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SENATE JOINT MEMORIAL 12

42ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SPECIAL SESSION
1996

INTRODUCED BY
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A JOINT MEMORIAL
REQUESTING THE UNITED STATES CONGRESS TO REVIEW NATIONAL POLICY
REGARDING STATE TAXATION OF ACTIVITIES, TRANSACTIONS AND
PROPERTY IN INDIAN COUNTRY.

WHEREAS, the Indian commerce clause of the United States
constitution provides congress with plenary power to legislate
in the field of Indian affairs; and

WHEREAS, the federal government has a trust responsibility
to all Indian tribes in the United States; and

WHEREAS, congress holds the power to prohibit or permit
taxation by the state of activities or transactions involving
non-Indians that occur in Indian country or of non-Indian
property located within Indian country, a power that is
essentially legislative according to the supreme court of the

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1 United States; and

2 WHEREAS, pursuant to the holding in Cotton Petroleum
3 Corporation v. New Mexico, states have imposed taxes on
4 activities and transactions that occur in Indian country and on
5 property located within Indian country because congress has not
6 exercised its power to prohibit states from taxing occurrences
7 or property in Indian country; and

8 WHEREAS, Indian nations, tribes or pueblos are sovereign
9 and have the power to impose taxes on activities, transactions
10 or property within their jurisdiction to generate revenue to
11 provide essential governmental services to tribal members; and

12 WHEREAS, conflict and friction between the states and the
13 tribes that lead to expensive litigation, animosity and
14 confrontation is occurring due to the federal policy that allows
15 dual taxation by the state and the tribe of the same activities,
16 transactions or property; and

17 WHEREAS, state taxation of activities, transactions or
18 property within Indian country places economic burdens on
19 businesses within Indian country; and

20 WHEREAS, state taxation of activities, transactions or
21 property within Indian country infringes on basic tenets of
22 tribal sovereignty, making tribal taxation a burden to
23 businesses and reducing a tribe's ability to provide essential
24 governmental services to tribal members; and

25 WHEREAS, any economic burden placed on businesses in Indian

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1 country discourages economic development in Indian country; and

2 WHEREAS, economic development in Indian country has
3 proceeded slowly and with great difficulty over the last one
4 hundred years; and

5 WHEREAS, the economies of most Indian nations, tribes and
6 pueblos are depressed and underdeveloped and are in many cases
7 similar to the economies of third world countries; and

8 WHEREAS, the federal government is now severely reducing
9 funding for programs for Indian nations, tribes and pueblos and
10 services to Indian people; and

11 WHEREAS, funding for tribal programs will be diminished or
12 eliminated in many cases due to the reductions in funding from
13 the federal government; and

14 WHEREAS, Indian nations, tribes or pueblos will need
15 greater sources of revenue to replace those funds that are being
16 withdrawn from them; and

17 WHEREAS, any additional burden, regardless of how small,
18 imposed on businesses that are being recruited or encouraged to
19 locate in Indian country can cause businesses to refuse to
20 locate in Indian country; and

21 WHEREAS, a review of the benefits and equity of current
22 national policy regarding concurrent taxation jurisdiction by
23 tribes and states is needed to determine if economic harm to
24 tribes is produced when states are permitted to impose taxes on
25 businesses in Indian country;

