

113TH CONGRESS
1ST SESSION

S. 279

To promote the development of renewable energy on public land, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 11, 2013

Mr. TESTER (for himself, Mr. HELLER, Mr. UDALL of Colorado, Mr. UDALL of New Mexico, Mr. RISCH, Mr. HEINRICH, Mr. BAUCUS, and Mr. BENNET) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To promote the development of renewable energy on public land, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Public Land Renewable Energy Development Act of
6 2013”.

7 (1) TABLE OF CONTENTS.—The table of con-
8 tents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—GEOTHERMAL ENERGY

Sec. 101. Extension of funding for implementation of Geothermal Steam Act of 1970.

TITLE II—DEVELOPMENT OF SOLAR AND WIND ENERGY ON
PUBLIC LAND

Sec. 201. Definitions.

Sec. 202. Programmatic environmental impact statements and land use planning.

Sec. 203. Development of solar and wind energy on public land.

Sec. 204. Disposition of revenues.

Sec. 205. Royalties.

Sec. 206. Enforcement of royalty and payment provisions.

Sec. 207. Enforcement.

Sec. 208. Segregation from appropriation under mining and Federal land laws.

Sec. 209. Report.

Sec. 210. Applicability of law.

1 TITLE I—GEOTHERMAL ENERGY

2 SEC. 101. EXTENSION OF FUNDING FOR IMPLEMENTATION

3 OF GEOTHERMAL STEAM ACT OF 1970.

4 (a) IN GENERAL.—Section 234(a) of the Energy Pol-
5 icy Act of 2005 (42 U.S.C. 15873(a)) is amended by strik-
6 ing “in the first 5 fiscal years beginning after the date
7 of enactment of this Act” and inserting “through fiscal
8 year 2020”.

9 (b) AUTHORIZATION.—Section 234(b) of the Energy
10 Policy Act of 2005 (42 U.S.C. 15873(b)) is amended—

11 (1) by striking “Amounts” and inserting the
12 following:

13 “(1) IN GENERAL.—Amounts”; and

14 (2) by adding at the end the following:

15 “(2) AUTHORIZATION.—Effective for fiscal year
16 2013 and each fiscal year thereafter, amounts de-
17 posited under subsection (a) shall be available to the

1 Secretary of the Interior for expenditure, subject to
2 appropriation and without fiscal year limitation, to
3 implement the Geothermal Steam Act of 1970 (30
4 U.S.C. 1001 et seq.) and this Act.”.

5 **TITLE II—DEVELOPMENT OF**
6 **SOLAR AND WIND ENERGY ON**
7 **PUBLIC LAND**

8 **SEC. 201. DEFINITIONS.**

9 In this title:

10 (1) COVERED LAND.—The term “covered land”
11 means land that is—

12 (A)(i) public land administered by the Sec-
13 retary; or

14 (ii) National Forest System land adminis-
15 tered by the Secretary of Agriculture; and

16 (B) not excluded from the development of
17 solar or wind energy under—

18 (i) a land use plan established under
19 the Federal Land Policy and Management
20 Act of 1976 (43 U.S.C. 1701 et seq.);

21 (ii) a land use plan established under
22 the National Forest Management Act of
23 1976 (16 U.S.C. 1600 et seq.); or

24 (iii) other law.

1 (2) PILOT PROGRAM.—The term “pilot pro-
2 gram” means the wind and solar leasing pilot pro-
3 gram established under section 203(a).

4 (3) PUBLIC LAND.—The term “public land”
5 has the meaning given the term “public lands” in
6 section 103 of the Federal Land Policy and Manage-
7 ment Act of 1976 (43 U.S.C. 1702).

8 (4) SECRETARIES.—The term “Secretaries”
9 means—

10 (A) in the case of public land administered
11 by the Secretary, the Secretary; and

12 (B) in the case of National Forest System
13 land administered by the Secretary of Agri-
14 culture, the Secretary of Agriculture.

15 (5) SECRETARY.—The term “Secretary” means
16 the Secretary of the Interior.

17 **SEC. 202. PROGRAMMATIC ENVIRONMENTAL IMPACT**
18 **STATEMENTS AND LAND USE PLANNING.**

19 (a) NATIONAL FOREST SYSTEM LAND.—As soon as
20 practicable but not later than 2 years after the date of
21 enactment of this Act, the Secretary of Agriculture shall—

22 (1) prepare and publish in the Federal Register
23 a notice of intent to prepare a programmatic envi-
24 ronmental impact statement in accordance with the
25 National Environmental Policy Act of 1969 (42

1 U.S.C. 4321 et seq.) to analyze the potential im-
2 pacts of—

3 (A) a program to develop solar and wind
4 energy on National Forest System land admin-
5 istered by the Secretary of Agriculture; and

6 (B) any necessary amendments to land use
7 plans for the land; and

8 (2) amend any land use plans as appropriate to
9 provide for the development of renewable energy in
10 areas considered appropriate by the Secretary of Ag-
11 riculture immediately on completion of the pro-
12 grammatic environmental impact statement.

13 (b) EFFECT ON PROCESSING APPLICATIONS.—The
14 requirement for completion of programmatic environ-
15 mental impact statements under this section shall not re-
16 sult in any delay in processing or approving applications
17 for wind or solar development on National Forest System
18 land.

19 (c) MILITARY INSTALLATIONS.—

20 (1) REPORT.—Not later than 2 years after the
21 date of enactment of this Act, the Secretary of De-
22 fense, in consultation with the Secretary of the Inte-
23 rior, shall conduct a study, and prepare a report, for
24 States that have not completed the analysis that—

1 (A) identifies locations on land withdrawn
2 from the public domain and reserved for mili-
3 tary purposes that—

4 (i) exhibit a high potential for solar,
5 wind, geothermal, or other renewable en-
6 ergy production;

7 (ii) are disturbed or otherwise have
8 comparatively low value for other re-
9 sources; and

10 (iii) could be developed for renewable
11 energy production in a manner consistent
12 with all present and reasonably foreseeable
13 military training and operational missions
14 and research, development, testing, and
15 evaluation requirements; and

16 (B) describes the administration of public
17 land withdrawn for military purposes for the
18 development of commercial-scale renewable en-
19 ergy projects, including the legal authorities
20 governing authorization for that use.

21 (2) ENVIRONMENTAL IMPACT ANALYSIS.—Not
22 later than 1 year after the completion of the study
23 required by paragraph (1), the Secretary of Defense,
24 in consultation with the Secretary of the Interior,
25 shall prepare and publish in the Federal Register a

1 notice of intent to prepare an environmental impact
2 analysis document to support a program to develop
3 renewable energy on withdrawn military land identi-
4 fied in the study as suitable for the production.

5 (3) REPORTS.—On completion of the report,
6 the Secretary and the Secretary of Defense shall
7 jointly submit the report required by paragraph (1)
8 to—

9 (A) the Committee on Armed Services of
10 the Senate;

11 (B) the Committee on Energy and Natural
12 Resources of the Senate;

13 (C) the Committee on Armed Services of
14 the House of Representatives; and

15 (D) the Committee on Natural Resources
16 of the House of Representatives.

17 **SEC. 203. DEVELOPMENT OF SOLAR AND WIND ENERGY ON**
18 **PUBLIC LAND.**

19 (a) PILOT PROGRAM.—

20 (1) IN GENERAL.—Not later than 180 days
21 after the date of enactment of this Act, the Sec-
22 retary shall establish a wind and solar leasing pilot
23 program on covered land administered by the Sec-
24 retary.

25 (2) SELECTION OF SITES.—

1 (A) IN GENERAL.—Not later than 90 days
2 after the date the pilot program is established
3 under this subsection, the Secretary shall (tak-
4 ing into consideration the multiple resource val-
5 ues of the land) select 2 sites that are appro-
6 priate for the development of a solar energy
7 project, and 2 sites that are appropriate for the
8 development of a wind energy project, on cov-
9 ered land administered by the Secretary as part
10 of the pilot program.

11 (B) SITE SELECTION.—In carrying out
12 subparagraph (A), the Secretary shall seek to
13 select sites—

14 (i) for which there is likely to be a
15 high level of industry interest;

16 (ii) that have a comparatively low
17 value for other resources; and

18 (iii) that are representative of sites on
19 which solar or wind energy is likely to be
20 developed on covered land.

21 (C) INELIGIBLE SITES.—The Secretary
22 shall not select as part of the pilot program any
23 site for which a notice of intent has been
24 issued.

1 (3) QUALIFICATIONS.—Prior to any lease sale,
2 the Secretary shall establish qualifications for bid-
3 ders that ensure bidders—

4 (A) are able to expeditiously develop a
5 wind or solar energy project on the site for
6 lease;

7 (B) possess—

8 (i) financial resources necessary to
9 complete a project;

10 (ii) knowledge of the applicable tech-
11 nology; and

12 (iii) such other qualifications as are
13 determined appropriate by the Secretary;

14 and

15 (C) meet the eligibility requirements for
16 leasing under the first section of the Mineral
17 Leasing Act (30 U.S.C. 181).

18 (4) LEASE SALES.—

19 (A) IN GENERAL.—Except as provided in
20 subparagraph (D)(ii), not later than 180 days
21 after the date sites are selected under para-
22 graph (2), the Secretary shall offer each site for
23 competitive leasing to qualified bidders under
24 such terms and conditions as are required by
25 the Secretary.

1 (B) BIDDING SYSTEMS.—

2 (i) IN GENERAL.—In offering the sites
3 for lease, the Secretary may vary the bid-
4 ding systems to be used at each lease sale,
5 to ensure a fair return to the public, in-
6 cluding—

7 (I) cash bonus bids with a re-
8 quirement for payment of the royalty
9 established under this Act;

10 (II) variable royalty bids based
11 on a percentage of the gross proceeds
12 from the sale of electricity produced
13 from the lease, except that the royalty
14 shall not be less than the royalty re-
15 quired under this Act, together with a
16 fixed cash bonus; and

17 (III) such other bidding system
18 as ensures a fair return to the public
19 consistent with the royalty established
20 under this Act.

21 (ii) ROUND.—The Secretary shall
22 limit bidding to 1 round in any lease sale.

23 (iii) EXPENDITURES.—In any case in
24 which the land that is subject to lease has
25 1 or more pending applications for the de-

1 velopment of wind or solar energy at the
2 time of the lease sale, the Secretary shall
3 give credit toward any bid submitted by
4 the applicant for expenditures of the appli-
5 cant considered by the Secretary to be
6 qualified and necessary for the preparation
7 of the application.

8 (C) REVENUES.—Bonus bids, royalties,
9 rentals, fees, or other payments collected by the
10 Secretary under this section shall be subject to
11 section 204.

12 (D) LEASE TERMS.—

13 (i) IN GENERAL.—As part of the pilot
14 program, the Secretary may vary the
15 length of the lease terms and establish
16 such other lease terms and conditions as
17 the Secretary considers appropriate.

18 (ii) DATA COLLECTION.—As part of
19 the pilot program, the Secretary shall—

20 (I) offer on a noncompetitive
21 basis on at least 1 site a short-term
22 lease for data collection; and

23 (II) on the expiration of the
24 short-term lease, offer on a competi-
25 tive basis a long-term lease, giving

1 credit toward the bonus bid to the
2 holder of the short-term lease for any
3 qualified expenditures to collect data
4 to develop the site during the short-
5 term lease.

6 (5) COMPLIANCE WITH LAWS.—In offering for
7 lease the selected sites under paragraph (4), the Sec-
8 retary shall comply with all applicable environmental
9 and other laws.

10 (6) REPORT.—The Secretary shall—

11 (A) compile a report of the results of each
12 lease sale under the pilot program, including—

13 (i) the level of competitive interest;

14 (ii) a summary of bids and revenues
15 received; and

16 (iii) any other factors that may have
17 impacted the lease sale process; and

18 (B) not later than 90 days after the final
19 lease sale, submit to the Committee on Energy
20 and Natural Resources of the Senate and the
21 Committee on Natural Resources of the House
22 of Representatives the report described in sub-
23 paragraph (A).

24 (7) RIGHTS-OF-WAY.—During the pendency of
25 the pilot program, the Secretary shall continue to

1 issue rights-of-way, in compliance with authority in
2 effect on the date of enactment of this Act, for avail-
3 able sites not selected for the pilot program.

4 (b) SECRETARIAL DETERMINATION.—

5 (1) IN GENERAL.—Not later than 2 years after
6 the date of enactment of this Act, the Secretaries
7 shall make a joint determination on whether to es-
8 tablish a leasing program under this section for wind
9 or solar energy, or both, on all covered land.

10 (2) SYSTEM.—If the Secretaries determine that
11 a leasing program should be established, the pro-
12 gram shall apply to all covered land in accordance
13 with this Act and other provisions of law applicable
14 to public land or National Forest System land.

15 (3) ESTABLISHMENT.—The Secretaries shall
16 establish a leasing program unless the Secretaries
17 determine that the program—

18 (A) is not in the public interest; and

19 (B) does not provide an effective means of
20 developing wind or solar energy.

21 (4) CONSULTATION.—In making the determina-
22 tions required under this subsection, the Secretaries
23 shall consult with—

24 (A) the heads of other relevant Federal
25 agencies;

1 (B) interested States, Indian tribes, and
2 local governments;

3 (C) representatives of the solar and wind
4 industries;

5 (D) representatives of the environment,
6 conservation, and outdoor sporting commu-
7 nities;

8 (E) other users of the covered land; and

9 (F) the public.

10 (5) CONSIDERATIONS.—In making the deter-
11 minations required under this subsection, the Secre-
12 taries shall consider the results of the pilot program.

13 (6) REGULATIONS.—Not later than 1 year after
14 the date on which any determination is made to es-
15 tablish a leasing program, the Secretaries shall joint-
16 ly promulgate final regulations to implement the
17 program.

18 (7) REPORT.—If the Secretaries determine that
19 a leasing program should not be established, not
20 later than 60 days after the date of the determina-
21 tion, the Secretaries shall jointly submit to the Com-
22 mittee on Energy and Natural Resources of the Sen-
23 ate and the Committee on Natural Resources of the
24 House of Representatives a report describing the
25 basis and findings for the determination.

1 (c) TRANSITION.—

2 (1) IN GENERAL.—If the Secretaries determine
3 under subsection (b) that a leasing program should
4 be established for covered land, until the program is
5 established and final regulations for the program are
6 issued—

7 (A) the Secretary shall continue to accept
8 applications for rights-of-way on covered land,
9 and provide for the issuance of rights-of-way on
10 covered land within the jurisdiction of the Sec-
11 retary for the development of wind or solar en-
12 ergy pursuant to each requirement described in
13 title V of the Federal Land Policy and Manage-
14 ment Act of 1976 (43 U.S.C. 1761 et seq.) and
15 other applicable law; and

16 (B) the Secretary of Agriculture shall con-
17 tinue to accept applications for authorizations,
18 and provide for the issuance of the authoriza-
19 tions, for the development of wind or solar en-
20 ergy on covered land within the jurisdiction of
21 the Secretary pursuant to applicable law.

22 (2) EXISTING RIGHTS-OF-WAY AND AUTHORIZA-
23 TIONS.—

24 (A) IN GENERAL.—Effective beginning on
25 the date on which the wind or solar leasing pro-

1 grams are established and final regulations are
2 issued, the Secretaries shall not renew an exist-
3 ing right-of-way or other authorization for wind
4 or solar energy development at the end of the
5 term of the right-of-way or authorization.

6 (B) LEASE.—

7 (i) IN GENERAL.—Subject to clause
8 (ii), at the end of the term of the right-of-
9 way or other authorization for the wind or
10 solar energy project, the Secretary or, in
11 the case of National Forest System land,
12 the Secretary of Agriculture, shall grant,
13 without a competitive process, a lease to
14 the holder of the right-of-way or other au-
15 thorization for the same covered land as
16 was authorized under the right-of-way or
17 other authorization if (as determined by
18 the Secretary concerned)—

19 (I) the holder of the right-of-way
20 or other authorization has met the re-
21 quirements of diligent development;
22 and

23 (II) issuance of the lease is in the
24 public interest and consistent with ap-
25 plicable law.

1 (ii) TERMS AND CONDITIONS.—Any
2 lease described in clause (i) shall be sub-
3 ject to—

4 (I) terms and conditions that are
5 consistent with this Act and the regu-
6 lations issued under this Act; and

7 (II) the regulations in effect on
8 the date of renewal and any other
9 terms and conditions that the Sec-
10 retary considers necessary to protect
11 the public interest.

12 (3) PENDING RIGHTS-OF-WAY.—Effective begin-
13 ning on the date on which the wind or solar leasing
14 programs are established and final regulations for
15 the programs are issued, the Secretary or, with re-
16 spect to National Forest System land, the Secretary
17 of Agriculture shall provide any applicant that has
18 filed a plan of development for a right-of-way or, in
19 the case of National Forest System land, for an ap-
20 plicable authorization, for a wind or solar energy
21 project with an option to acquire a lease on a non-
22 competitive basis, under such terms and conditions
23 as are required by this Act, applicable regulations,
24 and the Secretary concerned, for the same covered
25 land included in the plan of development if—

1 (A) the plan of development has been de-
2 termined by the Secretary concerned to be ade-
3 quate for the initiation of environmental review;

4 (B) granting the lease is consistent with all
5 applicable land use planning, environmental,
6 and other laws;

7 (C) the applicant has made a good faith ef-
8 fort to obtain a right-of-way or, in the case of
9 National Forest System land, other authoriza-
10 tion, for the project; and

11 (D) issuance of the lease is in the public
12 interest.

13 (d) LEASING PROGRAM.—If the Secretaries deter-
14 mine under subsection (b) that a leasing program should
15 be established, the program shall be established in accord-
16 ance with subsections (e) through (k).

17 (e) COMPETITIVE LEASES.—

18 (1) IN GENERAL.—Except as provided in para-
19 graph (2), leases for wind or solar energy develop-
20 ment under this section shall be issued on a competi-
21 tive basis with a single round of bidding in any lease
22 sale.

23 (2) EXCEPTIONS.—Paragraph (1) shall not
24 apply if the Secretary or, with respect to National

1 Forest System land, the Secretary of Agriculture de-
2 termines that—

3 (A) no competitive interest exists for the
4 covered land;

5 (B) the public interest would not be served
6 by the competitive issuance of a lease;

7 (C) the lease is for the placement and op-
8 eration of a meteorological or data collection fa-
9 cility or for the development or demonstration
10 of a new wind or solar technology and has a
11 term of not more than 5 years; or

12 (D) the covered land is eligible to be grant-
13 ed a noncompetitive lease under subsection (c).

14 (f) PAYMENTS.—

15 (1) IN GENERAL.—The Secretaries shall jointly
16 establish—

17 (A) fees, rentals, bonuses, or other pay-
18 ments to ensure a fair return to the United
19 States for any lease issued under this section;
20 and

21 (B) royalties pursuant to section 205 that
22 apply to all leases issued under this section.

23 (2) BONUS BIDS.—The Secretaries may grant
24 credit toward any bonus bid for a qualified expendi-
25 ture by the holder of a lease described in subsection

1 (e)(2)(C) in any competitive lease sale held for a
2 long-term lease covering the same land covered by
3 the lease described in subsection (e)(2)(C).

4 (g) QUALIFICATIONS.—Prior to any lease sale, the
5 Secretary shall establish qualifications for bidders that en-
6 sure bidders meet the requirements described in sub-
7 section (a)(3).

8 (h) REQUIREMENTS.—The Secretaries shall ensure
9 that any activity under a leasing program is carried out
10 in a manner that—

11 (1) is consistent with all applicable land use
12 planning, environmental, and other laws; and

13 (2) provides for—

14 (A) safety;

15 (B) protection of the environment and fish
16 and wildlife habitat;

17 (C) mitigation of impacts;

18 (D) prevention of waste;

19 (E) diligent development of the resource,
20 with specific milestones to be met by the lessee
21 as determined by the Secretaries;

22 (F) coordination with applicable Federal
23 agencies;

24 (G) a fair return to the United States for
25 any lease;

1 (H) use of best management practices, in-
2 cluding planning and practices for mitigation of
3 impacts;

4 (I) public notice and comment on any pro-
5 posal submitted for a lease under this section;

6 (J) oversight, inspection, research, moni-
7 toring, and enforcement relating to a lease
8 under this section;

9 (K) the quantity of acreage to be commen-
10 surate with the size of the project covered by a
11 lease; and

12 (L) efficient use of water resources.

13 (i) LEASE DURATION, SUSPENSION, AND CANCELLA-
14 TION.—

15 (1) DURATION.—A lease under this section
16 shall be for—

17 (A) an initial term of 25 years; and

18 (B) any additional period after the initial
19 term during which electricity is being produced
20 annually in commercial quantities from the
21 lease.

22 (2) ADMINISTRATION.—The Secretary shall es-
23 tablish terms and conditions for the issuance, trans-
24 fer, renewal, suspension, and cancellation of a lease
25 under this section.

1 (3) READJUSTMENT.—

2 (A) IN GENERAL.—Royalties, rentals, and
3 other terms and conditions of a lease under this
4 section shall be subject to readjustment—

5 (i) on the date that is 15 years after
6 the date on which the lease is issued; and

7 (ii) every 10 years thereafter.

8 (B) LEASE.—Each lease issued under this
9 Act shall provide for readjustment in accord-
10 ance with subparagraph (A).

11 (j) SURFACE-DISTURBING ACTIVITIES.—The Secre-
12 taries shall—

13 (1) regulate all surface-disturbing activities con-
14 ducted pursuant to any lease issued under this sec-
15 tion; and

16 (2) require any necessary reclamation and other
17 actions under the lease as are required in the inter-
18 est of conservation of surface resources.

19 (k) SECURITY.—The Secretaries shall require the
20 holder of a lease issued under this section—

21 (1) to furnish a surety bond or other form of
22 security, as prescribed by the Secretaries;

23 (2) to provide for the reclamation and restora-
24 tion of the area covered by the lease; and

1 (3) to comply with such other requirements as
2 the Secretaries consider necessary to protect the in-
3 terests of the public and the United States.

4 (1) PERIODIC REVIEW.—Not less frequently than
5 once every 5 years, the Secretary shall conduct a review
6 of the adequacy of the surety bond or other form of secu-
7 rity provided by the holder of a lease issued under this
8 section.

9 **SEC. 204. DISPOSITION OF REVENUES.**

10 (a) DISPOSITION OF REVENUES.—Of the amounts
11 collected as bonus bids, royalties, rentals, fees, or other
12 payments under a right-of-way, permit, lease, or other au-
13 thorization for the development of wind or solar energy
14 on covered land—

15 (1) 25 percent shall be paid by the Secretary of
16 the Treasury to the State within the boundaries of
17 which the income is derived;

18 (2) 25 percent shall be paid by the Secretary of
19 the Treasury to the 1 or more counties within the
20 boundaries of which the income is derived;

21 (3) 15 percent shall—

22 (A) for the period beginning on the date of
23 enactment of this Act and ending on date the
24 date that is 15 years after the date of enact-
25 ment of this Act, be deposited in the Treasury

1 of the United States to help facilitate the proc-
2 essing of renewable energy permits by the Bu-
3 reau of Land Management, including the trans-
4 fer of the funds by the Bureau of Land Man-
5 agement to other Federal agencies and State
6 agencies to facilitate the processing of renew-
7 able energy permits on Federal land; and

8 (B) beginning on the date that is 15 years
9 after the date of enactment of this Act, be de-
10 posited in the Fund; and

11 (4) 35 percent shall be deposited in the Renew-
12 able Energy Resource Conservation Fund estab-
13 lished by subsection (c).

14 (b) PAYMENTS TO STATES AND COUNTIES.—

15 (1) IN GENERAL.—Except as provided in para-
16 graph (2), amounts paid to States and counties
17 under subsection (a) shall be used consistent with
18 section 35 of the Mineral Leasing Act (30 U.S.C.
19 191).

20 (2) IMPACTS ON FEDERAL LAND.—Not less
21 than 33 percent of the amount paid to a State shall
22 be used on an annual basis for the purposes de-
23 scribed in subsection (c)(2)(A).

24 (c) RENEWABLE ENERGY RESOURCE CONSERVATION
25 FUND.—

1 (1) IN GENERAL.—There is established in the
2 Treasury a fund, to be known as the “Renewable
3 Energy Resource Conservation Fund”, to be admin-
4 istered by the Secretary for use in regions impacted
5 by the development of wind or solar energy.

6 (2) USE.—

7 (A) IN GENERAL.—Amounts in the Fund
8 shall be available to the Secretary, who may
9 make amounts available to the Secretary of Ag-
10 riculture and to other Federal or State agen-
11 cies, as appropriate, for the purposes of—

12 (i) addressing and offsetting the im-
13 pacts of wind or solar development on Fed-
14 eral land, including restoring and pro-
15 tecting—

16 (I) fish and wildlife habitat for
17 affected species;

18 (II) fish and wildlife corridors for
19 affected species; and

20 (III) water resources in areas im-
21 pacted by wind or solar energy devel-
22 opment;

23 (ii) securing recreational access to
24 Federal land through an easement, right-
25 of-way, or fee title acquisition from willing

1 sellers for the purpose of providing en-
2 hanced public access to existing Federal
3 land that is inaccessible or significantly re-
4 stricted; and

5 (iii) carrying out activities authorized
6 under the Land and Water Conservation
7 Fund Act of 1965 (16 U.S.C. 460l-4 et
8 seq.) in the State.

9 (B) ADVISORY BOARD.—The Secretary
10 shall establish an independent advisory board
11 composed of key stakeholders and technical ex-
12 perts to provide recommendations and guidance
13 on the disposition of any amounts expended
14 from the Fund.

15 (3) MITIGATION REQUIREMENTS.—The expend-
16 iture of funds under this subsection shall be in addi-
17 tion to any mitigation requirements imposed pursu-
18 ant to any law, regulation, or term or condition of
19 any lease, right-of-way, or other authorization.

20 (4) INVESTMENT OF FUND.—

21 (A) IN GENERAL.—Any amounts deposited
22 in the Fund shall earn interest in an amount
23 determined by the Secretary of the Treasury on
24 the basis of the current average market yield on

1 outstanding marketable obligations of the
2 United States of comparable maturities.

3 (B) USE.—Any interest earned under sub-
4 paragraph (A) may be expended in accordance
5 with this subsection.

6 **SEC. 205. ROYALTIES.**

7 (a) IN GENERAL.—The Secretaries shall require as
8 a term and condition of any lease, right-of-way, permit,
9 or other authorization for the development of wind or solar
10 energy on covered land the payment of a royalty estab-
11 lished by the Secretaries pursuant to a joint rulemaking
12 that shall be a percentage of the gross proceeds from the
13 sale of electricity at a rate that—

14 (1) encourages production of solar or wind en-
15 ergy;

16 (2) ensures a fair return to the public com-
17 parable to the return that would be obtained on
18 State and private land; and

19 (3) encourages the maximum energy generation
20 while disturbing the least quantity of covered land
21 and other natural resources, including water.

22 (b) AMOUNT.—The royalty on electricity produced
23 using wind or solar resources shall be—

24 (1) not less than 1 percent, and not more than
25 2.5 percent, of the gross proceeds from the sale of

1 electricity produced from the resources during the
2 first 10 years of production; and

3 (2) not less than 2 percent, and not more than
4 5 percent, of the gross proceeds from the sale of
5 electricity produced from the resources during each
6 year after that initial 10-year period.

7 (c) DIFFERENT ROYALTY RATES.—The Secretaries
8 may establish—

9 (1) a different royalty rate for wind or solar en-
10 ergy generation; and

11 (2) a reduced royalty rate for projects located
12 within a zone identified for development of solar or
13 wind energy.

14 (d) ROYALTY IN LIEU OF RENT.—During the period
15 of production, a royalty shall be collected in lieu of any
16 rent for the land from which the electricity is produced.

17 (e) ROYALTY RELIEF.—To promote the generation of
18 renewable energy, the Secretaries may reduce any royalty
19 otherwise required on a showing by clear and convincing
20 evidence by the person holding a lease, right-of-way, per-
21 mit, or other authorization for the development of wind
22 or solar energy on covered land under which the genera-
23 tion of energy is or will be produced in commercial quan-
24 tities that—

1 (1) collection of the full royalty would unreason-
2 ably burden energy generation; and

3 (2) the royalty reduction is in the public inter-
4 est.

5 (f) PERIODIC REVIEW AND REPORT.—

6 (1) IN GENERAL.—Not later than 5 years after
7 the date of enactment of this Act and every 5 years
8 thereafter, the Secretary, in consultation with the
9 Secretary of Agriculture, shall—

10 (A) complete a review of collections and
11 impacts of the royalty and fees provided under
12 this Act; and

13 (B) submit to the Committee on Energy
14 and Natural Resources of the Senate and the
15 Committee on Natural Resources of the House
16 of Representatives a report describing the re-
17 sults of the review.

18 (2) TOPICS.—The report shall address—

19 (A) the total revenues received (by cat-
20 egory) on an annual basis as royalties from
21 wind, solar, and geothermal development and
22 production (specified by energy source) on cov-
23 ered land;

24 (B) whether the revenues received for the
25 development of wind, solar, and geothermal de-

1 (b) APPLICABILITY OF OTHER LAW.—The Federal
2 Oil and Gas Royalty Management Act of 1982 (30 U.S.C.
3 1701 et seq.) (including the civil and criminal enforcement
4 provisions of that Act) shall apply to leases, permits,
5 rights-of-way, or other authorizations issued for the devel-
6 opment of solar or wind energy on covered land and the
7 holders and operators of the leases, permits, rights-of-way,
8 or other authorizations (and designees) under this title,
9 except that in applying that Act—

10 (1) “wind or solar leases, permits, rights-of-
11 way, or other authorizations” shall be substituted
12 for “oil and gas leases”;

13 (2) “electricity generated from wind or solar re-
14 sources” shall be substituted for “oil and gas”
15 (when used as nouns);

16 (3) “lease, permit, right-of-way, or other au-
17 thorization for the development of wind or solar en-
18 ergy” shall be substituted for “lease” and “lease for
19 oil and gas” (when used as nouns); and

20 (4) “lessee, permittee, right-of-way holder, or
21 holder of an authorization for the development of
22 wind or solar energy” shall be substituted for “les-
23 see”.

1 **SEC. 207. ENFORCEMENT.**

2 (a) IN GENERAL.—Sections 302(c) and 303 of the
3 Federal Land Policy and Management Act of 1976 (43
4 U.S.C. 1732(c), 1733) shall apply to activities conducted
5 on covered land under this title.

6 (b) APPLICABILITY OF OTHER ENFORCEMENT PRO-
7 VISIONS.—Nothing in this title reduces or limits the en-
8 forcement authority vested in the Secretary or the Attor-
9 ney General by any other law.

10 **SEC. 208. SEGREGATION FROM APPROPRIATION UNDER**
11 **MINING AND FEDERAL LAND LAWS.**

12 (a) IN GENERAL.—On covered land identified by the
13 Secretary or the Secretary of Agriculture for the develop-
14 ment of solar or wind power under this title or other appli-
15 cable law, the Secretary or the Secretary of Agriculture
16 may temporarily segregate the identified land from appro-
17 priation under the mining and public land laws.

18 (b) ADMINISTRATION.—Segregation of covered land
19 under this section—

20 (1) may only be made for a period not to exceed
21 10 years; and

22 (2) shall be subject to valid existing rights as
23 of the date of the segregation.

24 **SEC. 209. REPORT.**

25 (a) STUDY.—

1 (1) IN GENERAL.—Not later than 180 days
2 after the date of enactment of this Act, the Secre-
3 taries shall carry out a study on the siting, develop-
4 ment, and management of projects to determine the
5 feasibility of carrying out a conservation banking
6 program on land administered by the Secretaries.

7 (2) CONTENTS.—The study under paragraph
8 (1) shall—

9 (A) identify areas in which—

10 (i) privately owned land is not avail-
11 able to offset the impacts of solar or wind
12 energy development on federally adminis-
13 tered land; or

14 (ii) mitigation investments on feder-
15 ally administered land are likely to provide
16 greater conservation value for impacts of
17 solar or wind energy development on feder-
18 ally administered land; and

19 (B) examine—

20 (i) the effectiveness of laws (including
21 regulations) and policies in effect on the
22 date of enactment of this Act in facili-
23 tating the development of conservation
24 banks;

1 (ii) the advantages and disadvantages
2 of using conservation banks on Federal
3 land to mitigate impacts to natural re-
4 sources on private land; and

5 (iii) any changes in Federal law (in-
6 cluding regulations) or policy necessary to
7 further develop a Federal conservation
8 banking program.

9 (b) REPORT TO CONGRESS.—Not later than 18
10 months after the date of enactment of this Act, the Secre-
11 taries shall jointly submit to Congress a report that in-
12 cludes—

13 (1) the recommendations of the Secretaries re-
14 lating to—

15 (A) the most effective system for Federal
16 land described in subsection (a)(2)(A) to meet
17 the goals of facilitating the development of a
18 conservation banking program on Federal land;
19 and

20 (B) any change to Federal law (including
21 regulations) or policy necessary to address more
22 effectively the siting, development, and manage-
23 ment of conservation banking programs on Fed-
24 eral land to mitigate impacts to natural re-
25 sources on private land; and

1 (2) any administrative action to be taken by the
2 Secretaries in response to the recommendations.

3 (c) **AVAILABILITY TO THE PUBLIC.**—Not later than
4 30 days after the date on which the report described in
5 subsection (b) is submitted to Congress, the Secretaries
6 shall make the results of the study available to the public.

7 **SEC. 210. APPLICABILITY OF LAW.**

8 (a) **RENTAL FEE EXEMPTION.**—Wind or solar gen-
9 eration projects with a capacity of 20 megawatts or more
10 that are issued a lease, right-of-way, permit, or other au-
11 thorization under applicable law shall not be subject to
12 the rental fee exemption for rights-of-way under section
13 504(g) of the Federal Land Policy and Management Act
14 of 1976 (43 U.S.C. 1764(g)).

15 (b) **FEEES, CHARGES, AND COMMISSIONS.**—Section
16 304 of the Federal Land Policy and Management Act of
17 1976 (43 U.S.C. 1734) shall apply to an application made
18 under section 203.

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