Written Testimony of the Honorable Irene C. Cuch
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Before the Committee on Indian Affairs
U.S. Senate

April 19, 2012

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

Good afternoon Chairman Akaka, Vice Chairman Barrasso, and Members of the Committee on Indian Affairs, my name is Irene Cuch. I am the Chairwoman of the Business Committee for the Ute Indian Tribe of the Uintah and Ouray Reservation. The Ute Indian Tribe consists of three Ute Bands: the Uintah, the Whiteriver and the Uncompahgre Bands. Our Reservation is located in northeastern Utah. Thank you for the opportunity to testify on S. 1684, the "Indian Tribal Energy Development and Self-Determination Act Amendments of 2011."

I. Introduction

The Ute Indian Tribe is a major oil and gas producer in the United States. Production of oil and gas began on the Reservation in the 1940's and has been ongoing for the past 70 years with significant periods of expansion. The Tribe leases about 400,000 acres for oil and gas development. We have about 7,000 wells that produce 45,000 barrels of oil a day. We also produce about 900 million cubic feet of gas per day. And, we have plans for expansion. The Tribe is currently in process of opening up an additional 150,000 acres to mineral leases on the Reservation with an $80 million investment dedicated to exploration.

The Tribe relies on its oil and gas development as the primary source of funding for our tribal government and the services we provide. We use these revenues to govern and provide services on the second largest reservations in the United States. Our Reservation covers more than 4.5 million acres and we have 3,175 members living on the Reservation.

Our tribal government provides services to our members and manages the Reservation through 60 tribal departments and agencies including land, fish and wildlife management, housing, education, emergency medical services, public safety, and energy and minerals management. The Tribe is also a major employer and engine for economic growth in northeastern Utah. Tribal businesses include a bowling alley, a supermarket, gas stations, a feedlot, an information technology company, a manufacturing plant, Ute Oil Field Water

Services LLC, and Ute Energy LLC. Our governmental programs and tribal enterprises employ 450 people, 75% of whom are tribal members. Each year the Tribe generates tens of millions of dollars in economic activity in northeastern Utah.

The Tribe takes an active role in the development of its resources as a majority owner of Ute Energy LLC which has an annual capital budget of $216 million. In addition to numerous oil and gas wells, Ute Energy teamed with the Anadarko Petroleum Corporation to establish and jointly own the Chipeta gas processing and delivery plant in the Uintah Basin. The Tribe recently approved plans for Ute Energy to become a publically traded company. This investment will allow us to expand our energy development and increase revenues.

Despite our progress, the Tribe's ability to fully benefit from its resources is limited by the federal agencies overseeing oil and gas development on the Reservation. As the oil and gas companies who operate on the Tribe's Reservation often tell the Tribe, the federal oil and gas permitting process is the single biggest risk factor to operations on the Reservation. As former Senator Dorgan highlighted, a single oil and gas permit must make its way through a bureaucratic 49 step maze to be approved. This process involves at least 4 routinely understaffed federal agencies.

The Tribe estimates that an oil and gas permit could be processed through these steps in about 60 to 90 days. That is about how long it takes a permit to be approved on the Fort Berthold Reservation in North Dakota, where the Department of the Interior (DOI) utilizes a "virtual one-stop shop" to oversee and streamline permitting. On our Reservation, a typical permit can take about 480 days to be processed—more than one year.

The Tribe takes delays in the permitting process seriously because the number of permits approved is directly related to the revenues the Tribe has available to fund our government and provide services to our members. For example, the Tribe understands that oil and gas companies operating on the Reservation are currently limiting operations based on the number of permits the agencies are able to process. In particular, companies are limiting the number of drilling rigs they are willing to operate on the Reservation.

Drilling rigs are expensive operations that move from site to site to drill new wells. Oil and gas companies often contract for the use of drilling rigs. Any time a drilling rig is not actively drilling a new well, it amounts to an unwanted expense. Consequently, oil and gas companies will only employ as many drilling rigs as permit processing will support. On our Reservation, the Tribe understands that some oil and gas companies who are currently using one drilling rig would increase their operations to three drilling rigs if permit processing could support this increase.

One example of this is the Anadarko Petroleum Corporation's operations on the Reservation. Anadarko reported that it needed 23 well locations approved per month in 2011 and beyond, but in 2010, their permits were approved at a rate of 1.7 per month. Anadarko informed the Tribe that unpredictable approvals of permits forces the company to alter its operational plans at the last minute and often results in the company temporarily moving its

operations off the Reservation to state and private lands. With consistent and reliable permit approvals, the Tribe is hopeful additional drilling rigs will move on to tribal lands and increase the revenues available for the tribal government, our members, and our investments.

To improve the permitting process, the Tribe has been directly seeking legislative and administrative improvements to the permitting process for oil and gas development on Indian lands. The Tribe is working with the Administration on its own and as a part of the Coalition of Large Tribes (COLT) to improve the oil and gas permitting process. The Tribe hosted tours of oil and gas development on the Reservation for government officials, attended meetings with high ranking Bureau of Indian Affairs (BIA) and Bureau of Land Management (BLM) officials, and is planning energy summits and conferences to work collaboratively with other tribes and industry partners in seeking improvements to the permitting process.

The Tribe is also working directly with Congress to improve the permitting process. In the 111th Congress and the current Congress, the Tribe participated in the development of Indian energy legislation to help resolve these permitting issues. In the current Congress, the Tribe attended two listening sessions on a draft of S. 1684. At these listening sessions, Committee staff asked tribes to submit legislative ideas that would facilitate Indian energy development. In response, the Ute Indian Tribe developed 32 legislative proposals to overcome barriers and improve the management of Indian energy resources. These proposals were submitted to the Committee in July 2011. In February 2012, the Committee held an oversight hearing on Indian energy development. The Tribe attended that hearing and submitted extensive testimony for the hearing record.

Today, the Tribe is again providing testimony on needed legislative changes. My testimony will focus on the specific sections of S. 1684. I will also highlight some of the Tribe's 32 legislative proposals that need to be included in S. 1684 to further improve the permitting process and provide additional tools for Indian tribes to manage their energy resources. For your convenience, I have attached the Tribe's 32 legislative proposals to my testimony.

II. S. 1684, the Indian Tribal Energy Development and Self-Determination Act Amendments of 2011

The Tribe supports S. 1684 and believes that it is a good start. S. 1684 would amend existing laws to provide tribes with improved opportunities to manage their own energy resources. However, S. 1684 only addresses a few areas of the law. On its own, the Tribe came up with 32 areas of law that need revision. Much more needs to be done to overcome barriers tribes face in Indian energy development and to put tribes on an equal playing field with state governments and other energy developers. Before discussing what else is needed, below I specifically discuss the substantive sections of S. 1684.

A. Section 101. Indian Tribal Energy Resource Development

The Tribe supports the amendments proposed in Section 101, but, in at least one case, more is necessary. First, this section would require the Secretary to consult an Indian tribe when

adopting or approving an oil and gas well-spacing program or plan on the Tribe's lands. This proposal was among the 32 legislative proposals submitted by the Tribe. For too long the BLM, on behalf of the Secretary, has approved well-spacing plans on Indian lands without involving tribes. Tribes should be involved in this decision-making process to ensure that Indian lands are being developed efficiently, that protected areas are avoided, and to ensure that tribes have every opportunity to work closely with their industry partners.

Over the past year, the Tribe has been working as a part of COLT to seek an administrative change from the BLM on the issue of well-spacing. BLM officials in attendance at these meetings have been supportive of including tribes in well-spacing decisions, but the BLM has yet to issue any sort of policy directive to ensure that tribes are included. By making this change legislatively, the Congress would advance an issue that the Tribe and COLT has been seeking for almost a year, and which appears to have the support of the Administration.

Second, Section 101 also extends important planning authority to the Secretary of the Interior. When the Energy Policy Act of 2005 was passed, two Indian energy offices were created—one in the DOI and one in the Department of Energy (DOE). The DOE office was provided specific authority to assist tribes in overall energy planning. The DOI office was not provided similar authority.

Both offices need this specific planning authority. Federal energy policy has long overlooked or ignored tribes. Today tribes are catching up quickly and need the same or similar federal assistance that states rely on to manage their energy resources. In addition, Congress must support this statutory authority with needed appropriations to help tribes overcome decades of neglect by federal energy policy makers.

Third, Section 101 would require the Secretary of Energy to develop regulations for a long-overdue Indian energy loan guarantee program that was originally authorized in 2005 but never implemented. The Tribe believes that developing regulations would go a long way toward implementing the program and ensuring needed appropriations from Congress, but more is needed.

The law also needed to be changed to actually require the Secretary of Energy to provide these loan guarantees. Current law only states that the Secretary "may" provide guarantees. Making the program mandatory would provide the Indian energy loan guarantee program with the same authority provided to the Title XVII loan guarantee program which was authorized at the same time for energy innovations. Under the Title XVII program, the law stated that the Secretary "shall" provide guarantees.

We need similar energy innovations on Indian lands and we need similar laws to require that they be implemented. The Tribe specifically included this recommendation among its 32 legislation proposals because financing expensive energy projects is one of the most significant barriers to Indian energy development. Providing tribes with the opportunity to secure government backed financing would promote tribal self-determination in the development of

energy resources because tribes would have the opportunity to be the owners of their development companies rather than relying on others to develop tribal resources.

DOI currently manages a successful Indian loan guarantee program for tribal businesses, but it lacks the budget for more expensive energy projects. Tribes need the level of funding proposed by the DOE loan guarantee program to cover the investment needed for energy projects. With this level of funding tribes will be encouraged to be owners of their own energy projects and vast untapped tribal energy resources can be developed for the long-term benefit of tribal communities and the Nation's domestic energy supplies.

B. Section 102. Indian Tribal Energy Resource Regulation

The amendments in this section would extend DOI funding opportunities for energy surveys and inventories to a new entity called a "tribal energy development organization" that is defined elsewhere. The Tribe believes that it would be useful for tribal energy development organizations to be able to receive funding through this program. However, it is more important and would advance Indian self-determination for Congress to provide sufficient appropriations to fund Indian energy surveys and inventories in the first instance. Funding is needed to ensure that tribes can enter into energy development negotiations with sufficient information and thereby promote Indian energy development.

C. Section 103. Tribal Energy Resource Agreements

The Tribe supports the changes Section 103 would make to the existing Tribal Energy Resource Agreement (TERA) program. As you know, the TERA program generally provides a process for Indian tribes to apply and potentially gain authority to approve leases, business agreements, and rights-of-way for energy development or transmission on their lands without Secretarial review. Many of the proposed changes in Section 103 would make the existing TERA application process more certain by providing timelines, requiring the Secretary to act on a TERA or it is deemed approved, and making more specific the reasons the Secretary may disapprove a TERA application. These are needed changes. I understand that since the program was created in 2005, no tribe has applied for a TERA, in part, because of the lengthy and uncertain application process.

Section 103 would also expand some TERA authority to a new category of tribes. This new category would be tribes who have carried out a contract or compact under the Indian Self-Determination and Education Assistance Act (ISDEAA) involving activities related to the management of tribal land for not less than three years and without a material auditing exception. This new category of tribes may exercise TERA authority when the other party to the lease is a "certified" tribal energy development organization that is majority-owned and controlled by the tribe, or the tribe and one or more other tribes.

The Tribe strongly supports this change to the TERA program. This change would provide tribes, with demonstrated experience, the authority to approve some of their own leases, business agreements, and rights-of-way without the delays inherent in Secretarial review and

approval. The Tribe has long managed its own energy development, lands and natural and cultural resources. The Tribe's experience in these areas should be recognized by the federal government without the Tribe being forced to take the additional, extensive, and uncertain step of completing a TERA application.

This change also promotes tribal self-determination and local control over the development of tribal energy resources. Tribes would be encouraged to develop tribally owned energy companies to develop their resources because tribes could enter into leases and agreements with tribally owned businesses without Secretarial oversight. This change allows tribes to avoid understaffed and bureaucratic federal agencies and the permitting delays associated with those agencies. Instead, tribes would be free to develop their own processes for more efficiently reviewing and approving leases and agreements with tribally owned businesses.

The Tribe also strongly supports changes proposed in Section 103 that would require the Secretary to make funds available to tribes operating an approved TERA pursuant to annual funding agreements—similar to ISDEAA contracts. If the tribes are going to take over these responsibilities for the federal government, then the federal government must provide adequate funding to tribes. Although it is unclear how much funding would be available from the Secretary for , any new opportunity for funding energy activities is a significant change.

In addition to any federal funding may become available, tribal self-determination in the area of energy development would be better advanced if Congress affirmed tribes' exclusive authority to tax activities on Indian lands. Managing the permitting of energy resources, not to mention the infrastructure needs, is an expensive undertaking for any government. Tribes need the same revenues that other governments rely on to oversee and provide the needed infrastructure for energy development.

Finally, the Tribe supports changes in Section 103 that would help to clarify the Secretary's trust responsibilities for leases and agreements negotiated pursuant to a TERA. The proposed changes use language that is similar to existing law for Indian Mineral Development Agreements 25 U.S.C. §§ 2101-08 (1982) (IMDA). The IMDA's explanation of the Secretary's trust responsibilities has stood the test of time and is an appropriate model for the Secretary's trust responsibilities pursuant to a TERA.

D. Section 104. Conforming Amendments

Section 104 expands the definition of "tribal energy development organizations" to include a greater variety of tribally owned business entities that can utilize the authorities provided to tribal energy development organizations. The Tribe supports this change. The Tribe agrees that it is important and will advance Indian energy development to specifically recognize and extend authorities to tribally owned business entities. In many cases, tribally owned business entities, as opposed to just tribal governments themselves, are needed for the practical and efficient development of resources.

E. Section 201. Issuance of Preliminary Permits or Licenses

The Tribe supports Section 201 which would provide tribes with the same preference that states and municipalities have over private applicants for hydroelectric preliminary permits or licenses. It is appropriate to extend this preference to Indian tribes because tribal governments have many of the same public water development needs as state and municipal governments.

However, subsection 201(b) "Applicability" is neither appropriate nor needed and should be deleted from S. 1684. This subsection would limit the tribal preference and is intended to protect previously issued preliminary permits and original licenses that had been accepted for filing. Subsection 201(b) is not needed because the underlying law, 16 U.S.C. § 800(a), already provides protection for previously issues preliminary permits. Section 800(a) provides that governments may only receive this preference "where no preliminary permit has been issued."

Subsection 201(b) also not an appropriate protection for original licenses that have been accepted for filing. Congress already provided a process for "competing" license applications at 16 U.S.C. § 808 and subsection 201(b) should not attempt to override existing law. In Section 808, Congress encourages competition for licenses and provides standards to ensure the best development of public waterways. The proposed changes in subsection 201(b) would limit competition and result in water projects that are not the best available for tribal and public waterways.

F. Section 202. Tribal Biomass Demonstration Project

The Tribe supports Section 202 and requests that these provisions be made permanent and available to many tribes rather than just a limited demonstration project. Section 202 would require the Secretary of Agriculture or the Secretary of the Interior to enter into long-term contracts with tribes to collect woody debris on federal lands for biomass energy production. Longer contract terms are needed to help finance and justify the investment in biomass energy generation facilities. The Tribe could utilize a longer-term contact to test development of biomass facilities and make use of National Forests that have been included within our Reservation.

G. Section 203. Weatherization Program

The Tribe supports the change proposed in Section 203, but thinks that it does not go far enough to make weatherization programs work in Indian Country. The Tribe requests that Section 203 be replaced with the weatherization proposal included among the Tribe's 32 legislative proposals. The Tribe's proposal includes a number of changes to the weatherization program so that it would work in Indian Country

Section 203 would provide tribes with the ability to apply for direct access to weatherization funding. This authority should have been provided long ago. Under current law, Indian tribes are supposed to receive federal weatherization funding through state programs

funded by DOE. However, very little 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. This arrangement is a violation of the government-to-government relationship between Indian tribes and the federal government, and the federal trust responsibility. DOE does not even track the weatherization needs of Indian tribes or the funding distributed to tribes. When former Senator Dorgan raised this issue with DOE in the 111th Congress, DOE reported that it had no idea how much weatherization funding was actually received by Indian tribes.

Over the years that the weatherization program has been in existence, tribes have missed out on millions in funding. Each year the weatherization program is funded at around $50 million per year, and under the American Reinvestment and Recovery Act of 2009 $4 billion was provided for weatherization needs. This funding is intended for low-income households and should go to those who need it most. On Indian reservations poverty rates are 2 to 3 times higher than national averages.

Section 203 should include additional changes to the weatherization program otherwise Indian tribes will still not be able to utilize the funding. As written, Section 203 requires tribes to comply with the same standards as state governments who have been receiving weatherization assistance for decades. This puts the burden on tribes to overcome decades of neglect by the federal government for energy use and management on Indian reservations. Without standards and training that are appropriate to Indian country, many Indian tribes will still not be able to utilize this funding opportunity. Section 203 should include reporting standards that make sense in Indian country and provide for training of energy auditors to serve Indian reservations.

III. Additional Changes Needed to Promote Indian Energy

I ask that you review the Tribe's legislative proposals and expand the bill to address more of the barriers that tribes face in managing our energy resources. I have attached the Tribe's 32 legislative proposals to my testimony for your convenience and so that they will be part of the hearing record.

In particular, the Tribe asks that the Committee support the creation of Indian Energy Development Offices to improve both traditional and renewable energy permitting. On the House side, Congressman Don Young has already included this proposal in H.R. 3973, his "Native American Energy Act." As former Senator Dorgan and many in Congress have noted, the oil and gas permitting process is a bureaucratic maze of federal agencies. Indian Energy Development Offices would bring all of the agencies into the same room and would streamline permit processing. These agencies could then work collaboratively to eliminate backlogs and delays in approving leases, rights-of-way, and applications for permits to drill.

Former Senator Dorgan referred to these offices as one-stop shops. There are 3 one-stop shops already in Indian Country. There is one at Navajo, in Oklahoma, and a virtual one-stop

shop on the Fort Berthold Reservation in North Dakota. Former Senator Dorgan reported that the one-stop shop at Fort Berthold helped to increase oil and gas permit approvals by 4 times.

On our Reservation, the Ute Indian Tribe needs 10 times as many oil and gas permits to be approved. Currently, about 48 Applications for Permits to Drill (APD) permits are approved each year on the Reservation. The Tribe and its business partners estimate that about 450 APDs will be needed each year as the Tribe expands its operations. The Tribe believes that a one-stop shop is the best way to get the BIA, the BLM, and other federal agencies working efficiently with the Tribe to manage the high level of permitting needed on the Reservation.

Just as important, the BIA, BLM and other federal agencies that oversee the permitting process do so without the staffing and expertise needed to fully support Indian energy development. A one-stop shop would encourage DOI to hire staff with Indian energy expertise. The BIA may be the most important federal agency responsible for supporting Indian energy development, yet there are only a handful of BIA employees with energy expertise. Congress needs to provide the authority and budgets so that the BIA can hire energy experts.

The Tribe also believes that we need to remove as many disincentives to energy development on Indian reservations as we can. For example, the fees that the BLM charges for oil and gas activities on Indian lands are a disincentive to Indian energy development and encourage developers to move just over the Reservation boundary to private lands where there are no BLM fees. In the case of shallow wells, these fees may make development completely uneconomical. In addition, when the Tribe is developing its own resources, it is outrageous that the Tribe's federal trustee would charge us for performing its trust responsibility. The BLM should be prohibited from charging fees for oil and gas activities on Indian lands.

We also need clarifications in the law to encourage energy development and other economic activities. Legislation should clarify that Indian tribes retain their inherent sovereign authority and jurisdiction over any rights-of-way they have granted. Over the last 30 years, jurisdiction over rights-of-way has been treated differently by various federal courts. Each time an issue arises, another federal court undertakes a new examination. This leads to uncertainty in the law and a lack of dependability about the rules that apply on a right-of-way. This hinders our ability to develop energy resources because all parties need certainty in the law.

The law should also be clarified to ensure that tribes can raise needed tax revenues to support and oversee energy development. Currently, federal courts allow other governments to tax energy development on Indian lands. This limits and even prevents tribes from earning tax revenues from development on our lands. Without tax revenues, tribal infrastructure, law enforcement, and other services cannot keep up with the burdens imposed by energy development, and we remain dependent upon funding from the federal government.

The Tribe also asks that Committee not overlook the important role DOE could be playing in the management of Indian energy resources. In general, DOE ignores Indian tribes in its programs and in setting national energy policies. The relatively new Office of Indian Energy Policies and Programs is making progress, but tribes are left out of the vast majority of DOE

programs. The Committee could hold an entire hearing on the lost opportunities. Tribes need full access to existing DOE programs for energy loan guarantees, energy efficiency, weatherization assistance, and renewable energy research and development.

At a minimum, DOE should fully include tribes in federal energy efficiency and weatherization programs. The federal government provides about $100 million every year to fund these programs at the state level. This funding should go to those who need it most, but for decades these programs have ignored the needs of tribes. The Tribe asks that these programs be expanded to include set-asides for tribal governments. These programs would help tribes reduce energy costs and manage energy use in government buildings and reservation homes.

IV. Regulatory Barriers to Indian Energy Development

Finally, the Tribe asks that the Committee monitor agency actions to create additional barriers to Indian energy development. Two recent examples are the BLM's decision to develop regulations for hydraulic fracturing activities on public lands, and the Environmental Protection Agency's (EPA) implementation of its Minor Source Rule for air permits. The Committee may need to hold oversight hearings on these issues or develop legislative solutions depending upon how the agencies proceed in developing or implementing these rules.

There are a variety of problems with the BLM's proposed regulation of hydraulic fracturing. First, the BLM has never initiated a discussion with Indian tribes about the need for the regulations, alternatives that could preserve tribal authority for tribes to regulate the issue ourselves, or even a government-to-government discussion of the substance of the proposed regulations. All of which fails to fulfill DOI's four month old Policy on Consultation with Indian Tribes (December 2011) and Executive Order No. 13175 on Consultation and Coordination with Indian Tribal Governments. The Tribe requests that the Committee inquire with BLM regarding its plan for ensuring that tribal concerns are considered in the development of any regulations.

Second, Indian lands are not public lands. Indian lands are for the exclusive use and benefit on Indian tribes. Any BLM oversight of activities on our lands is in fulfillment of the BLM's trust responsibility to the Tribe. The BLM should not apply public interest standards to Indian lands. The Tribe requests that the Committee and Congress pass legislation that would prevent Indian lands from being swept into laws and policies for public lands.

Third, as written, the proposed rule would increase delays in obtaining oil and gas permits. The very delays the Tribe has been working so hard to overcome. The proposed rule would require separate approval of hydraulic fracturing plans. This will add time to the oil and gas permitting process, increase the costs of developing energy on Indian lands, and overburden already short-staffed BLM offices. Oil and gas operators seeking permits to develop oil and gas on Indian lands already undergo an extensive environmental review process before they can begin drilling activities. As written, BLM's proposed regulations add additional unnecessary steps to the process.

While EPA's Minor Source Rule, to date, has not had a significant impact on the oil and gas industry on our Reservation, we understand that it has impacted some of our sister tribes. First, EPA also did not engage in meaningful tribal consultation prior to finalizing the rule and subsequent publication in the Federal Register. Any agency action without meaningful consultation impacts us greatly.

Second, although EPA delayed implementation of part of the rule for three years while it hires the necessary staff and develops its permitting process, one significant part of the rule took effect almost immediately, the Synthetic Minor Source Rule (SMSR). EPA implemented the rule despite not knowing what the SMSR permit should look like or exactly what it should contain. To date, EPA has yet to share with our industry partners what a SMSR permit should look like and what is should contain. EPA plans to phase the SMSR rule in over the next year. To prevent any impacts to energy development on Indian lands, we ask the Committee to develop legislation that would delay implementation of the SMSR part until September 2013 in order for the EPA to develop its permitting process fully.

V. Conclusion

I would like to thank Chairman Akaka, Vice Chairman Barrasso and members of the Committee for the opportunity to present this testimony on behalf of the Tribe. The Tribe stands ready to work with the Committee to find ways to eliminate barriers to Indian energy development. The current barriers have a direct effect on the Tribe's revenues, our ability to invest in the future, and the services we are able to provide our members, our children and grandchildren.

Towaok (Thank You)

Attachment:
Ute Indian Tribe's 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. Require DOI to provide in writing any reasons for disapproving an appraisal.

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) 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.

[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).*

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.

(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 housing and community purposes for not more than 25 years 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 more than 50 years; and

"(ii) for a lease of individually owned restricted Indian land, not more than 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 first section of 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 as follows:

(1) In subsection (d)—

(A) in paragraph (4), by striking "the Navajo Nation" and inserting "an applicable Indian tribe";

(B) in paragraph (6), by striking "the Navajo Nation" and inserting "an Indian tribe";
(C) in paragraph (7), by striking "and" after the semicolon at the end;
(D) in paragraph (8)—
(i) by striking "the Navajo Nation";
(ii) by striking "with Navajo Nation law" and inserting "with applicable tribal law"; and
(iii) by striking the period at the end and inserting a semicolon; and
(E) by adding at the end the following:
"(9) the term 'Indian tribe' has the meaning given such term in section 102 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a); and
"(10) the term 'individually owned allotted land' means a parcel of land that—
"(A)(i) is located within the jurisdiction of an Indian tribe; or
"(ii) is held in trust or restricted status by the United States for the benefit of an Indian tribe or a member of an Indian tribe; and
"(B) is allotted to a member of an Indian tribe.".
(2) 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 a business or 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 lease for public, religious, educational, recreational, or residential purposes, 75 years, if such a term is 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.

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.".

14) Duplicative Review of Tribal Energy Resource Agreements

Problem: The Energy Policy Act of 2005 provided clear standards for the Secretary to assess in approving an application for a tribal energy resource agreement. These standards do not include or require review under NEPA. However, the Department of Interior's regulations require that a TERA application be reviewed under NEPA.

Proposed Solution: Clarify that Secretarial approval of a TERA includes only the standards expressed in the Energy Policy Act of 2005 and does not include review under NEPA.

Proposed Legislative Text:

Section 2604 of the Energy Policy Act of 1992 (25 U.S.C. 3504) is amended by adding at the end the following—

"SECRETARIAL REVIEW.—In determining whether to approve a tribal energy resource agreement submitted in accordance with this section, the Secretary shall only rely on the standards set forth in Title V of the Energy Policy Act of 2005. The Secretary's review shall not include compliance with the National Environmental Policy Act.

15) 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

16) 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).

17) 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. 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 the Indian Energy Parity Act of 2010, 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".

18) 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.

19) 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).

20) 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.

21) 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

[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*.

the United States holds, the energy or mineral 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.

22) 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.

23) 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.

24) 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).''

25) 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.

26) 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.

27) 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

28) 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).

29) 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.".

30) 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.".

31) 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).".

32) 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."