



Housing, Infrastructure & Economic Opportunity

A Special Report Prepared by:

Democratic Policy Committee

Democratic Steering and Coordination Committee

Office of Senate Democratic Leader Tom Daschle

It is difficult to overstate and understand the full extent of the economic challenges facing American Indians and Alaska Natives throughout Indian Country. By virtually any measure, economic conditions on most American Indian reservations and Alaska Native villages are among the worst in the nation. Many of the poorest counties in the nation are within Native reservations.

Like other rural areas across the nation, the challenge of stimulating economic development involves many interrelated issues. While these challenges are difficult for rural areas, they are even more vexing for Indian Country, where extreme poverty, inadequate infrastructure and a lack of access to capital make even the most rudimentary economic development efforts seem daunting.

Housing

Lack of adequate housing is one of the most pressing community development issues in Indian Country. While there are many reasons for the lack of adequate housing on Indian Reservations, there is one dynamic—the difficulty in obtaining a mortgage—that relates to both the underlying housing problems and broader economic development issues.

Much Indian land is held in trust by the federal government and cannot be conveyed by the Tribe or members for any transaction unless approved by the Secretary of the Interior. This limitation makes it extremely difficult to obtain a mortgage on trust land. Not only is it much tougher to get a mortgage, but it is also more difficult to tap into home equity or borrow against trust holdings for new business ventures. In fact, several small business studies have found that home equity is one of the major sources of capital for small business start-ups. The BIA has sought to speed up the time it takes to approve the paperwork necessary to obtain a mortgage on trust land, but this continues to be a persistent, structural barrier to economic development on tribal lands.

The *Native American Housing Assistance and Self-Determination Act* (NAHASDA), first passed in 1996, is the preeminent federal program that provides housing assistance to low- to moderate-income families on Indian reservations. The project has been a success across Indian Country, and for this reason Senate Democrats played an integral part in the reauthorization of the bill through 2007. The purpose of NAHASDA is to improve the delivery of housing assistance to Indian tribes in a manner that recognizes the right of tribal self-governance. The original bill created an independent Indian housing program, which distributes grants directly to individual tribes. The tribes are authorized to create housing authorities to assist in the implementation of the program. Since original passage, NAHASDA has helped speed up the construction of new homes and has proven the ability of the tribal housing committees to do what is best for the individuals they serve. The new homes created through this program are an important investment in the future of tribal communities.

Tribal Infrastructure

While America is known for its extensive and strong infrastructure, tribal communities lack even the most basic infrastructure, such as transportation, telecommunications, water and sewer.

Transportation. By some estimates, only half the families on Indian reservations own—or have ready access to—an automobile. In urban areas with public transportation, this is commonplace. In rural areas, a round-trip to work—or to the doctor or a grocery store—is at least 50 miles. Hitchhiking is commonplace.

Public transportation is extremely limited in Indian Country, and is largely non-existent. Very few tribes have any type of public bus system, although a few rural areas have limited service for the elderly and disabled. Senate Democrats included in the *SAFETEA highway bill* provisions for transit start-ups.

Paved roads are less common on the reservations than throughout much of the state. Existing roads frequently carry residents to non-native, off-reservation communities for shopping and services, rather than fostering transportation within reservation boundaries. Tribal road funding is generally limited to a modest BIA account.

The Senate-passed *SAFETEA transportation bill* includes increases for Indian Reservation Roads, first time funding for Indian bridges, tribal transit funds, tribal safety and seatbelt provisions, and other key improved provisions to address tribal infrastructure that is vital to building tribal economies.

Telecommunications. While most communities in America are searching for ways to enhance broadband Internet access, much of Indian Country still lacks basic telephone service. Many tribal members cannot report a fire or medical emergency, let alone leave a phone number to be contacted for a job interview. Some efforts have been made to provide wireless service, but coverage continues to be spotty at best. Internet access is uncommon.

Senator Inouye introduced the *Native American Connectivity Act* (S. 2382). This legislation would establish a Native American telecommunications block grant program within the National Telecommunications and Information Agency that would award tribes, tribal organizations, tribal colleges, or other institutions acting in conjunction with an Indian tribe, competitive grants for the development of telecommunications capacities in Indian Country.

Water and Sanitary Systems. Many tribal members do not have clean drinking water or adequate sanitary facilities. In many communities, the wastewater treatment facilities are leaking or overloaded, and they threaten to contaminate the drinking water supply.

Senate Democrats are working to address the issue of safe drinking water as part of the *Water Resources Development Act* reauthorization, and also funding provision enacted in the *2002 Farm bill*.

Economic Development

Legal Issues. Many legal issues are especially important with regard to economic development and deserve specific mention within the context of economic development on Indian reservations.

National Labor Relations Board (NLRB) Ruling. In May 2004, the NLRB overturned 30 years of its own precedent and ruled that it has jurisdiction over tribal government enterprises located on tribes' own sovereign lands in San Manuel Indian Bingo and Casino, 341 NLRB No. 138 (May 28, 2004). The *National Labor Relations Act* expressly exempts states, cities, and local governments from its coverage, and the NLRB has ruled that territorial governments, such as Puerto Rico and Guam, are also exempt from NLRB jurisdiction. If this decision stands, the only governments that will be subject to NLRB jurisdiction will be tribal governments.

Improving Tribal Judicial Systems. Uncertainty with regard to tribal laws and regulations and the lack of an independent tribal judiciary are often cited by non-tribal investors as one of the main reasons they refuse to commit capital to otherwise worthy investments on reservations¹. Some tribes have taken the unique step of adopting the Uniform Commercial Code (UCC) in the hopes that it will give outside investors more comfort regarding the tribe's judicial system.

Stability of Tribal Government. Because tribal governments are such large players in tribal economies, a change in administration can have dramatic economic effects on the reservation. One recent controversial case in South Dakota involved the Rosebud Sioux Tribe and Bell Farms. The new tribal administration reversed its previous decision to allow Bell Farms to operate a hog confinement facility after the facility was constructed. This case has been brought to federal court, and an appeal is pending. Outside private investors are leery of partnering on reservations wary whether agreements and contracts will be honored by tribal leadership.

Inalienability of Tribal Land. Tribal land is largely held in trust by the federal government and is inalienable; individuals are not allowed to sell or encumber the land without permission from the Department of Interior. The obvious impact of this legal structure is that most Indians aren't able to utilize their most valuable asset for economic development purposes. Economist Hernando De Soto has done extensive work in this area, demonstrating that an inability to utilize land as an asset has been a major impediment to economic growth for most third-world countries.² Although his work does not directly examine the role that trust status plays in tribal economies, it does raise interesting issues that may shed light on tribal economic development efforts.

Financial/Tax Issues. Most American Indian and Alaska Native tribes have extremely poor financial infrastructures. There are many barriers to capital on the reservation, ranging from technical or physical barriers to cultural ones. There are few banks in reservation communities, and, as a result, it is extremely difficult to obtain credit or conduct routine financial transactions. This poor financial infrastructure has a profound impact on the ability of tribal communities to support economic development. Not only does it make it more difficult to access capital, but it also makes it difficult to access even the most basic financial services. Take, for example, the effect the financial infrastructure has on transaction processing and how it relates to credit. Because most non-traditional income earners use cash for all their transactions, they often don't have any credit history established when it comes time to apply for a loan. Senate Democrats are urging the Senate Banking Committee majority to hold an oversight hearing on banking and lending in Indian Country to further examine this issue.

Microloan Funds. One of the more promising developments regarding tribal financial institutions has been the emergence of community development loan funds. These institutions, which receive support from the Treasury Department's Community Development Financial Institutions (CDFI) Fund, provide microloans (usually under \$25,000) business planning assistance and other technical support to tribal entrepreneurs. Although these institutions don't provide the broad array of services that a typical community bank would, they serve an important role in Tribal communities.

New Markets. In the *JOBS bill*, Senator Daschle worked to include a Tribal New Market Tax Credit which would expand the existing New Market Tax Credit Program by authorizing \$50 million in tax credits for people who make capital investments on Indian reservations with poverty rates over 40 percent. These tax credits, which would be awarded through competitive application process run by the Department of Treasury, would provide investors the incentives they need to invest in reservations, and they would help create jobs that otherwise would not exist.

Tribal Tax-Exempt Bonding. Under current law, Tribes may issue tax-exempt bonds under limited circumstances. Tribes may issue exempt bonds for (1) essential governmental functions (an activity customarily performed by states and local governments); and (2) bonds to finance the acquisition, construction, reconstruction or improvement of a manufacturing facility that is owned and operated by a government body. Senator Daschle worked with the Indian Affairs Committee to include a proposal which would permit Tribes to issue tax-exempt bonds for (1) essential governmental functions; and (2) for facilities constructed on a reservation. This proposal brings tribes more in line with other government bodies with respect to their ability to issue exempt bonds, and provides an important tool for economic development on the reservation.

Extension of the Indian Employment Credit. Under current law, employers receive a credit equal to 20 percent of the wages and health insurance costs incurred employing qualified individuals living on reservations. The provision expires December 31, 2004. The Senate-passed *JOBS bill* would extend the provision.

Accelerated Depreciation on Indian Reservations. Under current law, property on Indian reservations depreciates faster than in other places. This provision is set to expire on December 31, 2004. The Senate-passed *JOBS bill* would extend the provision.

Economic Opportunities

Tribally owned Businesses. Many Tribes have developed tribally owned businesses as a means to create job opportunities on reservations. For example, the InterTribal Bison Cooperative (ITBC) has been instrumental in rebuilding tribally owned bison herds on Indian reservations. In 1991, the ITBC began with only 7 tribes and 1,500 bison. In 1999, after only 8 years, the ITBC had expanded to 48 tribes, with 9,000 bison in 16 states. The ITBC's efforts have not only restored a national treasure, but have brought significant economic benefits to participating tribes. In areas with some of the highest unemployment in the nation, hundreds of jobs have been created.

Entrepreneurship. As with economic development efforts in general, the barriers to starting a successful small business on the reservation are high. Yet, some people have been able to do it. Encouraging more tribal members to pursue entrepreneurial opportunities is a goal that should be kept in mind, but much work remains to be done, especially with regard to the financial infrastructure, before entrepreneurship promotion can become a viable long-term development strategy.

Several tribal business support organizations have been developed in recent years, most notably the tribal Chambers of Commerce. Senate Democrats believe these organizations can play an important role in supporting and encouraging tribal entrepreneurship.

Federal Contracting. The weak economy has caused many businesspeople to look to opportunities to do business with the federal government. Tribes are no different. The process for gaining access to this tremendous market, however, is complicated and daunting. General technical resources—such as the Small Business Administration (SBA) and various websites—are available, but these resources generally do not have the expertise to address issues related to specific agencies.

Tourism. Many western states have long relied on tourism as a major component of their economy. There has been some discussion of developing tourism opportunities that highlight Indian culture. International travelers and bus tours have been identified as high potential sources of increased visitation. Tribal people, however, are concerned about the potential commercialization of their culture and rituals.

Tribal Colleges. Tribal Colleges have become important institutions in Indian Country. In addition to providing quality educational opportunities, tribal colleges have also become important economic institutions. They are quickly becoming an alternative to tribal governments in developing for-profit ventures and providing employment for tribal members.

Gaming. Although it has not had consistent impact across all of Indian Country, gaming is an important source of revenue for tribes. Gaming compacts with the state limit the size and scope of operations. Since 1988, tribes have used their gaming resources to supplement tribal programs, and have used these funds for community enhancement of surrounding reservation territory. Although gaming has not been a panacea, it has allowed tribes to leverage resources to help diversify their tribal economies.

Endnotes:

1. “The Report of the Native American Lending Study,” p. 4, CDFI Fund, November 2001.
2. De Soto, Hernando, *The Mystery of Capital*. New York: Basic Books, 2000.