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State Government-Tribal Relations

– A Brief Review –

This paper provides a brief overview of the variety of relationships that different states in the United States have with Indigenous tribes that live within their borders. Although the issue of tribal recognition and the scope of tribal authority is a federal matter, the actions of state governments can and do impact on the ability of tribes to exercise their right of self-determination. This paper offers a state-by-state comparison of existing policies that states have adopted regarding their relationships with Indigenous tribes.

U.S. history reveals shifts in federal policies towards tribes that range from laws designed to assimilate tribal members, to laws that terminate tribes. In the 1970s, federal policy transformed as the U.S. government has gradually acknowledged the need to support tribal self-determination as a policy and practice. The right of sovereignty and self-determination is recognized in a variety of federal laws that engage tribes in a government to government relationship with the federal government, and in the United States' recent support of the United Nations Declaration on the Rights of Indigenous Peoples.

Some states have followed this path, and adopted progressive laws and policies that support tribal self-determination. For example, California, Alabama, Kansas, Michigan, Oklahoma, North Dakota and South Dakota) that were once hostile to tribes and willing to ignore the plight of dispossessed tribes are now adopting policies that recognize and implement a government-to-government relationships with tribes for the mutual benefit of all residents. Others, like Alaska, have had a more difficult relationship with tribes as evidenced by the persistence of conflicts over issues of subsistence, voting rights, and the right to ensure community public safety.

NSG offers the following summary of the relations between state governments and tribes throughout the U.S. Many states recognize tribes and have instituted relevant, dynamic and effective relations with Natives and tribal communities, particularly regarding issues involving governance and commerce. **Along with the accompanying matrix – 2014 State-Tribal Relations Matrix – this document is a snapshot of some of the highlights of the current situation.** It also shows that the topic is well worth additional research.

A major source for this summary is the National Conference of State Legislature's report "Government to Government: Models of Cooperation Between States and Tribes," published in April, 2009. Minor updates are provided where available, though the NCSL report remains one of the best information sources on this subject currently available. The complete report can be

found through this link, http://www.ncsl.org/documents/statetribe/2009_gov_to_gov.pdf. NCSL also provides additional state-by-state information at this site, <http://www.ncsl.org/research/state-tribal-institute/state-tribal-relations-committees-and-commissions.aspx>.

The History of State Recognition and Sharing Governance

The first leading model for state recognition and government-to-government tribal relations is Maine, which has provided one seat in the state House of Representatives for the recognized Penobscot and Passamaquoddy Tribe of Indians (of the original Algonkian Nation) since 1823. A seat for the Houlton Band of Maliseet Indians was added in 2010. While tribal representatives are non-voting, they have the right to speak on the House floor. Though former Rep. Donna Loring (elected 1999) compared the experience to sitting at a card game with no cards, this unique legislative arrangement allows tribes a chance to promote their issues directly with the legislators who draft and vote on legislation. Even better, the Maine Legislature adopted a rule change in 1999 to allow tribal representatives to co-sponsor bills, even those not pertaining to tribes.

Commented [MK1]: Be careful to not use the term delegation when discussing how states interact with tribes. Tribes have inherent governance authority, this authority is not delegated to them by states or even by the federal government.

State Recognition and Summary of State-Tribal Government Relations

- **Alabama** – The Poarch Band of Creek Indians is the sole federally recognized tribe, while the state recognizes nine tribes (including the PBCI). Despite a contentious history and present compact conflict (state v. PBCI gaming), governors and the legislature have continued to recognize and commemorate Native Americans.
- **Alaska** – Alaska has the most federally recognized tribes in the nation (229). Likewise, the unique way in which aboriginal land claims were settled in Alaska led to the creation of Alaska Native corporations that are one of the largest economic drivers of the state's economy. These corporations also hold title to almost twelve percent of Alaska's lands, and generally have positive relationships with the state government. However, the relationship between the 229 tribes and the State government has been less than ideal in recent decades. Nevertheless, the economic power that Alaska Natives wield in the State likewise provides some political power as well. Likewise, the recent statewide election promises hope of a new era of cooperation between tribes and the State. Lt. Governor Byron Mallott (Tlingit) is an original and returning member of the Alaska Rural Governance Commission (first convened in 1998), and he has promised to raise stature and respect for Alaska Native tribes. Governor Bill Walker is an oil & gas industry pioneer, and will likely adopt policies to bolster tribal self-determination and governance in concert with improved resources development as a win-win endeavor.
- **Arizona** – Despite being classified as some of the last domestic 'Enemies of the State,' Arizona tribes today practice progressive relations with the state largely due to the monetary and employment contributions their gaming operations make to the state's economy. The foundation for good relations was laid in 1953 with the legislature's creation of the Arizona Commission of Indian Affairs. The 20-member commission has a wide-ranging mandate to facilitate communication and cooperation, including supporting government agencies as they assist Indians and tribal councils in developing mutual goals, designing projects, and implementing plans. To encourage issue discussion, the

commission also hosts Indian Nations and Tribes Legislative Day and the Arizona Indian Town Hall, and submits an annual report to the legislature.

- **California** – California’s history is rife with land grabs, forced removal, starvation and disease which obliterated the lives of thousands of Native Americans. U.S. treaties in the 1800’s were incompetently negotiated, and the state refused to address or ratify them until 1905. The Rancheria Act passed in 1958 (endorsing the BIA Termination Act), which left tribes dispossessed and destitute. The legislature established the CA American Heritage Commission in 1978 to oversee proper government-tribal consultation (and address/reverse wrongful termination). Gov. Jerry Brown issued a 2011 executive order to allow government-to-government consultation with tribes. Yet, despite these advancements, the local and state governments consistently challenge current tribal recognition, trust and gaming applications with the Bureau of Indian Affairs (possibly because existing gaming tribes object to possible competition).
- **Colorado** – The state had historically enabled massacres of tribes by rival tribal bands, territorial militia, U.S. Army and settlers with the intent to gain tribal lands/resources. Remarkably, Gov. John Hickenlooper made a formal apology on Dec. 3, 2014 for the 150th anniversary of the Sand Creek Massacre, which wiped out a Cheyenne and Arapaho village (the victims were mainly women, children, and elderly Natives). A massacre commemoration commission had been formed to plan the commemoration events. Colorado’s Lt. Governor oversees the Colorado Commission of Indian Affairs, which was created in 1973 to be the official liaison between the state, Colorado’s two Ute tribes, and off-reservation Indian citizens.
- **Florida** – The Seminole Nation consists of largely Creek tribe members who hid in the swamps before and after the Civil War to survive removal and genocide; they consider themselves ‘Undeclared.’ To promote communications with tribes and address issues, the Florida Governor’s Council on Indian Affairs was established as a private, nonprofit corporation in 1974. It has 15 members appointed by the governor with the advice of the two co-chairmen, who are also the chairmen of the Miccosukee Tribe of Indians of Florida and the Seminole Tribe of Florida. Recognizing the contributions of Native Americans, Florida observed American Indian Day on Sept. 26, 2014
- **Idaho** – The Shoshone’s first contact with the U.S. government occurred in 1805 with the Lewis and Clark expedition; by the end of the century Natives were forced onto reservations. Relations have evolved to the point that the Nez Perce were able to assert their treaty right to restrict and stop mining ‘Megaload’ transports through their tribal lands. State-tribal communications are maintained through the 10-member Idaho Council on Indian Affairs, consisting tribal representatives, legislators, and a governor’s representative.

- **Kansas** – Pawnee, Kansa, Wichita and Apache tribes' first contacts were with Spanish explorer Coronado in 1541; European traders established fur trade with tribes. Many tribes (Nanticoke, Kickapoo, and Potawatomi) were transported to Kansas after being removed from their neighboring homelands. The Kansas Native American Affairs Office was established by the legislature in 1999; the Capitol is adorned with a Kansa warrior. The state negotiates many compact agreements beyond tribal gaming (law enforcement, disaster response, etc.) The Kansas State Senate enacted the first Wednesday of every February as Native American Legislative Day.
- **Massachusetts** - Explorer Giovanni da Verrazano noted the large population of Massachusetts, Mohican, Nauset, Wampanoag and other tribes in 1524. The Massachusetts Commission on Indian Affairs was established by the legislature in 1974 to educate the state about tribes and improve state-tribal relations. In 2014, Massachusetts voters supported and approved expanded tribal gaming.
- **Michigan** – Starting in the 1700's, settlers and explorers wiped out two-thirds of Michigan's tribal population. In recent history, the state government made commitments to support the many tribes, and currently has many compacting best practices (shared water resources protection, gaming, education, etc.) in effect.
- **Montana** - Arapaho, Assiniboine, Atsina, Blackfeet, Cheyenne, Crow, Bannock, Flathead, Kalispell, Kootenai and Shoshone were Montana's first tribes. In the 1800s, the U.S. government sanctioned termination hunting, butchering and bounty killing of buffalo to wipe out the Plains Indians' main source of food, clothing and sustenance. Despite the policy, the tribes remained on the land and rebuilt their society via treaty protected federal self-determination programs. Today, the state enters into gaming compacts with the tribes, which benefits the economy. The Montana Office of Indian Affairs oversees many state-tribal activities.
- **New York** – New York is the homeland of the historic Iroquois Confederacy consisting of the Oneida (Haudenosaunee), Mohawk, Onondaga, Cayuga, Seneca and Tuscarora nations. The IC's successful democratic accord was the basis of the U.S. Constitution. Despite an historic land grab, denial of civil rights, and resistance to federal trust land protections and access, New York tribes have made great strides in self-determination and compacting with the recent Pataki and Cuomo gubernatorial administrations.
- **North Dakota** - Plains Indians suffered through some of the worst slaughters initiated by the U.S. government. Yet, the tribes survived and rebuilt, and today the North Dakota Indian Affairs Commission provides a forum for dynamic state-tribal government relations programs.

- **Oklahoma** - Oklahoma has had a major Indian population since tribes were forced to relocate from the eastern U.S. The state has largest number Native Americans elected to public office. A legislative State-Tribal Relations Joint Committee oversees agreements between tribes and the state. An Indian Affairs Commission addresses many issues via the Oklahoma Secretary of State office.
- **Washington** - Indian treaty fishing rights were controversial in 1970s & 1980s. The 1989 Centennial Accord between tribes and the state set up a process for communication and cooperation. It was reaffirmed in 2005. The state recognizes a government-to-government relationship, and today tribes administer many compact agreements throughout the state. The governor's office includes an Office of Indian Affairs.
- **Wisconsin** - Relations once reached a crisis over Menominee spear-fishing rights and practices. Since then, dialogue has improved through frequent forums and problems have been addressed through legislation. Through a 2004 governor's executive order, the state recognized a government-to-government relationship with tribes that allows for responsive discourse and compacting. Facilitating organizations in existence are the Wisconsin State Tribal Relations Initiative and the legislature's Special Committee on State-Tribal Relations.

More Information

For more information on state-tribal relations and related topics, please refer to www.ruralgov.org or contact Veronica Slajer, vaslajer@northstargrp.com or (907) 360-2288 / (202) 544-6355.