



**State of Arizona  
Office  
of the  
Auditor General**

**PERFORMANCE AUDIT**

**ARIZONA  
COMMISSION  
OF  
INDIAN AFFAIRS**

**Report to the Arizona Legislature  
By Douglas R. Norton  
Auditor General  
May 1998  
Report No. 98-9**



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May 12, 1998

Members of the Arizona Legislature

The Honorable Jane Dee Hull, Governor

Ms. Marilyn Evans, Acting Executive Director  
Arizona Commission of Indian Affairs

Transmitted herewith is a report of the Auditor General, A Performance Audit of the Arizona Commission of Indian Affairs. This report is in response to a May 27, 1997, resolution of the Joint Legislative Audit Committee. The performance audit was conducted as part of the Sunset review set forth in A.R.S. §§41-2951 through 41-2957.

The report found that the Arizona Commission of Indian Affairs (Commission) has been unable to effectively meet its important statutory mission for many years and, as a result, has a minimal impact on state-tribal relations. Specifically, the Commission has not established relationships with the State's 21 tribes because it has not regularly met with tribal officials nor disseminated meaningful information to tribes on a consistent basis. Further, the Commission has only limited contact with state agencies providing services to tribes and has not made recommendations to state policymakers about Indian affairs. The report determined that the Commission's statutory charge is important to the State because of the significant presence of Native Americans within Arizona; and, therefore, the agency needs to make several changes to ensure its future effectiveness.

As outlined in its response, the Commission agrees with the report's first four recommendations and has identified further steps that it will implement to realize the intent of the recommendations. The Commission does not concur with the fifth recommendation, which recommends that the Legislature consider restructuring the agency if it does not strengthen its role within state-tribal relations. However, implementing this recommendation is under the Legislature's purview rather than the Commission's since it requires legislative action.

My staff and I will be pleased to discuss or clarify items in the report.

This report will be released to the public on May 13, 1998.

Sincerely,

Douglas R. Norton  
Auditor General

Enclosure

# SUMMARY

The Office of the Auditor General has conducted a performance audit and Sunset review of the Arizona Commission of Indian Affairs pursuant to a May 27, 1997, resolution of the Joint Legislative Audit Committee. The audit was conducted under the authority vested in the Auditor General by Arizona Revised Statutes (A.R.S.) §§41-2951 through 41-2957.

The Commission of Indian Affairs (Commission), consists of 15 members including 7 Indian and 2 non-Indian members appointed by the Governor, and 6 ex officio members who serve by virtue of their office within state government. The Governor appoints an Executive Director who administers the Agency.

The Legislature established the Commission of Indian Affairs (Commission) in 1953 to “consider and study conditions among the Indians residing within the state.” The Legislature changed this mission in 1986, by requiring the Commission to serve as the State’s liaison with Indian tribes. Among other things, the Commission must gather and disseminate facts that tribal, state, and federal agencies need to work together effectively, assist the State in its responsibilities to tribes, and work for a greater understanding between Indians and non-Indians.

## **The Arizona Commission of Indian Affairs Plays Insignificant Role in State-Tribal Relations (See pages 9 through 17)**

The Arizona Commission of Indian Affairs has been unable to effectively meet its statutory mission for many years and, as a result, has minimal impact on state-tribal relations. Arizona clearly needs an active Indian agency to coordinate frequent, structured, government-to-government communication between the State and the tribes. The State has a complex relationship with the 21 tribal governments residing in Arizona. Each tribal government is sovereign, with its own laws and administrative procedures. As a result, the State has very limited jurisdiction on reservation lands. However, even though it has limited jurisdiction on reservations, the State must provide tribal members with the services they are entitled to as Arizona citizens, such as health, education, and transportation services. Due to the unique status of tribal governments, confusion and misunderstanding can arise between the State and the tribes. Therefore, Arizona needs an active Indian agency to foster state-tribal communication.

The Commission of Indian Affairs has not taken the lead in creating a forum where the State and the tribes can address issues on a regular and proactive basis. The Commission should

improve its effectiveness by carrying out the activities central to its statutory mission. While the Commission has performed some activities, it has not established working relationships with state and tribal policymakers. The Commission has not regularly met with tribal officials or disseminated useful information to tribes. Further, the Commission has not held Indian Town Hall meetings for the last two years, despite receiving appropriations to do so. Additionally, the Commission has not regularly communicated and reported to state officials. For example, the Commission has not made recommendations on behalf of the tribes to the Governor or the Legislature, and has not issued an annual report describing its activities to state policymakers since 1991. The Commission's ability to meet its mission has been hampered by, among other things, internal confusion regarding the statutory responsibilities of and relationship between Commission members and agency staff, a lack of rules and regulations to guide Commission activities, unfilled Commission vacancies, and high staff turnover.

To meet its statutory mission, the Commission must develop goals and a plan to realize those goals, clarify internal confusion about the responsibilities of Commission members and staff, establish relations with state and tribal officials, hold annual Indian Town Halls, and regularly disseminate important information to key stakeholders.

If the Commission cannot improve its effectiveness, the Legislature may eventually want to consider creating a differently structured agency to manage state-tribal relations. Specifically, the Legislature could establish an Indian agency within the Governor's Office. Such an office would have a greater tie to the Governor and, therefore, may be in a better position to promote state-tribal communication. Additionally, placing the agency under the Governor could give it heightened status, and promote its visibility with both state and tribal leaders.

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# INTRODUCTION

The Office of the Auditor General has conducted a performance audit of the Arizona Commission of Indian Affairs, pursuant to a May 27, 1997, resolution of the Joint Legislative Audit Committee. This audit was conducted as part of the Sunset review set forth in A.R.S. §§41-2951 through 41-2957.

## **Native Americans in Arizona**

Native Americans have a significant presence within Arizona. Currently, there are 17 federally recognized Indian tribes residing on 21 reservations located completely or partially within Arizona's borders. Five of the largest six Indian reservations nationally, in terms of acreage, are located within Arizona, including the largest three reservations (Navajo, Tohono o' Odham, and San Carlos Apache). In fact, Indian reservations account for more than 25 percent of the State's total land mass. The 1990 U.S. Census determined that Arizona had a Native American population of 203,527, which was the third-largest Native American population of any state.<sup>1</sup> More recent estimates place Arizona's Native American population between 237,000 and 252,000.

## **State-Tribal Relationship**

Under federal law, Indian tribes possess inherent governmental power over their internal affairs, and states are precluded from interfering with tribal self-governance. Specifically, tribes have the authority to determine their form of government, define conditions for membership in the tribe, administer justice and enforce laws, impose taxes, regulate members' domestic relations, and regulate property use. The sovereign status of tribal governments presents unique and difficult issues for governments of states in which tribes reside. As a result of these complex jurisdictional realities, specific questions related to issues such as taxation, gaming, and water rights continually burden the relationship between the State and tribes.

Generally, the State has very limited jurisdiction on reservation lands. For example:

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<sup>1</sup> Oklahoma and California ranked first and second, respectively.

- **Criminal and civil jurisdiction**—Tribes usually have jurisdiction over criminal and civil cases that occur on reservations unless they involve only non-Indians. The State generally has jurisdiction over cases that occur on reservations and involve only non-Indians, as well as over all cases that occur outside of reservation boundaries, regardless of whether the people involved are Indian or non-Indian.
- **Taxation**—State authority to impose taxes on reservations is severely limited. For example, states cannot impose taxes on reservation lands, tribal governments, or income earned by individual tribal members on reservations. There appears to be a growing conflict between states and tribes over the issue of taxation, especially related to the taxation of non-Indian activities on reservations, which has not been definitively addressed by federal law.<sup>1</sup>
- **Gaming**—The federal law that permits gaming on reservations requires states to negotiate state-tribal gaming compacts with tribes that address jurisdictional issues. These compacts provide states and tribes with mutual jurisdiction over gaming. Currently, 16 tribes have compacts with the State of Arizona. Indian gaming continues to be a highly contentious area that has resulted in conflict and litigation between the State and tribes.
- **Water rights**—Under federal law, tribes are entitled to enough water to irrigate all irrigable acres on the reservations. Competing water users, including the State, receive water allotments only after reservations receive their full water allotment. Indian water rights were not fully quantified in a 1963 U.S. Supreme Court ruling, which has caused state-tribal disputes and litigation because the long-term availability of water in Arizona is not assured.<sup>2</sup>
- **Other jurisdictional areas**—There are also other areas where jurisdictional issues between tribes and states are somewhat complex in nature. For example, states generally lack authority to regulate various activities such as traffic and safety laws, building and zoning regulations, and hunting and fishing activities on reservation lands.

Despite these jurisdictional complexities, the State's obligations to provide transportation, education, social services, and other governmental services are the same on reservations as elsewhere in the State. For example, the Arizona Department of Transportation is responsible for building and maintaining state and federal highways on reservations, and the Arizona Department of Education funds and oversees public schools serving reservation residents.

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<sup>1</sup> Since 1994, there have been at least four federal court cases where tribes have either sued the State of Arizona or an Arizona county over taxation disputes.

<sup>2</sup> Arizona has negotiated complex water settlements with some tribes, including the San Carlos Apache, Fort McDowell, Salt River, Tohono o' Odham, and Ak-Chin tribes, as well as the four tribes on the lower Colorado River.



## **Commission Role and Mission**

The Commission of Indian Affairs' (Commission) current mission of serving as the State's liaison with tribes has evolved over time. The State initially created the Commission in 1953 to "consider and study conditions among the Indians residing within the state." In 1986, the Legislature changed the Commission's statutory mission, delineated in A.R.S. §41-542, requiring the agency to serve as the State's liaison with tribes by:

- Assembling facts needed by tribal, state, and federal agencies to work together effectively;
- Assisting the State in its responsibilities to tribes by making recommendations to the Governor and the Legislature;
- Conferring and coordinating with other governmental entities and legislative committees regarding Indian needs and goals;
- Working for a greater understanding and improved relationships between Indians and non-Indians by creating an awareness of the needs of Indians in the State;
- Promoting increased participation by Indians in state and local affairs; and
- Assisting tribal groups to develop increasingly effective methods of self-government.

## **Commission Structure**

The Commission consists of 15 members including 7 Indian and 2 non-Indian members appointed by the Governor, and 6 members who serve by virtue of their office. These ex officio members include the Governor, Attorney General, and the Superintendent of Public Instruction; and the directors of the Departments of Health Services, Transportation, and Economic Security, or their representatives. Currently, the Commission has one vacancy. Statute requires that the Commission meet at least quarterly.

The Governor appoints an Executive Director who administers the agency. The Commission is budgeted for three full-time staff including the Executive Director, a project specialist, and an administrative secretary.

## **Commission Budget**

The Legislature appropriates General Fund monies for the Commission's operation. For fiscal year 1997, the Commission had a total budget of \$175,400 (see Table 1, page 4). The

**Table 1**

**Arizona Commission of Indian Affairs  
Statement of Revenues, Expenditures, and Other Changes in Fund Balance<sup>1</sup>  
Years Ended or Ending June 30, 1996, 1997, and 1998  
(Unaudited)**

	<b>1996 (Actual)</b>	<b>1997 (Actual)</b>	<b>1998 (Estimated)</b>
Revenues:			
State General Fund appropriations	\$189,800	\$175,400	\$156,000
Charges for services	<u>5,760</u>	<u>          </u>	<u>          </u>
Total revenues	<u>195,560</u>	<u>175,400</u>	<u>156,000</u>
Expenditures:			
Personal services	102,541	98,087	90,100
Employee related	27,148	17,109	18,400
Professional and outside services	568	1,216	
Travel, in-state	5,212	10,201	6,800
Travel, out-of-state		727	
Other operating	47,482	41,669	44,589 <sup>3</sup>
Capital outlay	<u>6,848</u>	<u>          </u>	<u>          </u>
Total expenditures	189,799	169,009	159,889
Reversions and remittances to State General Fund	<u>5,761</u>	<u>2,502</u>	<u>          </u>
Total expenditures, reversions, and remittances	<u>195,560</u>	<u>171,511</u>	<u>159,889</u>
Excess of revenues over (under) expenditures, reversions, and remittances		3,889	(3,889)
Fund balance, beginning of year	<u>          </u>	<u>          </u>	<u>3,889</u>
Fund balance, end of year	<u>\$ -0-</u>	<u>\$ 3,889 <sup>2</sup></u>	<u>\$ -0-</u>

<sup>1</sup> Excludes the Communication Publications Fund, an enterprise fund that had less than \$13,000 in revenues and expenses for fiscal years 1996 and 1997. The ending fund balance was \$4,540 at June 30, 1997.

<sup>2</sup> Consists entirely of the unexpended appropriation for the Indian Town Hall, a statewide educational forum.

<sup>3</sup> Includes \$7,889 for a planned Indian Town Hall meeting: \$3,889 remained from the fiscal year 1997 appropriation and \$4,000 was appropriated in fiscal year 1998.

Source: The Uniform Statewide Accounting System *Revenues and Expenditures by Fund, Program, Organization, and Object; Trial Balance by Fund;* and *Status of Appropriations and Expenditures* reports for the years ended June 30, 1996 and 1997, and the *State of Arizona Appropriations Report* for the years ended or ending June 30, 1996, 1997, and 1998.

Commission's annual appropriation includes a \$4,000 special line item appropriation to sponsor annual Indian Town Hall meetings. However, the Commission has not held an Indian Town Hall since 1995 and, therefore, has a current Indian Town Hall balance of over \$7,500 from line-item appropriations in fiscal years 1996 and 1997. Additionally, the Commission receives nonappropriated monies from the sales of its publications.

The Commission also currently employs a Deputy Director using monies obtained through a one-year contract (fiscal year 1997-98) with the Arizona Department of Health Services. The Legislature eliminated funding for this position from the Commission's budget during the 1997 session. The contract requires the Commission to assist the Department by conducting a survey of tribal health issues and generating a final report by the end of the 1998 fiscal year. The Commission will request the Legislature to provide funding for this position once the contract expires.

## **Previous Audit History**

The Office of the Auditor General conducted performance audits of the Commission in 1985 and 1988 (see Auditor General Reports No. 85-1 and No. 88-3), which identified issues limiting the agency's effectiveness. Audit work conducted during the current audit revealed that many of these previously identified performance issues have not been corrected.

The 1985 audit found that the Commission "did not adequately address the major issues affecting Arizona's Indian population and State agencies serving Indian citizens." The report stated that the Commission failed to foster communication and coordinate meaningful activities between tribes and the State, and attributed this failure to the Commission's lack of direction and leadership. The report recommended that the Legislature either sunset the agency and replace it with an Indian affairs office within the Governor's Office or clarify the agency's statutory mission to provide it with more direction. The Legislature changed the Commission's statutory mission the following year.

The 1988 performance audit indicated that the Commission had improved since the 1985 audit. The report found that the Commission had conducted some worthwhile activities and had begun to identify state-tribal issues. However, the report noted that the Commission still needed to exercise stronger leadership. Specifically, the report concluded that the agency did not conduct adequate follow-through on projects and had still not established meaningful relationships with Arizona's tribes. The report noted that problems also existed with vacancies on the Commission and in the Executive Director position.

## Audit Scope and Methodology

Audit work focused on the Commission's effectiveness in meeting its statutory mission, the need for the Commission or some other agency to carry out its statutory mission, and whether a differently structured state Indian agency could better serve the State and the tribes.

The audit team used a number of methods to conduct the review, including:

- Interviewing representatives from 16 of the State's 21 tribes via in-person visits or telephone discussions;
- Reviewing Commission correspondence, publications, and documents pertaining to its interaction with tribes and other stakeholders, including responses to a recent Commission survey about its performance and role; files the agency retained for each tribe and stakeholder; and the Commission's project request log;
- Interviewing representatives from 11 state agencies who provide direct services to the tribes, including all of the agencies whose directors serve as ex officio members of the Commission;
- Interviewing current and former Commissioners and staff;
- Reviewing Commission meeting minutes from 1994 through 1997, and attending Commission meetings and training workshops held during the audit (August through December of 1997);
- Obtaining information from private and public entities providing services to Native Americans from Arizona<sup>1</sup> and 22 other states;<sup>2</sup> and

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<sup>1</sup> These entities included the Inter-Tribal Council of Arizona, the Arizona Indian Chamber of Commerce, the Arizona Native American Economic Coalition, the Arizona American Indian Tourism Association, the Phoenix Indian Center, the Tucson Indian Center, the National Center for American Indian Enterprise Development, Northern Arizona University's Center for American Indian Economic Development, Arizona State University's Indian Legal Program, American Indian Institute, and Center for Indian Education, the University of Arizona's Native American Research and Training Center and American Indian Studies Program, the National Indian Policy Center, and the U.S. Bureau of Indian Affairs.

<sup>2</sup> These states included those with large Native American populations (over 50,000), such as Alaska, California, Michigan, New Mexico, New York, North Carolina, Oklahoma, South Dakota, and Washington; selected states with smaller Native populations that have reservations such as Colorado, Florida, Maine, Minnesota, Montana, Nebraska, Oregon, Utah, Wisconsin, and Wyoming; and a few states with smaller Native American populations (fewer than 17,000) and no reservations, such as Alabama, Maryland, and New Jersey.

- Reviewing literature and legal documents pertaining to Indian affairs and state-tribal government relationships.

The audit was conducted in accordance with government auditing standards.

The Auditor General and staff express appreciation to the Commissioners, the Executive Director and Commission staff, and tribal officials for their cooperation and assistance throughout the audit.

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## FINDING I

### THE ARIZONA COMMISSION OF INDIAN AFFAIRS PLAYS INSIGNIFICANT ROLE IN STATE-TRIBAL RELATIONS

The Arizona Commission of Indian Affairs has not met its statutory mission for many years. Although Arizona needs an active state Indian agency to foster and coordinate communication between the State and the 21 sovereign tribal governments, the Commission has had a minimal impact on state-tribal relations. The Commission needs to take several actions to improve its performance. If needed improvements are not made, the Legislature, as an alternative, may wish to eventually replace the Commission with an Office of Indian Affairs within the Governor's Office.

#### **Clear Need Exists for a State Indian Agency**

Arizona needs a strong Indian agency to coordinate frequent, structured, government-to-government communication between the State and tribes so that jurisdictional and other important issues can be discussed and resolved. Such communication is essential to ensuring that the State effectively provides important services to the reservation population. Key stakeholders, including tribal and state officials, support the need for such an Indian agency. Further, at least 31 other states have created state Indian agencies because of the importance of state-tribal communication.

***Nature of state-tribal relationship necessitates an Indian agency***—Due to the State's complex relationship with the 21 tribal governments residing within its borders, Arizona needs an active state Indian agency to foster and promote understanding and communication between the State and tribal governments. Each tribal government is sovereign, with its own laws and administrative procedures. As a result, the State has very limited jurisdiction on reservation lands. Due to the unique status of tribal governments, confusion and misunderstanding can arise within state-tribal relations regarding jurisdictional issues and areas of mutual interest, such as taxation, gaming, water rights, and statewide economic development.

Further, even though it has limited jurisdiction on reservations, the State must provide tribes with the services they are entitled to as Arizona citizens, such as education, health, and transportation services. For example, the Arizona Department of Education provides over \$100 million annually in funding for public education services on reservations. The Depart-

ment of Transportation is responsible for building and maintaining state and federal roads on reservations. In fact, at least 16 state agencies provide services to tribes.

***Tribal and state officials support a state Indian agency***—Key stakeholders associated with Indian affairs support the need for an active Indian agency. Tribal officials from 20 tribes indicated, through interviews and survey responses, a desire for an Indian agency that disseminates timely information about state policies, activities, and positions; relays tribal information and positions to state policymakers; and acts as a conduit for general state-tribal communication and interaction. Additionally, representatives from independent Indian organizations, such as the Inter-Tribal Council of Arizona and the Center for American Indian Economic Development, identified a need for a state Indian agency. Further, a 1994 Arizona Town Hall report states that “tribal, state and local governments can more effectively come together by focusing on long-range goals instead of always dealing in crisis management. Better conduits for communication of tribal viewpoints to state and local governments should be instituted.”

State officials, including representatives from the Governor’s Office and the Arizona Departments of Health Services, Commerce, Education, Emergency and Military Affairs, Revenue, and the Health Care Cost Containment System, also indicated that a need exists for a state Indian agency. While many of these agencies have their own tribal liaisons who work with tribes on agency-specific issues, officials indicated that a separate state Indian agency is also needed to foster state-tribal communications on a broader government-to-government level. Specifically, officials stated that an Indian agency is needed to address issues that are not in the purview of any other state agency and to assist individual Indians, tribal governments, elected state officials, and state agencies to better interact with one another.

***Other states have Indian agencies***. Many other states have established state Indian agencies because of the importance of state-tribal communication. In fact, at least 31 states have created Indian agencies. The size and structure of these Indian agencies vary from state to state. For example, Alabama, Michigan, Nebraska, New Mexico, North Carolina, Oklahoma, and Wyoming retain Indian agencies with structures similar to the Arizona Commission of Indian Affairs. Other states, such as Colorado, Montana, South Dakota, and Washington, have created Indian agencies within their governors’ offices. Most states maintain small Indian agencies with limited staffs and budgets. However, some states, such as New Mexico, have larger Indian agencies. For example, the New Mexico agency has 18 staff. While the structure and size of Indian agencies vary from state to state, all were created to foster government-to-government communication between the state and tribes.



## **Arizona Commission of Indian Affairs Currently Has Little Impact on State-Tribal Relations**

The Arizona Commission of Indian Affairs has not taken the lead in state-tribal affairs. While the Commission has performed some activities, it has not accomplished the most rudimentary aspect of its statutory mission by failing to establish permanent working relationships with key stakeholders, including state and tribal policymakers. Further, Commission activities have been sparse and narrow in scope. Overall, it appears that the Commission suffers from a lack of direction and strategic planning, internal confusion about the responsibilities of and relationship between Commission members and agency staff, and high turnover. As a result, the Commission lacks visibility and credibility in the state-tribal affairs arena.

***Commission has performed some services***—The Commission has undertaken some worthwhile activities in recent years. Some stakeholders view its annual Resource Directory, which contains information about individual tribes, legislative and congressional districts, Indian organizations, and Indian publications, as a useful tool. Additionally, Commission staff worked with the Department of Emergency and Military Affairs to assist a few tribes who experienced emergency situations in 1997. The Commission also held two legislative training workshops for tribes during the fall of 1997. However, only seven people attended those workshops, including representatives from three tribes.

***The Commission is not meeting its statutory mission***—The Commission has not established essential relationships or performed necessary activities to fulfill its statutory duties. Statutes direct the Commission to assist the State in its responsibilities to Indians and tribes, and to promote increased participation by Indians in local and state affairs. However, the Commission has only limited interaction with tribes, state agencies, and legislators. Further, the agency has not performed many other activities required to effectively accomplish its mission.

- **Lack of tribal interaction**—Interviews with tribal officials and a review of the Commission's tribal files reveal that the agency has not had sufficient contact with the State's tribes. Some tribal officials were not even aware of the Commission's purpose or activities. Most other tribal officials indicated that the Commission keeps a low profile and only rarely interacts with tribes. A review of Commission tribal visits confirms that limited interaction occurs between the agency and the tribes. In fact, over the past two years, Commission staff have made fewer than 20 tribal visits and have not met with tribal representatives from 5 tribes. As a result of limited contact, some tribal officials indicated that they usually bypass the Commission when interacting with the State and rely on other entities, such as the Inter-Tribal Council of Arizona, to provide information and assistance.

Further, the Commission has not held an Indian Town Hall for two years, despite receiving an annual line-item appropriation to do so, and has not disseminated important information to tribes. The Commission has not yet published a report from the last Indian Town Hall held in 1995. Additionally, the Commission has not disseminated information in a regular and organized manner. In fact, until fall 1997, the Commission had not issued any official informational publication (such as a newsletter), besides its directory, since March 1996. Tribal officials indicated that they only occasionally receive information from the Commission. However, tribal officials and others consistently identified disseminating information, especially legislative information, as being one of the Commission's most important, yet neglected, responsibilities.

- **Limited interaction with government agencies**—The Commission has also had limited contact with government agencies. Officials from several state agencies, including the Departments of Education, Gaming, Transportation, and Water Resources, indicated that interaction with the Commission has been sparse. Commission meeting minutes from January 1994 through April 1997 reveal that state agency ex officio members attend Commission meetings less than 40 percent of the time. In fact, the Governor's representative to the Commission attended less than 20 percent of Commission meetings during that period. The Commission's former Chairman acknowledged this lack of interaction by declaring that, according to Commission meeting minutes from 1996, "We do not follow up with communications or cooperation with state agencies. The Commission only interacts with agencies when we need assistance." A review of agency files indicates that the Commission also has very limited contact with most counties and cities. Further, a representative from the U.S. Bureau of Indian Affairs indicated that the agency has only minimal contact with the Commission.
- **Commission does not make recommendations or report to the State**—The Commission has not regularly communicated with the Legislature. Despite being a statutory responsibility, no evidence exists to indicate that the Commission has ever made recommendations on behalf of tribes to the Legislature or Governor. Further, the Commission has not regularly updated state officials about its performance. In fact, the Commission has not even issued an annual report describing its activities to the Legislature and Governor since 1991, in violation of statute.<sup>1</sup> The agency, therefore, lacks visibility and credibility within the Legislature, making it vulnerable to legislative criticism. For example, bills have been introduced at least five times in the last ten years to eliminate the agency. Further, only two legislators responded to a recent Commission survey about the agency's performance. One was unaware of the Commission and its role and both were critical of its performance.

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<sup>1</sup> Legislators' desire for this information is reflected in a footnote to the Commission's current budget, which required the agency to report back to the Legislature by October 31, 1997, regarding progress made on its mission and goals. According to the Director, the Commission missed that deadline and had still not officially updated the Legislature about its activities as of December 1997.

The Commission's poor visibility at the Legislature is further witnessed by its limited involvement in State-Tribal Legislative Day activities. The event is organized jointly by the Inter-Tribal Council of Arizona and state legislators for the purpose of conducting "activities and discussions between state and tribal leaders on major issues, particularly those in which the state and tribes share a common interest or jurisdiction." The Commission's involvement in this activity consists of a half-hour description of the Commission being presented to tribal leaders.

**Several factors hamper Commission effectiveness**—The Commission appears to be ineffective for a number of reasons. A major issue impacting its effectiveness concerns internal confusion over the Commission's role in respect to the Executive Director and staff. In 1986, the Legislature changed the Commission's statutes to require that the Governor appoint the agency's Executive Director. Previously, the Commission appointed the Director. As a result of this change, several Commissioners are unsure whether the Director and staff are accountable to them. Although minutes from Commission meetings reveal that Commissioners give few directives to staff, Commissioners claim the former Director ignored the requests they made and impeded action by the Commissioners.

Other factors also contribute to the Commission's ineffectiveness. For example, the Commission has never adopted rules and regulations for the conduct of meetings, which hinders the Commission from taking a structured approach to decision-making. Further, a review of Commission meeting minutes for 17 meetings held during a three-year period revealed that there have been longstanding problems with Commissioner attendance. While some Commissioners have exemplary attendance records, others have missed numerous meetings, sometimes as many as three consecutively. Poor attendance by some Commissioners twice prevented the Commission from obtaining quorums during the period reviewed. Further, ex officio members attended less than 40 percent of commission meetings during the period. Additionally, appointments for Commission vacancies have not been made in a timely manner by the Governor's Office. In fact, in some cases, a vacancy has not been filled for over a year. Currently, the Commission has one vacancy. Finally, Commissioners state that the agency budget limits them to only four meetings each year, a number they believe is inadequate to make the needed changes in the agency's operations.

In addition to these problems, the agency has an exceptionally high turnover rate; about 200 percent during the past two years. Over the last two years, the agency has witnessed turnover in all of its positions, including the Executive Director. In fact, there have been four Deputy Directors, six project specialists, and four administrative secretaries during that period. As a result, the agency is constantly training new employees instead of focusing on effectively meeting its mission. Further, high turnover hinders the Commission's ability to develop and maintain long-term relationships with tribal officials.

## Commission Needs to Take Action to Fulfill Its Statutory Mission

In order to better serve the State, the Commission should carry out the tasks required to fulfill its statutory mission, including establishing relationships with State and tribal officials, sponsoring annual Indian Town Halls, and serving as an informational clearinghouse and reference desk. Specifically, the Commission should:

- **Establish relationships with tribal and state officials**—In order to be effective, the Commission must first establish meaningful relationships with all tribal and state policymakers. Tribal relationships should be fostered through the regular dissemination of information, particularly legislative information, and frequent visits to each reservation to obtain tribal input about state activities. Further, the Commission needs to establish a relationship with state policymakers by regularly updating them about Indian concerns and issues. The Commission can accomplish this by submitting frequent status reports, arranging meetings between state and tribal policymakers to discuss specific issues, and by making recommendations to the Legislature and Governor.
- **Sponsor annual Indian Town Halls**—The Commission should plan and hold annual Indian Town Hall meetings to create a regular forum where state and tribal officials can meet to examine and discuss selected Indian issues. Such meetings should be well-planned to ensure widespread attendance and should resemble the Arizona Town Hall meetings that produce recommendations and areas for action. Indian Town Hall reports should be published within a timely manner and made available to state and tribal officials.
- **Act as an informational clearinghouse and reference desk**—The Commission should obtain, retain, and disseminate information about various Indian and state issues and areas of interest. Such information should include federal, state, and local laws and policies that impact tribes; sources that identify grants and other monies available for tribal use; data about each Arizona tribe; and information about national Indian issues. The Commission should continue to publish its *Tribal Resource Directory* annually. Further, the Commission should serve as a reference desk with the ability to assist people in finding out who or what they need to know regarding Indian issues. However, the Commission should not create or analyze information since it lacks the staff resources and expertise to do so.

Before it can accomplish these goals, however, the Commission needs to clearly define its role, establish priorities and set measurable objectives, and eliminate its internal problems, such as turnover and confusion over the respective roles of the Commission and Executive director. The Legislature can help by clarifying the agency's administrative structure and by establishing a target date for the Commission to meet these goals. If the Commission is un-

able to resolve its problems within a time the Legislature deems reasonable, the option of disbanding the Commission and replacing it with a different kind of Indian agency exists.

### **If Effectiveness Does Not Improve, Legislature Could Create a Differently Structured Indian Agency**

If the Commission does not improve its effectiveness, the Legislature may want to eventually consider creating a differently structured Indian agency. Specifically, the Legislature could establish an Indian agency within the Governor's Office. While simply changing the agency's structure will not in itself improve state-tribal communication, creating an Indian agency within the Governor's Office could have certain advantages. Such an office would have a greater tie to the Governor and may give it heightened status and visibility with both tribal and state policymakers. The idea of establishing such an office is supported by most stakeholders. Further, some other states have located their Indian agencies within their governor's office. While such an idea has merit, the Legislature should consider some issues associated with creating such an office before taking action.

***An Indian agency within the Governor's Office may be a better conduit for state-tribal communication***—Establishing an Indian affairs office within the Governor's Office may offer some distinct advantages. Such an agency might be able to more effectively fulfill the important mission currently under the Commission's charge. Specifically, an Indian Affairs Office within the Governor's Office may have higher visibility and status among tribal and state officials than the Commission currently holds. The Commission's independent structure places the agency in the position of an intermediary between state and tribal officials. Tribes have been reluctant to work through the Commission, preferring instead to go directly to the Governor or other state officials to address their concerns. Further, it appears that state officials are not interested in communicating with tribes through the Commission, as evidenced by their poor attendance at Commission meetings. Creating an Office of Indian Affairs within the Governor's Office may increase the visibility and status of a state Indian agency because it would be directly linked to the State's highest elected official.

Further, an Indian office under the Governor might also be able to provide stronger leadership and more effective decision-making than an independent Commission can achieve. Instead of relying on a large and diverse Commission that meets only quarterly, an office under the Governor would receive ongoing policy direction from the Governor. As a result, it should be easier to establish goals, engage in government-to-government communication, and carry out meaningful activities based on official state positions.

***Agency continuity and tribal representation concerns***—While establishing an Office of Indian Affairs under the Governor could have some distinct advantages, there are some issues related to such a proposal that merit legislators' attention. Because such an agency would lose the independent status the Commission currently holds, it would have the potential to

become a highly politicized office. Two tribal officials expressed concern about this issue. It would be important that the goals of such an office clearly focus on openly communicating with and providing assistance to tribes.

Another issue with creating such an office involves the loss of tribal representation within the state Indian agency. Currently, the Commission has tribal representatives for the purpose of obtaining regular tribal input and direction regarding the State's approach to fostering state-tribal communication. The Legislature could address this issue by creating an Indian advisory board, consisting of tribal representatives, that would consult and assist such an office on a regular basis.

Finally, merely changing the structure of the State's Indian agency would not guarantee enhanced state-tribal communication. For this to occur, any state Indian agency must be actively focused on carrying out the activities necessary to ensure meaningful state-tribal communication and interaction.

## Recommendations

1. The Commission of Indian Affairs needs to better define its mission and improve its performance by:
  - a. Defining its role, establishing priorities, and setting measurable objectives;
  - b. Establishing and maintaining relationships with tribal and state policymakers;
  - c. Regularly updating state and tribal policymakers about Indian issues;
  - d. Planning and holding annual Indian Town Hall meetings;
  - e. Acting as an informational clearinghouse and reference desk for Indian issues and activities; and
  - f. Continuing to publish an annual *Tribal Resource Directory*.
2. Administratively, the Commission should:
  - a. Adopt rules for the conduct of Commission meetings; and
  - b. Determine the reasons for and take steps to address high rates of staff turnover.
3. The Legislature should consider changing statute (A.R.S. §41-542, Section D) to clarify the respective roles and reporting relationships of the Commission and the Executive Director.
4. The Governor and Commission should ensure that Commission vacancies are filled in a timely manner.
5. If the Commission does not improve its performance, the Legislature should consider creating an Office of Indian Affairs within the Governor's Office with an Indian advisory board.

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# SUNSET FACTORS

In accordance with Arizona Revised Statutes (A.R.S.) §41-2354, the Legislature should consider the following 12 factors in determining whether the Arizona Commission of Indian Affairs should be continued or terminated.

## 1. **The objective and purpose of establishing the Commission.**

The Legislature established the Arizona Commission of Indian Affairs (Commission) in 1953, when the state-tribal relationship was much different than it is today. During that year, the U.S. Congress passed the Termination Act (House Concurrent Resolution 108) which intended to lessen federal control and supervision over tribes and to dramatically diminish Native American sovereignty by ending all special tribal programs, removing state tax exemptions, and imposing state civil and criminal jurisdiction on reservations in selected states. Within this national setting, the Arizona Legislature created the Commission to “consider and study conditions among the Indians residing within the state.” Statute also directed the Commission to “confer with the officials of the Indian bureau of the federal government in order to secure co-operation between the federal and state governments in the promotion of the welfare of the Indian people.”

As federal Indian policy evolved, state policymakers reexamined the Commission’s mission. By the 1960s, the federal “termination” policy was viewed as a complete failure by, among others, federal courts and the U.S. Congress, who made a series of decisions that affirmed tribal sovereignty and restricted state jurisdictional authority on reservations. In 1963, Governor Paul Fannin stated that a primary role of the Commission should be “bridging the gap between our people throughout the State of Arizona.” In 1969, a joint legislative committee recommended that the Commission work primarily in the capacity of a liaison between the State and the tribes. However, the Legislature made no changes to the Commission’s enabling statutes during the 1960s.

Changes in federal law during the 1970s and 1980s increased the need to refocus the Commission’s statutory mission. During those decades, the federal government implemented additional legislation intended to strengthen tribal governments and promote Native American self-determination. In fact, the U.S. Congress passed at least eight major federal Native American Acts during those years. As a result, states, including Arizona, needed to develop mechanisms to better communicate with tribes on a government-to-government basis. In 1985, an Auditor General performance audit (Report No. 85-1) found that the Commission’s enabling statutes were not specifically focused on fostering such communication.

In 1986, the Legislature changed the Commission's statutes to its current mission of, among others things, assisting the State in its responsibilities to tribes, working for a greater understanding and improved relationships between Indians and non-Indians, promoting increased participation by Indians in state affairs, and conferring with other governmental units regarding Indian needs and goals.

**2. The effectiveness with which the Commission has met its objective and purpose and the efficiency with which it has operated.**

Despite the importance of its statutory mission, the Commission has been largely ineffective for many years. Although some of its activities have served the public interest (described below in Sunset Factor 3) the Commission has not held annual Indian Town Hall meetings, even though it receives an annual appropriation to pay for such meetings; it has not regularly distributed important information to tribal and state officials; and it has not made recommendations to the Governor or Legislature regarding Indian needs and goals. Further, because it lacks good working relationships with state and tribal officials, the Commission cannot fulfill its liaison role, described in statute as to "assist and support state and federal agencies in assisting Indians and tribal councils in this state to develop mutual goals, to design projects for achieving goals, and to implement their plans."

The Commission has been unable to effectively and efficiently meet its mission for a number of reasons. Primarily, it appears that the Commission lacks a clear vision of its mission and has not exhibited strong leadership in state-tribal affairs. The agency does not have measurable goals or a clear plan of action for how to meet its mission. The agency's fiscal year 1998 budget request acknowledges this deficiency, stating that "It is the position of the Arizona Commission of Indian Affairs to achieve realistic and worthwhile goals and programs by the year 2000." Further, interaction between the Commission and staff is limited. A review of Commission minutes revealed that the Commission gives few directives to staff. Additionally, the Commission has also been plagued by high turnover rates, which seriously impacts its efficiency. Finally, the Commission has failed to adopt rules or policies for its operations, which impedes its efficiency, since no structured approach exists for decision-making and prioritizing activities (see Finding I, pages 9 through 17 for further details).

**3. The extent to which the Commission has operated within the public interest.**

The Commission has operated within the public interest by publishing an annual *Indian Resource Directory* that is used by various public and private groups for reference purposes. Further, the Commission has assisted the Arizona Department of Emergency and Military Affairs in providing emergency services to a few tribes that experienced emergency situations, such as flooding and fires. The Commission also occasionally disseminates information to tribes. However, though the agency has pro-

vided some useful services, it needs to accomplish more to fully serve the public's interest (as discussed in Finding I, pages 9 through 17).

**4. The extent to which rules and regulations promulgated by the Commission are consistent with the legislative mandate.**

The Commission has not adopted rules and regulations for the conduct of meetings in violation of A.R.S. §41-541, Section D.

**5. The extent to which the Commission has encouraged input from the public before promulgating its rules and regulations and the extent to which it has informed the public as to its actions and their expected impact on the public.**

The Commission has not promulgated any rules or regulations for its operations and, therefore, has not informed the public about any rules. However, the Commission does adhere to state open meeting laws for Commission meetings. Meeting notices are posted in public areas and the public is given an opportunity to address the Commission during meetings.

**6. The extent to which the Commission has been able to investigate and resolve complaints within its jurisdiction.**

This factor is not applicable since the Commission is not a regulatory agency.

**7. The extent to which the Attorney General or any other applicable agency of state government has the authority to prosecute actions under enabling legislation.**

This factor is not applicable since the Commission is not a regulatory agency.

**8. The extent to which the Commission has addressed deficiencies in the enabling statutes which prevent it from fulfilling its statutory mandate.**

There have been no legislative changes in the Commission's statutes since 1986. Legislative changes made at that time, based in part on recommendations of the Auditor General, intended to provide the Commission with specific guidance on its role and responsibilities within state-tribal relations.

**9. The extent to which changes are necessary in the laws of the Commission to adequately comply with the factors listed in the Sunset law.**

The Legislature should clarify statutory language so that the agency's mission and the working relationship between the Commission and staff is very clear. Specifically, the Legislature should modify A.R.S. §41-542, Section D, to clarify the respective roles and reporting relationships of the Commission and the Executive Director. Additionally, to help the agency better focus on its liaison mission, the Legislature should consider eliminating A.R.S. §41-542, Section A, sub-section six, which requires the Commission to "assist tribal groups in developing increasingly effective methods of self-government," because the requirement is vague and is not in the purview of the Commission's liaison mission. Furthermore, the Commission lacks the staff resources and expertise to assist tribes in this area (see Finding I, Recommendations, page 17).

If the Commission does not improve its performance, the Legislature may want to consider changing the agency's statutes to create a cabinet-level Indian office within the Governor's Office. Such an office may provide Indian affairs with increased state-level visibility, which could lead to better communication between the tribes and the State. Such an idea is generally supported by stakeholders and has been suggested in the past by the Auditor General and the Arizona Town Hall, among others.

**10. The extent to which the termination would significantly harm the public health, safety, or welfare.**

Terminating the Commission of Indian Affairs would not significantly harm the public health, safety, or welfare. However, the purpose and potential role of a state Indian agency is of high importance to both the State and Indian tribes, especially because of Arizona's significant Native American population and reservations, in terms of both size and number. Arizona has the third-largest Native American population nationally, has more reservation land (over 19 million acres) than any other state, and is home to America's three largest reservations. In fact, reservations make up more than 25 percent of Arizona's total land mass. Further, there are 21 sovereign tribal governments operating within Arizona's borders representing 17 federally recognized Indian tribes.

Many issues and areas of mutual interest exist between the State and the tribes, which necessitates constant communication. Jurisdictional issues involving taxation, gaming, and water rights, as well as tribal economic development efforts, make such communication of paramount importance. A 1994 Arizona Town Hall report states that "the current debate between states and tribes appears to be over the degree of ju-

risdiction that will be exercised by both governments within reservation boundaries.” Promoting and fostering such communication is the Commission’s primary responsibility. While state agencies generally have Indian liaisons who work with tribes on agency-specific issues, no entity besides the Commission exists that can promote and foster communication and interaction between tribes and the State on a broader government-to-government level.

11. **The extent to which the level of regulation exercised by the Commission is appropriate and whether less or more stringent levels of regulation would be appropriate.**

This factor is not applicable since the Commission is not a regulatory agency.

12. **The extent to which the Commission has used private contractors in the performance of its duties and how effective use of private contractors could be accomplished.**

As with many agencies, the Commission occasionally uses private contractors for various purposes. However, these contracts are usually small in scope and are for services under \$10,000. For example, the Commission has used graphic artists, photographers, and printers to assist with some publications, and currently contracts with a private vendor for Internet access. The agency generally adheres to the State Procurement Code when contracting with the private sector. During the audit, no problems were identified with the Commission’s contracting processes. However, a 1996 Arizona Department of Administration audit found that the Commission did not follow procurement rules and regulations when it purchased a copier. The Commission needs to ensure that it closely adheres to state procurement rules when contracting with the private sector.

## Agency Response

May 4, 1998

Douglas R. Norton  
Auditor General  
State of Arizona  
2910 N. 44th Street, Suite 410  
Phoenix, AZ 85018

Dear Mr. Norton:

On behalf of the Commissioners of the Arizona Commission on Indian Affairs, I submit the following response to the audit recommendations.

Thank you and best wishes.

Sincerely,

Marilyn Evans  
Acting Executive Director

Performance Audit  
Arizona Commission of Indian Affairs  
May 4, 1998

The audit process is to address the previous ten years. However, the current Commissioners have served for only a few years. Therefore, their recommendations are based upon service for the last 1-5 years, not a complete decade.

Recommendations:

“1. The Commission of Indian Affairs needs to better define its mission and improve its performance by:

- a. Defining its role, establishing priorities, and setting measurable objectives;
- b. Establishing and maintaining relationships with tribal and state policy-makers;
- c. Regularly updating state and tribal policymakers about Indian issues;
- d. Planning and holding annual Indian Town Hall meetings;
- e. Acting as an informational clearinghouse and reference desk for Indian issues activities; and
- f. Continuing to publish an annual Tribal Resource Directory.”

The finding of the Auditor General is agreed to and a different method of dealing with the finding will be implemented:

In addition to the above recommendations:

- a. Mandating an annual Indian Town Hall meeting;
- b. Developing a Plan of Operation that provides a clear system of roles, responsibilities, and procedures between the Commission and staff for getting things done; and
- c. Defining the mechanism for engaging the active participation of the Commission and in projects undertaken by the Commission and staff.

“2. Administratively, the Commission should:

- a. Adopt rules for the conduct of Commission meetings; and
- b. Determine the reasons for and take steps to address high rates of staff turnover.”

The finding of the Auditor general is agreed to and a different method of dealing with the finding will be implemented.



In addition to the above recommendations:

- a. Meeting as least eight times per year for longer periods of time, four times in tribal center areas;
  - b. Engaging active tribal participation by consistently reporting to tribal governments on the work of the Commission and acquiring input from the tribes about their concerns and priorities;
  - c. Providing better publicity of scheduled Commission meetings and associated agendas throughout Arizona communities; and
  - d. Assessing status of quorum at beginning of meeting to prevent delays in meetings' call to order.
  - e. Budgeting process should be initiated by the executive director and budget adopted by the Commissioners.
- “3. The Legislature should consider changing statute (A.R.S. #41-542, Section D) to clarify the respective roles and reporting relationships of the Commission and the Executive Director.”

The finding of the Auditor General is agreed to and a different method of dealing with the finding will be implemented.

Additional recommendations:

- a. Alter the statutes to assure the executive director is employed by and reports to the Commission, consistent with the other state commissions.
  - b. Alter the statutes so that the Commission has total authority for ACIA policy formulation.
  - c. Compare the commissions of similar states (e.g. New Mexico) as benchmarks to calculate realistic size of staffs, relation to governor's office, etc.
  - d. Increase the budget to facilitate effectiveness:
    1. Allowing eight meetings per year, four within tribal communities;
    2. Adding staff positions (two researchers and another administrative assistant) and providing salaries commensurate with other commission staffs; and
    3. Acquiring an agency vehicle for travel.
- “4. The Governor and Commission should ensure that Commission vacancies are filled in a timely manner.”

The finding of the Auditor General is agreed to and the audit recommendation will be implemented.

- “5. If the Commission does not improve its performance, the Legislature should consider creating an Office of Indian Affairs within the governor's Office with an Indian advisory board.”

The finding of the Auditor General is not agreed to and the recommendation will not be implemented. However, other organizational possibilities will be considered

In addition, the commissioners request that the following be added to the summary:

“The statutes authorizing the ACIA are vague about who the ACIA executive director and the ACIA employees ultimately report to. If a definite chain of command existed, the “ineffectiveness” of the ACIA could have been laid at the feet of the responsible party(ies), addressed and resolved many years ago. The ambiguity of authorizing statutes enable the dissension between the former executive director and commissioners whenever the executive director’s actions were questioned. If legislation is introduced to continue the ACIA, it must include strong language reflecting a clear reporting relationship between the executive director and Commissioners.”

Add to second paragraph, page ii:

“Due to the Commission’s longstanding ineffectiveness, several options should be seriously considered to improve performance towards meeting the ultimate objective of improving state-tribal relations. First, the Commission should develop an organization that is more effective through changes in the management structure and processes including the:

1. Development of a Plan of Operation for the Commission that provides a clear system of roles, responsibilities, and procedures for getting things done, especially between the Commission and staff.
2. A defined mechanism for engaging the active participation of the Commissioners in the projects undertaken by the Commission and Office.
3. Maximize opportunities for Commission productivity such as holding longer quarterly Commission meetings at or near various Native American communities across the State and consistently providing opportunity for dialogue between tribal governments and state agencies.
4. Engaging active tribal participation and relations by consistently reporting to the tribal governments on the work of the Commission and getting input on their concerns and priorities and providing better publicity of scheduled Commission meetings and the agenda throughout Arizona communities.

Second, the legislature may improve the credibility of the Commission as a sincere attempt by the State to improve State/Tribal relations by appointing ex officio members to the Commission who are willing and able to participate in carrying out the Commission’s statutory responsibility.

Third, the Legislature should assess the effectiveness of comparable neighboring states such as New Mexico that has a similar entity and consider staff additions.”

Additionally, the Commissioners request the following additions to the report:

Page 12.....last section on Several Factors hamper Commission effectiveness after last sentence....”The Director can also impede tribal/state relations if they are not cognizant and appreciative of the cultures and practices of the diverse Native American tribes of Arizona.”

page 13.....second paragraph

after last sentence....”The development of effective and supportive long-term relationship with many Native American governments requires that the integral staff be supported in the development of that relationship which in some tribal governments will be quick and in others require numerous visits and open communication.”

Page 14.....before the section ”Legislature Could Create a Differently Structured Indian Agency” add this section:

“Commission Could Develop a More Effective Organization

Regardless of what action the Legislature eventually takes, the Commission should immediately take steps to develop an organization that is more effective through changes in the management structure and processes including the:

1. development of a Plan of Operation for the Commission that provides a clear system of roles, responsibilities, and procedure for getting things done, especially between the Commission and staff;
2. a defined mechanism for engaging the active participation of the Commissioners in the projects undertaken by the Commission and Office;
3. maximize opportunities for Commission productivity such as holding longer quarterly Commission meetings at or near various Native American communities across the State and consistently providing opportunity for dialogue between tribal governments and state agencies; and
4. Engaging active tribal participation and relations by consistently reporting to the tribal governments on the work of the Commission and getting input on their concerns and priorities, and providing better publicity of scheduled Commission meetings and the agenda throughout Arizona communities.

Commission Could Hire and Hold the Executive Director and ultimately the Staff Accountable

The staff is integral to carrying out much of the Commission’s responsibility. The Governor’s Office should consider delegating oversight of the Executive Director to the Commission. This would be a vital ingredient to the development of an effective management structure that requires performance of the front line workers.”