

111TH CONGRESS
2D SESSION

S. 3402

To encourage residential use of renewable energy systems by minimizing upfront costs and providing immediate utility cost savings to consumers through leasing of such systems to homeowners, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 24, 2010

Mr. LEMIEUX introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To encourage residential use of renewable energy systems by minimizing upfront costs and providing immediate utility cost savings to consumers through leasing of such systems to homeowners, 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.**

4 This Act may be cited as the “Renewable Energy
5 Access Through Leasing Act of 2010” or the “REAL Act
6 of 2010”.

1 **SEC. 2. INSURANCE COVERAGE FOR LOANS FOR FINANC-**
2 **ING OF RENEWABLE ENERGY SYSTEMS**
3 **LEASED FOR RESIDENTIAL USE.**

4 (a) PURPOSES.—The purposes of this section are—

5 (1) to encourage residential use of renewable
6 energy systems by minimizing upfront costs and pro-
7 viding immediate utility cost savings to consumers
8 through leasing of such systems to homeowners;

9 (2) to reduce carbon emissions and the use of
10 nonrenewable resources;

11 (3) to encourage energy efficient residential
12 construction and rehabilitation;

13 (4) to encourage the use of renewable resources
14 by homeowners;

15 (5) to minimize the impact of development on
16 the environment;

17 (6) to reduce consumer utility costs; and

18 (7) to encourage private investment in the
19 green economy.

20 (b) DEFINITIONS.—As used in this section, the fol-
21 lowing definitions shall apply:

22 (1) AUTHORIZED RENEWABLE ENERGY LEND-
23 ER.—The term “authorized renewable energy lend-
24 er” means a lender authorized by the Secretary to
25 make a loan under this section.

1 (2) RENEWABLE ENERGY SYSTEM LEASE.—The
 2 term “renewable system energy lease” means an
 3 agreement between an authorized renewable energy
 4 system owner and a homeowner for a term of not
 5 less than 5 years, pursuant to which the home-
 6 owner—

7 (A) grants an easement to such renewable
 8 energy system owner to install, maintain, use,
 9 and otherwise access the renewable energy sys-
 10 tem; and

11 (B) agrees to—

12 (i) lease the use of such system from
 13 such renewable energy system owner; or

14 (ii) purchase electric power from such
 15 renewable energy system owner.

16 (3) RENEWABLE ENERGY MANUFACTURER.—
 17 The term “renewable energy manufacturer” means a
 18 manufacturer of renewable energy systems.

19 (4) RENEWABLE ENERGY SYSTEM OWNER.—
 20 The term “renewable energy system owner” means
 21 a homebuilder, a manufacturer or installer of a re-
 22 newable energy system, or any other person, as de-
 23 termined by the Secretary.

1 (5) RENEWABLE ENERGY SYSTEM.—The term
2 “renewable energy system” means a system of en-
3 ergy derived from—

4 (A) a wind, solar (including photovoltaic
5 and solar thermal), biomass (including bio-
6 diesel), or geothermal source; or

7 (B) hydrogen derived from biomass or
8 water using an energy source described in sub-
9 paragraph (A).

10 (6) SECRETARY.—The term “Secretary” means
11 the Secretary of Housing and Urban Development.

12 (c) AUTHORITY.—

13 (1) IN GENERAL.—The Secretary may, upon
14 application by an authorized renewable energy sys-
15 tem owner, insure or make a commitment to insure
16 a loan made by an authorized renewable energy
17 lender to a renewable energy system owner to fi-
18 nance the acquisition of a renewable energy system
19 for lease to a homeowner for use at the residence of
20 such homeowner.

21 (2) TERMS AND CONDITIONS.—The Secretary
22 may prescribe such terms and conditions for insur-
23 ance under paragraph (1) as are consistent with the
24 purposes of this section.

25 (d) LIMITATION ON PRINCIPAL AMOUNT.—

1 (1) LIMITATION.—The principal amount of a
 2 loan insured under this section shall not exceed the
 3 residual value of the renewable energy system to be
 4 acquired with the loan.

5 (2) RESIDUAL VALUE.—For purposes of this
 6 subsection—

7 (A) the residual value of a renewable en-
 8 ergy system is the fair market value of the fu-
 9 ture revenue stream from the sale of the ex-
 10 pected remaining electricity production from the
 11 system, pursuant to the easement granted in
 12 accordance with subsection (e); and

13 (B) the fair market value of the future rev-
 14 enue stream for each year of the remaining life
 15 of the renewable energy system shall be deter-
 16 mined based on the net present value of the
 17 power output production warranty for such re-
 18 newable energy system provided by the renew-
 19 able energy manufacturer and the forecast of
 20 regional residential electricity prices made by
 21 the Energy Information Administration of the
 22 Department of Energy.

23 (e) EASEMENT.—The Secretary may not insure a
 24 loan under this section unless the renewable energy system
 25 owner certifies, in accordance with such requirements as

1 the Secretary shall establish, consistent with the purposes
 2 of this section, that the systems financed will be leased
 3 only to homeowners that grant easements to install, main-
 4 tain, use, and otherwise access the system that include the
 5 right to sell electricity produced during the life of the re-
 6 newable energy system to a wholesale or retail electrical
 7 power grid.

8 (f) DISCOUNT OR PREPAYMENT.—To encourage the
 9 use of renewable energy systems, the Secretary shall en-
 10 sure that a discount given to a homeowner by a renewable
 11 energy system owner or other investor or prepayment of
 12 a renewable energy system lease by a renewable energy
 13 system owner does not adversely affect the mortgage re-
 14 quirements of such homeowner.

15 (g) ELIGIBILITY OF LENDERS.—The Secretary may
 16 not insure a loan under this section unless the lender mak-
 17 ing the loan—

18 (1) is an institution that—

19 (A) qualifies as a green banking center
 20 under section 8(x) of the Federal Deposit In-
 21 surance Act (12 U.S.C. 1818(x)) or section
 22 206(x) of the Federal Credit Union Act (12
 23 U.S.C. 1786(x)); or

24 (B) meets such other requirements as the
 25 Secretary shall establish for participation of re-

1 newable energy lenders in the program under
2 this section; and

3 (2) meets such qualifications as the Secretary
4 shall establish for all lenders for participation in the
5 program under this section.

6 (h) CERTIFICATE OF INSURANCE.—

7 (1) IN GENERAL.—The Secretary shall issue to
8 a lender that is insured under this section a certifi-
9 cate that serves as evidence of insurance coverage
10 under this section.

11 (2) CONTENTS OF CERTIFICATE.—The certifi-
12 cate required under paragraph (1) shall set forth the
13 fair market value of the future revenue stream for
14 each year of the remaining life of the renewable en-
15 ergy system.

16 (3) FULL FAITH AND CREDIT.—The certificate
17 required under paragraph (1) shall be backed by the
18 full faith and credit of the United States.

19 (i) PAYMENT OF INSURANCE CLAIM.—

20 (1) FILING OF CLAIM.—The Secretary shall
21 provide for the filing of claims for insurance under
22 this section and the payment of such claims.

23 (2) PAYMENT OF CLAIM.—A claim under para-
24 graph (1) may be paid only upon a default under the

1 loan insured under this section and the assignment,
2 transfer, and delivery to the Secretary of—

3 (A) all rights and interests arising under
4 the loan; and

5 (B) all claims of the lender or the assigns
6 of the lender against the borrower or others
7 arising under the loan transaction.

8 (3) LIEN.—

9 (A) IN GENERAL.—Upon payment of a
10 claim for insurance of a loan under this section,
11 the Secretary shall hold a lien on the underlying
12 renewable energy system assets and any associ-
13 ated revenue stream from the use of such sys-
14 tem, which shall be superior to all other liens
15 on such assets.

16 (B) RESIDUAL VALUE.—The residual value
17 of such renewable energy system and the rev-
18 enue stream from the use of such system shall
19 be not less than the unpaid balance of the loan
20 amount covered by the certificate of insurance.

21 (C) REVENUE FROM SALE.—The Secretary
22 shall be entitled to any revenue generated by
23 such renewable energy system from selling elec-
24 tricity to the grid when an insurance claim has
25 been paid out.

1 (j) ASSIGNMENT AND TRANSFERABILITY OF INSUR-
 2 ANCE.—A renewable energy system owner or an author-
 3 ized renewable energy lender that is insured under this
 4 section may assign or transfer the insurance in whole or
 5 in part, to another owner or lender, subject to such re-
 6 quirements as the Secretary may prescribe.

7 (k) PREMIUMS AND CHARGES.—

8 (1) INSURANCE PREMIUMS.—

9 (A) IN GENERAL.—The Secretary shall fix
 10 and collect premiums for insurance of loans
 11 under this section, that shall be paid by the ap-
 12 plicant renewable energy system owner at the
 13 time of issuance of the certificate of insurance
 14 to the lender and shall be adequate, in the de-
 15 termination of the Secretary, to cover the ex-
 16 penses and probable losses of administering the
 17 program under this section.

18 (B) DEPOSIT OF PREMIUM.—The Sec-
 19 retary shall deposit any premiums collected
 20 under this subsection in the Renewable Energy
 21 Lease Insurance Fund established under sub-
 22 section (l).

23 (2) PROHIBITION ON OTHER CHARGES.—Except
 24 as provided in paragraph (1), the Secretary may not
 25 assess any other fee (including a user fee), insurance

1 premium, or charge in connection with loan insur-
2 ance provided under this section.

3 (l) RENEWABLE ENERGY LEASE INSURANCE
4 FUND.—

5 (1) FUND ESTABLISHED.—There is established
6 in the Treasury of the United States the Renewable
7 Energy Lease Insurance Fund (referred to in this
8 subsection as the “Fund”), which shall be available
9 to the Secretary without fiscal year limitation, for
10 the purpose of providing insurance under this sec-
11 tion.

12 (2) CREDITS.—The Fund shall be credited with
13 any premiums collected under subsection (k)(1), any
14 amounts collected by the Secretary under subsection
15 (i)(3), and any associated interest or earnings.

16 (3) AVAILABILITY.—Amounts in the Fund shall
17 be available to the Secretary for fulfilling any obliga-
18 tions with respect to insurance for loans provided
19 under this section and paying administrative ex-
20 penses in connection with this section.

21 (4) EXCESS AMOUNTS.—The Secretary may in-
22 vest in obligations of the United States any amounts
23 in the Fund determined by the Secretary to be in ex-
24 cess of amounts required at the time of such deter-
25 mination to carry out this section.

1 (m) REGULATIONS.—

2 (1) IN GENERAL.—The Secretary shall issue
3 such regulations as may be necessary to carry out
4 this section.

5 (2) TIMING.—Not later than 180 days after the
6 date of enactment of this Act, the Secretary shall
7 issue interim or final regulations.

8 (n) INELIGIBILITY FOR PURCHASE BY FEDERAL FI-
9 NANCING BANK.—Notwithstanding any other provision of
10 law, no debt obligation that is insured or committed to
11 be insured by the Secretary under this section shall be
12 subject to the Federal Financing Bank Act of 1973 (12
13 U.S.C. 2281 et seq.).

14 (o) TERMINATION OF AUTHORITY.—The authority of
15 the Secretary to insure and make commitments to insure
16 new loans under this Act shall terminate 10 years after
17 the date of enactment of this Act.

○