Tribal Government Debt - Parity

**Summary:**

- Tribal governments must have the right to access the tax-exempt bond market on equal terms as state and local governments.
- Support H.R. 3138, which creates tribal government parity by eliminating the “essential government functions” test in the Internal Revenue Code, Section 7871, 75 Fed Reg. No 132.

**Background Information:**

The lack of effective access to capital is prevalent in tribal governments and can potentially impact at any stage of growth. This means financing for needed infrastructure, health care centers, tourism projects, and public safety are delayed, not built to their full capacity, funded in more costly ways, or never built at all.

Tribal governments are currently unable to issue debt in the same manner as other governments since they are subject to additional administrative burdens and restrictions that negate the use of tax exempt bonds beyond the ill-defined “essential government functions.” For state and local governments, “commercial” activities are recognized by the federal government as necessary in the raising of revenues and debt financing for these projects to retain their governmental status and are not subject to the “essential government function” requirements. Tribal governments, on the other hand, do not have access to tax exempt debt if the debt financing project is engaged in a “commercial” activity.

The restriction and unclear definition of the “essential government functions test” creates uncertainty. The capital markets tend to either steer clear of or charge a premium for uncertainty, making capital more costly or inaccessible. Providing a legislative fix for this failed government capital policy that only applies to tribal governments is critically important and timely considering tax-exempt debt will be the preferred financing for infrastructure development by this Administration and Congress.

**Recommendation:**

Congress must provide tribal governments the right to access the tax-exempt bond market on equal terms as other governments. Support H.R. 3138, which eliminates the essential governmental function test in Section 7871 of the Internal Revenue Code and subjecting tribes to the same federal tax standards and requirements as states for governmental tax-exempt bond issuances. Parity also establishes private activity bond volume cap rules to enable tribal governments, like states, to issue limited quantities of such bonds for economic development purposes.