

Margery Hunter Brown Indian Law Clinic
32 Campus Drive
Missoula, MT 59812-6552
indianlawclinic@umontana.edu

Margery Hunter Brown Indian Law Clinic

MEMORANDUM

To: Sue Rogers, NADC
From: Amy Johns, Clinical Student & Monte Mills, Director, MHBILC
Re: Cooperatives in Indian Country
Date: June 17, 2020

Q: Are there tribes that have adopted a formal process specifically designed to establish cooperatives (Co-ops) under tribal law?

A: Generally, many tribes have adopted some form of business or corporation code designed to aid economic development within their respective tribal boundaries. In the alternative, other tribes rely solely on language within their respective constitutions to authorize the creation and/or regulation of business entities within tribal boundaries.

SUMMARY:

In an effort to identify tribes that have established codes governing business and/or corporation creation, initial research will be limited to tribes within the states of Montana, North Dakota, South Dakota and Wyoming.

To date, there are currently eight (8) tribes within the state of Montana, nine (9) tribes within the state of South Dakota (two of which straddle North Dakota), five (5) tribes within the state of North Dakota (two of which are the same tribes straddling South Dakota), and one (1) reservation in Wyoming that is home to two tribes.

The information below shows the results of our initial research and identifies the state, lists the tribes in each (in no particular order), excerpts pertinent constitutional language, business and/or corporation code provisions, if any, and provides a brief analysis of how those constitutions or codes may impact the creation of cooperatives under tribal law.

MONTANA

1. Fort Peck Assiniboine & Sioux Tribes -- Poplar, MT

CONSTITUTION:

ARTICLE IV – GOVERNING BODY

Section 1. The governing body of the Tribes shall be known as the Tribal Executive Board, subject to the powers of the General Council.

ARTICLE X - BUSINESS AND FISCAL AUTHORITIES

The Tribal Executive Board shall exercise the following powers subject to any limitations imposed by the Constitution or Statutes of the United States and subject further to all expressed restrictions upon such powers contained in this Constitution and Bylaws.

Section 6. To borrow money from the Federal Government, or other sources, and to direct the use of such funds for productive purposes, or to loan money thus borrowed to members of the Tribes, with the approval of the Secretary of the Interior, or his authorized representative.

TRIBAL CODE:

Title 24 (Commercial Law) Subchapter B at Sec. 1107 – 1122: Governs corporations established under tribal law.

Sample:

Chapter 11. Corporation Code Sections:

Sec. 1101. Citation.

Sec. 1102. Definitions.

Sec. 1103 Reserved.

Sec. 1104. Reservation of Right.

Sec. 1105. Corporations Wholly Owned by the Tribe.

Sec. 1106. Sovereign Immunity of the Tribe Not Waived.

Sec. 1107. Purposes.

Sec. 1108. Incorporators.

Sec. 1109. Articles.

Sec. 1110. Corporate Name.

Sec. 1111. Reserved Name.

Sec. 1112. Registered Office; Registered Agent.

Sec. 1113. Change of Registered Office or Registered Agent; Change of Name of Registered Agent.

Sec. 1114. Amendment of Articles.

Sec. 1115. Procedure for Amendment Before Issuance of Shares.

Sec. 1116. Procedure for Amendment After Issuance of Shares.

Sec. 1117. Class or Series Voting on Amendments.

ANALYSIS:

Article X, section 6 of the Fort Peck constitution is common language often found in other tribal constitutions that typically allows for federal funding provided by the United States direct loan program under 25 CFR §101 (LOANS TO INDIANS FROM THE REVOLVING LOAN FUND).

For your reference and for purposes of this query, pertinent sections of 25 CFR §101 are as follows:

25 CFR § 101.1 - Definitions.

Cooperative association means an association of individuals organized pursuant to state, Federal, or tribal law, for the purpose of owning and operating an economic enterprise for profit with profits distributed or allocated to patrons who are members of the organization.

Economic enterprise means any Indian-owned commercial, industrial, agricultural, or business activity established or organized for the purpose of profit, provided that eligible Indian ownership constitutes not less than 51 percent of the enterprise.

25 CFR § 101.2 - Kinds of loans.

Loans from the Indian Revolving Loan Fund shall be made for purposes which will improve and promote the economic development on Indian reservations.

(a) Loans may be made by the United States to eligible relending organizations for relending to members for economic enterprises and to eligible tribes for relending to members, eligible corporations, cooperative associations, partnerships and subordinate bands and for financing tribal economic enterprises, which will promote the economic development of a reservation and/or the group or members thereon.

25 CFR § 101.3 - Eligible borrowers under United States direct loan program.

(a) Loans may be made from the revolving loan fund to Indians, eligible tribes and relending organizations, and corporations, cooperative associations and partnerships having a form of organization satisfactory to the Commissioner.

Portions of the above language are often found in tribal ordinances authorizing tribal loan programs. The purpose for including this portion of the analysis is to generally provide the language some tribes might utilize for purposes of defining cooperatives. (i.e. Pine Ridge Revolving Loan Fund)

The Fort Peck Commercial Law does establish the parameters for which a cooperative might be formed under tribal law. The above sample is but a small outline of what is a substantial and comprehensive code governing the creation of corporations chartered under tribal law.

2. Fort Belknap Indian Community -- Harlem, MT

CONSTITUTION:

ARTICLE IV - ORGANIZATION OF COMMUNITY COUNCIL

Section 1. Composition. The Community Council shall be composed of [...].

ARTICLE V - POWERS OF THE COMMUNITY COUNCIL

Section 1. Enumerated Powers. The Council of the Fort Belknap Community shall have the following powers, the exercise of which shall be subject to popular referendum as provided hereafter:

(n) To charter subordinate organizations for economic purposes and to regulate the activities of all cooperative associations of members of the Community.

ANALYSIS:

Initial research suggests that the Fort Belknap Indian Community does not currently have tribal laws specifically governing corporate charters or other economic development entities. However, as the above Section 1, subsection (n) suggests, the governing body of the Fort Belknap Community is authorized under its constitution to specifically regulate cooperative associations within its boundaries and potentially charter them as well.

3. Blackfeet Tribe -- Browning, MT

CONSTITUTION:

AMENDMENT IV

Section 1. The governing body of the Blackfeet Tribe shall consist of a council known as the Blackfeet Tribal Business Council.

ARTICLE VI - POWERS OF THE COUNCIL

Section 1. Enumerated Powers -The council of the Blackfeet Reservation shall exercise the following powers, subject to any limitations embodied in the statutes or the Constitution of the United States, and subject further to all express restrictions upon such powers contained in this constitution and the attached by-laws.

(m) To encourage and foster Indian arts, crafts, culture and traditions.

(r) To delegate to subordinate boards or to cooperative associations which are open to all members of the tribe any of the foregoing powers, reserving the right to review any actions taken by virtue of such delegated powers.

TRIBAL CODE:

Blackfeet Commercial Code – Remedies and Enforcement, Secured Transactions and Consumer Protection.

ANALYSIS:

Initial research suggests that the Blackfeet Tribe have not established codes specifically governing corporate charters. Business laws which are currently in place are only for the purpose of regulating commercial transactions of personal property and fixtures, equal credit opportunity and procedures for attachment/garnishment of property and execution of judgments.

However, the Blackfeet Tribal Business Council has the discretion to potentially approve cooperatives pursuant to Article VI, Section 1, subsection (m) of their Constitution. Most likely, the language here may be sufficient to initiate a tribal resolution that would approve the establishment of cooperatives on a case-by-case basis. Further, although subsection (r) does not specifically speak to the creation of cooperatives; the specific reference to cooperative associations read in conjunction with subsection (m) suggests a desired role for cooperative associations within the tribal community.

4. Chippewa Cree Tribe (Rocky Boy's) -- Box Elder, MT

CONSTITUTION:

ARTICLE III-ORGANIZATION OF GOVERNING BODY

SECTION 1. The governing body of the Chippewa Cree Tribe shall be known as the "Business Committee."

ARTICLE VI-POWERS OF THE COMMITTEE

SECTION 1. The Business Committee of the Chippewa Cree Tribe of the Rocky Boy's Reservation shall exercise the following powers subject to any limitations imposed by the Statutes or the Constitution of the United States, and subject further to all express restrictions on such powers contained in this Constitution and the attached Bylaws.

(g) To charter subordinate organizations for economic purposes and regulate the activities of all cooperative associations of members of the Chippewa Cree Tribe.

(n) To encourage and foster the arts, crafts, culture, and traditions of the Chippewa Cree Tribe.

(t) To delegate to subordinate boards or to cooperative associations which are open to all members of the tribe any of the foregoing powers, reserving the right to review any action taken by virtue of such delegated power.

TRIBAL CODE:

Title X – Corporation's Act of the Chippewa Cree Tribe

V. Permissible Purposes for Incorporation:

Corporations may be organized under this chapter for any lawful purpose or purposes.

ANALYSIS:

The Chippewa Cree Tribe is authorized to charter corporations under both its Constitution and Title X of its tribal code. It is likely, though not definitive, that prospective organizations would follow procedures outlined under Title X and then the charter would be approved via resolution by the Business Committee.

5. Little Shell Tribe of Chippewa Indians -- Great Falls, MT

CONSTITUTION:

ARTICLE I – GOVERNING BODY

SECTION II. The governing body of the Little Shell Tribe of Chippewas Indians of Montana shall be known as the Executive Board.

ARTICLE III – POWERS OF THE EXECUTIVE BOARD

SECTION I. The Executive Board of the Chippewa Indians of Montana shall exercise the following powers, subject to the limitations imposed by the statutes of the Constitution of the United States and subject further to all express restrictions upon such power contained in the Constitution and By-Laws.

SECTION VIII. To encourage and foster the Arts, Crafts, Culture and traditions of the Pembina Band of Chippewa Indians.

TRIBAL CODE:

Not yet applicable.

ANALYSIS:

The Little Shell Tribe of Chippewa Indians were federally recognized on January 25, 2020. It is anticipated that the Little Shell Tribe will develop its tribal codes as needed and as it acquires and expands a much-needed land base.

6. Confederated Salish and Kootenai Tribes of the Flathead Reservation -- Pablo, MT

CONSTITUTION:

ARTICLE III – THE TRIBAL COUNCIL

SECTION 1. The governing body of the Confederated Salish and Kootenai Tribes of the Flathead Reservation shall be the Tribal Council.

ARTICLE VI – POWER AND DUTIES OF THE TRIBAL COUNCIL

SECTION 1. The Tribal Council shall have the power, subject to any limitations imposed by the Statutes or the Constitution of the United States, and subject to all express restrictions upon such powers contained in this Constitution and attached Bylaw;

o) To charter subordinate organizations for economic purposes and to regulate the activities of all cooperative and other associations which may be organized under any charter issued under this Constitution

TRIBAL CODE:

Initial research suggests the CSKT Tribal Council has no Corporation Ordinance readily available.

ANALYSIS:

The Confederated Salish and Kootenai Tribes have an extensive history of economic development and successful tribal enterprises. In light of this history, it is probable that the CKST does have some form of a Corporation Ordinance, but which has not been publicly disseminated to date.

In the alternative, the CSKT Tribal Council is authorized pursuant to Article IV, Section 1(o) of their Constitution to charter organizations.

7. Crow Tribe – Crow Agency, MT

CONSTITUTION:

ARTICLE I - GOVERNING BODY

The traditional name of the government of the Crow Tribe of Indians of the Crow Indian Reservation shall be the Apsaalooke Nation Tribal General Council hereinafter known formally as the Crow Tribal General Council.

ARTICLE IV - EXECUTIVE BRANCH OF GOVERNMENT

Section 1. Executive Officers. The Crow Tribal General Council shall elect from its membership by secret ballot an Executive Branch of Government...

Section 3. Enumerated Powers. The Executive Branch shall exercise the following powers and responsibilities herein provided, subject to any limitations imposed upon such powers by the statutes and laws of the United States:

(g) enforce all laws, ordinances, resolutions, regulations or guidelines passed by the Legislative Branch providing for the levying of taxes and licensing of members and non-members for various purposes;

Section 4. General Duties. The general duties of the Executive Branch Officials shall be:

(a) to implement all laws, resolutions, codes, and policies duly adopted by the Legislative Branch;

ARTICLE V - LEGISLATIVE BRANCH OF GOVERNMENT

Section 1. Membership. The Crow Tribal General Council shall elect three members from each of the established districts within the Crow Reservation...to serve as legislators comprising the Legislative Branch of the Crow Tribal Government. [...] The Legislative Branch of the Crow Tribe shall operate as a separate and distinct branch of the Crow Tribal government and shall exercise a separation of powers from the other branches of the Crow Tribal government.

Section 2. Powers and Duties. The powers and duties of the Legislative Branch shall be

(c) to adopt legislation chartering instrumentalities of the Crow Tribe for the purposes of economic development, housing, education or other purposes not inconsistent with this Constitution;

TRIBAL CODE:

April 2014 CROW TRIBAL LEGISLATURE - BILL NO. CLB 14-03. " AN ACT TO AMEND TITLE 18, BUSINESS ORGANIZATIONS, OF THE CROW LAW AND ORDER CODE BY ADOPTING CHAPTER 1, PURPOSE, POLICY AND ADMINISTRATION, AND CHAPTER 5, THE APSAALOOKE CORPORATION CODE, AND RESCINDING CLB 05-16."

Title 18. Business Organizations

Part 2. Formation of Corporations.

18-3-201 Scope of Chapter.

A. Unless otherwise provided, the provisions of this Chapter apply to all corporations formed or authorized under the sovereign powers of the Apsaalooke Nation.

B. Parts 1 through 9 of this Chapter shall not apply to Tribally-Owned Corporations, or to nonprofit corporations chartered as instrumentalities of the Crow Tribe, except as otherwise provided in such corporations' Articles of Incorporation or in Part 10 of this Chapter.

ANALYSIS:

The Crow Tribe has adopted formal procedures for chartering corporations.

8. Northern Cheyenne -- Lame Deer, MT

CONSTITUTION:

ARTICLE III – GOVERNING BODY AND OFFICERS

SECTION 1. The governing body of the Northern Cheyenne Tribe under this Constitution and Bylaws shall be a council which shall hereafter be known as "The Tribal Council of the Northern Cheyenne."

ARTICLE IV – POWERS OF THE TRIBAL COUNCIL

Section 1. Enumerated Powers. The Tribal Council of the Northern Cheyenne shall exercise the following powers, subject to any limitations imposed by the applicable statutes of the United States and subject further to all express restrictions upon such powers contained in the Constitution and the attached Bylaws:

(m) To cultivate and preserve native arts, crafts, culture and Indian ceremonials.

(o) To establish subordinate organizations of members of the Tribe for economic purposes.

TRIBAL CODE:

The Northern Cheyenne has adopted a Uniform Commercial Code to aid economic development on the reservation. However, to date, there are no tribal corporation codes.

ANALYSIS:

In the alternative, the Tribal Council of the Northern Cheyenne is authorized pursuant to their Constitution to potentially authorize cooperatives.

WYOMING:

1. Wind River Indian Reservation (Eastern Shoshone and Northern Arapaho) - Fort Washakie, WY

CONSTITUTION:

The Wind River Intertribal Council is the duly elect governing body within the Wind River Indian Reservation who is authorized under the laws of the Tribes and federal law to manage affairs relating to laws on the Wind River Reservation.

TRIBAL CODE:

NORTHERN ARAPAHO CODE - TITLE 2. BUSINESS ORGANIZATIONS

Section 101 - Authority. The Northern Arapaho Tribe is a sovereign, federally recognized Indian Tribe. The Northern Arapaho Business Council is authorized under tribal law to enact tribal codes. This Code is enacted pursuant to the Tribes' inherent powers of self-government, which includes the power to charter corporations, limited liability companies, or other business entities.

ANALYSIS:

A Constitution governing the Shoshone and Arapaho Indians of the Wind River Reservation was adopted October 7, 1938. In furtherance of the goals of their original Constitution, laws impacting the Wind River

Reservation in general are passed by joint resolutions of the Wind River Intertribal Council (WRITC). The WRITC is made up equally of representatives from each tribe.

Separately, the Eastern Shoshone and Northern Arapaho each promulgate laws under their respective Business Councils. Initial research failed to locate documents related to the governance structure for each respective tribe.

The Northern Arapaho tribe has adopted its own code governing Business Organizations. Initial research suggests that the Eastern Shoshone may not have adopted the same. However, past actions by the Eastern Shoshone reveal the tribe created a Limited Liability Company under the authority of its Business Council in order to facilitate the development of the Eastern Shoshone Business Park.

Therefore, while the Northern Arapaho have established specific procedures governing the creation and regulation of business organizations; it initially appears that the Eastern Shoshone may authorize the creation of business entities under authority of its Business Council. More research should be conducted to determine with certainty, the Eastern Shoshone's business organization process.

NOTE: Both tribes are under the jurisdiction of the Wind River Tribal Court.

NORTH DAKOTA:

1. MHA Nation (Mandan, Hidatsa, and Arikara Nation) - New Town, ND

CONSTITUTION:

ARTICLE III – GOVERNING BODY

SECTION 1. The governing body of the Three Affiliated Tribes of the Fort Berthold Reservation shall be known as the Tribal Business Council.

ARTICLE VI - POWERS

SECTION 3. The people of the Fort Berthold Reservation hereby grant to the Tribal Business Council of the Three Affiliated Tribes all necessary sovereign authority - legislative and judicial for the purpose of exercising the jurisdiction granted by the people in Article 1 of this Constitution. Further the people hereby delegate to the Tribal Court such jurisdictional power and authority as may be necessary to realize the jurisdiction granted by the people in Article I of this Constitution.

TRIBAL CODE:

Title VII - Business and Licenses

Chapter 1 – Business Enterprises

Articles of Incorporation (11-126-VJB – Corporation Act)

ANALYSIS:

The MHA Nation Constitution specifically grants to the Tribal Business Council the legislative authority to grant a corporate charter. Prospective organizations seeking a corporate charter under the laws and jurisdiction of the MHA Nation are advised to follow the procedures outlined under the Corporation Act of the Tribal Code. Once all preliminary measures have been satisfactorily completed, a resolution seeking a corporate charter shall be submitted to the Tribal Business Council for final approval. To date the MHA Nation has chartered over 70 for-profit and non-profit organizations operating within tribal boundaries.

2. Spirit Lake Nation – Fort Totten, ND

CONSTITUTION:

ARTICLE IV - GOVERNING BODY

Section 1. The governing body of the Spirit Lake Tribe shall be the Tribal Council.

ARTICLE VI - GOVERNMENTAL AUTHORITIES

The Tribal Council of the Spirit Lake Tribe shall exercise the following powers, subject to any imitations imposed by this Constitution and Bylaws or the laws and regulations of the Federal Government.

Section 3. To regulate and license where permitted by law, all business and professional activities conducted upon the Reservation, provided that any assessment upon nonmembers, trading or residing within the jurisdiction of the tribe, shall be subject to review of the Secretary of the Interior or his duly authorized representative, where required by law.

TRIBAL CODE:

Spirit Lake Sioux Law and Order Code
Title 10: Corporations and Tribal Entities.

§10-1-102. Scope.

The provisions of this Title shall apply to all corporations formed under the laws and sovereign power of the Spirit Lake Sioux Tribe, whether before or after the enactment hereof.

§10-1-103. Purpose and Construction.

(1) The purposes of this Title are:

- (a) to encourage commerce by providing limitations on the liability of participants in incorporated enterprises;
- (b) to reform the laws of business corporations by allowing greater flexibility in the organization and operation of close corporations;
- (c) to ensure that corporate assets are available for the satisfaction of valid claims of corporate creditors; and
- (d) to simplify, clarify and modernize the laws applicable to for-profit and non-profit corporations created under the sovereign powers of the Tribe.

(2) The provisions of the chapters of this Title shall be liberally construed and applied to promote its underlying purposes and policies.

ANALYSIS:

The Spirit Lake Nation has adopted comprehensive codes governing Corporations and Tribal Entities.

3. Standing Rock Sioux Tribe – Fort Yates, ND

CONSTITUTION:

ARTICLE III - GOVERNING BODY

Section 1. The governing body of the Standing Rock Sioux Tribe shall be known as the Standing Rock Sioux Tribal Council.

ARTICLE IV - POWERS OF THE STANDING ROCK SIOUX TRIBAL COUNCIL

Section 1. The Tribal Council shall exercise the following powers by appropriate motion, resolution or ordinance, subject to any limitation imposed by the Constitution or applicable statutes of the United States.

c. To promote and protect the health, education and general welfare of the members of the Tribe, and to administer charity and such other services as may contribute to the social and economic advancement of the Tribe and its members.

g. To encourage and foster the arts, crafts, traditions, Sioux language, and culture of the Sioux Indians.

TRIBAL CODE:

The Standing Rock Sioux Tribe has adopted a Uniform Commercial Code to aid economic development on the reservation. However, to date, there are no tribal corporation codes.

ANALYSIS:

In the alternative, the Standing Rock Sioux Tribal Council is authorized pursuant to their Constitution to potentially authorize cooperatives. Approval of cooperatives would further the goals of Article IV, Section 1 (c) & (g).

4. Turtle Mountain Band of Chippewa Indians (Ojibwe & Metis) Belcourt, ND

CONSTITUTION:

ARTICLE IV - GOVERNING BODY

Section 1. The governing body shall be the Tribal Council...

ARTICLE IX - POWERS OF THE TRIBAL COUNCIL

The Tribal Council shall exercise the following powers, subject to any limitations imposed by this Constitution and Bylaws or the laws and regulations of the Federal Government:

(a) Governmental Powers

Section 3. To regulate and license where permitted by law all business and professional activities conducted upon the reservation, provided that any assessment upon non-members trading or residing within the jurisdiction of the Band shall be subject to review of the Secretary of the Interior, or his duly authorized representative, where required by law.

TRIBAL CODE:

TITLE 29 TURTLE MOUNTAIN TRIBAL CODE OF CORPORATIONS

CHAPTER 29.01 Tribal Entities

29.0101 Scope. The provisions of this Chapter Four shall apply to all corporations which are Tribal Entities formed under the laws and sovereign power of the Turtle Mountain Band of Chippewa Indians, whether formed before or after the enactment hereof.

29.0102 Purpose and construction.

1. The purposes of this Chapter are:

a. To encourage commerce by providing limitations of the liability of the Tribe as owner in incorporated enterprises;

b. To reform the laws of business corporations by allowing greater flexibility in the organization and operation of corporations;

c. To ensure that corporate assets, but not those generally of the Tribe, are available for the satisfaction of valid claims of corporate creditors; and

d. To simplify, clarify and modernize the laws applicable to for-profit and non-profit corporations created under the sovereign powers of the Tribe.

2. The provisions of this Chapter shall be liberally construed and applied to promote its underlying purposes and policies

ANALYSIS:

The Turtle Mountain Tribe of Chippewa have adopted formal procedures for chartering corporations.

5. Sisseton Wahpeton Oyate of the Lake Traverse Reservation – Agency Village, SD

CONSTITUTION:

ARTICLE III - ORGANIZATION

SECTION 1. The Sisseton-Wahpeton Oyate (people) of the Lake Traverse Reservation shall be governed by a Council... The Chairman, Vice-Chairman and Secretary of the Council shall be elected at large, which Officers shall constitute an Executive Committee.

SECTION 2. The Executive Committee, in formal session, shall have the power to speak and act for the Tribe when the Council is not in session and to carry into effect all properly enacted resolutions and ordinances of the Council...

ARTICLE VII - POWERS

SECTION 1. The Council shall have the following powers as outlined in this revised Constitution, which may be exercised pursuant to the tribe's inherent sovereignty, treaties and applicable federal statutes, rulings or regulations. (As amended by Amendment No. III, effective November 15, 2006.)

(h) To promote public health, education, charity, and such other services as may contribute to the social advancement of the members of the Sisseton-Wahpeton Oyate.

ii. The Council is hereby authorized to recognize any district committees, associations or other organizations open to the members of the Sisseton-Wahpeton Oyate and to approve such organizations, subject, however, to the provision that no such committee, association or organization may assume authorities specifically granted to the Council unless by a proper delegation of authority by the Council.

TRIBAL CODE:

Sisseton Wahpeton Oyate Codes of Law

Ch. 8 – Sisseton-Wahpeton Sioux Business Corporation Ordinance

08-03-01 PURPOSES

Corporations may be organized under this Ordinance for any lawful purpose or purposes, except for the purpose of banking or insurance.

ANALYSIS:

The Sisseton-Wahpeton Sioux have adopted formal procedures for chartering corporations.

SOUTH DAKOTA:

1. Cheyenne River Sioux Tribe – Eagle Butte, SD

CONSTITUTION:

Article III – Governing Body

Section 1. The governing body of the Cheyenne River Sioux Tribe shall consist of a council, known as the Cheyenne River Sioux Tribal Council.

Article IV – Powers of Self-Government

Section 1. The tribal council of the Cheyenne River Reservation shall exercise the following powers...

(f) To select subordinate boards, officials, and employees not otherwise provided for in this constitution and to prescribe their tenure and duties and to establish district councils; to authorize and establish any association or organization having for its purpose and sole object the benefit of the members of the Cheyenne River Sioux Tribe. Such association or organization shall have the right to engage in collective or cooperative bargaining or marketing, or purchasing of supplies, crops, equipment, seed, machinery, building or livestock, the council reserving the right to establish ordinances covering the activities of such association or organization, and to enforce the observance of such ordinances.

TRIBAL CODE:

The Cheyenne River Sioux Tribe has adopted a Corporations Ordinance.

ANALYSIS:

Initial research indicates that the Cheyenne River Sioux Tribe has authority under both its Constitution and Corporation Ordinance to charter corporations.

2. Crow Creek Sioux Tribe – Fort Thompson, SD

CONSTITUTION:

ARTICLE III-THE GOVERNING BODY

SECTION 1. The governing body of the Crow Creek Sioux Tribe shall be the Tribal Council.

ARTICLE VI-POWERS AND DUTIES OF THE TRIBAL COUNCIL

SECTION 1. The Council of the Crow Creek Reservation shall exercise the following powers, subject to any limitations imposed by the statutes or the Constitution of the United States, and subject further to all express restrictions upon such powers contained in this Constitution and the attached by-laws.

(f) To adopt resolutions and ordinances subject to the approval of the Commissioner of Indian Affairs governing the management of all economic affairs and enterprises of the tribe, including tribal lands, tribal timber, tribal livestock enterprises; tribal community store, or any other tribal activity.

(s) To delegate to subordinate boards or to cooperative associations which are open to all members of the Tribe any of the foregoing powers reserving the right to review any action taken by virtue of such delegated power.

TRIBAL CODE:

As of 2005, the Crow Creek Sioux Tribe has not adopted a Corporations Ordinance.

ANALYSIS:

Of special note is the existence of several “Mom & Pop” businesses on the Crow Creek reservation. Approximately half of the businesses located on the reservation are incorporated under the state of South Dakota, while the other half are not. This suggests that the Crow Creek Sioux Tribe may have mechanisms in place authorizing the establishment of businesses within its tribal boundaries. In depth research will need to be conducted to verify with certainty that this is the case.

In the alternative, and as the above excerpt suggests, the Tribal Council is authorized under its Constitution to establish laws regulating the economic affairs and enterprises within the tribe.

3. Flandreau Santee Sioux Tribe – Flandreau, SD

CONSTITUTION:

ARTICLE III - GOVERNING BODY

Section 1. The governing body of the Flandreau Santee Sioux Tribe shall be the Executive Committee.

ARTICLE VIII - POWERS OF THE EXECUTIVE COMMITTEE

Section 1. Enumerated powers. The Executive Committee of the Flandreau Santee Sioux Tribe shall exercise the following powers subject to any limitations imposed by the statutes or the Constitution of the United States.

(g) To charter subordinate organizations for economic purposes and to delegate to such organizations, or to any subordinate boards or officials of the Tribe, any of the foregoing powers, reserving the right to review any action taken by virtue of such delegated powers.

TRIBAL CODE:

TITLE 25 CORPORATION ORDINANCE

CHAPTER 1 TITLE, POLICY, CONSTITUTIONAL AUTHORITY AND PURPOSE OF THIS ORDINANCE

Section 25-1-2. Policy.

Indian Tribes have been consistently recognized as sovereign throughout the history of the United States of America, and to retain as governmental powers, where consistent with the trusteeship of the United States, all powers necessary to commercially utilize their undivided resources for the economic benefit of the Tribe, and to possess the power to charter corporations to do so. It is the policy of the Flandreau Santee Sioux Tribe in the enactment of this Ordinance to exercise its retained inherent sovereign governmental authority to implement Tribal corporate, economic, and commercial powers, as it exercises all other inherent governmental authority pursuant to the provisions of the Flandreau Santee Sioux Tribal Constitution.

ANALYSIS:

The Flandreau Santee Sioux have adopted formal procedures for chartering corporations.

4. Lower Brule Sioux Tribe – Lower Brule, SD

CONSTITUTION:

ARTICLE III – GOVERNING BODY

SECTION 1. The governing body of the Lower Brule Sioux Tribe shall consist of a Council, known as the Lower Brule Sioux Tribal Council, hereinafter designated as the “Tribal Council”.

ARTICLE VI – POWERS OF THE TRIBAL COUNCIL

SECTION 1. Enumerated Powers. The Tribal Council of the Lower Brule Sioux Reservation shall exercise the following powers, subject to any limitations imposed by the statues applicable to Indian tribes or the applicable provisions of the Constitution of the United States, and subject further to all express restrictions upon such powers contained in this Constitution and the attached Bylaws:

e. To safeguard and promote the peace, safety, morals, and general welfare of the Lower Brule Sioux Tribe and to regulate the conduct of trade and the use and disposition of property upon the reservation provided that any ordinance directly affecting non-members of the reservation shall be subject to review by the Secretary of the Interior.

TRIBAL CODE:

Initial research suggests the Lower Brule Sioux Tribe has not adopted a Corporations Ordinance.

ANALYSIS:

In the alternative, the Lower Brule Sioux Tribal Council is authorized pursuant to their Constitution to potentially authorize cooperatives. Approval of cooperatives would further the goals of Article IV, Section 1 (e).

5. Oglala Sioux Tribe - Pine Ridge, SD

CONSTITUTION:

ARTICLE III - GOVERNING BODY

Section 1. The governing body of the Tribe under this constitution shall be a council which shall be composed of councilmen chosen by secret ballot by qualified voters of the tribe, which council shall hereafter be known as "The Oglala Sioux Tribal Council".

ARTICLE IV - POWERS OF THE COUNCIL

Section 1. Enumerated Powers. The Oglala Sioux Tribal Council shall exercise the following powers; subject to any limitations imposed by the statutes or the Constitution of the United States and subject further to all express restrictions upon such powers contained in this Constitution and the attached Bylaws:

(o) To charter subordinate organizations for economic purposes and to regulate the activities of associations thus chartered by the tribal council, or any other associations of members of the tribe, which are indebted to the tribe.

TRIBAL CODE:

Oglala Sioux Tribe Law and Order Code

Chapter 44 – OST Business Code

ANALYSIS:

As Article IV, Section 1 (o) suggests, the Tribal Council is authorized under its Constitution to charter organizations for economic purpose. However, in 2018, Chapter 44 of the Oglala Sioux Tribe Law and Order code was updated to, “foster local employment of attorney and lay advocates who are members of the Bar of the Oglala Sioux Tribe, and to empower Lakota entrepreneurs and business owners at minimal cost reducing barriers to entry for Lakota business start-ups”, per the Oglala Lakota Nation.

Several modern corporate laws within the U.S. were utilized as the basis to draft the new OST Business Code. Interested parties seeking to submit Business filings should contact the Oglala Sioux Tribe Department of Revenue. Important note: Foreign entities must maintain a registered agent who is a member of the Bar of the Oglala Sioux Tribe.

6. Rosebud Sioux Tribe – Rosebud, SD

CONSTITUTION:

Article III – Governing Body

Section 1. The governing body of the Rosebud Sioux Tribe shall consist of a Council known as the Rosebud Sioux Tribal Council.

Article IV - Powers of the Rosebud Sioux Tribal Council

Section 1. Enumerated powers -The Council of the Rosebud Sioux Tribe shall exercise the following powers subject to any limitations imposed by the statutes or the Constitution of the United States, and subject further to all express restrictions upon such powers contained in this Constitution and attached By-Laws. (Amendment I effective June 19, 1962, Yes-346; No-296)

(n) To charter subordinate organization for economic purposes and to regulate the activities of all cooperative associations of members of the Tribe.

TRIBAL CODE:

TITLE 15: CORPORATIONS AND TRIBAL ENTITIES

CHAPTER ONE: General Provisions

§15-1-101. Short Title

This Title shall be known and may be cited as the Rosebud Law and Order Code - Corporations and Tribal Entities.

§15-1-102. Scope

The provisions of this Title shall apply to all corporations formed under the laws and sovereign power of the Rosebud Sioux Tribe, whether before or after the enactment hereof.

§15-1-103. Purpose and Construction

(a) The purposes of this Title are:

(1) to encourage commerce by providing limitations on the liability of participants in incorporated enterprises;

- (2) to reform the laws of business corporations by allowing greater flexibility in the organization and operation of close corporations;
 - (3) to ensure that corporate assets are available for the satisfaction of valid claims of corporate creditors; and
 - (4) to simplify, clarify and modernize the laws applicable to for-profit and non-profit corporations created under the sovereign powers of the Rosebud Sioux Tribe.
- (b) The provisions of the chapters of this Title shall be liberally construed and applied to promote its underlying purposes and policies.

ANALYSIS:

The Rosebud Sioux Tribal Council have adopted formal procedures for chartering corporations.

7. Sisseton Wahpeton Oyate of the Lake Traverse Reservation – Agency Village, SD

CONSTITUTION:

ARTICLE III - ORGANIZATION

SECTION 1. The Sisseton-Wahpeton Oyate (people) of the Lake Traverse Reservation shall be governed by a Council... The Chairman, Vice-Chairman and Secretary of the Council shall be elected at large, which Officers shall constitute an Executive Committee.

SECTION 2. The Executive Committee, in formal session, shall have the power to speak and act for the Tribe when the Council is not in session and to carry into effect all properly enacted resolutions and ordinances of the Council...

ARTICLE VII - POWERS

SECTION 1. The Council shall have the following powers as outlined in this revised Constitution, which may be exercised pursuant to the tribe's inherent sovereignty, treaties and applicable federal statutes, rulings or regulations. (As amended by Amendment No. III, effective November 15, 2006.)

(h) To promote public health, education, charity, and such other services as may contribute to the social advancement of the members of the Sisseton-Wahpeton Oyate.

ii. The Council is hereby authorized to recognize any district committees, associations or other organizations open to the members of the Sisseton-Wahpeton Oyate and to approve such organizations, subject, however, to the provision that no such committee, association or organization may assume authorities specifically granted to the Council unless by a proper delegation of authority by the Council.

TRIBAL CODE:

Sisseton Wahpeton Oyate Codes of Law

Ch. 8 – Sisseton-Wahpeton Sioux Business Corporation Ordinance

08-03-01 PURPOSES

Corporations may be organized under this Ordinance for any lawful purpose or purposes, except for the purpose of banking or insurance.

ANALYSIS:

The Sisseton Wahpeton Oyate have adopted formal procedures for chartering corporations.

8. Standing Rock Sioux Tribe – Fort Yates, ND

CONSTITUTION:

ARTICLE III - GOVERNING BODY

Section 1. The governing body of the Standing Rock Sioux Tribe shall be known as the Standing Rock Sioux Tribal Council.

ARTICLE IV - POWERS OF THE STANDING ROCK SIOUX TRIBAL COUNCIL

Section 1. The Tribal Council shall exercise the following powers by appropriate motion, resolution or ordinance, subject to any limitation imposed by the Constitution or applicable statutes of the United States.

c. To promote and protect the health, education and general welfare of the members of the Tribe, and to administer charity and such other services as may contribute to the social and economic advancement of the Tribe and its members.

g. To encourage and foster the arts, crafts, traditions, Sioux language, and culture of the Sioux Indians.

TRIBAL CODE:

The Standing Rock Sioux Tribe has adopted a Uniform Commercial Code to aid economic development on the reservation. However, to date, there are no tribal corporation codes.

ANALYSIS:

In the alternative, the Standing Rock Sioux Tribal Council is authorized pursuant to their Constitution to potentially authorize cooperatives. Approval of cooperatives would further the goals of Article IV, Section 1 (c) and (g).

9. Yankton Sioux Tribe – Wagner, SD

CONSTITUTION:

ARTICLE II - NAME

Section 1. The Executive organization existing under this Constitution shall be known as the Yankton Sioux Tribal Business and Claims Committee wherever the word committee is used it shall mean the Yankton Sioux Tribal Business & Claims Committee, hereafter.

ARTICLE V. Officers

Section 3 - The judicial power shall remain in the Tribal membership and upon request of five members of any just cause, such cause shall be submitted at any regular Tribal meeting for action. The legislative branch shall be comprised of the nine Committee members; however, any legislative action shall first be submitted to a General Tribal Council and subject to Tribal amendment, repeal or ratification.

ARTICLE IX - DEMOCRATIC FORM OF GOVERNMENT

Section 1 - All operations under this Constitution shall be free from any system of collectivism and/or socialism under any and all circumstances.

Section 2. This Constitution shall stress to the fullest extent of its authority at all times, recognition of and operation under the private enterprise system and democratic way of life.

TRIBAL CODE:

Initial research indicates that the Yankton Sioux Tribe has not adopted a Corporation Code.

ANALYSIS:

Of particular note, the excerpts from the above amended tribal Constitution reflect a full democratic system of governance. Any legislative action taken by the Yankton Sioux Tribal Business and Claims Committee must be approved by the General Tribal Council. The General Tribal Council consists of ALL tribal members over the age of eighteen.

The Yankton Sioux Tribe Economic Development Department is currently implementing a Comprehensive Economic Development Strategy (CEDS) Plan (2018-2021), of which the scope of work includes assistance in writing and implementation of business codes and corporation codes, and to implement guidelines for formation of corporations (for profit and non-profit). Further, the tribe is aggressively seeking certification of its Ihanktonwan Development Fund, LLC. (CDFI).

Therefore, initial research indicates an updated series of tribal laws, including a Corporation Code will be forthcoming.