MANDAN, HIDATSA & ARIKARA NATION

Three Affiliated Tribes * Fort Berthold Indian Reservation
Tribal Business Council

Tex "Red Tipped Arrow" Hall
Office of the Chairman

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

Legislative Hearing on H.R. 3973, the Native American Energy Act
Subcommittee on Indian and Alaska Native Affairs
Natural Resources Committee
U.S. House of Representatives

February 15, 2012

Good morning Chairman Young and Members of the Subcommittee. My name is Fred Fox. I am the Administrator of the Mandan, Hidatsa and Arikara Nation's (MHA Nation) Tribal Energy Department. Chairman Hall regrets that he could not be here to testify on this issue of great importance. I am honored to present this testimony on his behalf.

Chairman Hall testified last April during the Subcommittee's hearing on Indian energy. As you will recall, the Fort Berthold Reservation is located in the heart of the Bakken Formation which is the largest continuous oil accumulation in the lower 48 states. In 2008, the United States Geological Survey estimated that the Bakken Formation contains between 3 billion and 4.3 billion barrels of oil. Today the Bakken Formation is the most active oil and gas play in the United States.

We continue to work on many of the same issues raised in Chairman Hall's April testimony including streamlining the oil and gas permitting process, insufficient federal staffing, and the Environmental Protection Agency's recent decision to require air permits for wells on our Reservation.

Of all of the challenges, the biggest issue we face is the inequitable division of tax revenues with the State. Under current law, states can tax energy companies on Reservation lands. Because of these state taxes, we cannot raise enough of our own tax revenue to provide the infrastructure needed to support and regulate the growing energy industry. We need Congress to affirm the exclusive authority of tribes raise tax revenues on the Reservation so that we can rely on the same revenues that state governments use to maintain infrastructure and support economic activity.

For example, we need to maintain roads so that heavy equipment can reach drilling locations, but also so that our tribal members can safely get to school or work. I have brought two pictures that show how the industry has devastated our roads.

We also need to provide increased law enforcement to protect tribal members and the growing population of oil workers. And, we need to develop tribal codes and employ tribal staff to regulate activities on the Reservation. For example, we developed a code to prevent dumping of hazardous waste, but we also need to hire staff to enforce the code.

The laws that restrict our ability to raise tax revenues force us to govern with one hand tied behind out back. It is not a fair fight and our homelands are suffering the consequences.

To avoid dual state and tribal taxation that would have driven energy companies off the Reservation, we were forced into a lopsided tax agreement with the State. Three years later, the State is sitting on surpluses while we struggle to make ends meet.

In the current fiscal year the State will have a $1 billion budget surplus and created a $1.2 billion investment account for future infrastructure needs. We have current needs and our tax revenues should not be going into a State investment account.

We actually agree with what State Governor Dalrymple said earlier this year, "The number one priority is to keep up with infrastructure … growth cannot continue if we do not keep up with all of the impact that happens on communities out there."

Apparently, the Governor was not talking about tribal communities. In 2011, the State collected more than $60 million in tax revenue from the Reservation, but the State expended less than $2 million toward the maintenance of state and county roads on the Reservation. In 2012, the State is expected to make $100 million in tax revenues from our Reservation.

We agree with Chairman Young, it would be good to get the Bureau of Indian Affairs out of the way. But, without the tax revenues that other governments rely on, tribal governments will never have the staff and resources to run permit programs—especially in the complicated area of energy development. Without laws that support tribal taxing authority, we will always be subject to the bureaucratic federal permit approval process.

This is the perspective we take when we assess H.R. 3973. We support many of the provisions in the bill and we ask that more be included to ensure that tribes can exercise self-determination in the area of energy development.

We support changes in the bill to the appraisal process, standardizing lease numbers, limiting participants in the environmental review process to the affected area, eliminating BLM oil and gas fees, and providing formal authority for Indian Energy Development Offices.

In addition to these, we ask that you expand the bill to include provisions that will allow the MHA Nation to develop the legal and physical infrastructure necessary to support the growing energy industry on the Reservation. Most important, the bill should affirm that tribes have exclusive authority to raise taxes from activities on Indian lands. This authority is essential for tribal governments to exercise self-determination over our energy resources. We cannot be

asked to take over more responsibilities for the federal government without the ability to raise the revenues needed to support those responsibilities.

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

MHA Nation is also blessed with some of the windiest lands in the Nation. To develop this resource we need to be able to use tax credits and the Western Area Power Authority should treat tribal power as federal power so that we have access to the existing transmission grid to get this energy to the cities that need it.

Finally, the bill should include tribes in federal energy efficiency and weatherization programs.

In conclusion, I want to thank Chairman Young and the members of the Subcommittee for the opportunity to highlight the most significant issues the MHA Nation faces as we promote and manage the development of our energy resources.

Testimony of Chairman Hall
Legislative Hearing on H.R. 3973
Additional Materials for the Record:

Photo of Oil and Gas Impacts on Fort Berthold Reservation Roads

Photo of Oil and Gas Impacts on Fort Berthold Reservation Roads

Legislative Proposals Submitted by the MHA Nation to the Subcommittee on July 18, 2011: Proposals That Would Change the Tax Code and Proposals Already Appearing in Introduced Bills Have Been Omitted

1) **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.

2) **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.

3) **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.

4) 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.

5) 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.

6) 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.

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[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.

7) Surface Leasing Authority

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

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

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

Proposed Legislative Text:

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

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

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

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

(2) in the second sentence, by striking "All leases so granted" through "twenty five years, except" and inserting the following:

"(2) TERM.—

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

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

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

"(B) EXCEPTION.—Except";

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

"(3) APPROVAL BY SECRETARY.—

"(A) IN GENERAL.—All"; and

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

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

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

"(h) Tribal Approval of Leases.—

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

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

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

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

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

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

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

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

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

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

"(II) a process for ensuring that—

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

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

"(4) REVIEW PROCESS.—

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

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

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

"(5) FEDERAL ENVIRONMENTAL REVIEW.—Notwithstanding paragraphs (3) and (4), if an Indian tribe carries out a project or activity funded by a Federal agency, the Indian tribe

shall have the authority to rely on the environmental review process of the applicable Federal agency rather than any tribal environmental review process under this subsection.

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

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

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

"(7) TRUST RESPONSIBILITY.—

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

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

"(8) COMPLIANCE.—

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

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

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

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

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

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

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

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

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

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

8) 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.

9) Tribal Energy Resource Agreements

Problem: The effect the Tribal Energy Resource Agreement (TERA) program, authorized in Title V of the Energy Policy Act of 2005, on the federal government's trust responsibility is unclear.

Proposed Solution: DOI must do further outreach and education on the TERA program and its impacts on the Secretary's trust responsibility, including revising TERA regulations after further consultation with Tribes.

Proposed Legislative Text:

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

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

responsibility. Following consultation the Secretary shall make revisions to the regulations consistent with that consultation.

10) 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.

11) 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).

12) Indian Tribal Energy Loan Guarantee Program.

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

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

Proposed Legislative Text:

Section 2602(c) of the Energy Policy Act of 1992 (25 U.S.C. 3502(c)) is amended—
(1) in paragraph (1)—
(A) by striking the paragraph designation and all that follows through "may provide" and inserting the following:
"(1) REQUIREMENT.—Subject to paragraph (4), not later than 1 year after the date of enactment of this Act, the Secretary of Energy shall provide"; and
(B) by striking "any loan made to an Indian tribe for energy development" and inserting "such loans made to Indian tribes or tribal energy development organizations for energy development, energy transmission projects, or the integration of energy resources as the Secretary determines to be appropriate";
(2) in paragraph (3), by striking the paragraph designation and all that follows through "made by—" and inserting the following:
"(3) ELIGIBLE PROVIDERS OF LOANS.—A loan for which a loan guarantee is provided under this subsection shall be made by—";
(3) in paragraph (4)—
(A) by striking "(4) The aggregate" and inserting the following:
"(4) LIMITATIONS.—
"(A) AGGREGATE OUTSTANDING AMOUNT.—The aggregate"; and
(B) by adding at the end the following:
"(B) SPECIFIC APPROPRIATION OR CONTRIBUTION.—No loan guarantee may be provided under this subsection unless—
"(i) an appropriation for the cost of the guarantee has been made; or
"(ii) the Secretary of Energy has—
"(I) received from the borrower a payment in full for the cost of the obligation; and
"(II) deposited the payment into the Treasury.";

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

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

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

13) 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).

14) 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.

15) 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.

16) 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).

17) 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.".

18) 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.".

19) 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).".

20) 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."