

# **TRIBAL PRIORITIES FOR SENATE CLIMATE LEGISLATION BASED UPON THE AMERICAN CLEAN ENERGY AND SECURITY ACT**

**August 25, 2009**

This document is a collaborative effort to bring together tribal perspectives on climate legislation being considered by the Senate and to express justifications and recommendations for equitable tribal inclusion. This document is currently based upon Titles I, II, III, and IV of the American Clean Energy and Security Act (ACESA).

## **Title I – Clean Energy**

Title I spurs clean energy generation, energy efficiencies and greenhouse gas reductions through programs and initiatives, including, among other things: a Combined Efficiency and Renewable Electricity Standard that mandates gradually increasing percentages of energy generation from renewable energy or energy savings (to be 20 percent in 2020); a national program to bolster the implementation of Carbon Capture and Sequestration technologies; Clean Transportation such as the promotion of clean vehicles, electric vehicles and related infrastructure; support for state renewable energy and energy efficiency activities; and development of smart grid, and transmission planning.

Indian tribes can and should be meaningful contributors to the nation's transition to clean energy and energy independence. Tribal lands comprise more than 4 percent of the nation's land base and contain 10 percent of the nation's energy resources – conventional and renewable. According to the U.S. Department of Energy (DOE), tribal wind potential could provide 20 percent of the installed electric power that was generated in the United States in 2004. Tribal solar energy potential could provide 4.5 times the installed electric power that was generated in the United States in 2004. Renewable energy is one of the most significant economic development opportunities available to tribes during these difficult economic times, particularly tribes in remote areas which to date, have had limited economic development opportunities made available to them.

However, the tribes' ability to participate is challenged by a variety of factors:

- The federal government has yet to provide tribes with the level of support for renewable energy activities that is even remotely comparable to that already provided to states over a number of years, constraining tribal capacity to engage in these activities. The DOE has provided states with \$7.2 billion in funding under their State Energy Programs since 1975, including \$3.1 billion under the American Recovery and Reinvestment Act of 2009 (ARRA). In contrast, the DOE's Tribal Energy Program has received \$22.5 million since 2002 and \$0 under the ARRA.
- Indian tribes are not sufficiently involved in national and regional planning efforts regarding access and improvements to the electricity grid.
- Indian tribes do not have adequate access to financial incentives for renewable energy deployment, such as production and investment tax credits, loan guarantees, and bonds.
- Leasing, siting, and permitting issues in Indian Country hamper the deployment of renewable energy projects.
- Indian tribes dependent upon non-renewable energy sources for revenue to serve their peoples are particularly vulnerable during this transition to a clean energy economy.

While the American Clean Energy and Security Act (ACESA) provides Indian tribes with some opportunities to participate in the Clean Energy Title, and tribes are provided a modest amount of funding, improvements are needed, including:

- Increasing the current tribal set-aside of 0.5 percent of the allowances provided to states and tribes for renewable energy and energy efficiency activities, to 5 percent. (Sec. 132). Furthermore, that set-aside should allow tribes to build capacity, receive the allowances directly or through the auctioned revenue, and have the opportunity to receive funding where applicable, on a non-competitive basis. (Sec. 133);
- Ensuring that national and regional transmission planning includes Indian tribes;
- Providing tribes equitable access to financial incentives for renewable energy production, such as the transfer of production and investment tax credits; an extension of the accelerated depreciation allowance; and streamlined processes for leasing, rights of way, and environmental reviews on Indian lands; and
- Providing specific assistance and incentives to Indian tribes dependent upon non-renewable energy sources for revenue needed to serve their people.

## **Title II – Energy Efficiency**

Energy consumption associated with buildings accounts for nearly half of the greenhouse gas (GHG) emissions in the United States. Improving the energy efficiency of buildings is one of the most inexpensive and accessible way of reducing GHG emissions. Among other things, this title establishes new energy efficiency standards for buildings as well as lighting products, commercial furnaces, and other appliances; harmonizes federal fuel economy standards and enacts programs to reduce transportation-related energy consumption; increases the efficiency of water use; and promotes energy savings by the federal government and other public institutions.

While tribes are included in some sections, they are excluded from several critical ones. For example, Sec. 201 establishes a national building code and energy efficiency targets for residential and commercial buildings that would achieve at least 75 percent reductions from those baselines by 2030. Tribal governments have the authority to establish and enforce tribal building codes, and many do, but are not provided the levels of technical and financial assistance provided to states and local governments to adopt these codes and meet targets. Tribes have historically been excluded from federal financial support for code development and implementation, and tribes should be provided 5 percent of these allowances to engage in these activities as well. In addition, Indian tribes are not included in the Retrofit for Energy and Environmental Performance (REEP) program (Sec. 202); rebates for manufactured homes (Sec. 203); or the grant program to support enforcement of community building codes (Sec. 207). Top priorities include:

- Tribal inclusion in energy efficiency programs, including Sections 201, 202, 203, 207.
- Five percent of the allocations currently provided to states to adopt and comply with the national building code.
- Tailoring to the fullest extent possible such new programs into related existing programs in coordination with the relevant federal agencies such as the U.S. Department of Housing and Urban Development, Bureau of Indian Affairs (BIA), and Indian Health Service (IHS).

### **Title III – Reducing Global Warming Pollution**

This title would mandate the reduction of national greenhouse gas (GHG) emissions by adding a new Title VII to the Clean Air Act. This new title would call for GHG emissions reductions below 2005 levels by 17 percent in 2020 and by 83 percent in 2050. Such emissions reductions would be accomplished through a national cap-and-trade program, although 2 billion tons annually in domestic and international emissions offsets could serve as substitutes for some of these reductions. In addition, developing countries could receive allowances for reducing GHG emissions from deforestation. With respect to international efforts, the title's current provisions are much too weak to adequately protect the rights of indigenous peoples, and also fail to acknowledge the status of such peoples as sovereign entities.

Like other titles under the ACESA, Title III fails to adequately address the needs and concerns of Indian tribes. As such, the top priorities for Indian tribes in relation to Title III should be to:

- Provide Indian tribal governments heavily dependent on revenue from non-renewable energy production and/or the royalties from such activities, with allowances to ease the impacts upon their ability to provide services to their peoples.
- Provide Indian tribes with a 5 percent set-aside of the allowances made available to states to help offset any increased costs to home heating oil, propane, and kerosene.
- Include Indian tribes alongside states and local governments on the list of eligible governments to receive allowances to support the deployment of renewable energy infrastructure; and
- Make clear that all international activities to reduce GHG emissions must be conditioned on a recognition of, and protection of, the national and international rights of indigenous peoples.

### **Title IV – Transitioning to a Clean Energy Economy**

Title IV focuses on three major categories: 1) Reducing industrial emissions; 2) Green jobs and worker transition; and 3) Domestic, Natural Resource, and International Adaptation to Climate Change. While Title IV provides a number of provisions to assist tribes with mitigating and adapting to climate change, Title IV does not adequately address the needs of tribes and their role, and that of other indigenous peoples, as sovereign nations. Title IV also contains numerous provisions calling for the collecting of, and the making of decisions based on, the "best available science," but fails to acknowledge and include the valuable contributions that tribal traditional knowledge can make both to assessing climate change, and addressing and mitigating its impacts.

The top priorities for Indian tribes in relation to Title IV include:

#### *For Domestic Adaptation*

- An increase to 6 percent the tribal percentage of allocations for domestic adaptation activities, which includes 1 percent for Alaska Native Villages to address the flooding and erosion that threatens 86 percent of the villages.
- Establishing a federal plan to address the dire circumstances of Alaska Native Villages, as 31 villages currently qualify for permanent relocation.

*For Natural Resource Adaptation*

- An 8 percent set-aside for Indian tribes to carry out natural resources adaptation activities, with ½ available through the BIA Trust Natural Resources Program, ¼ available through the U.S. Fish and Wildlife Service Tribal Wildlife Grants Program, and ¼ available through the U.S. Department of Agriculture (USDA) Natural Resources Conservation Service Program.
- The 27.6 percent allocation to the Department of the Interior (DOI) for natural resource adaptation activities should be apportioned and distributed on an equitable basis based upon land ownership and management, including 16.02 percent of the allocation to Indian tribes in accordance with their responsibility for 95 million acres.
- Flexibility and equity must be ensured in the apportionment and distribution of the Land and Water Conservation Fund made available on a competitive basis to Indian tribes and States by conducting consultation among the DOI, USDA, Indian tribes, and States.
- No less than 5 percent of the Climate Change Health Protection and Promotion Fund should be made available to Indian tribes to prepare for and respond to the public health impacts of climate change on Indian tribes.
- Provisions must be made for taking tribal traditional knowledge into account, consistent with tribal concerns over confidentiality and protection of their rights to such knowledge.
- Indian tribes' treaty-reserved rights to First Foods must be protected.

*For International Provisions*

- Communication and coordination among Federal departments and agencies, States, Indian tribes, and other nations and their indigenous peoples should take place regarding common interests in making cross-boundary natural resources more resilient to climate change, and in ensuring the continuing vitality of international treaties and of cross-boundary indigenous treaty rights;
- As sovereigns, indigenous peoples should be specifically included as qualifying entities for assistance in Subtitle D's provision for exporting clean technology to developing countries. Indigenous peoples should also be able to receive allowances for adaptation available under the International Climate Change Adaptation Program, and, when allowances go to other entities, if indigenous peoples might be affected, their rights must be protected more fully than provided by the present bill language.