MANDAN, HIDATSA & ARIKARA NATION
Three Affiliated Tribes * Fort Berthold Indian Reservation
Tribal Business Council

Tex "Red Tipped Arrow" Hall
Office of the Chairman

**Testimony of the Honorable Tex G. Hall**
**Chairman, Mandan, Hidatsa and Arikara Nation of the Fort Berthold Reservation**

**Legislative Hearing on S. 1684,**
**the Indian Tribal Energy Development and Self-Determination Act Amendments of 2011**
**Senate Committee on Indian Affairs**
**U.S. Senate**

**April 19, 2012**

Good afternoon Chairman Akaka, Vice Chairman Barrasso and Members of the Committee. My name is Tex Hall. I am the Chairman of the Mandan, Hidatsa and Arikara Nation (MHA Nation). I am honored to present this testimony.

## Introduction

The MHA Nation has long been working with both the Senate Committee on Indian Affairs and the House Subcommittee on Indian and Alaska Native Affairs in an effort to advance Indian energy legislation that would help tribes unlock the potential of their energy resources and provide additional tools for tribes to manage their energy resources. In the 110th and 111th Congresses, the MHA Nation was fortunate to participate and present testimony at two Indian energy hearings held by former Senator Dorgan. Senator Dorgan eventually introduced the "Indian Energy Parity Act of 2010" which included a number of proposals supported by the MHA Nation.

In the current 112th Congress, the MHA Nation is again an active participant. In May of 2011, the Committee held a listening session on Senator Barrasso's draft bill the "Indian Tribal Energy Development and Self-Determination Act Amendments of 2011." At that listening session Committee staff requested that tribes submit proposals to overcome barriers to Indian energy development. On July 18, 2011, the MHA Nation submitted 31 legislative proposals to the Committee. I have attached these proposals to my testimony so that they will be a part of the Committee hearing record.

The MHA Nation also testified before the House Subcommittee in April of 2011 as a part of an Indian Energy Oversight Hearing, in February 15, 2012, on Chairman Young's "Native American Energy Act," H.R. 3973, and again this morning on the Bureau of Land Management's (BLM) proposed regulation of hydraulic fracturing activities. We also attended this Committee's oversight hearing on "Energy Development in Indian Country" held in February 2012.

The MHA Nation has a strong interest in these proceedings because our lands are currently in the middle of the most active oil and gas play in the United States. As you know, the Fort Berthold Reservation is located in the heart of the Bakken Formation, which is the largest continuous oil accumulation in the lower 48 states. In 2008, the United States Geological Survey estimated that the Bakken Formation contains between 3 billion and 4.3 billion barrels of oil.

In the last four years, energy development in and around the Reservation has exploded and we have struggled with the federal bureaucracy for every single oil and gas permit. We now have about 250 wells in production on the Reservation and the MHA Nation and Fort Berthold Allottees have earned about $182 million in oil and gas royalties. In addition, we have 905 vendors providing services directly to the oil and gas industry. Each of those vendors employs between 4 and 24 people. Based on an average employment of 12 jobs per company, that is in excess of 10,000 jobs.

In 2012, we expect more wells to be drilled on the Reservation than were drilled in the first four years combined. In 2013, we expect another 300 wells to be drilled. This energy development will result in hundreds of millions in royalty payments and economic activity and provide the MHA Nation with a substantial opportunity to fund government operations, and ensure that our members can heat their homes and provide for their families.

MHA Nation is actively promoting the development of our energy resources and seeking every opportunity to be an active developer of our resources, not just a passive lessor. However, the MHA Nation continues to work on many of the same barriers to Indian energy development that we started working on four years ago. The agencies and the issues change, but we are still trying overcome outdated laws and regulations, bureaucratic regulatory and permitting processes, and insufficient federal staffing or expertise to implement those processes.

Of all of these challenges, the biggest issue we face is the inequitable division of tax revenues with the State of North Dakota. Under current law, states can tax energy companies on Reservation lands. To avoid double state and tribal taxation and promote energy development on the Reservation, the MHA Nation was forced into an unfair tax agreement with the State.

About four years later, the State has a $1 billion budget surplus and created a $1.2 billon trust fund for infrastructure needs. The MHA Nation has roads that need fixing now. Our tax revenues should not go to a State investment account. State Governor Dalrymple said that infrastructure is his number one priority to promote growth and manage impacts on our communities. Apparently, this does not include tribal communities. In 2011, the State collected more than $60 million in taxes from energy development on the Reservation, but spent less than $2 million for infrastructure on the Reservation. In 2012, projections are that the State will make nearly $100 million in tax revenues from oil and gas development on the Reservation.

Because of these state taxes, we cannot raise enough of our own tax revenue to provide the infrastructure needed to support and regulate the growing energy industry. Under the tax agreement, the State has been receiving about 60 percent of the revenues and the MHA Nation is receiving about 40 percent. However, about 60 percent of the total tax revenue collected under

the agreement comes from lands held in trust for the MHA Nation and its members and only 40 from privately owned land fee lands within the Reservation. This is a windfall for the State! In addition, it is important to note that, 100 percent of the development covered by the tax agreement and the impacts are occurring on the Reservation.

We need Congress to affirm the exclusive authority of tribes raise tax revenues on the Reservation so that we can rely on the same revenues that state governments use to maintain infrastructure and support economic activity. The MHA Nation needs to maintain roads so that heavy equipment can reach drilling locations, but also so that our tribal members can safely get to school or work. We also need to provide increased law enforcement to protect tribal members and the growing population of oil workers. And, we need to develop tribal codes and employ tribal staff to regulate activities on the Reservation. I have attached to my testimony two pictures of the tremendous toll energy development is taken on our Reservation roads.

It is with this background that the MHA Nation assesses whether the "Indian Tribal Energy Development and Self-Determination Act Amendments of 2011" or S. 1684 will advance the development of Indian energy resources. If Indian tribes are going to unlock the potential of their energy resources, we need real changes in the law. Changes that affirm tribal authority, provide tribes access to funding and financing opportunities, and allow tribes to participate in federal energy programs that have over looked tribes for decades.

## MHA Nation Views on S. 1684, the Indian Tribal Energy Development and Self-Determination Act Amendments of 2011

In general, the MHA Nation supports S. 1684, the "Indian Tribal Energy Development and Self-Determination Act Amendments of 2011." There are only a few problems with some of the provisions in S. 1684. The biggest problem is what is *not* in the bill. S. 1684 barely scratches the surface of outdated laws and regulations, bureaucratic regulatory and permitting processes and insufficient federal staffing or expertise to implement those processes. While we appreciate the effort made to improve these areas of law, much more needs to be done.

In the last two Congresses, former Senator Dorgan spent three years holding hearings and consulting with Indian tribes in the development of Indian energy legislation. Senator Dorgan's bill was introduced in August 2010 as the "Indian Energy Parity Act of 2010." This bill contained a variety of new tools, programs and authorities that were designed to help tribes at any stage in the energy development process. In addition, Senator Dorgan developed a draft Indian Energy Tax Act to address issues in tax law that can make or break an Indian energy project.

A few of former Senator Dorgan's proposals found their way into S. 1684, but most are more limited versions. I ask that the Committee go back and reconsider these proposals for inclusion in S. 1684. I also ask that the Committee look across Capitol Hill to Congressman Don Young's H.R. 3973, the "Native American Energy Act." Combining all four of these bills, S. 1684, H.R. 3973, the "Indian Energy Parity Act of 2010," and the draft "Indian Energy Tax Act," would bring to the table much of what is needed to bring Indian energy law into modern

times.

S. 1684 would provide some of what is needed and the MHA Nation supports much of what is in the bill. S. 1684 is focused on making changes to the Tribal Energy Resource Agreement (TERA) program that was authorized by Title V of the Energy Policy Act of 2005. The primary benefit of a TERA is to enable a tribe to enter into leases and rights-of-way without Secretarial approval. A TERA would allow a tribe to gain greater control over the multiple approvals needed for oil and gas development.

The changes in S. 1684 are needed changes as I understand that no tribe has utilized the TERA program since it was created. S. 1684 would make the TERA application process more certain, allow a new category of tribes to exercise partial TERA authority, attempt to clarify the federal government's trust responsibility in relation to a TERA, and provide a potential funding source for tribes to run TERA programs.

MHA Nation and the oil and gas development on our Reservation could benefit from these proposed changes to the TERA program. Oil and gas development is permitting intensive and we are constantly struggling with the federal government's bureaucratic permitting processes. The proposed changes to the TERA program would make it possible for MHA Nation to take over the oil and gas permitting process from the Secretary, or to greatly streamline the permitting process by creating a tribally owned energy company to develop our energy resources. The changes in S. 1684 might also provide some funding from the Department of the Interior (DOI) to help support the increased responsibilities we would be assuming.

In addition to these changes, I ask that the Committee consider a few more changes to the TERA program. First, MHA Nation would be in a better position to take over the oil and gas permitting process from DOI and establish its own energy company if S. 1684 provided more reliable source of funding than annual funding agreements with DOI. To help make the changes proposed in S. 1684 a reality for the MHA Nation and other tribes, S. 1684 should also affirm the exclusive authority of Indian tribes to tax energy activities on our lands. As I mentioned above, tribal governments need access to the same tax revenues that other governments rely on to support energy and economic development. If the state or local governments provide any services on the Reservation in support of this energy and economic development, then the law could provide for fair reimbursement by tribes for state and local services.

Second, to help make the TERA application process even more certain, S. 1684 should include a one-revision limit on a TERA application. In response to an initial application, DOI should get one bite at the apple in requesting revisions. If DOI requires any additional changes beyond this first round, DOI should have to show cause for why such changes were not requested the first time, and tribes should be able to appeal any DOI requests to revise the same application multiple times.

Finally, the MHA Nation appreciates S. 1684's new language that would help clarify the Secretary of the Interior's trust responsibility in relation to leases and agreements made under a

TERA. S. 1684 should also include an additional requirement for the Secretary to further consult with tribes on the effect of a TERA on the Secretary's trust responsibility. The Secretary should then be required to ensure that the results of this consultation are included in the regulations for implementing the TERA program. The trust responsibility is an expression of the government-to-government treaty relationship between Indian tribes and the federal government. When laws like the TERA program are enacted, we should all fully discuss and understand any consequences.

S. 1684 includes a variety of other changes and initiatives that the MHA Nation also supports. In some cases, we ask that the Committee revise these proposals to make them more likely to benefit Indian energy development. First, the MHA Nation supports a legislative directive for the Secretary to include tribes in well-spacing decisions. As a part of the Coalition of Large Tribes, the MHA Nation is seeking this same change administratively.

Second, we support changes in S. 1684 that would make it more likely that the Department of Energy (DOE) would implement its long overdue Indian Energy Loan Guarantee Program. However, the language in S. 1684 falls short of requiring the Secretary of Energy to implement this program as was required for DOE's Title XVII, Energy Innovations Loan Guarantee Program. DOE should be required to offer loan guarantees to Indian tribes. Indian energy loan guarantees are likely to be more successful than the Title XVII program because of the vast unlocked potential of Indian energy resources. As an example, DOI is already running a successful Indian loan guarantee program but it lacks the budget to fund expensive energy projects.

Finally, the MHA Nation supports changes in S. 1684 that would allow tribes to apply for direct weatherization funding from DOE. However, S. 1684 only goes halfway to solving the problem. Allowing tribes to simply apply for direct funding is an important change, but Indian tribes need a weatherization program that is tailored to Indian Country.

The MHA Nation included needed changes to DOE's weatherization program in its legislative proposals. In addition to direct funding, DOE should reduce reporting requirements for Indian tribes, use weatherization standards that reflect the status of housing in Indian Country, and provide training for energy auditors in Indian Country. The weatherization program is a low-income program and its funding should go to those that need it most—in Indian Country poverty rates are two and half times the national average.

The decades old weatherization program and its management by DOE is an affront to the federal government's trust responsibility and DOE's own "American Indian Tribal Government Interactions and Policy." Funding intended, in part, for the members of Indian tribes should not be distributed through state governments who then distribute the funding through state non-profits. Regardless of whether this legislation is passed by Congress, DOE should immediately reform its weatherization program consistent with federal trust responsibilities.

**MHA Nation Proposals that Should be Included in any Indian Energy Legislation**

The MHA Nation asks that the Committee review the legislative proposals submitted by the MHA Nation and other Indian energy legislation to increase the scope and benefits that S. 1684 would provide. If Indian tribes are going to unlock the potential of their energy resources and provided needed domestic energy supplies, we need real changes in the law. Changes that affirm tribal authority, provide tribes access to funding and financing opportunities, and allow tribes to participate in federal energy programs that have over looked tribes for decades. Below we highlight some of the most important changes needed in law.

First, similar to Congressman Don Young's bill, H.R. 3973, the Committee should include authority for establishing Indian Energy Development Offices in areas of high energy demand. These "one-stop shops" would encourage the hiring of staff with energy expertise by the Bureau of Indian Affairs (BIA) and promote communication and efficiency among the DOI agencies that are involved in energy permitting on Indian lands. While MHA already has a virtual "one-stop shop," this provision would make the office permanent in law. As former Senator Dorgan reported, the one-stop shop increased permitting on the Fort Berthold Reservation by four times.

Second, the Committee should prohibit the Bureau of Land Management (BLM) from applying regulations developed for public lands to Indian lands. Indian lands are not public lands, yet the Bureau of Land Management has been incorrectly using its authority under the Federal Land Policy and Management Act of 1976 to regulate activities on Indian lands. In the most recent example, the BLM is developing regulations for hydraulic fracturing activities for public lands and intends to apply those regulations to Indian lands. The proposed regulations would eliminate much of the oil and gas development the MHA Nation has been working so hard to establish. Indian lands are for the use and benefit of Indian tribes and the Committee should develop legislation that either precludes BLM from exercising authority on Indian lands, or require that BLM develop regulations consistent with its trust responsibility to Indian tribes and not public interest standards.

Third, the Committee should prohibit the Environmental Protection Agency (EPA) from implementing its new synthetic minor source rule for two years to ensure appropriate staffing is in place to administer any new permitting requirements. Energy development on the Fort Berthold Reservation is already limited by layers of bureaucratic federal oversight and federal agencies that are too short-staffed to manage existing requirements. EPA should be prohibited from implementing this new rule, or any new rule, until it can prove that it has the staff resources in place.

Fourth, as described above, S. 1684 should affirm that tribes have exclusive authority to raise taxes from activities on Indian lands. Because federal courts have allowed other governments to tax energy development on Indian lands, tribes are unable to impose their own taxes or can only impose partial taxes. Without tax revenues, tribal infrastructure, law enforcement, and social services cannot keep up with the burdens imposed by increased energy development. This authority is essential for tribal governments to exercise self-determination

over our energy resources. We cannot be asked to take over more responsibilities for the federal government without the ability to raise the revenues needed to support those responsibilities.

Fifth, we also need to clarify tribal jurisdiction over Reservation activities and any rights-of-way granted by an Indian tribe. Courts have created uncertainty in the law and this uncertainty is yet another disincentive to the energy business.

Sixth, the Committee should develop legislation to expand and clarify the "Buy Indian Act," 25 U.S.C. § 47. As a part of its government-to-government and trust relationship to Indian tribes, the federal government should be required to purchase tribally produced or owned energy resources. As an example, the MHA Nation is developing an oil refinery that could supply federal agencies and the Defense Department with tribally produced and owned domestic energy supplies.

Seventh, S. 1684 should address delays in payments of oil and gas royalties due to approval of Communitization Agreements. Under current law, royalties are due within 30 days of the first month of production. However, without any authority, the BLM has allowed royalty payments to be delayed for months and years pending the approval of Communitization Agreements. This violation of the law cannot be allowed to continue.

Where feasible, S. 1684 should require Communitization Agreements to be submitted at the time an Application for Permit to Drill is filed. This is possible where the oil and gas resource is well known. When this is not feasible, BLM should require that royalty payments from producing wells be paid within 30 days from the first month of production into an interest earning escrow account.

Eighth, S. 1684 should eliminate BLM oil and gas fees on Indian lands. BLM fees for oil and gas activities on Indian lands create additional disincentives for development on Indian lands and in the case of shallow wells may make development uneconomical. In addition, where an Indian tribe is seeking to develop its own resources, BLM should not charge tribes to carry out its trust responsibilities to the tribe. We included a legislative proposal that would prohibit BLM from charging fees for oil and gas activities on Indian trust and restricted fee lands, including fees for: 1) applications for permits to drill; 2) fees for oil and gas inspections; and, 3) fees for non-producing acreage.

Ninth, S. 1684 should create a low sulfur diesel tax credit for tribal refineries. This credit would be in addition to the existing credit for small business refiners. This legislation would retain the 1,500 employee cap and 5 cents per gallon credit, but remove the barrel and time limits, and provide that the credit may be sold for equity.

Finally, in addition to the weatherization program discussed above, S. 1684 should open the doors of DOE's energy efficiency programs to Indian tribes. Despite a longstanding state program, there are no ongoing programs to support tribal energy efficiency efforts. DOE should allocate not less than 5 percent of existing state energy efficiency funding to establish a grant

program for Indian tribes interested in conducting energy efficiency activities for their lands and buildings.

The MHA Nation has included in its legislative proposals a tribal energy efficiency program that is modeled after the successful Energy Efficiency Block Grant (EEBG) program. Despite its success, the EEBG program was only funded one time—under the American Reinvestment and Recovery Act of 2009. To ensure an ongoing source of funding for tribal energy efficiency efforts, tribes should be provided a portion of the funding for state energy efficiency efforts.

## Conclusion

I want to thank Chairman Akaka, Vice Chairman Barrasso and the members of the Committee for the opportunity to highlight the most significant issues the MHA Nation faces as we promote and manage the development of our energy resources. We ask that you consider legislation to address many of the issues we have described.

**Testimony of Chairman Hall**
**Legislative Hearing on S. 1684**
**Additional Materials for the Record:**

**Photo of Oil and Gas Impacts on Fort Berthold Reservation Roads**

**Photo of Oil and Gas Impacts on Fort Berthold Reservation Roads**

**Testimony of Chairman Hall**
**Legislative Hearing on S. 1684**
**Additional Materials for the Record:**

**MHA Nation's Indian Energy Legislative Proposals**

## I. Streamlining and Promoting Indian Energy Development

### 1) Appraisals

**Problem:** The Department of the Interior (DOI) lacks the staff to provide timely appraisal of Indian agency activities. DOI also lacks the expertise to appraise complicated energy transactions.

**Proposed Solution:** Provide options for appraisal of Indian energy activities. Allow appraisals to be conducted by DOI, a tribe, or a certified third-party appraiser. Require that appraisals submitted by tribes or certified third-party appraisers to be approved or disapproved by DOI within 30 days. If not approved, appraisals shall be deemed approved. The Secretary's trust responsibility shall be maintained even though appraisals are deemed approved.

**Proposed Legislative Text:**

(a) In General.—Title XXVI of the Energy Policy Act of 1992 (25 U.S.C. 3501 et seq.) is amended by adding at the end the following:

"(a) Options for Conducting Appraisals.—With respect to a transaction involving tribal land or the trust assets of an Indian tribe that requires the approval of the Secretary, any appraisal relating to fair market value required to be conducted under applicable law may be conducted by—

"(1) the Secretary;

"(2) the affected Indian tribe; or

"(3) a certified, third-party appraiser pursuant to a contract with the Indian tribe.

"(b) Secretarial Review and Approval.—Not later than 30 days after the date on which the Secretary receives an appraisal conducted by or for an Indian tribe pursuant to paragraph (2) or (3) of subsection (a), the Secretary shall—

"(1) review the appraisal; and

"(2) provide to the Indian tribe a written notice of approval or disapproval of the appraisal.

"(c) If the Secretary does not respond within 30 days, the appraisal shall be deemed approved. Under no circumstances shall deeming an appraisal approved result in the waiver of the federal government's trust responsibility.

"(d) Regulations.—The Secretary shall develop regulations for implementing this section, including standards the Secretary shall use for approving or disapproving an appraisal.".

(b) Conforming Amendment.—The table of contents of the Energy Policy Act of 1992 (42 U.S.C. 13201 note) is amended by adding at the end of the items relating to title XXVI the following:

"Sec.2608.Appraisals.".

**2) Delayed Royalties Due to Communitization Agreements**

**Problem:** Current law requires that oil and gas companies pay royalties on producing wells within 30 days of the first month of production. However, when the well is subject to a Communitization Agreement (CA), without any statutory or regulatory authority, the Bureau of Land Management (BLM) allows oil and gas companies a 90 day grace period before royalties are due. During this period no interest is due. Moreover, the 90 day grace period has been known to extend for a year or more.

**Proposed Solution:** Where feasible, BLM should require CAs to be submitted at the time an Application for Permit to Drill is filed. This is possible where the oil and gas resource is well known. When this is not feasible, BLM should require that royalty payments from producing wells be paid within 30 days from the first month of production into an interest earning escrow account. Once the CA is approved the royalties, plus interest can be paid to the mineral owners.

**3) Standardization of Procedures for Oil and Gas Lease Numbers**

**Problem:** The four DOI agencies involved in the review, approval, and oversight of oil and gas activities on Indian lands use different reference numbers and tracking systems for oil and gas wells. Using different reference numbers and tracking system adds to the complication and delay in approving wells and monitoring well activity.

**Proposed Solution:** Require DOI to develop and implement procedures to ensure that only one reference and tracking number is used among different DOI agencies for each oil and gas well on Indian lands.

**4) Standardization of Procedures for Well Completion Reports and Enforcement of Late Payments**.

**Problem:** Current regulations only require oil and gas companies to send well completion reports to the BLM. However, at least two other agencies should be aware of this information as soon as possible, the Bureau of Indian Affairs (BIA) and the Office of Natural Resources Revenue (ONRR) within the Bureau of Ocean Energy Management, Regulation and Enforcement (BOEMRE). In addition, upon receipt of this information ONRR should inform oil and gas companies of the penalties if royalties are not received in the required time periods, and ONRR needs to be reminded of its enforcement obligations.

**Proposed Solution:** Require DOI to develop a regulation that requires oil and gas lessees to send oil and gas well completion reports to BLM, BIA and ONRR at the same time. Also require ONRR to inform oil and gas companies of penalties for late payment, and clarify that ONRR is required to collect penalties if payments are late.

**5) Inclusion of Tribes in Well Spacing Decisions**

**Problem:** In most states, the BLM defers to state practices and forums when determining oil and gas well spacing on federal lands. The BLM follows this same procedure for determining spacing on Indian lands. Although the BLM ultimately exercises its federal authority and approves the oil and gas well spacing that was originally proposed in state forums, the BLM should more directly consult with and include Indian tribes in spacing determinations on their reservations.

**Proposed Solution:** Where the BLM is involved in determining spacing units on a tribe's reservation, the BLM should be directed to enter into oil and gas spacing agreements with Indian tribes. These agreements should provide a tribe every opportunity to participate in and ultimately determine spacing units on its reservation.

**6) Environmental Review of Energy Projects on Indian Lands**

**Problem:** Environmental review of energy projects on Indian land is often more extensive than on comparable private lands. This extensive review acts as a disincentive to development on Indian lands. In addition, federal agencies typically lack the staff and resources to expeditiously review a project.

**Proposed Solution:** Similar to the Clean Water Act, Clean Air Act and others, amend the National Environmental Policy Act (NEPA) to include treatment as a sovereign (TAS) provisions. The new provision would allow a tribe to submit an application to the Council on Environmental Quality and once approved, federal authority for performing environmental reviews would be delegated to tribal governments.

**7) Review of Major Federal Action on Indian Lands**

**Problem:** Indian lands are held in trust by the federal government for the benefit of Indian tribes. However, review of major federal actions pursuant to NEPA provides the opportunity for national public review and comment on actions on Indian lands. By providing for national public review of actions on Indian lands, a NEPA review provides the opportunity for the public to assess and influence proposed actions on Indian lands. This national review may result in the federal government being forced to take actions that conflict with its trust responsibility to Indian tribes and obligations to manage tribal lands for the benefit of tribes.

**Proposed Solution:** NEPA review and comment for major federal actions on Indian lands should be limited to members of an Indian tribe and members of the public who live in the affected area. This would better align the purposes of an Indian reservation and the federal government's trust responsibility over the reservation with any review pursuant to NEPA. Members of the public who live within the affected area would still be able to comment so that the primary purpose of NEPA is maintained. A new section could be included in NEPA that defines Indian lands and provides that for any major federal action on Indian lands public review and comments will be limited to an affected area defined in regulation or by the agency performing the NEPA review.

**Proposed Legislative Text:**

The National Environmental Policy Act is amended by adding at the end the following:

SEC. XXX. REVIEW OF MAJOR FEDERAL ACTIONS ON INDIAN LANDS.

(a) IN GENERAL.—For any major Federal action on Indian lands requiring the preparation of a detailed statement by a responsible official pursuant to Section 102 of the Act, the statement shall only be available for review and comment by members of the Indian tribe on whose Indian lands the major federal action is proposed and any members of the public living within the affected area.
(b) TRUST RESPONSIBILITY.—In preparing a detailed statement pursuant to Section 102 of the Act, and responding to any comments provided on that detailed statement, the Federal Government shall ensure that its trust relationship to Indian tribes is fulfilled, and that the purposes of an Indian reservation are fulfilled.
(c) REGULATIONS.—The Chair of the Council on Environmental Quality shall develop regulations to implement this section, including descriptions of affected areas for specific major Federal actions, in consultation with Indian tribes.
(d) DEFINITIONS.—For the purposes of this section, the terms "Indian tribe" and "Indian land" have the meaning given the terms in section 2601 of the Energy Policy Act of 1992 (25 U.S.C. 3501).

**8) Minor Source Regulation in Indian Country**

**Problem:** The Environmental Protection Agency (EPA) recently completed new regulations for issuing minor source air permits in Indian Country. EPA's new regulations were completed without meaningful consultation with tribal governments, and EPA does not have the necessary staff throughout Indian Country to implement the new regulations.

**Proposed Solution:** Require EPA to delay implementation of any new minor source rule until after it consults with tribes on its implementation plan and considers the impacts. In addition, require EPA to ensure appropriate staffing is in place to administer any new permitting requirements.

**9) Indian Energy Development Offices**

**Problem:** The BIA lacks the staff and expertise to oversee energy development on Indian lands. In addition, Indian energy development is often subject to extensive review and approval by multiple agencies. The resulting bureaucratic delays are a disincentive to energy development on Indian lands.

**Proposed Solution:** Indian Energy Development Offices should be created in each BIA regional and agency offices where there is a high level of energy activities. Offices should be staffed with energy experts and people familiar with the environmental impacts of energy projects. Each office should be led by a Director who would coordinate and help process energy permitting by the respective agencies. The offices should be overseen by a national

Director who would be housed within the Secretary's office, similar to the Secretary's Indian Water Rights Office, to provide the national Director with the ability to oversee all the activities of DOI agencies.

**Proposed Legislative Text:**

Section 2602(a) of the Energy Policy Act of 1992 (25 U.S.C. 3502(a)) is amended—

(1) by redesignating paragraph (3) as paragraph (4);

(2) by inserting after paragraph (2) the following:

"(3) INDIAN ENERGY DEVELOPMENT OFFICES.—

"(A) ESTABLISHMENT.—To assist the Secretary in carrying out the Program, the Secretary shall establish within the Department of the Interior not less than 5 offices.

"(B) NAMING.—Each office established under subparagraph (A) shall be known as an 'Indian Energy Development Office'.

"(C) LOCATION.—The Secretary shall locate each Indian Energy Development Office—

"(i) within a regional or agency office of the Bureau of Indian Affairs; and

"(ii) to the maximum extent practicable, in an area in which there exists a high quantity of tribal energy development opportunities, as determined by the Secretary in consultation with Indian tribes.

"(D) DIRECTORS.—Each Indian Energy Development Office established under this paragraph shall be headed by a director.

"(E) DUTIES.—The director of each Indian Energy Development Office shall—

"(i) provide energy-related information and resources to Indian tribes and tribal members;

"(ii) coordinate meetings and outreach among Indian tribes, tribal members, energy companies, and relevant Federal, State, and tribal agencies;

"(iii) oversee, and ensure the timely processing of, Indian energy applications, permits, licenses, and other documents that are subject to development, review, or processing by—

"(I) the Bureau of Indian Affairs;

"(II) the Bureau of Land Management;

"(III) the National Park Service;

"(IV) the United States Fish and Wildlife Service;

"(V) the Bureau of Reclamation;

"(VI) the Minerals Management Service; or

"(VII) the Office of Special Trustee for American Indians of the Department of the Interior; and

"(iv) consult with Indian tribes that will be served by an Indian Energy Development Office to determine what services, information, facilities, or programs would best expedite the responsible development of energy resources."

"(F) STAFF.—Each Indian Energy Development Office established under this paragraph shall be adequately staffed to meet the demand for energy permitting in the region or agency where the office is established.

**10) Distributed Generation and Community Transmission**

**Problem:** Areas of Indian Country lack access to electric transmission. 1990 Census data found that 14.2 percent of Indian households lacked access to electric service compared to 1.4 percent of all U.S. households – a tenfold difference.[1] In some areas it is not economically feasible to develop large transmission projects. Current Department of Energy (DOE) tribal energy programs are focused on developing the most energy for the most people. There is no program that emphasizes efficient distributed generation and community transmission.

**Proposed Solution:** Direct DOE to conduct no fewer than 10 distributed energy demonstration projects to increase the energy resources available to Indian and Alaska Native homes, communities, and government buildings. Priority should be given to projects that utilize local resources, and reduce or stabilize energy costs.

**Proposed Legislative Text:**

(a) Definition of Indian Area.—In this section, the term "Indian area" has the meaning given the term in section 4 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4103).

(b) Energy Demonstration Projects.—The Secretary of Energy shall conduct not less than 10 distributed energy demonstration projects to increase the energy resources available to Indian tribes for use in homes and community or government buildings.

(c) Priority.—In carrying out this section, the Secretary of Energy shall give priority to projects in Indian areas that—

(1) reduce or stabilize energy costs;
(2) benefit populations living in poverty;
(3) provide a new generation facility or distribution or replacement system;
(4) have populations whose energy needs could be completely or substantially served by projects under this section; or
(5) transmit electricity or heat to homes and buildings that previously were not served or were underserved.

(d) Eligible Projects.—A project under this section may include a project for—

(1) distributed generation, local or community distribution, or both;
(2) biomass combined heat and power systems;
(3) municipal solid waste generation;
(4) instream hydrokinetic energy;
(5) micro-hydroelectric projects;
(6) wind-diesel hybrid high-penetration systems;
(7) energy storage and smart grid technology improvements;
(8) underground coal gasification systems;
(9) solar thermal, distributed solar, geothermal, or wind generation; or
(10) any other project that meets the goals of this section.

---

[1] U.S. Dep't of Energy, Energy Info. Admin., Energy Consumption and Renewable Energy Development Potential on Indian Lands ix (April 2000) *(available at http://www.eia.doe.gov/cneaf/solar.renewables/ilands/ilands.pdf (using information from the 1990 Decennial Census).*

(e) Incorporation Into Existing Infrastructure.—As necessary, the Director shall encourage local utilities and local governments to incorporate demonstration projects into existing transmission and distribution infrastructure.

(f) Exemptions.—

(1) IN GENERAL.—A project carried out under this section shall be exempt from all cost-sharing requirements of section 988 of the Energy Policy Act of 2005 (42 U.S.C. 16352).

(2) APPLICATIONS.—An application submitted to carry out a project under this section shall not be subject—

(A) to any maximum generation requirements; or

(B) to any requirements for maximizing benefits in relation to the population served.

(g) Reports.—Not later than 2 years after the date on which funds are made available for a project under this section, and annually thereafter, the Secretary shall submit to Congress a report describing—

(1) the activities carried out under the project, including an evaluation of the activity; and

(2) the number of applications received and funded under this section.

**11) Surface Leasing Authority**

**Problem:** In general, surface leases on Indian lands are limited to 25 years with one 25 year automatic approval allowed, however, the life of a typical energy project is 50 years.

**Proposed Solutions:** General surface lease terms should be lengthened to reflect the life of energy projects. These proposals are limited to 50 year lease terms to avoid a lease resulting in de facto ownership of tribal lands by non-Indians, and because other federal laws governing tribal jurisdiction over tribal lands can change over shorter time periods and affect the authority of tribes over lessors. In addition, all tribes should be given the opportunity to assume BIA leasing responsibilities for certain kinds of surface leasing.

a) Amend 25 U.S.C. 415(a), known as the "Indian Long Term Leasing Act," to authorize Indian tribes to lease restricted Indian land for not more than 50 years.
b) Amend 25 U.S.C. 415(e) to allow all tribes to develop leasing regulations, and once approved by the Secretary, the tribes may lease their lands for 25 or 50 years, depending on the circumstance, without having to obtain the approval of the Secretary for each individual leases. This proposal is the similar to the HEARTH Act introduced in the 112th Congress as S. 703 and H.R. 205.
c) Amend the Indian Reorganization Act (25 U.S.C. 477) to authorize Section 17 Corporations to lease Indian land for not more than 50 years.

**Proposed Legislative Text:**

(a) Long-Term Leasing Act.—Subsection (a) of the first section of the Act of August 9, 1955 (25 U.S.C. 415(a)) (commonly known as the "Long-Term Leasing Act"), is amended—

(1) by striking the subsection designation and all that follows through "Any restricted" and inserting the following:

"(a) Authorized Purposes; Term; Approval by Secretary.—

"(1) AUTHORIZED PURPOSES.—Any restricted";

(2) in the second sentence, by striking "All leases so granted" through "twenty five years,

except" and inserting the following:

"(2) TERM.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), the term of a lease granted under paragraph (1) shall be—

"(i) for a lease of tribally owned restricted Indian land, not to exceed 50 years; and

"(ii) for a lease of individually owned restricted Indian land, not to exceed 25 years.

"(B) EXCEPTION.—Except";

(3) in the third sentence, by striking "Leases for public" and all that follows through "twenty-five years, and all" and inserting the following:

"(3) APPROVAL BY SECRETARY.—

"(A) IN GENERAL.—All"; and

(4) in the fourth sentence, by striking "Prior to approval of" and inserting the following:

"(B) REQUIREMENTS FOR APPROVAL.—Before approving".

(b) Approval of, and Regulations Related to, Tribal Leases.—The Act titled "An Act to authorize the leasing of restricted Indian lands for public, religious, educational, recreational, residential, business, and other purposes requiring the grant of long-term leases", approved August 9, 1955 (25 U.S.C. 415) is amended by adding at the end the following:

"(h) Tribal Approval of Leases.—

"(1) IN GENERAL.—At the discretion of any Indian tribe, any lease by the Indian tribe for the purposes authorized under subsection (a) (including any amendments to subsection (a)), except a lease for the exploration, development, or extraction of any mineral resources, shall not require the approval of the Secretary, if the lease is executed under the tribal regulations approved by the Secretary under this subsection and the term of the lease does not exceed—

"(A) in the case of an agricultural lease, 25 years, except that any such lease may include an option to renew for up to 2 additional terms, each of which may not exceed 25 years; and

"(B) in the case of a leases for business, public, religious, educational, recreational, or residential purposes, 50 years and with the consent of both parties may include provisions authorizing their renewal for one additional term of not to exceed 25 years, if such terms are provided for by the regulations issued by the Indian tribe.

"(2) ALLOTTED LAND.—Paragraph (1) shall not apply to any lease of individually owned Indian allotted land.

"(3) AUTHORITY OF SECRETARY OVER TRIBAL REGULATIONS.—

"(A) IN GENERAL.—The Secretary shall have the authority to approve or disapprove any tribal regulations issued in accordance with paragraph (1).

"(B) CONSIDERATIONS FOR APPROVAL.—The Secretary shall approve any tribal regulation issued in accordance with paragraph (1), if the tribal regulations—

"(i) are consistent with any regulations issued by the Secretary under subsection (a) (including any amendments to the subsection or regulations); and

"(ii) provide for an environmental review process that includes—

"(I) the identification and evaluation of any significant effects of the proposed action on the environment; and

"(II) a process for ensuring that—

"(aa) the public is informed of, and has a reasonable opportunity to comment on, any significant environmental impacts of the proposed action identified by the Indian tribe; and

"(bb) the Indian tribe provides responses to relevant and substantive public comments on any such impacts before the Indian tribe approves the lease.

"(4) REVIEW PROCESS.—

"(A) IN GENERAL.—Not later than 120 days after the date on which the tribal regulations described in paragraph (1) are submitted to the Secretary, the Secretary shall review and approve or disapprove the regulations.

"(B) WRITTEN DOCUMENTATION.—If the Secretary disapproves the tribal regulations described in paragraph (1), the Secretary shall include written documentation with the disapproval notification that describes the basis for the disapproval.

"(C) EXTENSION.—The deadline described in subparagraph (A) may be extended by the Secretary, after consultation with the Indian tribe.

"(5) FEDERAL ENVIRONMENTAL REVIEW.—Notwithstanding paragraphs (3) and (4), if an Indian tribe carries out a project or activity funded by a Federal agency, the Indian tribe shall have the authority to rely on the environmental review process of the applicable Federal agency rather than any tribal environmental review process under this subsection.

"(6) DOCUMENTATION.—If an Indian tribe executes a lease pursuant to tribal regulations under paragraph (1), the Indian tribe shall provide the Secretary with—

"(A) a copy of the lease, including any amendments or renewals to the lease; and

"(B) in the case of tribal regulations or a lease that allows for lease payments to be made directly to the Indian tribe, documentation of the lease payments that are sufficient to enable the Secretary to discharge the trust responsibility of the United States under paragraph (7).

"(7) TRUST RESPONSIBILITY.—

"(A) IN GENERAL.—The United States shall not be liable for losses sustained by any party to a lease executed pursuant to tribal regulations under paragraph (1).

"(B) AUTHORITY OF SECRETARY.—Pursuant to the authority of the Secretary to fulfill the trust obligation of the United States to the applicable Indian tribe under Federal law (including regulations), the Secretary may, upon reasonable notice from the applicable Indian tribe and at the discretion of the Secretary, enforce the provisions of, or cancel, any lease executed by the Indian tribe under paragraph (1).

"(8) COMPLIANCE.—

"(A) IN GENERAL.—An interested party, after exhausting of any applicable tribal remedies, may submit a petition to the Secretary, at such time and in such form as the Secretary determines to be appropriate, to review the compliance of the applicable Indian tribe with any tribal regulations approved by the Secretary under this subsection.

"(B) VIOLATIONS.—If, after carrying out a review under subparagraph (A), the Secretary determines that the tribal regulations were violated, the Secretary may take any action the Secretary determines to be necessary to remedy the violation, including rescinding the approval of the tribal regulations and reassuming responsibility for the approval of leases of tribal trust lands.

"(C) DOCUMENTATION.—If the Secretary determines that a violation of the tribal regulations has occurred and a remedy is necessary, the Secretary shall—

"(i) make a written determination with respect to the regulations that have been violated;

"(ii) provide the applicable Indian tribe with a written notice of the alleged violation together with such written determination; and

"(iii) prior to the exercise of any remedy, the rescission of the approval of the regulation involved, or the reassumption of lease approval responsibilities, provide the applicable Indian tribe with—

"(I) a hearing that is on the record; and

"(II) a reasonable opportunity to cure the alleged violation.

"(9) SAVINGS CLAUSE.—Nothing in this subsection shall affect subsection (e) or any tribal regulations issued under that subsection.".

(c) Indian Reorganization Act.—Section 17 of the Act of June 18, 1934 (25 U.S.C. 477) (commonly known as the "Indian Reorganization Act") is amended in the second sentence by striking "twenty-five" and inserting "50"

**12) Partnership with Federal Power Marketing Agencies**

**Problem:** Despite the enormous potential for generating traditional and renewable energy on Indian lands, in many cases, the nation is unable to utilize these resources because they are in remote locations far from population centers where additional energy is needed.

**Proposed Solution:** Require Federal Power Marketing Agencies, including the Western Area Power Administration and the Bonneville Power Administration, to treat energy generated on Indian lands as federal energy generated or acquired by the United States for the purposes of transmitting and marketing such energy. This solution would promote the development of traditional and renewable energy projects on tribal lands, and allow the nation to benefit from additional domestic energy supplies. In addition, this solution would provide some compensation through the promotion of tribal energy projects to Indian tribes whose lands were flooded or taken for the generation of federal energy.

**Proposed Legislative Text:**

Title XXVI of the Energy Policy Act of 1992 (2512 U.S.C. 3501) is amended, by adding at the end a new section:

Section XXXX. Classification of Indian Energy.

(a) IN GENERAL.—The Western Area Power Administration, the Bonneville Power Administration, and all other Federal Power Marketing agencies and related agencies shall consider energy generated on Indian lands the same as federal energy generated or acquired by the United States for the purposes of transmitting and marketing such energy.

**13) Tribal Energy Resource Agreements**

**Problem:** The Tribal Energy Resource Agreement (TERA) program authorized in Title V of the Energy Policy Act of 2005 needs to be amended to make the application process more

clear and certain, to clarify the federal government's trust responsibility, and to provide for needed funding for tribes conducting activities pursuant to a TERA. Despite the benefits of the TERA program, after six years no tribe has applied to the program.

**Proposed Solution:** Deadlines and guidance are needed to make the TERA application process more certain, tribes with demonstrated governing capacity should be able to exercise some forms of TERA authority, and funding is needed to support tribal activities conducted pursuant to a TERA. In addition, DOI must do further outreach and education on the TERA program and its impacts on the Secretary's trust responsibility, including revising TERA regulations after further consultation with Tribes.

**Proposed Legislative Text:**

Section 2604 of the Energy Policy Act of 1992 (25 U.S.C. 3504) is amended—

(1) in subsection (a)—

(A) in paragraph (1)(B)—

(i) in clause (i)—

(I) by inserting "production," after "electric"; and

(II) by inserting "(including a facility that produces electricity from renewable energy resources)" after "facility"; and

(ii) in clause (ii), by inserting ", at least a portion of which have been" after "energy resources"; and

(B) by striking paragraph (2) and inserting the following:

"(2) a lease or business agreement described in paragraph (1) shall not require review by or the approval of the Secretary under section 2103 of the Revised Statutes (25 U.S.C. 81), or any other provision of law, if—

"(A) the lease or business agreement—

"(i) was executed in accordance with the requirements of a tribal energy resource agreement that was approved by the Secretary pursuant to subsection (e) (including the periodic review and evaluation of the activities of the Indian tribe under the agreement, to be conducted pursuant to subparagraphs (D) and (E) of subsection (e)(2)); and

"(ii) has a term that does not exceed—

"(I) 30 years; or

"(II) in the case of a lease for the production of oil or gas resources, or both, the sum of 10 years and the period of time thereafter during which oil or gas is produced in paying quantities; or

"(B)(i) the Indian tribe has carried out a contract or compact under title I or IV of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) and, for a period of not less than 3 years ending on the date on which the Indian tribe requests a certification pursuant to subsection (h), the contract or compact—

"(I) has been carried out by the Indian tribe without material audit exceptions (or without any such exceptions that were not corrected within the 3-year period); and

"(II) has included programs or activities relating to the management of tribal land; and

"(ii) the other party to the lease or business agreement is, and continues to be throughout the full term or renewal term (if any) of the lease or business agreement, a tribal energy development organization that is majority owned and controlled by the Indian tribe.";

(2) by striking subsection (b) and inserting the following:

"(b) Rights-of-way.—An Indian tribe may grant a right-of-way over tribal land without review or approval by the Secretary if—

"(1) the right-of-way serves—

"(A) an electric production, generation, transmission, or distribution facility (including a facility that produces electricity from renewable energy resources) located on tribal land;

"(B) a facility located on tribal land that extracts, produces, processes, or refines energy resources; or

"(C) the purposes, or assists in carrying out the purposes, of any lease or business agreement; and

"(2)(A)(i) the right-of-way was executed in accordance with the requirements of a tribal energy resource agreement that was approved by the Secretary pursuant to subsection (e) (including the periodic review and evaluation of the activities of the Indian tribe under the agreement, to be conducted pursuant to subparagraphs (D) and (E) of subsection (e)(2)); and

"(ii) has a term that does not exceed 30 years; or

"(B)(i) the Indian tribe has carried out a contract or compact under title I or IV of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 458aa et seq.) and, for a period of not less than 3 years ending on the date on which the Indian tribe requests a certification pursuant to subsection (h), the contract or compact—

"(I) has been carried out by the Indian tribe without material audit exceptions (or without any such exceptions that were not corrected within the 3-year period); and

"(II) has included programs or activities relating to the management of tribal land; and

"(ii) the grantee of the right-of-way is, and continues to be throughout the full term or renewal term (if any) of the right-of-way, a tribal energy development organization that is majority owned and controlled by the Indian tribe.";

(3) by striking subsection (d) and inserting the following:

"(d) Validity.—No lease or business agreement entered into, or right-of-way granted, pursuant to this section shall be valid unless the lease, business agreement, or right-of-way is authorized by subsection (a) or (b).";

(4) in subsection (e)—

(A) in paragraph (1), by striking "(1) On the date" and inserting the following:

"(1) IN GENERAL.—On the date";

(B) in paragraph (2)—

(i) by striking "(2)(A)" and all that follows through the end of subparagraph (A) and inserting the following:

"(2) PROCESS FOR APPROVAL.—

"(A)(i) The Secretary shall approve or disapprove—

"(I) a tribal energy resource agreement submitted under paragraph (1) not later than 270 days after the date on which the Secretary receives the agreement; or

"(II) a revised tribal energy resource agreement submitted under paragraph (4)(B) not later than 60 days after the date on which the Secretary receives the revised agreement.

"(ii) A tribal energy resource agreement submitted under paragraph (1) or (4)(B) shall take effect beginning on the date on which the Secretary approves the agreement.

"(iii)(I) If the Secretary has not yet approved or disapproved a tribal energy resource agreement submitted under paragraph (1), the tribal energy resource agreement shall take effect beginning on the date that is 270 days after the date on which the Secretary receives the agreement.

"(II) If the Secretary has not yet approved or disapproved a revised tribal energy resource agreement submitted under paragraph (4)(B), the revised tribal energy resource agreement shall take effect beginning on the date that is 60 days after the date on which the Secretary receives the revised agreement.

"(III) A tribal energy resource agreement that takes effect pursuant to subclause (I) or (II) shall be considered to have been approved by the Secretary for all purposes of this section.";

(ii) in subparagraph (B)—

(I) by striking "(B)" and all that follows through "if—" and inserting the following:

"(B) The Secretary may disapprove a tribal energy resource agreement submitted under paragraph (1) or (4)(B) only if—";

(II) by striking clause (i) and inserting the following:

"(i) the Secretary determines that the Indian tribe has not demonstrated that the Indian tribe has sufficient capacity to regulate the development of the specific 1 or more energy resources that would be subject to the tribal energy resource agreement submitted by the Indian tribe.";

(III) by redesignating clause (iii) as clause (iv) and indenting appropriately;

(IV) by striking clause (ii) and inserting the following:

"(ii) a provision of the tribal energy resource agreement would violate a treaty applicable to the Indian tribe;

"(iii) the tribal energy resource agreement does not include 1 or more provisions required under subparagraph (D); or"; and

(V) in clause (iv) (as redesignated by subclause (III)), in the matter preceding subclause (I), by striking "includes" and all that follows through "section—"and inserting "does not include provisions that, with respect to any lease, business agreement, or right-of-way to which the tribal energy resource agreement applies—"; and

(iii) in subparagraph (C)—

(I) by striking clause (ii) and inserting the following:

"(ii) the identification of mitigation measures, if any, that the Indian tribe in the discretion of the Indian tribe might propose and the incorporation of any such measures into the lease, business agreement, or right-of-way;";

(II) in clause (iv), by striking "and" at the end;

(III) in clause (v), by striking the period at the end and inserting "; and"; and

(IV) by adding at the end the following:

"(vi) the identification of specific classes or categories of actions, if any, determined by the Indian tribe not to have significant environmental effects.";

(iv) in subparagraph (D)(ii), by striking "subparagraph (B)(iii)(XVI)" and inserting "subparagraph (B)(iv)(XVI)"; and

(v) by adding at the end the following:

"(F)(i) The Secretary shall make a determination under subparagraph (B)(i) not later than 90 days after the date on which the Indian tribe submits to the Secretary the tribal energy resource agreement of the Indian tribe pursuant to paragraph (1), unless the Secretary and the Indian tribe mutually agree to an extension of the deadline for making the determination.

"(ii) Any determination that the Indian tribe lacks the requisite capacity shall be treated as a disapproval under paragraph (4) and, not later than 10 days after the date of the determination, the Secretary shall provide to the Indian tribe—

"(I) a detailed, written explanation of each reason for the determination; and

"(II) a description of the steps that the Indian tribe should take to demonstrate sufficient capacity.

"(G) Notwithstanding any other provision of this section, an Indian tribe shall be considered to have demonstrated sufficient capacity under subparagraph (B)(i) to regulate the development of the specific 1 or more energy resources of the Indian tribe that would be subject to the tribal energy resource agreement submitted by the Indian tribe under paragraph (1) if—

"(i) the Secretary determines that—

"(I) the Indian tribe has carried out a contract or compact under title I or IV of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) without material audit exceptions for a period of not less than 3 years ending on the date on which the Indian tribe submits the tribal energy resource agreement of the Indian tribe under paragraph (1) (or without any such exceptions that were not corrected within the 3-year period); or

"(II) the Indian tribe meets the capacity criteria described in the regulations promulgated under paragraph (8)(A); or

"(ii) the Secretary fails to make the determination within the time allowed under subparagraph (F) (including any agreed-to extension under that subparagraph).";

(C) in paragraph (3), by striking "(3) The Secretary" and inserting the following:

"(3) NOTICE AND COMMENT; SECRETARIAL REVIEW.—The Secretary";

(D) in paragraph (4)—

(i) by striking "(4) If the Secretary" and inserting the following:

"(4) ACTION IN CASE OF DISAPPROVAL.—If the Secretary"; and

(ii) by striking "date of disapproval" and all that follows through the end of subparagraph (C) and inserting the following: "date of disapproval, provide the Indian tribe with—

"(A) a detailed written explanation of—

"(i) each reason for the disapproval; and

"(ii) the revisions or changes to the tribal energy resource agreement necessary to address each reason; and

"(B) an opportunity to revise and resubmit the tribal energy resource agreement.";

(E) in paragraph (5), by striking "(5) If an Indian tribe" and inserting the following:
"(5) PROVISION OF DOCUMENTATION TO SECRETARY.—If an Indian tribe";
(F) in paragraph (6)—
(i) by striking "(6)(A) In carrying out" and inserting the following:
"(6) SECRETARIAL OBLIGATIONS AND EFFECT OF SECTION.—
"(A) In carrying out";
(ii) in subparagraph (A), by indenting clauses (i) and (ii) appropriately;
(iii) in subparagraph (B)—
(I) by striking "(B) Subject to the provisions of" and inserting the following:
"(B) Subject only to"; and
(II) by striking "the provisions of subparagraph (D)" and inserting "subparagraphs (C) and (D)";
(iv) in subparagraph (C), in the matter preceding clause (i), by inserting "to perform the obligations of the Secretary under this section and" before "to ensure"; and
(v) in subparagraph (D), by adding at the end the following:
"(iii) Nothing in this subparagraph absolves, limits, or otherwise affects the liability of the United States, if any, for any—
"(I) terms that are not negotiated terms; or
"(II) losses that are not the result of negotiated terms, including the failure of the Secretary to perform an obligation of the Secretary under this section."; and
(G) in paragraph (7)—
(i) by striking "(7)(A) In this paragraph" and inserting the following:
"(7) PETITIONS BY INTERESTED PARTIES.—
"(A) In this paragraph"; and
(ii) by adding at the end the following:
"(G) Notwithstanding any other provision of this paragraph, the Secretary shall dismiss any petition from an interested party that has agreed to a resolution of the claims with the Indian tribe.";
(5) by redesignating subsection (g) as subsection (i); and
(6) by inserting after subsection (f) the following:
"(g) Application of Indian Self-Determination and Education Assistance Act.—
"(1) IN GENERAL.—Any activities proposed to be carried out by the Indian tribe under a tribal energy resource agreement that would otherwise have been performed by the Secretary through the Bureau of Indian Affairs or the Office of the Special Trustee for American Indians shall, at the request of the Indian tribe, be subject to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.).
"(2) LIMITATION.—The only activities described in paragraph (1) that shall not be subject to the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450 et seq.) are the specific activities required to be performed by the Secretary under this section.
"(h) Certification.—
"(1) IN GENERAL.—Not later than 90 days after the date on which an Indian tribe submits a request in accordance with regulations promulgated under paragraph (3), the Secretary shall determine whether—

"(A) the Indian tribe meets the requirements described in subsections (a)(2)(B)(i) or (b)(2)(B)(i); and

"(B) the tribal energy development organization is majority owned and controlled by the Indian tribe.

"(2) ACTION BY SECRETARY.—If the Secretary determines that the Indian tribe meets the requirements described in subsections (a)(2)(B)(i) or (b)(2)(B)(i) and the tribal energy development organization is majority owned and controlled by the Indian tribe, the Secretary shall, not more than 10 days after making the determination—

"(A) issue a certification stating that the Indian tribe meets those requirements and that the tribal energy development organization is majority owned and controlled by the Indian tribe;

"(B) deliver a copy of the certification to the Indian tribe; and

"(C) publish the certification in the Federal Register.

"(3) REGULATIONS.—Not later than 1 year after the date of enactment of this paragraph, the Secretary shall promulgate regulations to implement subsections (a)(2)(B) and (b)(2)(B) and this subsection, including the process to be followed by, and any applicable criteria and documentation required for, an Indian tribe to request and obtain the certification.".

"(f) FURTHER CONSULTATION.—Within six months after the passage of this act, the Secretary shall engage in further consultation with Indian tribes regarding the regulations for implementing the Tribal Energy Resource Agreement program. Consultation shall pay particular attention to fully explaining and discussing the impacts, if any, of the program on the Secretary's trust responsibility. Following consultation the Secretary shall make revisions to the regulations consistent with that consultation.

**14) Tribal Jurisdiction Over Rights-of-Way**

**Problem**: Tribal jurisdiction over some rights-of-way has been limited by federal case law. Without clear jurisdictional authority over rights-of-way tribal governments are unable to provide for the health, safety, and welfare of reservation lands, and state and county governments do not have the resources to provide these services. Legislation is needed to clarify that Indian tribes retain their inherent sovereign authority and jurisdiction for any rights-of-way across Indian lands.

**Proposed Solution:** Clarify the law to state that Indian tribes retain their inherent jurisdiction over any rights-of-way across Indian lands.

**Proposed Legislative Text:**

Notwithstanding any other provision of law, Indian tribes retain inherent sovereignty and jurisdiction over Indian and non-Indian activities on any rights-of-way across Indian land granted for any purpose.

## II. Financing Indian Energy Development

### 15) Need for Tax Revenues

**Problem:** In addition to taxes levied by Indian tribes, a variety of other governments attempt to tax energy activities on Indian lands. In some cases, the other governments levying the taxes earn more from the project than the tribal government. Dual and triple taxation is a disincentive to energy development on Indian lands and results in decreased revenues for tribal governments. Just to encourage development, many tribes are unable to impose their own taxes or can only impose partial taxes. When tribes are not able to collect taxes on energy development, tribal governments lack the revenues to fund staff and tribal agencies to effectively oversee energy activities and tribes will remain dependent on federal funding and programs.

**Proposed Solution:** Limit other governments from taxing energy projects on tribal lands. If limited taxation is allowed by other governments, they should only be able to tax a project to the extent needed to cover any impacts from the project on that government's infrastructure.

**Proposed Legislative Text:**

(a) IN GENERAL.—Indian tribes have exclusive authority to levy or require all assessments, taxes, fees, or levies for energy activities on Indian lands.
(b) REIMBURSEMENT FOR SERVICES.—State and other local governments may enter into agreements with Indian tribes for reimbursement of services provided by the state or local government that are a directly related to the energy activities on Indian lands. Indian tribes, state and local governments are directed to negotiate in good faith in developing such agreements. Any agreement under this section may be reviewed for accuracy by the Secretary of the Interior.
(c) DEFINITIONS.—For the purposes of this section, the terms "Indian tribe" and "Indian land" have the meaning given the terms in section 2601 of the Energy Policy Act of 1992 (25 U.S.C. 3501).

### 16) Indian Tribal Energy Loan Guarantee Program.

**Problem:** Despite the success of federal loan guarantee programs, DOE has not implemented the Indian Energy Loan Guarantee Program from the Energy Policy Act of 2005. This significant loan guarantee program is needed to help tribes finance energy projects.

**Proposed Solution:** Require DOE to implement the program in the same way that the Energy Policy Act required a national non-Indian loan guarantee program (the Title XVII program) to be implemented within one year after the passage of this act. The Title XVII program required DOE to develop regulations establishing the program and providing for its implementation. Once the program was established, then appropriations were provided by Congress to fund the program.

**Proposed Legislative Text:**

Section 2602(c) of the Energy Policy Act of 1992 (25 U.S.C. 3502(c)) is amended—

(1) in paragraph (1)—

(A) by striking the paragraph designation and all that follows through "may provide" and inserting the following:

"(1) REQUIREMENT.—Subject to paragraph (4), not later than 1 year after the date of enactment of this Act, the Secretary of Energy shall provide"; and

(B) by striking "any loan made to an Indian tribe for energy development" and inserting "such loans made to Indian tribes or tribal energy development organizations for energy development, energy transmission projects, or the integration of energy resources as the Secretary determines to be appropriate";

(2) in paragraph (3), by striking the paragraph designation and all that follows through "made by—" and inserting the following:

"(3) ELIGIBLE PROVIDERS OF LOANS.—A loan for which a loan guarantee is provided under this subsection shall be made by—";

(3) in paragraph (4)—

(A) by striking "(4) The aggregate" and inserting the following:

"(4) LIMITATIONS.—

"(A) AGGREGATE OUTSTANDING AMOUNT.—The aggregate"; and

(B) by adding at the end the following:

"(B) SPECIFIC APPROPRIATION OR CONTRIBUTION.—No loan guarantee may be provided under this subsection unless—

"(i) an appropriation for the cost of the guarantee has been made; or

"(ii) the Secretary of Energy has—

"(I) received from the borrower a payment in full for the cost of the obligation; and

"(II) deposited the payment into the Treasury.";

(4) in paragraph (5), by striking the paragraph designation and all that follows through "may issue" and inserting the following:

"(5) REGULATIONS.—The Secretary of Energy shall promulgate"; and

(5) in paragraph (7), by striking "1 year after the date of enactment of this section" and inserting "2 years after the date of enactment of the Indian Energy Parity Act of 2010".

## 17) Bureau of Land Management Oil and Gas Fees

**Problem:** BLM fees for oil and gas activities on Indian lands create additional disincentives for oil and gas development on Indian lands and in the case of shallow wells may make development uneconomical. BLM oversight of oil and gas activities on Indian lands should be performed without cost as a part of BLM's trust responsibility to Indian tribes. When a tribe is interested in developing oil and gas resources on its own lands, BLM should not charge the tribe a fee to develop its own resources.

**Proposed Solution:** Prohibit BLM from charging fees for oil and gas activities on Indian trust and restricted fee lands, including fees for: 1) applications for permits to drill (APD); 2) fees for oil and gas inspections; and, 3) fees for non-producing acreage. BLM would still be able to collect these fees on federal lands.

**Proposed Legislative Text:**

(a) In General.—The second undesignated paragraph of the matter under the heading "MANAGEMENT OF LANDS AND RESOURCES (INCLUDING RESCISSION OF FUNDS)" under the heading "Bureau of Land Management" of title I of division A of the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2010 (Public Law 111–88), is amended by striking ", and in addition" and inserting ", subject to the condition that no such fee may be collected by the Bureau for any application for a permit to drill on Indian land (as defined in section 2601 of the Energy Policy Act of 1992 (25 U.S.C. 3501)); and in addition".

(b) Restriction.—Notwithstanding any other provision of law, the Secretary shall not collect a fee for an application for a permit to drill on Indian land.

(c) Oil and Gas Inspection Fees.—Notwithstanding any other provision of law, the Secretary shall not collect any fee to conduct any oil or gas inspection activity on Indian land.

(d) Nonproducing Acreage Fees.—Notwithstanding any other provision of law, the Secretary shall not collect any fee on any oil or gas lease for nonproducing acreage on Indian land.

**18) Coordination of Agency Funding and Programs**

**Problem:** Funding for Indian energy activities is spread across many agencies. Individual funding sources are typically too small to meet the financial needs of developing energy projects. Tribal administration costs are increased because each agency requires different application and reporting requirements.

**Proposed Solution:** Allow tribes to integrate and coordinate energy funding from the departments of Agriculture, Commerce, Energy, EPA, Housing and Urban Development (HUD), Interior, Labor and Transportation to ensure efficient use of existing federal funding. The proposal is modeled after the successful Pub.L.102-477 employment training integration program. The proposal would allow individual agencies to retain discretion over approval of individual projects.

**Proposed Legislative Text:**

(a) Definitions.—In this section:

(1) AGENCY.—The term "agency" has the meaning given the term in section 551 of title 5, United States Code.

(2) AGENCY LEADER.—The term "Agency leader" means 1 or more of the following:

(A) The Secretary of Agriculture.
(B) The Secretary of Commerce.
(C) The Secretary of Energy.
(D) The Secretary of Housing and Urban Development.
(E) The Administrator of the Environmental Protection Agency.
(F) The Secretary of the Interior.
(G) The Secretary of Labor.
(H) The Secretary of Transportation.

(3) TRIBAL ENERGY DEVELOPMENT ORGANIZATION.—The term "tribal energy development organization" has the meaning given the term in section 2601 of the Energy Policy Act of 1992 (25 U.S.C. 3501).

(b) Single Integrated Program.—

(1) IN GENERAL.—An Indian tribe or tribal energy development organization may submit to the Secretary, and to applicable Agency leaders, a plan to fully integrate into a single, coordinated, comprehensive program federally funded energy-related activities and programs (including programs for employment training, energy planning, financing, construction, and related physical infrastructure and equipment).

(2) NO ADDITIONAL REQUIREMENTS.—The Agency leaders shall not impose any additional requirement or condition, additional budget, report, audit, or supplemental audit, or require additional documentation from, an Indian tribe or tribal energy development organization that has satisfied the plan criteria described in subsection (c).

(3) PROCEDURE.—

(A) IN GENERAL.—On receipt of a plan of an Indian tribe or a tribal energy development organization described in paragraph (1) that is in a form that the Secretary determines to be acceptable, the Secretary shall consult with the applicable Agency leaders to determine whether the proposed use of programs and services is in accordance with the eligibility rules and guidelines on the use of agency funds.

(B) INTEGRATION.—If the Secretary and the applicable Agency leaders make a favorable determination pursuant to subparagraph (A), the Secretary shall authorize the Indian tribe or tribal energy development organization—

(i) to integrate and coordinate the programs and services described in paragraph (4) into a single, coordinated, and comprehensive program; and

(ii) to reduce administrative costs by consolidating administrative functions.

(4) DESCRIPTION OF ACTIVITIES.—The activities referred to in paragraph (1) are federally funded energy-related activities and programs (including programs for employment training, energy planning, financing, construction, and related physical infrastructure and equipment), including—

(A) any program under which an Indian tribe or tribal energy development organization is eligible to receive funds under a statutory or administrative formula;

(B) activities carried out using any funds an Indian tribe or members of the Indian tribe are entitled to under Federal law; and

(C) activities carried out using any funds an Indian tribe or a tribal energy development organization may secure as a result of a competitive process for the purpose of planning, designing, constructing, operating, or managing a renewable or nonrenewable energy project on Indian land.

(5) INVENTORY OF AFFECTED PROGRAMS.—

(A) REPORTS.—Not later than 90 days after the date of enactment of this Act, the Agency leaders shall—

(i) conduct a survey of the programs and services of the agency that are or may be included in the plan of an Indian tribe or tribal energy development organization under this subsection;

(ii) provide a description of the eligibility rules and guidelines on the manner in which the funds under the jurisdiction of the agency may be used; and

(iii) submit to the Secretary a report identifying those programs, services, rules, and guidelines.

(B) PUBLICATION.—Not later than 60 days after the date of receipt of each report under subparagraph (A), the Secretary shall publish in the Federal Register a comprehensive list of the programs and services identified in the reports.

(c) Plan Requirements.—A plan submitted by an Indian tribe or tribal energy development organization under subsection (b) shall—

(1) identify the activities to be integrated;

(2) be consistent with the purposes of this section regarding the integration of the activities in a demonstration project;

(3) describe—

(A) the manner in which services are to be integrated and delivered; and

(B) the expected results of the plan;

(4) identify the projected expenditures under the plan in a single budget;

(5) identify each agency of the Indian tribe to be involved in the administration of activities or delivery of the services integrated under the plan;

(6) address any applicable requirements of the Agency leaders for receiving funding from the federally funded energy-related activities and programs under the jurisdiction of the Agency leaders, respectively;

(7) identify any statutory provisions, regulations, policies, or procedures that the Indian tribe recommends to be waived to implement the plan, including any of the requirements described in paragraph (6); and

(8) be approved by the governing body of the affected Indian tribe.

(d) Approval Process.—

(1) IN GENERAL.—Not later than 90 days after the receipt of a plan of an Indian tribe or tribal energy development organization, the Secretary and applicable Agency leaders shall coordinate a single response to inform the Indian tribe or tribal energy development organization in writing of the determination to approve or disapprove the plan, including any request for a waiver that is made as part of the plan.

(2) PLAN DISAPPROVAL.—Any issue preventing approval of a plan under paragraph (1) shall be resolved in accordance with subsection (e)(3).

(e) Plan Review; Waiver Authority; Dispute Resolution.—

(1) IN GENERAL.—On receipt of a plan of an Indian tribe or tribal energy development organization, the Secretary shall consult regarding the plan with—

(A) the applicable Agency leaders; and

(B) the governing body of the applicable Indian tribe.

(2) IDENTIFICATION OF WAIVERS.—

(A) IN GENERAL.—In carrying out the consultation described in paragraph (1), the Secretary, the applicable Agency leaders, and the governing body of the applicable Indian tribe shall identify the statutory, regulatory, and administrative requirements, policies, and procedures that must be waived to enable the Indian tribe or tribal energy development organization to implement the plan.

(B) WAIVER AUTHORITY.—Notwithstanding any other provision of law, the applicable Agency leaders may waive any applicable regulation, administrative requirement, policy, or procedure identified under subparagraph (A) in accordance with the purposes of this section.

(C) TRIBAL REQUEST TO WAIVE.—In consultation with the Secretary and the applicable Agency leaders, an Indian tribe may request the applicable Agency leaders

to waive a regulation, administrative requirement, policy, or procedure identified under subparagraph (A).

(D) DECLINATION OF WAIVER REQUEST.—If the applicable Agency leaders decline to grant a waiver requested under subparagraph (C), the applicable Agency leaders shall provide to the requesting Indian tribe and the Secretary written notice of the declination, including a description of the reasons for the declination.

(3) DISPUTE RESOLUTION.—

(A) IN GENERAL.—The Secretary, in consultation with the Agency leaders, shall develop dispute resolution procedures to carry out this section.

(B) PROCEDURES.—If the Secretary determines that a declination is inconsistent with the purposes of this section, or prevents the Department from fulfilling the obligations under subsection (f), the Secretary shall establish interagency dispute resolution procedures involving—

(i) the participating Indian tribe or tribal energy development organization; and

(ii) the applicable Agency leaders.

(4) FINAL DECISION.—In the event of a failure of the dispute resolution procedures under paragraph (3), the Secretary shall inform the applicable Indian tribe or tribal energy development organization of the final determination not later than 180 days after the date of receipt of the plan.

(f) Responsibilities of Department.—

(1) MEMORANDUM OF AGREEMENT.—Not later than 180 days after the date of enactment of this Act, the Secretary and the Agency leaders shall enter into an interdepartmental memorandum of agreement that shall require and include—

(A) an annual meeting of participating Indian tribes, tribal energy development organizations, and Agency leaders, to be co-chaired by a representative of the President and a representative of the participating Indian tribes and tribal energy development organizations;

(B) an annual review of the achievements made under this section and statutory, regulatory, administrative, and policy obstacles that prevent participating Indian tribes and tribal energy development organizations from fully carrying out the purposes of this section;

(C) a forum comprised of participating Indian tribes, tribal energy development organizations, and agencies to identify and resolve interagency or Federal-tribal conflicts that occur in carrying out this section; and

(D) the dispute resolution procedures required by subsection (e)(3).

(2) DEPARTMENT RESPONSIBILITIES.—The responsibilities of the Department include—

(A) in accordance with paragraph (3), developing a model single report for each approved plan of an Indian tribe or tribal energy development organization regarding the activities carried out and expenditures made under the plan;

(B) providing, subject to the consent of an Indian tribe or tribal energy development organization with an approved plan under this section, technical assistance either directly or pursuant to a contract;

(C) developing a single monitoring and oversight system for the plans approved under this section;

(D) receiving and distributing all funds covered by a plan approved under this section; and

(E) conducting any required investigation relating to a waiver or an interagency dispute resolution under this section.

(3) MODEL SINGLE REPORT.—The model single report described in paragraph (2)(A) shall—

(A) be developed by the Secretary, in accordance with the requirements of this section; and

(B) together with records maintained at the Indian tribal level regarding the plan of the Indian tribe or tribal resource development organization, contain such information as would allow a determination that the Indian tribe or tribal energy development organization—

(i) has complied with the requirements incorporated in the applicable plan; and

(ii) will provide assurances to each applicable agency that the Indian tribe or tribal energy development organization has complied with all directly applicable statutory and regulatory requirements.

(g) No Reduction, Denial, or Withholding of Funds.—No Federal funds may be reduced, denied, or withheld as a result of participation by an Indian tribe or tribal energy development organization in the program under this section.

(h) Interagency Fund Transfers.—

(1) IN GENERAL.—If a plan submitted by an Indian tribe or tribal energy development organization under this section is approved, the Secretary and the applicable Agency leaders shall take all necessary steps to effectuate interagency transfers of funds to the Department for distribution to the Indian tribe or tribal energy development organization.

(2) COORDINATED AGENCY ACTION.—As part of an interagency transfer under paragraph (1), the applicable Agency leader shall provide the Department a 1-time transfer of all required funds by not later than October 1 of each applicable fiscal year.

(3) AGENCIES NOT AUTHORIZED TO WITHHOLD FUNDS.—If a plan is approved under this section, none of the applicable Agency leaders may withhold funds for the plan.

(i) Administration; Recordkeeping; Overage.—

(1) ADMINISTRATION OF FUNDS.—

(A) IN GENERAL.—The funds for a plan under this section shall be administered in a manner that allows for a determination that funds from a specific program (or an amount equal to the amount attracted from each program) shall be used for activities described in the plan.

(B) SEPARATE RECORDS NOT REQUIRED.—Nothing in this section requires an Indian tribe or tribal energy development organization—

(i) to maintain separate records relating to any service or activity conducted under the applicable plan for the program under which the funds were authorized; or

(ii) to allocate expenditures among those programs.

(2) ADMINISTRATIVE EXPENSES.—

(A) COMMINGLING.—Administrative funds for activities under a plan under this section may be commingled.

(B) ENTITLEMENT.—An Indian tribe or tribal energy development organization shall be entitled to the full amount of administrative costs for the activities of a plan under this section, in accordance with applicable regulations.

(C) OVERAGES.—No overage of administrative costs for the activities of a plan under this section shall be counted for Federal audit purposes, if the overage is used for the purposes described in this section.

(j) Single Audit Act.—Nothing in this section interferes with the ability of the Secretary to fulfill the responsibilities for the safeguarding of Federal funds pursuant to chapter 75 of title 31, United States Code (commonly known as the "Single Audit Act").

(k) Training and Technical Assistance.—

(1) IN GENERAL.—The Department, with the participation and assistance of the Agency leaders, shall conduct activities for technical assistance and training relating to plans under this section, including—

(A) orientation sessions for Indian tribal leaders;

(B) workshops on planning, operations, and procedures for employees of Indian tribes;

(C) training relating to case management, client assessment, education and training options, employer involvement, and related topics; and

(D) the development and dissemination of training and technical assistance materials in printed form and over the Internet.

(2) ADMINISTRATION.—To effectively administer the training and technical assistance activities under this subsection, the Department shall collaborate with an Indian tribe that has experience with federally funded energy-related activities and programs (including programs for employment training, energy planning, financing, construction, and related physical infrastructure and equipment).

**19) Permanent Extension of Accelerated Depreciation for Investments on Indian Lands**

**Problem:** Development of new businesses and new job opportunities in Indian Country is scarce. On average, unemployment in Indian Country is almost 50 percent. Bureaucratic federal oversight of Indian lands is a primary disincentive to business development on Indian lands. To foster business, investment tax credits need long-term authorization to allow businesses to plan accordingly.

**Proposed Solution:** Permanently extend the ability to take accelerated depreciation for property on Indian lands.

**Proposed Legislative Text:**

(a) PERMANENT EXTENSION.—Subsection (j) of section 168 of the Internal Revenue Code of 1986 (relating to property on Indian reservations) is amended by striking paragraph (8).

(b) MODIFICATION OF QUALIFIED INFRASTRUCTURE PROPERTY.—

(1) The last sentence of clause (ii) of section 168(j)(4)(C) of the Internal Revenue Code of 1986 is amended by striking ''and communications facilities'' and inserting ''communications facilities, facilities related to the production or extraction of minerals or energy resources, facilities for the production, generation, transportation, transmission, or distribution of energy, and facilities for the sequestration of emissions related to such production'' before the period at the end.

(2) Section 168(j)(4) of such Code is amended by adding at the end the following new subparagraph:

(D) SPECIAL RULE FOR FACILITIES PREDOMINATELY USING RESOURCES HELD IN TRUST FOR INDIAN TRIBES OR THEIR MEMBERS.—The term 'qualified Indian reservation property' shall include property predominately using resources held in trust for Indian tribes or their members to produce energy or minerals where title to the energy or minerals being produced is held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation.

(c) EFFECTIVE DATES.—

(1) EXTENSION.—The amendment made by subsection (a) shall apply to property placed in service after December 31, 2009.

(2) MODIFICATIONS.—The amendments made by subsection (b) shall apply to property placed in service after the date of the enactment of this Act.

**20) Eligibility of Indians for Work Opportunity Tax Credit.**

**Problem:** The average unemployment rate on Indian reservations is 49%.[2]

**Proposed Solution:** Indians should be included in the Work Opportunity Tax Credit as opposed to extending the existing Indian Employment Tax Credit. Inclusion in this modern national employment tax credit program will help to ensure that tax credits for employing Indians are not left behind.

**Proposed Legislative Text:**

(a) QUALIFIED INDIANS TREATED AS MEMBERS OF A TARGETED GROUP.—Section 51(d) of the Internal Revenue Code of 1986 is amended—

(1) in paragraph (1), by striking ''or'' at the end of subparagraph (H), by striking the period at the end of subparagraph (I) and inserting '', or'', and by adding at the end the following new subparagraph: ''(J) a qualified Indian.'', and

(2) by adding at the end the following new paragraph:

''(15) QUALIFIED INDIAN.—

''(A) IN GENERAL.—The term 'qualified Indian' means any individual—

''(i) who is an enrolled member of an Indian tribe or the spouse of an enrolled member of an Indian tribe, and

''(ii) whose principal place of abode is on or near an Indian reservation—

''(I) in the case of qualified employment services described in subparagraph (B)(i), on which the qualified employment services are performed,

''(II) in the case of qualified employment services described in subparagraph (B)(ii), of the Indian tribe which holds, or for whose benefit the United States holds, the energy or mineral

[2] Bureau of Indian Affairs Labor Force Report (2005). Tribes with the highest unemployment rates are located in the Great Plains and Rocky Mountain Regions, with an average reservation unemployment rate of 77% and 67% respectively. These regions encompass the States of Montana, Nebraska, North Dakota, South Dakota and Wyoming. *Id*.

resources with respect to which the qualified employment services are performed, and

''(III) in the case of qualified employment services described in subparagraph (B)(iii), of the Indian tribe for which there is a hiring preference.

''(B) QUALIFIED EMPLOYMENT SERVICES.—The term 'qualified employment services' means—

''(i) any services performed for an employer within an Indian reservation,

''(ii) any services performed for an employer in connection with a trade or business which—

''(I) consists of the development of energy or mineral resources held by the United States in trust for the benefit of an Indian tribe or enrolled members of an Indian tribe or held by an Indian tribe or any enrolled member of an Indian tribe and subject to a restriction by the United States against alienation, and

''(II) pays royalties from such trade or business to an Indian tribe, or

''(iii) any services with respect to which there is a hiring preference under the law of an Indian tribe or under an agreement between the employer and an Indian tribe."

''(C) INDIAN TRIBE.—The term 'Indian tribe' has the meaning given such term under section 45A(c)(6).

''(D) INDIAN RESERVATION.—The term 'Indian reservation' has the meaning given such term under section 168(j)(6).''

(b) CREDIT FOR SECOND YEAR WAGES, ETC.—Section 51 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subsection:

''(l) SPECIAL RULES FOR EMPLOYMENT OF QUALIFIED INDIANS.—

''(1) CREDIT FOR SECOND-YEAR WAGES.—With respect to the employment of a qualified Indian—

''(A) the amount of the work opportunity credit determined under this section for the taxable year shall include 50 percent of the qualified second-year wages for such year, and

''(B) in lieu of applying subsection (b)(3),the amount of the qualified first-year wages, and the amount of applicable second-year wages, which may be taken into account with respect to any qualified Indian shall not exceed $10,000 per year.

''(2) QUALIFIED SECOND-YEAR WAGES.—For purposes of this subsection, the term 'qualified second-year wages' means, with respect to any qualified Indian, wages attributable to qualified employment services rendered during the 1 year period beginning on the last day of the 1-year period with respect to such qualified Indian determined under subsection (b)(2).

''(3) INFLATION ADJUSTMENT.—In the case of any calendar year after calendar year 2010, the $10,000 amount in paragraph (1)(C) shall be increased by an amount equal to—

''(A) such dollar amount, multiplied by

''(B) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year, determined by substituting 'calendar year 2010' for 'calendar year 1992' in subparagraph (B) thereof. Any increase determined under the preceding sentence shall be rounded to the nearest multiple of $500.

''(4) SPECIAL RULES FOR AGRICULTURAL AND RAILWAY LABOR.—If a qualified Indian is an employee to which subparagraph (A) or (B) of subsection (h)(1) applies, rules similar to the rules of such subparagraphs shall apply except that—

''(A) such subparagraph (A) shall be applied by substituting 'the amount in effect under subsection (l)(1)(B)' for '$6,000', and

''(B) such subparagraph (B) shall be applied by substituting 'one-twelfth of the amount in effect under subsection (l)(1)(B)' for '$500'.''

(c) COORDINATION WITH INDIAN EMPLOYMENT CREDIT.—Subparagraph (B) of section 45A(b)(1) of the Internal Revenue Code of 1986 is amended by adding at the end the following new sentence: ''If any portion of wages are into account under subsection (e)(1)(A) or (l)(1)(A) of section 51, the preceding sentence shall be applied by substituting '2-year period' for '1-year period'.''

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to individuals who begin work after the date of the enactment of this Act.

**21) Investment Tax Credit**

**Problem:** The economic viability of innovative energy projects often depends on the ability to utilize federal tax credits. Because tribes are not able to take advantage of these tax credits, tribal projects are effectively priced out of the market.

**Proposed Solution:** Indian tribes need to be able to use all of the tools that are available to others to lower the cost of developing energy projects. Authorize Indian tribes or their instrumentalities to assign to their private sector partner the basis of energy property that would be allocated to the tribe. Tribes could then receive an equity interest in the project or other benefits from their partner for their share of the basis.

**Proposed Legislative Text:**

(a) IN GENERAL.—Section 48(a) of the Internal Revenue Code of 1986 (relating to energy credit) is amended by adding at the end the following new paragraph:

(6) ASSIGNMENT OF BASIS BY INDIAN TRIBAL GOVERNMENTS.—

(A) IN GENERAL.—In the case of energy property in which an Indian tribal government (within the meaning of section 7871) has an ownership interest, such government may assign to any other person who has an ownership interest in the property any portion of the basis of the property that would (but for this paragraph) be allocated to such government. This assignment—

(i) shall be made not later than the date the property is placed in service for purposes of this section,

(ii) shall be made in such manner as the Secretary may provide, and

(iii) may be revoked only with the consent of the Secretary.

(B) TERMINATION.—This paragraph shall not apply to periods after December 31, 2014, under rules similar to the rules of section (m) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990).

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to property placed in service after the date of the enactment of this Act.

**22) Renewable Energy Production Tax Credit Transferability**

**Problem:** The economic viability of renewable energy projects often depends on the ability to utilize federal tax credits. Because tribes are not able to take advantage of these tax credits, tribal projects are effectively priced out of the market.

**Proposed Solution:** Indian tribes need to be able to use all of the tools that are available to others to lower the cost of developing energy projects. Authorize Indian tribes to assign their share of the production tax credit for electricity generated from renewable energy to a private sector partner in the project. Tribes could then receive an equity interest in the project or other benefits from their partner for their share of the renewable energy produced.

**Proposed Legislative Text:**

(a) IN GENERAL.—Paragraph (3) of section 45(e) of the Internal Revenue Code of 1986 (relating to production attributable to the taxpayer) is amended to read as follows:

(3) PRODUCTION ATTRIBUTABLE TO THE TAX PAYER.—

(A) IN GENERAL.—In the case of a facility in which more than 1 person has an ownership interest, except to the extent provided in regulations prescribed by the Secretary, production from the facility shall be allocated among such persons in proportion to their respective ownership interests in the gross sales from such facility.

(B) SPECIAL RULE FOR INDIAN TRIBES.—

(i) IN GENERAL.—In the case of a facility described in subparagraph (A) in which an Indian tribe has an ownership interest in the gross sales from such facility the Indian tribe may assign to any other person who has an ownership interest in such facility any portion of the production from the facility that would (but for this subparagraph) be allocated to such Indian tribe. Any such assignment may be revoked only with the consent of the Secretary and shall be made at such time and in such manner as the Secretary may provide.

(ii) INDIAN TRIBE.—For purposes of clause (i), the term 'Indian tribe' means any Indian tribe, band, nation, pueblo, or other organized group or community, including any Alaska Native village or regional or village corporation, as defined in, or established pursuant to, the Alaska Native Claims Settlement Act (43 U.S.C.11 1601 et seq.) which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.''

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to electricity produced and sold after the date of the enactment of this Act.

**23) Grants for Energy Property in Lieu of Tax Credits.**

**Problem:** The economic viability of innovative energy projects often depends on the ability to utilize federal tax credits. Because tribes are not able to take advantage of these tax credits, tribal projects are effectively priced out of the market.

**Proposed Solution:** Allow non-taxpaying entities to receive grants instead of tax credits. To help stimulate investment in innovative energy projects, the federal government has provided grants in lieu of tax credits so that non-taxpaying entities could receive a benefit for investing in innovative energy projects.

**Proposed Legislative Text:**

Section 1603 of division B of the American Recovery and Reinvestment Act of 2009 is amended by redesignating subsections (h), (i), and (j) as subsections (i), (j), and (k), respectively, and by inserting after subsection (g) the following new subsection:
''(h) GRANTS TO INDIAN TRIBES.—
''(1) IN GENERAL.—Notwithstanding subsection (g)(3), subsection (a) shall apply to any Indian tribe which places specified energy property in service on Indian lands.
''(2) SPECIAL RULES.—In the case of any Indian tribe which is eligible to receive a grant under subsection (a) by reason of paragraph (1)—
''(A) the second sentence of subsection (a), the last sentence of subsection (d), and subsection (j) shall not apply, and
''(B) no grant shall be made to such Indian tribe with respect to any property unless—
''(i) such property is placed in service after the date of the enactment of this subsection and before the credit termination date with respect to such property, and
''(ii) the Secretary has received an application for such grant before the termination date with respect to such property.
''(3) DEFINITIONS.—In this subsection:
''(A) INDIAN TRIBE.—The term 'Indian tribe' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).
''(B) INDIAN LAND.—The term 'Indian land' has the meaning given the term in section 2601 of the Energy Policy Act of 1992 (25 U.S.C. 3501).''

**24) Tribal Economic Development Bonds**

**Problem:** Section 1402 of the American Recovery and Reinvestment Act of 2009, P.L. 115-5, 123 Stat. 115 (2009) authorized tribal governments to issue, on a temporary basis, tribal economic development bonds (TED Bonds) without satisfying the essential government function test. The bond limitation was set at $2 billion. The allocation of these bonds has been completed.

**Proposed Solution:** Permanently repeal the "essential government function" test currently applied by the Internal Revenue Service (IRS) to tribes who wish to issue tax exempt bonds. On a recurring annual basis, have a TED Bond allocation available to Tribes. Reallocate any unused allocation on a yearly basis.

**25) Hypothecation of Coal Resources.**

**Problem**: Many tribes and individual Indians own mineral rights to subsurface coal on split estates where non-Indians own the surface rights. To realize the benefit of the coal resources without affecting the environment or disturbing the non-Indian surface estates, tribes need to be able to hypothecate the coal resources in situ. Through hypothecation, tribes could pledge their coal resources as collateral to secure debts and obtain loans without having to extract the coal.

**Proposed Solution**: Clarify the law to specifically allow for the hypothecation of coal resources.

**Proposed Legislative Text**:

(a) PURPOSES. – The purposes of this section are –

(1) To ensure that Indian tribes and individual Indians are able to fully benefit from their coal resources in accordance with the Indian Mineral Leasing Act of 1938 (25 U.S.C. 396a–396g), the Indian Mineral Development Act of 1982 (25 U.S.C. 2101–2108) and other provisions of law that advance those Acts; and

(2) To ensure undiminished protection of the environment and the protection of surface owners under existing split estates.

(b) REVIEW – Notwithstanding any other law, Congress hereby authorizes Indian tribes and individual Indians to hypothecate their coal mineral interests in situ that tribes or individual Indians own within the boundaries of their reservations.

**26) Low Sulfur Refinery Tax Credit**

**Problem**: The Internal Revenue Code provides a low sulfur fuel tax credit of 5 cents for every gallon of low sulfur diesel fuel produced by a qualified small business refiner during the tax year. 26 U.S.C. 45H. However, a "small business refiner" is defined as one that has no more than 1,500 individuals engaged in the refinery operations on any day and had an average daily domestic refinery run or average retained production for the one-year period ending on December 31, 2002 under 205,000 barrels. Thus, under the Internal Revenue Code, a refinery would have had to been operating in 2002 to qualify for the tax credit, and the IRS form for this credit provides that the refiner must have been in operation on April 1, 2003. Any low sulfur diesel tribal refineries in operation after 2002, will not qualify as a small business refiner. The barrel limit is also too restrictive.

**Proposed Solution:** Amend the Internal Revenue Code to create a low sulfur diesel tax credit for any tribal refinery, in addition to the existing credit for small business refiners. This legislation would retain the 1,500 employee cap and 5 cents per gallon credit, but remove the barrel and time limits, and provide that the credit may be sold for equity.

**Proposed Legislative Text:** (Modeled after the existing small business refiner credit at 26 U.S.C. 45H)

(a) IN GENERAL.—For the purposes of section 38, the amount of the low sulfur diesel fuel production credit determined under this section with respect to any facility on Indian land

is an amount equal to 5 cents for each gallon of low sulfur diesel fuel produced during the taxable year by such facility.

…

(c) DEFINITIONS AND SPECIAL RULE.—The term "tribal refinery" means, with respect to any taxable year, a refiner of crude oil on Indian land for which no more than 1,500 individuals are engaged in the refinery operations of the business on any day during such taxable year.

…

(h) Credits as equity.—Tribal refineries may sell the tax credits under this section to their business partners to obtain equity for that amount of tax credit.

## III. Including Tribes in Federal Energy Programs and Planning

### 27) Study on Transmission Infrastructure and Access

**Problem:** Historically Federal and state electric transmission planning overlooked or ignored energy generation potential on Indian lands. Consequently, energy projects on tribal lands lack access to high voltage transmission.

**Proposed Solution:** Direct DOE to conduct a study of the electric generation potential on Indian lands and related transmission needs. The study should involve Indian tribes, federal agencies, and transmission providers and utilities operating in and around Indian country.

**Proposed Legislative Text:**

(a) Study.—

(1) IN GENERAL.—The Secretary of Energy, in consultation with Indian tribes, intertribal organizations, the Secretary of the Interior, the Federal Energy Regulatory Commission, the Federal power marketing administrations, regional transmission operators, national, regional, and local electric transmission providers, electric utilities, electric cooperatives, electric utility organizations, and other interested stakeholders, shall conduct a study to assess—

(A) the potential for electric generation on Indian land and on the Outer Continental Shelf adjacent to Indian land, from renewable energy resources; and

(B) the electrical transmission needs relating to carrying that energy to the market.

(2) REQUIREMENTS.—The study under paragraph (1) shall—

(A) identify potential energy generation resources on Indian land and on the Outer Continental Shelf adjacent to Indian land, from renewable energy resources;

(B) identify existing electrical transmission infrastructure on, and available to provide service to, Indian land;

(C) identify relevant potential electric transmission routes and paths that can carry electricity generated on Indian land to loads;

(D) assess the capacity and availability of interconnection of existing electrical transmission infrastructure;

(E) identify options to ensure tribal access to electricity, if the development of transmission infrastructure to reach tribal areas is determined to be unfeasible;

(F) identify regulatory, structural, financial, or other obstacles that Indian tribes encounter or would encounter in attempting to develop energy transmission infrastructure or connect with existing electrical transmission infrastructure; and

(G) make recommendations for legislation to help Indian tribes overcome the obstacles identified under subparagraph (F).

(b) Report.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit to Congress a report describing the results of the study under subsection (a).

**28) Tribal Energy Efficiency**

**Problem:** There are no ongoing programs to support tribal energy efficiency efforts. DOE's longstanding State Energy Program supporting energy efficiency efforts at the state level does not include tribes.

**Proposed Solution:** Direct DOE to allocate not less than 5 percent of existing state energy efficiency funding to establish a grant program for Indian tribes interested in conducting energy efficiency activities for their lands and buildings. Funding should be provided in a manner similar to successful Energy Efficiency Block Grant Program to promote projects and simplify reporting requirements.

**Proposed Legislative Text:**

Part D of title III of the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.) is amended by adding at the end the following:

"(a) Definition of Indian Tribe.—In this section, the term 'Indian tribe' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

"(b) Purpose.—The purpose of the grants provided under subsection (d) shall be to assist Indian tribes in implementing strategies—

"(1) to reduce fossil fuel emissions created as a result of activities within the jurisdictions of eligible entities in a manner that—

"(A) is environmentally sustainable; and

"(B) to the maximum extent practicable, maximizes benefits for Indian tribes and tribal members;

"(2) to increase the energy efficiency of Indian tribes and tribal members; and

"(3) to improve energy efficiency in—

"(A) the transportation sector;

"(B) the building sector; and

"(C) other appropriate sectors.

"(c) Tribal Allocation.—Of the amount of funds authorized to be appropriated for each fiscal year under section 365(f) to carry out this part, the Secretary shall allocate not less than 5 percent of the funds for each fiscal year to be distributed to Indian tribes in accordance with subsection (d).

"(d) Grants.—Of the amounts available for distribution under subsection (c), the Secretary shall establish a competitive process for providing grants under this section that gives priority to projects that—

"(1) increase energy efficiency and energy conservation rather than new energy generation projects;

"(2) integrate cost-effective renewable energy with energy efficiency;

"(3) move beyond the planning stage and are ready for implementation;

"(4) clearly articulate and demonstrate the ability to achieve measurable goals;

"(5) have the potential to make an impact in the government buildings, infrastructure, communities, and land of an Indian tribe; and

"(6) maximize the creation or retention of jobs on Indian land.

"(e) Use of Funds.—An Indian tribe may use a grant received under this section to carry out activities to achieve the purposes described in subsection (b), including—

"(1) the development and implementation of energy efficiency and conservation strategies;

"(2) the retention of technical consultant services to assist the Indian tribe in the development of an energy efficiency and conservation strategy, including—

"(A) the formulation of energy efficiency, energy conservation, and energy usage goals;

"(B) the identification of strategies to achieve the goals—

"(i) through efforts to increase energy efficiency and reduce energy consumption; and

"(ii) by encouraging behavioral changes among the population served by the Indian tribe;

"(C) the development of methods to measure progress in achieving the goals;

"(D) the development and publication of annual reports to the population served by the eligible entity describing—

"(i) the strategies and goals; and

"(ii) the progress made in achieving the strategies and goals during the preceding calendar year; and

"(E) other services to assist in the implementation of the energy efficiency and conservation strategy;

"(3) the implementation of residential and commercial building energy audits;

"(4) the establishment of financial incentive programs for energy efficiency improvements;

"(5) the provision of grants for the purpose of performing energy efficiency retrofits;

"(6) the development and implementation of energy efficiency and conservation programs for buildings and facilities within the jurisdiction of the Indian tribe, including—

"(A) the design and operation of the programs;

"(B) the identification of the most effective methods of achieving maximum participation and efficiency rates;

"(C) the education of the members of an Indian tribe;

"(D) the measurement and verification protocols of the programs; and

"(E) the identification of energy efficient technologies;

"(7) the development and implementation of programs to conserve energy used in transportation, including—

"(A) the use of—

"(i) flextime by employers; or

"(ii) satellite work centers;

"(B) the development and promotion of zoning guidelines or requirements that promote energy-efficient development;

"(C) the development of infrastructure, including bike lanes, pathways, and pedestrian walkways;

"(D) the synchronization of traffic signals; and

"(E) other measures that increase energy efficiency and decrease energy consumption;

"(8) the development and implementation of building codes and inspection services to promote building energy efficiency;

"(9) the application and implementation of energy distribution technologies that significantly increase energy efficiency, including—

"(A) distributed resources; and

"(B) district heating and cooling systems;

"(10) the implementation of activities to increase participation and efficiency rates for material conservation programs, including source reduction, recycling, and recycled content procurement programs that lead to increases in energy efficiency;

"(11) the purchase and implementation of technologies to reduce, capture, and, to the maximum extent practicable, use methane and other greenhouse gases generated by landfills or similar sources;

"(12) the replacement of traffic signals and street lighting with energy-efficient lighting technologies, including—

"(A) light-emitting diodes; and

"(B) any other technology of equal or greater energy efficiency;

"(13) the development, implementation, and installation on or in any government building of the Indian tribe of onsite renewable energy technology that generates electricity from renewable resources, including—

"(A) solar energy;

"(B) wind energy;

"(C) fuel cells; and

"(D) biomass; and

"(14) any other appropriate activity, as determined by the Secretary, in consultation with—

"(A) the Secretary of the Interior;

"(B) the Administrator of the Environmental Protection Agency;

"(C) the Secretary of Transportation;

"(D) the Secretary of Housing and Urban Development; and

"(E) Indian tribes.

"(f) Grant Applications.—

"(1) IN GENERAL.—

"(A) APPLICATION.—To apply for a grant under this section, an Indian tribe shall submit to the Secretary a proposed energy efficiency and conservation strategy in accordance with this paragraph.

"(B) CONTENTS.—A proposed strategy described in subparagraph (A) shall include a description of—

"(i) the goals of the Indian tribe for increased energy efficiency and conservation in the jurisdiction of the Indian tribe;

"(ii) the manner in which—

"(I) the proposed strategy complies with the restrictions described in subsection (e); and

"(II) a grant will allow the Indian tribe fulfill the goals of the proposed strategy.

"(2) APPROVAL.—

"(A) IN GENERAL.—The Secretary shall approve or disapprove a proposed strategy under paragraph (1) by not later than 120 days after the date of submission of the proposed strategy.

"(B) DISAPPROVAL.—If the Secretary disapproves a proposed strategy under paragraph (1)—

"(i) the Secretary shall provide to the Indian tribe the reasons for the disapproval; and

"(ii) the Indian tribe may revise and resubmit the proposed strategy as many times as necessary, until the Secretary approves a proposed strategy.

"(C) REQUIREMENT.—The Secretary shall not provide to an Indian tribe a grant under this section until a proposed strategy is approved by the Secretary.

"(3) LIMITATIONS ON USE OF FUNDS.—Of the amounts provided to an Indian tribe under this section, an Indian tribe may use for administrative expenses, excluding the cost of the reporting requirements of this section, an amount equal to the greater of—

"(A) 10 percent of the administrative expenses; or

"(B) $75,000.

"(4) ANNUAL REPORT.—Not later than 2 years after the date on which funds are initially provided to an Indian tribe under this section, and annually thereafter, the Indian tribe shall submit to the Secretary a report describing—

"(A) the status of development and implementation of the energy efficiency and conservation strategy; and

"(B) to the maximum extent practicable, an assessment of energy efficiency gains within the jurisdiction of the Indian tribe.".

**29) Weatherization of Indian Homes**

**Problem:** Under current law, Indian tribes are supposed to receive federal weatherization funding through state programs funded by DOE. However, very little weatherization funding reaches Indian tribes despite significant weatherization needs. If a tribe wants to receive direct funding from DOE, it must prove to DOE that it is not receiving funding that is equal to what the state is providing its non-Indian population. Currently, out of 565 federally recognized tribes, only two tribes and one tribal organization receive direct weatherization funding from DOE.

**Proposed Solution:** Pursuant to the federal government's government-to-government relationship with Indian tribes, DOE should directly fund tribal weatherization programs. Training programs should also be supported to ensure availability of energy auditors in Indian Country.

**Proposed Legislative Text:**

Section 413 of the Energy Conservation and Production Act (42 U.S.C. 6863) is amended by striking subsection (d) and inserting the following:

"(d) Direct Grants to Indian Tribes for Weatherization of Indian Homes.—

"(1) DEFINITIONS.—In this subsection:

"(A) INDIAN AREA.—The term 'Indian area' has the meaning given the term in section 4 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4103).

"(B) INDIAN TRIBE.—The term 'Indian tribe' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

"(2) IN GENERAL.—Of the amounts made available for each fiscal year to carry out the Weatherization Assistance Program for Low-Income Persons established under part A of title IV, the Secretary shall allocate for Indian tribes not less than 10 percent.

"(3) REGULATIONS.—

"(A) PROPOSED REGULATIONS.—Not later than 90 days after the date of enactment of the Indian Energy Parity Act of 2010, the Secretary, after consulting with the Secretary of the Interior, the Secretary of Housing and Urban Development, the Secretary of Health and Human Services, the Secretary of Labor, Indian tribes, and intertribal organizations, shall publish in the Federal Register proposed regulations to carry out this subsection.

"(B) FINAL REGULATIONS.—

"(i) IN GENERAL.—Not later than 120 days from the date of enactment of the Indian Energy Parity Act of 2010, the Secretary shall promulgate final regulations to carry out this subsection, taking into consideration the comments submitted in response to the publication of the proposed regulations described in subparagraph (A).

"(ii) CRITERIA.—Final regulations promulgated by the Secretary to carry out this subsection shall—

"(I) provide a formula or process for ensuring that weatherization funding is available for any Indian tribe that submits a qualifying weatherization funding application under paragraph (4)(C);

"(II) promote efficiency in carrying out this subsection by the Secretary and Indian tribes; and

"(III) consider—

"(aa) the limited resources of Indian tribes to carry out this subsection;

"(bb) the unique characteristics of housing in Indian areas; and

"(cc) the remoteness of Indian areas.

"(4) ALLOCATION OF FUNDING.—

"(A) IN GENERAL.—The Secretary shall provide financial assistance to an Indian tribe from the amounts provided under paragraph (2), if the Indian tribe submits to the Secretary a weatherization funding application.

"(B) CONTENTS.—A weatherization funding application described in subparagraph (A) shall—

"(i) describe—

"(I) the estimated number and characteristics of the persons and dwelling units to be provided weatherization assistance; and

"(II) the criteria and methods to be used by the Indian tribe in providing the weatherization assistance; and

"(ii) contain any other information (including information needed for evaluation purposes) and assurances that are required under regulations promulgated by the Secretary to carry out this section.

"(C) QUALIFYING WEATHERIZATION FUNDING.—A weatherization funding application that meets the criteria under subparagraph (B) shall be considered a qualifying weatherization funding application.

"(D) INITIAL DISTRIBUTION OF FUNDING.—The Secretary shall distribute funding under this subsection to Indian tribes that submit qualifying weatherization funding applications—

"(i) on the basis of the relative need for weatherization assistance; and

"(ii) taking into account—

"(I) the number of dwelling units to be weatherized;

"(II) the climatic conditions respecting energy conservation, including a consideration of annual degree days;

"(III) the type of weatherization work to be done;.

"(IV) any data provided in the most recent version of the Bureau of Indian Affairs American Indian Population and Labor Force Report prepared pursuant to Public Law 102–477 (106 Stat. 2302), or if not available, any similar publication; and

"(V) any other factors that the Secretary determines to be necessary, including the cost of heating and cooling, in order to carry out this section.

"(E) COMPETITIVE GRANTS.—For each fiscal year, if any amounts remain available after the initial distribution of funding described in subparagraph (D), the Secretary shall solicit applications for grants from Indian tribes—

"(i) to carry out weatherization projects and weatherization training;

"(ii) to supply weatherization equipment; and

"(iii) to develop tribal governing capacity to carry out a weatherization program consistent with this subsection.

"(F) REMAINING FUNDING.—For each fiscal year, if any amounts remain available after distribution under subparagraphs (D) and (E), the amounts shall remain available to fulfill the purpose of this subsection in subsequent fiscal years.

"(G) RENEWAL OF QUALIFYING WEATHERIZATION FUNDING APPLICATIONS.—

"(i) IN GENERAL.—To achieve maximum efficiency in the allocation of funding, an Indian tribe that submits a qualifying weatherization funding application may request that the weatherization funding application of the Indian tribe be renewed in subsequent fiscal years.

"(ii) CONTENTS.—A request to renew a qualifying weatherization funding application shall contain such information as the Secretary determines to be necessary to achieve efficiency in the allocation of funding under this subsection.

"(5) USE OF FUNDS.—

"(A) IN GENERAL.—An Indian tribe shall use funds provided under paragraph (4) to carry out weatherization and energy conservation activities that benefit the members of an Indian tribe in Indian areas.

"(B) ELIGIBLE ACTIVITIES.—The weatherization and energy conservation activities described in subparagraph (A) include—

"(i) the provision of existing services under this section;

"(ii) the acquisition and installation of energy-efficient windows and doors and heating and cooling equipment; or

"(iii) the repair, replacement, or insulation of floors, walls, roofs, and ceilings.

"(C) APPLICABILITY OF REQUIREMENTS.—

"(i) IN GENERAL.—Notwithstanding any other provision of law, the use of funds under this paragraph by an Indian tribe shall be subject only to—

"(I) the requirements of this subsection; and

"(II) implementing regulations of the Department of Energy.

"(ii) OTHER REQUIREMENTS OF ACT.—In accordance with the government-to-government and trust relationships between the United States and Indian tribes, the income, energy audit, grant limitation, and other administrative and eligibility requirements of this Act shall not apply to the use of funds under this paragraph by an Indian tribe.

"(6) REPORT.—Not later than 90 days after the closing date of each applicable project year, each Indian tribe that receives funds under this subsection shall submit to the Secretary a simple outcome report that describes, for that project year—

"(A) each activity carried out by the Indian tribe under this subsection, including the amounts used for each such activity;

"(B) the number of Indian households benefitted by the activities of the Indian tribe under this subsection; and

"(C) the estimated savings in energy costs realized in the communities served by the Indian tribe.

"(7) TRAINING AND TECHNICAL ASSISTANCE.—The Secretary shall carry out technical assistance and training activities relating to weatherization under this subsection, including—

"(A) orientation sessions for Indian tribes;

"(B) workshops on planning, operations, and procedures for Indian tribes to use the funding provided under this subsection;

"(C) training relating to carrying out weatherization projects; and

"(D) the development and dissemination of training and technical assistance materials in printed form and over the Internet.".

**30) Hydroelectric Licensing Preferences**

**Problem:** Section 7(a) of the Federal Power Act (16 U.S.C. 800(a)) provides a preference to states and municipalities, but not tribes, when applying for hydroelectric preliminary permits and original licenses.

**Proposed Solution:** Provide tribes with the same preference as states and municipalities.

**Proposed Legislative Text:**

Section 7(a) of the Federal Power Act (16 U.S.C. 800(a)) is amended—

(1) by striking "In issuing" and inserting "(1) IN GENERAL.—In issuing"; and

(2) in paragraph (1) (as so designated)—

(A) by striking "States and municipalities" and inserting "States, Indian tribes, and municipalities"; and

(B) by adding at the end the following:

"(2) DEFINITION OF INDIAN TRIBE.—In this section, the term 'Indian tribe' has the meaning given the term in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).".

**31) Department of Energy Laboratories Technical Assistance**

**Problem:** DOE's national laboratories have extensive research and technical expertise that is underutilized by Indian tribes.

**Proposed Solution:** Encourage DOE's national laboratories to reach out to Indian tribes and make research, training, and expertise more accessible to Indian tribes.

**Proposed Legislative Text:**

Section 2602(b) of the Energy Policy Act of 1992 (25 U.S.C. 3502(b)) is amended—

(1) by redesignating paragraphs (3) through (6) as paragraphs (4) through (7), respectively; and

(2) by inserting after paragraph (2) the following:

"(3) TECHNICAL AND SCIENTIFIC RESOURCES.—In addition to providing grants to Indian tribes under this subsection, the Secretary shall collaborate with the Directors of the National Laboratories in making the full array of technical and scientific resources of the Department of Energy available for tribal energy activities and projects."