lenders and other contracting parties on notice regarding the existence and potential consequence of tribal sovereign immunity, our experience clearly indicates that no such notice is required.

5. The CTUIR believes that S.613 would benefit the Section 81 review and approval process, and ultimately tribal economic development objectives, by further clarifying what agreements Section 81 applies to. While S.613 contains a subsection (c)(3) which authorizes the Secretary to issue guidelines for identifying which agreements Section 81 does not apply to, the CTUIR believes it would be useful to clarify the statutory language in the first paragraph of Section 81 that requires Section 81 approval for any tribal agreements that are "relative to their [tribal] lands . . . " Considerable time has been spent in our transactions trying to determine which documents Section 81 applies to in light of this ambiguous language and the fact that all our projects have been constructed on tribal lands. Resolving the ambiguity involves lawyers -- lawyers for the Tribe, the lender, bond counsel and other parties to a transaction -- all of which are included in transactional costs that the Tribe must bear.

The CTUIR urges that Section 81 approval only be required for tribal agreements that involve a contracting party receiving some possessory interest in tribal lands, such as an easement or license. Any clarification that can be brought to S.613 as to what agreements Section 81 applies to would be helpful in reducing unnecessary costs and would remove obstacles to economic development.

6. Finally, the CTUIR urges the Committee to recognize the importance of providing adequate BIA funding for the hiring of qualified personnel to provide meaningful Section 81 review of

the commercial and financial agreements that tribes are increasingly entering. With recent reductions in BIA staffing at the Agency and Area Office levels, the CTUIR's experience demonstrates that the BIA does not have sufficient staff to provide a timely and meaningful Section 81 review. It is critical to tribal economic development that any agreements requiring Section 81 approval receive effective and efficient review by BIA staff. While we have had tremendous cooperation in the past five years in our economic development efforts from both the Director of the Portland Area Office, Stan Speaks, and the Umatilla Agency Superintendent, Phillip Sanchez, we know that the expansion of tribal economic development initiatives and meaningful review of increasingly sophisticated tribal financial and commercial agreements will require additional professional staff in the BIA field offices.

This concludes my comments to S.613. Attached to my testimony is a letter from Jesse Smith, Assistant Vice President of Seattle-Northwest Securities Corporation, who served as the underwriter in our recent $17 million bond issue, the proceeds of which were used to refinance the loans to construct our Wildhorse Resort enterprises, and for other purposes. Mr. Smith's letter, from a lender's perspective, supports many of the points raised in the CTUIR testimony I have just presented.

Again, Mr. Chairman, on behalf of the CTUIR, we welcome the opportunity to address the Committee on our views on S.613. We applaud the Committee in its efforts to facilitate tribal economic development. The development of a reservation economy on the Umatilla Indian Reservation has been the top priority of the CTUIR for the past decade. Tribal objectives such as restoring our Reservation land base, providing job opportunities to our tribal members, protecting the Treaty-reserved fishing and hunting rights, and providing additional funds to support tribal governmental programs for the benefit of tribal members and other residents of the Umatilla Indian Reservation require tribal economic development and the tribal funds and jobs they generate. In essence, our tribal economic development is our tax base. Your efforts in facilitating this development are appreciated.

Attachment

CTUIR\TOVEY TES

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
Portland Area Office
911 N.E. 11th Avenue
Portland, Oregon 97232-4169

IN REPLY REFER TO:

FEB 2 2 1999

FEB 1 6 1999

Mr. Antone Minthorn, Chairman
Board of Trustees, Confederated Tribes
of the Umatilla Indian Reservation
P.O. Box 638
Pendleton, Oregon 97801-0638

Dear Mr. Minthorn:

The Bureau of Indian Affairs, Portland Area Office sent out a letter dated October 30, 1998 regarding approval of documents under Sections 81 and 84 Accommodation Approval of U.S.C. regarding financial transactions to which the Bureau is not a party.

Portland Area is still receiving numerous requests for Sections 81 and 84 Accommodation Approvals that are incomplete. To avoid any delays when a package is submitted it should be complete and include the following:

1. A description from the tribe, attorney, and/or Superintendent summarizing the transaction (refinancing, new, construction), terms of loan (lowering interest rate, changing a maturity date), what is being used as collateral whether it is trust land, equipment, or fixtures.

2. Transactions must go through the respective Superintendent for a review and recommendation. If your tribe is self governance the documents should come directly to the Portland Area Director. Copies of the documents should **not** be sent directly to the Solicitor's office. Portland Area will submit the documents to the Solicitor's office.

3. A resolution must be included in documents that shows the tribe supports the project and why they have concluded that Sections 81 and 84 Accommodation Approval applies to the agreement and if not, why it requires Sections 81 and 84 Accommodation Approval.

4. The checklist must be included when submitting documents for review. The checklist will ensure that the documents have been reviewed and a complete package is being submitted.

As stated on the checklist any requests submitted that are not complete will be returned.

If you have any questions, please contact the Economic Development office at (503) 231-6754.

Sincerely,

Portland Area Director

Enclosures: Checklists

BUREAU OF INDIAN AFFAIRS
AREA OFFICE REQUIREMENTS

I. Please allow one week to be reviewed at the agency, one week to reviewed at the Area Office, and two weeks to be reviewed by the Solicitor's office. ***Incomplete packages will be returned to agency and/or tribe.***

II. Review completed by Portland Area Director. _____ initial

III. Review completed by Solicitor's office (if determined by Area Director). _____ initial

BUREAU OF INDIAN AFFAIRS
AGENCY REQUIREMENTS

I. Please allow one week to be reviewed at in your office, one week to reviewed at the Area Office, and two weeks to be reviewed by the Solicitor's office. ***Incomplete packages will be returned to your office and/or tribe.***

II. Tribal Resolution supporting transaction (e.g. section of tribal constitution), scope of authority, and tribal reason for entering into agreement must be stated specifically in document and why it should be Sections 81 and 84 Accommodation Aprpoval.

_____ initial

III. Review completed by Superintendent with recommendation.

_____ initial

IV. Review completed by Realty Office regarding trust land.

_____ initial

V. Must be reviewed for NEPA and meet requirements.

_____ initial

SECTIONS 81 AND 84 ACCOMMODATION APPROVAL CHECKLIST
(ITEMS I-V SHOULD BE INITIATED BY TRIBAL LINE OFFICIAL BEFORE SUBMITTING)

The following requirements as to form must be met in order for a document to comply with Sections 81 and 84 Accommodation Approval.

I. A document must be in writing, and a duplicate delivered to each party to the agreement.

_____ initial

II. Names, residences, and occupations of all parties to agreement must be stated in the document; if document is assigned, names, addresses, and occupations of all assignees must be added to document.

_____ initial

IV. Time and place where document entered into must be stated in document.

_____ initial

V. Purpose of agreement, and things to be done pursuant to agreement must be stated in document. If agreement is for collection of money, the basis for the claim, the source of the claim, the disposition to be made if money is collected, and the amount of the fee and if contingent, must be stated specifically in document.

_____ initial

VI. Agreement must have a fixed limited term which is clearly stated in document.

_____ initial

SEATTLE-NORTHWEST
SECURITIES CORPORATION

Portland Division
1000 SW Broadway
Suite 1800
Portland, Oregon 97205-3070
(503) 275-8304

May 14, 1999

Senator Ben Nighthorse Campbell, Chairman
Senate Select Committee on Indian Affairs
838 Hart Senate Building
Washington, DC 20510

Chairman Campbell:

RE: S. 613

I appreciate the opportunity to review this bill and provide you and your committee comments as you consider proposed language changes to 25 USC SUBSHAPTER II—Contracts with Indians, Section 81 ("Section 81").

Seattle-Northwest Securities Corporation is a regional municipal securities firm. Our banking clients are issuers of tax-exempt and taxable bonds. Our investing clients are those purchasing these securities. Our investing clients are retail (individuals) and institutional (banks, insurance companies, funds, corporations). Our banking clients are state and local governments, school districts and 501(c)(3) non-profits. They are also Indian Tribes. Though Tribes participation in the capital markets is today quite limited relative the total volume of the market, we consider them an important emerging participant. As new issuers of bonds, Tribes are establishing new relationships and partnerships within the finance and investment community. Relationships and partnerships that are fostered both by entrepreneurial development successes and shrinking federal funding. Relationships and partnerships that may not have been considered in the original drafting of Section 81.

I will suggest these comments are brief and to the point. The usefulness of the original language of Section 81 now is limited. We agree there should be changes to the language. We would not support eliminating Section 81, for with appropriate changes, we believe it can continue to require the federal government to honor certain trust responsibilities *and* offer comfort to new Tribal partners. Section 81 should offer value to both Tribes and their partners. We assume this was the original intention of Section 81.

Item 1. There must be meat on the bones defining transactions that are subject to Section 81. Neither the existing nor proposed language clarifies what is or what is not subject to Section 81 approval. Clarify this and you also eliminate the need for "accommodation approvals." The current language, "*.. relative to their lands, or to and*

Senator Campbell
Page 2
May 14, 1999

claims growing out of, or in reference to annuities, installments, or other moneys, claim, demands, or thing, ..." and language in S 613 does not give us the definition. I do not think it is too simple an approach to list specific examples to characterize what project is and is not subject to Section 81 review.

Further Section 81 refers only to *"any tribe of Indians."* The definition included in 25 USC 450b "Indian Tribe" does not provide include in its definition Tribal subdivisions, and tribal, federal and state chartered corporations, etc, wholly owned by the Tribe?

Item 2. Once there is more clarity in the definition as to when Section 81 applies, the Secretary's review must be more, rather than less, responsive. Ninety days and 45 days simply do not work. Quite honestly, 9 days is too long. Once it is known that Section 81 applies to a transaction, both the Tribe and its partners are responsible for keeping the Secretary informed of the progress of the transaction. Thereafter, Section 81 review should not be a penalty. By including the Secretary's designee S. 613 defines what has to this point been assumed.

Item 3. Is there a clear and convincing reason a waiver of sovereign immunity must be included in Section 81 review? Sovereign immunity can be asserted as a valid legal defense whether or not it is codified into Tribal law, as it is the inherent power of a sovereignty. The responsibility for requiring and obtaining the appropriate waiver of immunity as an element of any agreement to the party with whom the Tribe is contracting. *Honestly, we do not need Section 81 to tell us we need a waiver.* It does not appear to be a necessary element to an agreement requiring Section 81 approval as may be ultimately defined.

I appreciate this opportunity to provide comments to you in your review of Section 81. I would be more than happy to follow up should you or your committee staff wish any additional information.

Sincerely,

Jesse M. Smith
Vice President / Public Finance

TESTIMONY OF DENNIS HORN, ESQ. BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS ON REGULATORY REFORM

Mr. Chairman, thank you for inviting me to testify today before this esteemed Committee. My name is Dennis Horn, and I am an attorney at Holland & Knight LLP here in Washington. Over the last several years, I have served as a consultant to the District of Columbia ("the District") on the District's efforts to implement Congressionally-mandated regulatory reform. I understand that S. 614, the Indian Tribal Regulatory Reform and Business Development Act of 1999, will attempt to do for Indian Country what the National Capital Revitalization and Self-government Improvement Act ("Revitalization Act"), Public Law 105-33, did for the District. While I cannot speak authoritatively on Indian issues, I do believe there are important lessons to be learned from the District's regulatory reform experience.

As you all know, from 1970 until 1998, the District suffered a steady decline in population, jobs and quality of life. Since 1970, the District lost 25 percent of its population. Three years ago, the District was on the verge of bankruptcy with a cumulative deficit of $500 million. The District's unemployment rate was more than double the regional average. In fact, the District lost 14,000 jobs in 1996 alone. Similar economic distress can be witnessed in parts of Indian Country. Moreover, you may consider that the District model is applicable to Indian Country because of the District's significant reliance on the federal government – the District received 24 percent of its budget from the federal government in 1996.

The District was infamous for its high taxes and low quality of services. With the federal government downsizing, the District was stagnating economically. Private enterprise was booming in the region surrounding the District, primarily because the regulatory system was more readily understandable and more business-friendly. For example, the District government took 4 months on average to process a building permit application for either commercial or residential projects. Neighboring jurisdictions took an average of 2 months for commercial projects and 2 to 4 weeks for residential projects. It's no wonder Northern Virginia was attracting technology-based businesses on a routine basis. However, the District's insurmountable red tape, numerous outdated statutes and regulations, and overly burdensome regulation of professions and occupations stifled any private sector-driven development or growth. It was at this juncture that Congress decided to act.

On August 5, 1997, the President signed the Revitalization Act into law. Among its myriad provisions, the Revitalization Act required the D.C. Financial Responsibility and Management Assistance Authority ("the Authority") to hire consultants to develop and institute reforms to improve public services for the following departments and government-wide functions: Administrative Services; Consumer and Regulatory Affairs; Corrections; Employment Services; Fire and Emergency Services; Housing and Community Development; Human Services; Public Health; Public Works; Asset Management; Information Resources Management; Personnel Management; and Procurement. In addition, the

legislation required the Authority to complete within six months a review of existing regulations and processes for obtaining permits and applications of all types. The rebirth of the District that we witness today can be directly traced back to this important piece of legislation.

The Authority hired a team of consultants – of which I was one – to undertake Congressionally-mandated regulatory review. The Regulatory Reform Team focused on creating a regulatory environment that promotes economic development and growth. To accomplish this goal, we determined that the District's regulations had to be: (1) easy to understand, administer, and enforce; (2) predictable in application; (3) competitive with neighboring jurisdictions; (4) focused on consumer service rather than on processes; (5) less costly to the business community; and (6) devoid of unnecessary administrative burdens. Keeping in mind the goal of spurring economic development, i.e. bringing in new businesses and creating jobs, we recommended regulatory reforms that would improve the District's image, infrastructure, quality of life, business climate, and available development incentives.

We developed a list of regulatory targets that included: land use and development permits and approvals; regulation of professions and occupations; street and alley closings; environmental regulations; rent control/sale and conversion of rental housing; updated construction codes; self-certification in construction; code enforcement; business licenses; street vending; unemployment insurance and workers compensation; privatization, outsourcing and managed

competition; and parking. We then determined that the two highest priorities, those that would appeal to anyone looking to expand a business or start a new business in the District, are reform of land use and development and regulation of professions and occupations licensing. We made numerous recommendations to streamline the regulatory process in these areas and others.

At the time the Revitalization Act was passed, there already existed a Business Regulatory Reform Commission ("BRRC"), whose representatives consisted of members of business, industry, and government. They too were instrumental in promoting the much-needed regulatory reform. Again, in Section 11701, Congress made it clear in the Revitalization Act that the Authority's regulatory review should take into account the work and recommendations of the BRRC. Others in the public and private sectors including representatives of consumer groups and neighborhood preservation groups, played important roles in the streamlining process.

I cannot overstate the importance of the Revitalization Act in fostering the rebirth of our Nation's Capital. Armed with a wealth of information on how the current system was impeding growth and development, the Authority, on May 28, 1998, adopted a Resolution, Orders and Recommendations on Regulatory Reform. The Authority made 49 legislative recommendations to the Mayor and the City Council and issued almost 200 orders for new regulations and administrative procedures in the District government. The City Council expressed their

concurrence with a vast majority of these recommendations and by enacting two statutes, the Omnibus Regulatory Reform Amendment Acts of 1997 and 1998.

Throughout the District, the results are clear and unequivocal. Office space has increased, construction cranes are everywhere . . . It is clear that the District's economy is diversifying and more importantly, private employment is rising. According to one report, employment of District business grew by 6,800 jobs in the first two months of 1999 alone. The unemployment rate fell from over 9% in 1997 to 7.49 today. Capital investment is expanding. Home and property values are rising. At the same time, the wait for government services is going down. For example, the Department of Consumer and Regulatory Affairs has eliminated a 6-month backlog of electrical inspections. The same agency has also committed to reviewing building plans for projects worth $75,000 or less in 5 to 7 days and plans for projects worth $1 million or so within a month. DCRA has also introduced "post card permits" for simple building projects and has introduced an interactive WEB site to allow customers to complete business and licensing applications on line and to pay the associated fees via the Internet. In fact, KPMG Peat Marwick just completed a study of best practices in municipal services among American cities. The report concluded that Washington, D.C. has in the past year, moved from the close to last in all categories to one of the top two cities in the country in 6 of 7 categories of Building and Land Permits. While there is still much left to do, it is evident the climate has changed.

The District is not the only place where regulatory reform has proven to be a success. The process has worked in places like New York City, the State of Washington, and the City of Indianapolis. With successes at both the city and state level, I see no reason why it cannot be applied by sovereign Indian tribes to attract diverse, job-creating companies to reservation lands.

Regulatory reform is about creating jobs by eliminating unnecessary red tape. Businesses locate where it is easy for them to do business. They look for access to markets and motivated employees. They also look for a business-friendly environment. An Indian reservation may not be able to control its location in relation to markets, but it can control its business environment. Four things were important to the District's success with regulatory reform;

- Congress mandated the reform and set strict timetables for results to be reported back to Congress.
- The Authority, which was tasked with Regulatory Reform, had the power to enact the recommended changes. (In fact, while the D.C. Council passed most of the necessary statutory changes, both the Council and the Authority ducked some of the more controversial issues, like rent control. However, nothing would have happened without the Authority's power to pass laws and regulations.
- Extensive consultations with both the businesses that are regulated and the citizen and consumer groups who the regulations are designed to protect

were important to the project's success. In many cases, the existing regulations served nobody and everyone favored change.

- The D.C. government wanted to change its regulatory scheme. The bureaucrats were as frustrated as the business community and the citizens. The government simply needed to be shown a better way.

Mr. Chairman, in your statement upon introduction of S. 614, the Indian Tribal Regulatory Reform and Business Development Act of 1999, you noted that over time, "laws, regulations and policies have been built up – often with good intentions – but have outlived their usefulness or relevance to the contemporary needs of Indian tribal governments and economies." We who worked on the District's regulatory reform project noted the same phenomenon. Much of the bureaucracy and red tape in the District was designed to address historical problems that no longer exist. Regulatory reform can be used to clear out the deadwood.

Mr. Chairman, I am aware of the troubles that Indian lands are having attracting private sector enterprises. With dwindling federal financial aid, it is imperative that Indian tribes promote a more efficient, streamlined environment to foster private sector growth and development. The District was in a similar situation. Congress sparked the District's renaissance by passing the Revitalization Act. To the extent that S. 614 leads to true reform of laws and regulations impacting investment and business development on Indian lands, I believe the bill will provide benefits to Indian tribes for years to come. Thank you again for inviting me to testify. I will be happy to answer any questions the Committee may have.

REVISED - MAY 17, 1999

The New DCRA
"Becoming Ambassadors ... Not Just Regulators"

District of Columbia Government
Department of Consumer and Regulatory Affairs
Office of the Director
May 1999

Current BLRA Statistics

Process	Workload Measure	Workload	Performance Measure	Units	
Construction (Building Permit)	Permits	7,492			
File Jobs	Permits	834	Drop off to Pick up	Days	23.5
Walk throughs	Permits	6,658	Sign-in to Permit Issuance	Minutes	20-30
Supplemental Building Permit	Permits	15,416	Sign-in to Permit Issuance	Minutes	30-60
Part of Building Permit	Permits	10,791	Sign-in to Permit Issuance	Minutes	20-30
Stand Alone Permit	Permits	4,625	Sign-in to Permit Issuance	Minutes	20-30
Post Card Permit	Permits	N/A	Application to Issuance	Minutes	15
Certificate of Occupancy	CO's	2,833	Application to Inspection	Days	[1] 6.5
Inspections	Inspections	42,431	Request to Inspection	Hours	24
Historic Preservation Review	Reviews	1,637	Application to Approval	Days	30-45

Notes:
[1] If the certificate does not require inspections, the certificate is issued the same day. If inspections are required, the process takes an average of 6.5 days. 86% of all COs are walk through which take from 20-30 minutes.

Performance in Best Practice Jurisdictions

	Construction (Building Permit)						
	Large Plans [1]	Small Plans [1]	Supplemental Building Permit	Post Card Permit	Certificate of Occupancy	Inspections	Historic Preservation Review
Washington D.C.	23.5 days	20-30 minutes	30-60 minutes	15 minutes [4]	20-30 minutes [2]	24 hours	30-45 days
Houston [3]	21 days	30 minutes	N/A	-	N/A	24-48 hours	-
Mecklenburg	18-21 days	5 days	5-7 days	-	N/A	24 hours	30 days
Nashville	30 days	15-30 minutes	1 day	-	N/A	24-72 hours	30 days
Phoenix	30-45 days	14 days	N/A	-	N/A	24 hours	-
Vancouver	56-84 days	5 days	-	-	4 hours [2]	24-48 hours	30 days
Indianapolis	N/A	45 minutes	N/A	-	-	24 hours	10-30 days

Notes:
N/A = Information not tracked by the jurisdiction
- = Jurisdiction does not have process
[1] Large Plans are mostly file jobs. Small Plans for most jurisdictions, including DCRA, are reviewed in a walk-through process.
[2] If the certificate does not require inspections, the certificate is issued the same day. If inspections are required, the process takes an average of 6.5 days.
[3] Customer wait time is reduced significantly through the on-line permitting process.
[4] Customer wait time is reduced significantly through the use of mail.

KPMG

STATUS OF THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS ACTIVITIES

MANAGEMENT REFORM: IDEAS INTO ACTION

DOCUMENT MANAGEMENT PROJECTS

DCRA has approximately 20 million pages stored, with an annual increase of approximately 3 million pages.

- The agency has begun a document management operation consisting of two basic elements: scanning the agency's documents, and implementing of document management system.

- When complete all departments as well as our customers will be able to access documents from any computer.

AUTOMATION FOR THE NEW MILLENIUM

DCRA was an agency absent of modern technology. At best, the agency had a 1st generation WANG computer and some telephones were rotary dial.

- DCRA has installed a high performance, fiber optic Local Area Network (LAN) with enough bandwidth and capacity to accommodate the agency's data storage needs and to process applications. The LAN capability includes handling productivity software, the mission critical enterprise system, Internet and web-based GIS applications with a capacity for up to 400 users, and room for expansion and growth.

- DCRA has procured, installed and configured 314 PCs, 4 servers, and 6 workstations to replace obsolete hardware at DCRA.

- DCRA is in the process of converting all applications to a new client server based system, called the Enterprise Wide Information System (EWIS). The system consists of integrated permit, license, inspection, code enforcement and case tracking modules. All existing applications will be migrated to the EWIS and phased out. The conversion is expected to take place before the end of calendar year 1999.

- DCRA has now distributed state of the art telephone system.

RE-ENGINEERED FOR BUSINESS

The agency functioned at a dysfunctional level. The manor by which the agency operated discouraged business and economic development in the District.

- Operations at DCRA are being reengineered to improve business services, including changes in organization, staffing levels, customer service and training requirements, and technology upgrades.
- The Building and Land Regulation Administration has moved from the worst operation to one of the best performing operations in the country.
- New best practice re-engineering is taking place in the housing administration, business regulation administration and occupational and professional licensing administration.

NUISANCE PROPERTIES

The District of Columbia has been riddled with vacant and abandoned property. The District has an inventory of about 2,000 nuisance properties that increase with 15 new properties every two weeks.

- Cleaned, barricaded and/or demolished over 1300 nuisance properties.
- Achieved greater coordination between District Government agencies to prevent property deterioration and address the problems caused by nuisance properties.
- Implemented a pilot project to evaluate a new security system for properties barricaded under DC Law 5-513.
- Implemented new policy to publish the names of owners who fail to maintain nuisance properties.

REGULATORY REFORM INITIATIVES

DCRA Goes Interactive

- *DCRA On-Line* is an interactive site that will allow customers to be served completely over the internet. Customers will be able to apply for and receive business licenses; building permits and review records by use of their computers without having to set foot in the agency.

INTERNET WEB SITE

- DCRA has received many compliments for its Internet web site. Customers visiting the web site can get information about permits and licenses, as well as download the various forms.

- DCRA has obtained a property information database that provides the agency with ownership information, zoning information, tax and purchase information.

- Auto View is a software program that will allow architects, planners and engineers to transmit plans and drawings through the Internet, thereby saving the customer time.

Building and Land Regulation Improvements

- The agency has reduced the building permit process from 6 months to less than 40 minutes for 95% of its customers.

- The agency has eliminated 4 months of backlogged electrical inspections and reduced the time for inspections from 4 months to 2 days.

- Eliminated the 6-month backlog in building plan technical reviews.

- Re-engineered the permit and license processes pertaining to zoning, land use, and building permits by:

  - Granting the zoning administrator discretionary authority to deviate from zoning requirements by 2%.

  - Implementing new policy to allow self-certification of zoning variances which eliminates 2 to 3 months from processing time.

  - Implementing the post card permit process for the five trades. This reduces the number of visits to the office for permits.

- DCRA has assumed the fire and life safety function for the building permit program. The department is currently utilizing a "third party" approval and inspection method, until adequate staffing is brought on board.

- The Office of Surveyor now reports to the DCRA. The Second Omnibus Regulatory Reform Act, which proposed the transfer of the function to DCRA, was recently approved by Council and is currently before the Financial Responsibility and Management Assistance Authority.

- DCRA completed preparation of final BOCA Code rulemaking, which were published in the D.C. Register. The department will have incorporated the new

codes into its building permit application and approval processes by the end of the month. In anticipation of the revised codes, DCRA last year held a BOCA workshop for approximately 500 developers in the District.

Move to 941 North Capitol

For many years, DCRA operated in a dilapidated bug and rodent infested building at 614 H Street.

- DCRA moved to a newly renovated "smart" building 941 North Capitol Street, NE on March 26, 1999.

Neighborhood Stabilization Program

The responsibility for neighborhood code enforcement was spread among several agencies. Citizens were forced to guess which city agency could solve their problems. Code enforcement was complaint driven.

- In February, DCRA announced the Neighborhood Stabilization Program.

- This is a one-stop program to sustain and strengthen neighborhoods by providing a "pro-active" presence through the designation of Neighborhood Stabilization Officers in communities throughout the District.

- Housing inspectors have undergone extensive cross-training during the last six months leaving all neighborhood code enforcement activities from all servicing agencies. Training has thus far been provided in the following areas:

  ⇒ Rodent Control; BOCA Property Maintenance Codes; Food Protection; Abandoned Vehicle Regulations, Identification, and Removal Strategies; Vacant lot identification, citation, and abatement strategies; ABC Establishment Guidelines; Nuisance Properties Identification and Abatement; Soil Erosion and Sediment Control; and, Hazardous Waste and Materials;

  Housing inspectors are also scheduled for training in the areas of Zoning, Historic Preservation, and general business licensing.

- DCRA prepared rulemaking to adopt the BOCA Property Maintenance Codes to replace the District's antiquated Housing Code. This action will help to ensure uniformity between requirements for new construction and maintenance of existing structures.

State of the Art Inspections

Inspectors at DCRA lacked the use of modern technology to do their jobs. Inspectors did not have the use of vehicles, but often had to use public transportation to do their jobs. Inspectors manually prepared reports.

RAPIDS

- DCRA is in the process of implementing a state-of-the-art computer applications system to facilitate the Neighborhood Stabilization Program. The Remote Access Property Inspection and Dispatch System (RAPIDS) is scheduled to be on-line mid July 1999.

- RAPIDS will allow inspectors to remain in the field and process all matters on-site. The system will provide property information, ownership information, history of enforcement activity, etc. to inspectors.

- The system will allow the manager to track the progress of inspectors in the field.

- DCRA has purchased and deployed vehicles for inspector's use in the field.

ALCOHOL BEVERAGE CONTROL

- Increased staffing (2 supervisors and 9 investigators) has resulted in more effective inspection and monitoring of all ABC-licensed establishments in the District.

- An intensive training program has begun in conjunction with the Metropolitan Police Department and the Federal Bureau of Investigation.

- A $73,000 grant recently awarded by the Department of Justice will allow to DCRA to devote more resources and time to circumvent the acquisition of alcoholic beverages by juveniles in the District.

BUSINESS LICENSING

Obtaining business licenses in DCRA used to be a tedious process, which required several trips to the agency over several days.

- DCRA established the Customer Services Center and One Stop Business License Center, which provide customers efficient, on-the-spot service in 20 minutes or less.

- The agency is receiving great reviews for its **Customer Service Center**. The customer service representatives are located immediately inside the door of the one-stop business center.

- Customer service representatives received 6 weeks of training and help navigate customers through their business processes.

- All requests for business licenses are now processed in one location versus the customer having to visit different offices throughout the building.

PROFESSIONAL LICENSES

DCRA previously delivered Professional license in a very slow timeframe. It would take as much as 4 months to obtain professional licenses.

- DCRA has entered into a contract to outsource the clerical and administrative functions to be completed by the end of the calendar year. The largest remaining license category, "Nursing" will be processed by the contractor beginning in June 1999. All other Professional categories will be processed by the contract by the end of the calendar year.

Other Initiatives

- An **AMNESTY PROGRAM** was conducted by the agency for owners of residential rental property who require licensure. This program resulted in the issuance of more than 450 additional licenses and over $400,000 in revenue.

- **REGULATORY WORK GROUPS** were established by DCRA in December 1998. DCRA chaired the first monthly work group meeting of agencies that effect the regulatory process - DCRA, DPW, DOH, Fire and WASA.

- **"DEVELOPMENT AMBASSADOR PROGRAM"**. In February, DCRA formally announced an innovative program to assist in the progress of development projects from conception to completion. This program assigns a staff person to assist in assuring that development projects move smoothly through the regulatory process. Ambassador also intercedes in behalf of the project with all external agencies.

- **CUSTOMER SERVICE SURVEYS** were developed and are being distributed. 81% of those surveyed rate the agency as improving. 91% said services are "good" to "better."

LEGISLATIVE ENHANCEMENTS

- The agency has proposed legislation to establish higher quality property maintenance standards - the Vacant Building Registration and Maintenance Amendment Act of 1999.

- The agency has also proposed an amendment to 11 DCMR 2000 which sets the procedures for the replacement of structures destroyed by fire collapse, explosion, or Act of God. The amendment will include the replacement of buildings demolished by an order of the Code Official or Board for the Condemnation of Insanitary Buildings.

- The agency prepared a proposed amendment to the Condemnation Laws to decrease the time for compliance from 10 days to 5 days, and decrease the time allowed in the Order of Condemnation from not less than 6 months to 60 days.

- The agency has proposed amending legislation and limiting the number of times an inspector must cite the same violation within a specified period of time and allow for the summary abatement of the condition, without further notice to the property owner.

APR 26, 1999 Wash. Post

Wall Street Rewards D.C. With a Better-Than-Junk Bond Rating

By David A. Vise
Washington Post Staff Writer

The District left its "junk bond" status behind yesterday when a leading Wall Street firm boosted the city's credit rating several notches, an upgrade that will save D.C. taxpayers millions of dollars later this year.

Standard & Poor's raised the city's bond rating from "BB" to "BBB," a reflection of the dramatic improvement in the District's fiscal outlook during the last three years. The higher credit rating will permit the District to pay investors a lower interest rate when the city raises about $450 million by selling bonds on Wall Street this year, said Thomas F. Huestis, the city's deputy chief financial officer.

"It is an important symbol and an important signature of where we are," said D.C. Mayor Anthony A. Williams (D). "And the fact of the matter is, we have the substance to back it up. . . . As [the District's former chief financial officer], I am very pleased to see this. As mayor, I'm even more delighted."

Commenting on the improved bond rating, D.C. Council Chairman Linda W. Cropp (D) said, "I'm thrilled." Cropp went with Williams to New York this month to meet analysts from Standard & Poor's and other major firms. "It validates the positive momentum we have been working toward for the past year or two," she said.

Williams said the timing of the rating upgrade would help the city's economy because important visitors from abroad, who are in town for the NATO summit, would hear the good news.

"As people are here from around the world and know we are solidly 'investment grade' and see the city is also a good place to live, it starts changing impressions and starts building a sense of self-esteem and confidence," Williams said. "We have to continue to create a climate for investment and continue on this road we are traveling."

Standard & Poor's analysts said they were impressed that Williams and Cropp are working together to bolster the city's finances and improve services. The analysts also were impressed by the District's ability to post budget surpluses over the last two years in excess of half a billion dollars and by the commitment of elected leaders to responsible financial management and economic development.

Huestis said the District has made the strongest and fastest financial recovery of any big U.S. city to go through a major fiscal crisis. He said the District bounced back from the depths of its financial problems in 1996 to achieve an "investment grade" rating in about three years, while it took Philadelphia about five years to achieve a similar turnaround. He also noted that the District had overcome a multiyear deficit by generating budget surpluses, rather than borrowing money.

Parry Young, a director at Standard & Poor's, said the District not only has "momentum" but also has made fundamental improvements in its spending controls and tax-collection system.

Natwar M. Gandhi, the city's deputy chief financial officer, was honored yesterday by the local chapter of the Association of Government Accountants for his achievements in overhauling the tax system, including reducing the time it takes for residents to receive refunds. He also will receive the organization's national achievement award in June.

Young said the city still faces challenges, including the need to expand its economy, stabilize its population and repair its crumbling school buildings.

"A lot of good things have happened over the last several years," Young said, including the transfer of billions of dollars of expenses from the District to the federal government. "They have done a lot, but there is still a ways to go."

Williams, meanwhile, said his experience handling the city's finances contributed to its ability to rebound so rapidly. "I think also, in all humility, people like the idea that the former CFO is mayor," he said.

W. RON ALLEN, PRESIDENT
NATIONAL CONGRESS OF AMERICAN INDIANS
PREPARED STATEMENT ON
S. 613 , THE INDIAN TRIBAL ECONOMIC DEVELOPMENT AND CONTRACT ENCOURAGEMENT ACT OF 1999
&
S.614, THE INDIAN TRIBAL REGULATORY REFORM AND BUSINESS DEVELOPMENT ACT OF 1999
TO THE SENATE COMMITTEE ON INDIAN AFFAIRS

JUNE 2, 1999

I. INTRODUCTION

Good Morning, Chairman Campbell, Vice Chairman Inouye and distinguished Senators. It is an honor to be invited to provide testimony before the Senate Committee on Indian Affairs. I am W. Ron Allen, Chairman of the Jamestown S'Klallam Tribe and President of the National Congress of American Indians (NCAI). As the oldest and largest national Indian advocacy organization in the United States, NCAI is dedicated to advocating on behalf of our 250 member tribal governments on a broad range of issues affecting the health, welfare and self-determination of Indian Nations. I greatly appreciate the opportunity to comment on S. 613 , the Indian Tribal Economic Development and Contract Encouragement Act of 1999, and S. 614, the Indian Tribal Regulatory Reform and Business Development Act of 1999 and ask that this statement be included in the May 19, 1999 hearing record.

I would like to begin by thanking Chairman Campbell for his diligent work on these bills and the oversight of federal Indian affairs provided by this year's series of hearings. NCAI is very appreciative of the initiatives to find constructive solutions to issues in Indian Country such as business development and contracting. NCAI would like to continue to work closely with the Committee in these areas to assure that any new federal statutes will address these issues in a thoughtful manner that recognizes the federal trust obligation to protect tribal sovereignty.

At the outset, I must note that the member tribal governments of NCAI have not formally taken a position on S. 613 or S. 614 through our resolutions process. The topics at issue, particularly in S. 613 regarding the sovereign immunity of tribal governments, are weighty subjects with long histories in federal Indian policy. Tribal governments have not yet had the time and opportunity to come to a consensus position through comprehensive analysis of the bill. My comments today are intended to further the discussion of the bill, and not to signify a final NCAI position. This limitation, however, should fit well with the goals of the Committee to enable full consultation and deliberation on the bill with tribal governments.

As this Committee is well aware, American Indians and Alaska Natives suffer higher rates of unemployment, poverty, poor health, substandard housing, and associated social ills than any other group within the United States. Couple these problems with Federal under funding of Indian programs and very limited means for viable economic development opportunities and you will discover in Indian Country some of the most impoverished areas within the United States.

Sustainable economic development on Indian reservations has proven to be the most viable remedy to alleviate these ills. Under the United States fiduciary duty to tribes lies the responsibility to assist tribes with the development of sustainable economic development. NCAI believes S.614 takes considerable steps toward assisting tribes in obtaining economic self-sufficiency and is pleased to support this important legislation. In regards to S.613, NCAI is unable to support this legislation as written, but has made recommendations to make the legislation more responsive to the needs of tribes.

II. S.613 THE INDIAN TRIBAL ECONOMIC DEVELOPMENT AND CONTRACT ENCOURAGEMENT ACT OF 1999

A. Contracts and Agreements with Indian Tribes

Under the United States trust responsibility to Indian tribes, 25 U.S.C. § 81, as revised, requires the Bureau of Indian Affairs (BIA) to approve contracts "relative to Indian lands." Historically, this statute stands as an important symbol of the United States trust relationship of protection of Indian tribes, and this type of government intervention was necessary to protect unsophisticated tribes from unfair business transactions. As time has passed, many reservations have opened up to economic development, many tribal governments have became more sophisticated in their business relationships, and the need for federal protection has changed. The protection process has become more complicated due to the ambiguity surrounding the term "relative to Indian lands," and in many instances, contracting parties are requiring Section 81 approval for transactions that are arguably outside of its scope, thus increasing transactions time and cost. As tribal business activity has increased and become more diverse, more clarity is required.

Mr. Chairman, it has been suggested that instead of trying to clarify Section 81 through S.613, it should be repealed in its entirety. NCAI looks forward to the day when all tribes have reached the level of business sophistication and can enter into contracts without comment from the government. However, there are still a number of tribes that have not reached the business sophistication of other tribes. The Federal government owes tribes a trust responsibility of protection and must protect tribes from clearly disadvantageous contracts or efforts to cheat tribes of their dearly won resources.

The question is how this duty of protection can be met without creating unnecessary burdens and time delays for the thousands of contracts that are routinely entered into by

Indian tribes. NCAI is in agreement with S. 613's intention to require the Department of Interior to provide a clear definition of the applicability of Section 81, but we believe that more guidance should be provided to Interior by statute. A key policy issue is whether to construe the statute narrowly to apply only to contracts for a possessory interest in land, or more broadly to apply to all contracts that would have an impact on Indian lands. NCAI's immediate sense is that we should be cautious about defining the duty of protection too narrowly when there may be better ways to relieve the burden on tribes and the Department of Interior. For example, many tribes have reached a high level of business sophistication and perhaps the statute could provide a process where a tribe can opt out of the Section 81 protections for certain categories of contracts. Also, it may be possible to create exemptions for categories of contracts where there is little risk of serious economic harm to the tribe, for instance, contracts under a certain dollar amount or contracts for common goods or services that are regularly traded at published prices. Overall, Section 81 still stands as a key part of the framework of federal trust protection for tribes, and should not be modified without serious consideration of how to continue to protect the trust relationship.

B. Approval Time Lines

S.613 grants the BIA ninety days to approve or disapprove a contract and forty-five days to state its intention to review a contract. These are both excessive amounts of time. Time is of the essence when entering into business contracts. Extended periods of time can cause a tribe to lose the contract or incur additional costs waiting for approval.

NCAI is fully aware that in order to decrease the BIA's review time, there must be sufficient knowledgeable BIA staff. However, additional staff may not be required if S. 613 were modified to more specifically define what types of contracts require review by the BIA. NCAI does not support the lengths of time S.613 grants to the BIA for approval or review determination.

C. Contract Approval Conditions

In order for the BIA to approve a contract, S.613 requires that the contract must provide remedies for breach of contract, or disclose the tribe's sovereign immunity, or include an express waiver of the tribe's right to assert sovereign immunity. In general, NCAI believes that tribal leaders are still analyzing this provision of S.613, so our comments on this provision will be general. NCAI expects to be able to provide this Committee with more detailed comments as we receive more input from tribal leadership. It is extremely important to NCAI that tribal governments have an opportunity to consider the legislation and then form NCAI's position through our resolution process.

Mr. Chairman, your introductory statement to S.613 noted your concern regarding people who claim ignorance of a tribe's immunity when they entered into a contract with an Indian tribe. NCAI is very conscious of the pressures that have been placed on tribal

sovereign immunity for contracting, and we are appreciative of your efforts to find a solution that respects the important doctrine of tribal sovereign immunity. Tribal leadership has been discussing the solution you have suggested, and the disclosure or express waiver requirement can be viewed as a good faith effort on the part of the tribe to the other contracting party. Tribes are making this type of a good faith effort in many of the contracts that they are entering into everyday. However, this requirement can also be viewed as favoring the other party. When entering into a contract it is up to both parties to negotiate terms that not only are advantageous but also protect themselves from future problems. A disclosure or waiver requirement on the part of the tribe takes that burden off of the non-tribal entity. In addition, we know of no federal statute that requires that state and local governments disclose or waive their immunity when contracting. That matter is left to state law and the contracting parties.

D. Choice of Counsel

Pursuant to NCAI's Resolution MRB-98-104, Repeal of Federal Laws on Approval of Tribal Attorney Contracts (attached), NCAI member tribes would support S. 613's provisions striking the requirement of Secretarial approval of a tribe's choice of counsel and counsel fees. This has been a particularly burdensome requirement, and one that has been used by the BIA historically to prevent tribes from initiating litigation to protect their rights.

III. S.614 INDIAN TRIBAL REGULATORY REFORM AND BUSINESS DEVELOPMENT ACT OF 1999

Mr. Chairman, there are many obstacles inhibiting economic development in Indian Country. Unfortunately, some of those obstacles have been created by the same government that has a trust responsibility to promote economic development in Indian Country. A comprehensive review of the laws and regulations affecting investments and business decisions in Indian Country with the intent of removing unnecessary barriers to business development is long overdue. NCAI fully supports S.614 and believes that this type of legislation will not only benefit Indian Country, but will benefit the entire country.

IV. CONCLUSION

Sustainable economic development in Indian County is a top priority for NCAI. Therefore, we support S.614 and commend Chairman Campbell and Vice Chairman Inouye for assisting tribes in alleviating barriers to economic self-sufficiency through this important legislation. Once tribes start acquiring economic self-sufficiency, we can begin to eradicate our social problems and revitalize our distressed Indian reservations. In regards to S.613, NCAI is very supportive of the goal of clarifying the statute to decrease transaction time and cost, but would encourages further consultation with tribes to ascertain that the bill continues the trust obligation that is embodied in Section 81.

Mr. Chairman, NCAI stands ready to work with you and Vice Chairman Inouye on these bills and any other bills that is introduced to help Indian tribes develop economic self-sufficiency. Thank you once again, for the opportunity to provide this statement.

* * * * *

NATIONAL CONGRESS OF AMERICAN INDIANS

EXECUTIVE COMMITTEE

PRESIDENT
W. Ron Allen
Jamestown S'Klallam Tribe

FIRST VICE PRESIDENT
Ernie Stevens, Jr.
Oneida Nation of Wisconsin

RECORDING SECRETARY
Lela Kaskalla
Hopi Pueblo

TREASURER
Russell (Bud) Mason
Three Affiliated Tribes

AREA VICE PRESIDENTS

ABERDEEN AREA
Gerald M. Clifford
Oglala Sioux

ALBUQUERQUE AREA
Joe A. Garcia
Ohkay Owingeh
San Juan Pueblo

ANADARKO AREA
Gary McAdams
Wichita & Affiliated Tribes

BILLINGS AREA
Earl Old Person
Blackfeet Tribe

JUNEAU AREA
Steve Gianis
Native Village of Fort Yukon

MINNEAPOLIS AREA
Bernida Churchill
Mille Lacs Band of Ojibwe

MUSKOGEE AREA
S. Diane Kelley
Cherokee Nation

NORTHEAST AREA
Michael W. Schindler
Seneca Nation of Indians

PHOENIX AREA
Ivan Makil
Salt River Pima-Maricopa

PORTLAND AREA
Henry Cagey
Lummi Nation

SACRAMENTO AREA
Cheryl A. Seidner
Table Bluff Reservation / Wiyot

SOUTHEAST AREA
A. Bruce Jones
Lumbee Tribe

EXECUTIVE DIRECTOR

JoAna K. Chase
Mandan, Hidatsa & Arikara

RESOLUTION # MRB-98-104

Title: Repeal of Federal Laws on Approval of Tribal Attorney Contracts

WHEREAS, we, the members of the National Congress of American Indians of the United States, invoking the divine blessing of the Creator upon our efforts and purposes, in order to preserve for ourselves and our descendants rights secured under Indian treaties and agreements with the United States, and all other rights and benefits to which we are entitled under the laws and Constitution of the United States to enlighten the public toward a better understanding of the Indian people, to preserve Indian cultural values, and otherwise promote the welfare of the Indian people, do hereby establish and submit the following resolution; and

WHEREAS, the National Congress of American Indians (NCAI) is the oldest and largest national organization established in 1944 and comprised of representatives of and advocates for national, regional, and local Tribal concerns; and

WHEREAS, the health, safety, welfare, education, economic and employment opportunity, and preservation of cultural and natural resources are primary goals and objectives of NCAI; and

WHEREAS, American Indian Tribes, in protecting their rights, administering programs, providing education, housing, welfare and other social services, developing and operating business enterprises, and pursuing relations with other governmental entities frequently require the services of qualified attorneys; and

WHEREAS, Federal law within the United States, 25 U.S.C. § 476 (e), 25 U.S.C. § 81 and 25 C.F.R. § 89.40, purports to require that the choice of legal counsel, scope of legal services, and fixing of fees be subject to approval by the Secretary of the Interior; and

WHEREAS, the Bureau of Indian Affairs frequently requires, within attorney contracts, limiting provisions potentially adverse to Tribes such as assurances that the attorney will not sue the United States Government on behalf of the Tribe; and

1301 Connecticut Avenue NW, Suite 200, Washington, DC 20036 202.466.7767 fax 202.466.7797

WHEREAS, the requirement of approval of federal officials of attorney selection and attorney contracts by tribes undermines the sovereignty of American Indian Nations, is condescending and disrespectful, and is based on the assumption that staff employees of the Bureau of Indian Affairs know more about the needs of American Indian Tribes than the elected and traditional leadership of the respective tribes.

NOW THEREFORE BE IT RESOLVED, that NCAI does hereby join the Lac Courte Oreilles Band of Chippewa Indians in calling for the elimination of all federal laws purporting to dictate to American Indian Tribes the manner and terms through which they may engage legal counsel to represent the Tribe's interest and to define the scope of legal services that may be rendered by attorneys so engaged; and

BE IT FURTHER RESOLVED, that this resolution be forwarded to all tribes with the request that they join NCAI and the Lac Courte Oreilles Band of Chippewa Indians in advancing the above needed effort to respect the sovereignty and dignity and decision making ability of the respective Indian Nations, and the ability of said Nations to govern their own affairs; and

BE IT FINALLY RESOLVED, that this resolution be forwarded to appropriate United States Congressional Committees and administration officials with the request that they take action to address the repeal of all authority limiting the rights of American Indian tribes to employ legal counsel of their choice under terms, conditions, and purposes deemed appropriate by the Tribe.

CERTIFICATION

The foregoing resolution was adopted at the 1998 55th Annual Session of the National Congress of American Indians, held at the Myrtle Beach Convention Center in Myrtle Beach, South Carolina on October 18-23, 1998 with a quorum present.

W. Ron Allen

W. Ron Allen, President

ATTEST:

Lela Kaskalla

Lela Kaskalla, Recording Secretary

Adopted by the General Assembly during the 1998 55th Annual Session held at the Myrtle Beach Convention Center in Myrtle Beach, South Carolina on October 18-23, 1998.

Oglala Sioux Tribe

Box H
Pine Ridge, South Dakota 57770
Phone: (605) 867-5821
Fax: (605) 867-1373
E-mail: harolds@oglala.org

OFFICE OF THE PRESIDENT
HAROLD D. SALWAY
"Akil Nujipi"

STATEMENT OF PRESIDENT HAROLD D. SALWAY
OGLALA SIOUX TRIBE
SUBMITTED TO THE SENATE COMMITTEE ON INDIAN AFFAIRS
ON
S. 613 - THE INDIAN TRIBAL ECONOMIC DEVELOPMENT & CONTRACT ENCOURAGEMENT ACT OF 1999
AND
S. 614 - THE INDIAN TRIBAL REGULATORY REFORM AND BUSINESS DEVELOPMENT ACT OF 1999

May 19, 1999

Mr. Chairman, and Honorable Members of the Committee, My name is Harold D. Salway, I am the President of the Oglala Sioux Tribe I would like to thank you for the opportunity to provide written testimony on these two bills.

As the members of this committee know, economic conditions on Indian Reservations are the worst of any governmental jurisdiction in this country. And, the economy of Pine Ridge, our Reservation, is one of the poorest among Indian Reservations. For example,

- Shannon county, one of the two major land areas on the Pine Ridge Reservation, is the poorest county in the world.
- 63.1% of the population live below the poverty level.
- Unemployment level is 90%
- Few businesses exist on the Reservation and fewer are Indian owned.
- Majority of population does not have access to credit or easy access to banking services; there are not banks on the Reservation.
- There is an extreme shortage of housing on the Reservation. There are 400 families on the waiting list for single family homes.

- The existing stock of housing is substandard.
- More people rent than own their homes.
- There are few consumer services on the Reservation.
- There is no public transportation within the Reservation.
- Only one licensed day care exists on the Reservation.
- Substance abuse and related crime, gang violence, family violence impacts nearly every family on the Reservation.
- Welfare reform has negatively impacted a large number of mothers with small children.
- The education level of the population is extremely low: school drop-out rate is 70%, and 52.6% of high school students perform 2.6 grades below the national average.
- The Reservation suffers the highest rate of diabetes, alcoholism, heart disease, accidents, infant mortality, and suicide in Indian country and higher than any other group in the nation.
- Tuberculosis is eight times higher than the national average, and
- The Oglala Sioux people experience the lowest life expectancy of any group in the nation — 45 years.

The Tribe has undertaken several ventures in an attempt to improve and strengthen our economy. We have opened a casino which employees 170 individuals and produces yearly revenues of approximately $2 million. We are participating in HUD's "Housing Blitz" initiative which has a goal of building 300 new homes within the next year with the first 50 homes to be completed by the end of July 1999. The Reservation also has a lending institution called the "Lakota Fund", which provides limited funds as loans for tribal members to start their own businesses. And we have been awarded a *Rural Empowerment Zones and Enterprise Communities* grant by the U S Department of Agriculture, which we hope will result in direly needed improvements to our Reservation's economy.

However, we, like other tribes, have often been prevented from taking advantage of sound business opportunities because of delays caused by the requirements imposed by a variety of federal regulations affecting the manner in which tribes may conduct business with the private sector. Tribes need to have more latitude as sovereigns to attract and establish business ventures on their reservations so as to improve the quality of life, and the health and well being of their constituents. For this reason we support the intent of these two bills with the noted exceptions.

S 613

The Oglala Sioux Tribe fully agrees that Section 81 needs to be amended. In fact we believe that it should be repealed. This provision has outlived its usefulness. Today, tribes are quite capable of administering and managing their own affairs. This bill would eliminate the need for BIA approval of contracts that tribes enter with their own attorneys. It follows that if this bill recognizes that tribes are capable to enter into such contracts with out BIA oversight, then tribes should be able to enter into other contracts with the advice and counsel of said attorneys.

However, if Section 81 is left in place, then we present the following recommendations for the Committee's consideration:

- The time frames established in the newly created subsection *(b)* are not responsive to the demands of the business world. As noted above, tribes are often faced with small windows of opportunity during which they must act decisively if they are to take advantage of a business opportunity. Thus the time frame in Subsection (b)(1) regarding Secretary's approval of contracts needs to be shortened from 90 days to 30 days; and, the time frame in Subsection(b)(2)(B) regarding the Secretary's notification to a tribe that the contract will be reviewed needs to be shortened from 45 days to 30 days.

- The bill should have a provision which stipulates that a Secretary's determination, by action or inaction, on whether a contract requires Section 81 approval or not is binding on all parties to the subject contract or agreement. This will remove the ambiguity which currently exists about such determinations.

- The bill needs to clarify which provisions of Section 81 will be used, and how they well be applied in reviewing contractual transactions.

S 614

The Oglala Sioux Tribe is in full supports of this bill. The *Authority* which this bill would establish would provide a forum for tribal leaders or representatives to participate in a collegial partnership with federal agencies to address the regulatory and bureaucratic obstacles which prevent or thwart tribal efforts to implement effective economic development plans which are responsive to the unique and diverse needs of Indian Reservations. This bill could be the genesis for an effective Federal - Tribal, true government-to-government initiative to abolish the "third-world" living conditions in which many Indian people are forced to exist.

Section 4(b)(2), should stipulate that each tribe and Area should have the opportunity to place a name in nomination for a seat in the Authority. Such nominations to be submitted in writing and signed by the appropriate official.

Section 6(a) should stipulate that at least 3 public hearings must be held prior to the publication of the final report.

The serious social and health problems found in the Pine Ridge Reservations, are a direct result of the dire economic conditions which our people must endure. I encourage the Committee to support these bills and our recommendations and to advocate for their quick enactment into public laws so that we may be better able to provide our people the opportunity to enjoy the same high quality life style which is enjoyed by other United States Citizens.

This concludes my statement. Again thank you for allowing me this opportunity to provide the Oglala Sioux Tribe's comments on these bills.

L:\DOCUMENT\260\TEST.260

O