

111TH CONGRESS
2D SESSION

S. 3587

To require the Secretary of the Interior to establish a competitive leasing program for wind and solar energy development on Federal land, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 14, 2010

Mr. REID (for himself and Mr. TESTER) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To require the Secretary of the Interior to establish a competitive leasing program for wind and solar energy development on Federal 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.**

4 This Act may be cited as the “Clean Energy, Commu-
5 nity Investment, and Wildlife Conservation Act”.

6 **SEC. 2. DEVELOPMENT OF WIND AND SOLAR ENERGY ON**
7 **FEDERAL LAND.**

8 (a) DEFINITIONS.—In this section:

1 (1) FEDERAL LAND.—The term “Federal land”
2 means any Federal land under the administrative ju-
3 risdiction of the Bureau of Land Management or the
4 Forest Service.

5 (2) FUND.—The term “Fund” means the Re-
6 newable Energy Mitigation and Fish and Wildlife
7 Fund established by section 3(b).

8 (3) PILOT PROGRAM.—The term “pilot pro-
9 gram” means the wind and solar leasing pilot pro-
10 gram established under subsection (b).

11 (4) SECRETARY.—The term “Secretary” means
12 the Secretary of the Interior.

13 (5) STATE.—The term “State” means the State
14 within the boundaries of which income is derived
15 under a lease issued under this section.

16 (b) WIND AND SOLAR LEASING PILOT PROGRAM.—

17 (1) IN GENERAL.—Not later than 180 days
18 after the date of enactment of this Act, the Sec-
19 retary shall establish a wind and solar leasing pilot
20 program for Federal land.

21 (2) SELECTION OF SITES.—

22 (A) IN GENERAL.—Not later than 90 days
23 after the date on which the pilot program is es-
24 tablished, the Secretary shall select not fewer
25 than 2 sites that are appropriate for the devel-

1 opment of a solar energy project, and not fewer
2 than 2 sites that are appropriate for the devel-
3 opment of a wind energy project, on Federal
4 land as part of the pilot program.

5 (B) SITE SELECTION.—In carrying out
6 subparagraph (A), the Secretary shall seek to
7 select sites on Federal land—

8 (i) for which there is likely to be a
9 high level of industry interest; and

10 (ii) that has comparatively low value
11 for other resources.

12 (C) EXCLUSIONS.—For purposes of this
13 Act only, Federal land suitable for wind and
14 solar development does not include—

15 (i) any unit of the National Wildlife
16 Refuge System;

17 (ii) any component of the National
18 Wild and Scenic Rivers System;

19 (iii) any part of the National Land-
20 scape Conservation System;

21 (iv) any designated wilderness area,
22 wilderness study area, or other area man-
23 aged for wilderness characteristics;

24 (v) any inventoried roadless area with-
25 in the National Forest System;

1 (vi) any National Historic Landmark;

2 (vii) any National Historic District or
3 an Archaeological District eligible for or
4 listed in the National Register of Historic
5 Places; or

6 (viii) other sensitive land, as deter-
7 mined by the Secretary.

8 (D) COORDINATION WITH COUNTIES.—In
9 selecting sites under the pilot program, the Sec-
10 retary shall—

11 (i) coordinate site selection activities
12 with the county and State land manage-
13 ment and wildlife agencies in whose juris-
14 diction the Federal land is located; and

15 (ii) take into consideration local land
16 use planning and zoning requirements and
17 recommendations.

18 (3) CONSULTATION.—In establishing the pilot
19 program and the wind or solar leasing programs
20 under subsection (c), the Secretary shall consult
21 with—

22 (A) appropriate Federal agencies, including
23 the Department of Defense;

24 (B) affected States and counties;

25 (C) Indian tribes;

1 (D) representatives of the wind and solar
2 industries;

3 (E) representatives of the environmental,
4 conservation, and fish and wildlife conservation
5 communities;

6 (F) representatives of the motorized and
7 nonmotorized outdoor recreation communities;

8 (G) representatives of the ranching and ag-
9 ricultural communities; and

10 (H) the public.

11 (4) WIND AND SOLAR LEASE SALES.—

12 (A) IN GENERAL.—Except as provided in
13 subparagraph (C)(ii), not later than 180 days
14 after the date on which sites are selected under
15 paragraph (2), the Secretary shall offer each
16 site for competitive leasing to qualified bidders
17 under such terms and conditions as are re-
18 quired by the Secretary.

19 (B) BIDDING SYSTEMS.—In offering the
20 sites for lease, the Secretary—

21 (i) may vary the bidding systems to be
22 used at each lease sale; but

23 (ii) shall limit bidding to 1 round in
24 any lease sale.

25 (C) LEASE TERMS.—

1 (i) IN GENERAL.—As part of the pilot
2 program, the Secretary may vary the
3 length of the lease terms and establish
4 such other lease terms and conditions as
5 the Secretary considers appropriate.

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

8 (I) offer on a noncompetitive
9 basis on at least 1 site a short-term
10 lease for data collection; and

11 (II) on the expiration of the
12 short-term lease, offer on a competi-
13 tive basis a long-term lease, giving
14 credit toward the bonus bid to the
15 holder of the short-term lease for any
16 qualified expenditures to collect data
17 to develop the site during the short-
18 term lease.

19 (D) QUALIFICATIONS.—Prior to any lease
20 sale, the Secretary shall establish qualifications
21 for bidders that ensures bidders—

22 (i) are able to expeditiously develop a
23 wind or solar energy project on the site for
24 lease; and

25 (ii) possess—

- 1 (I) financial resources necessary
2 to complete a project;
3 (II) knowledge of the applicable
4 technology; and
5 (III) such other qualifications as
6 determined appropriate by the Sec-
7 retary.

8 (5) COMPLIANCE WITH LAWS.—In offering for
9 lease the selected sites under (4), the Secretary shall
10 comply with all applicable environmental and other
11 laws.

12 (6) REPORT.—The Secretary shall—

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

- 15 (i) the level of competitive interest;
16 (ii) a summary of bids and revenues
17 received; and
18 (iii) any other factors that may have
19 impacted the lease sale process; and

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

1 (c) LEASING PROGRAM FOR WIND AND SOLAR EN-
2 ERGY.—

3 (1) DETERMINATIONS.—

4 (A) IN GENERAL.—Not later than 2 years
5 after the date of enactment of this Act, the Sec-
6 retary shall determine whether to establish leas-
7 ing programs under this section for wind and
8 solar energy.

9 (B) REQUIREMENTS.—Not later than 180
10 days after the date on which any determination
11 under subparagraph (A) is made, the Secretary
12 shall establish a leasing program if the Sec-
13 retary determines that the program—

14 (i) is in the public interest; and

15 (ii) provides an effective means of de-
16 veloping wind or solar energy on Federal
17 land.

18 (C) REPORT.—If the Secretary determines
19 that a leasing program should not be estab-
20 lished, not later than 60 days after the date of
21 the determination, the Secretary shall submit to
22 the Committee on Energy and Natural Re-
23 sources of the Senate and the Committee on
24 Natural Resources of the House of Representa-

1 tives a report describing the reasons and find-
2 ings for that determination.

3 (2) LEASES FOR CERTAIN FEDERAL LAND.—

4 (A) IN GENERAL.—If the Secretary makes
5 the determination to establish a leasing pro-
6 gram under this section, except as provided in
7 subparagraph (B) and pursuant to the Federal
8 Land Policy and Management Act of 1976 (43
9 U.S.C. 1701 et seq.) and the National Forest
10 Management Act of 1976 (16 U.S.C. 1600 et
11 seq.), the Secretary may develop policy and reg-
12 ulations for, and issue leases on, Federal land
13 under the administrative jurisdiction of the Bu-
14 reau of Land Management and the Forest Serv-
15 ice.

16 (B) EXCEPTION.—The Secretary may not
17 issue any lease on National Forest System land
18 under subparagraph (A) over the objection of
19 the Secretary of Agriculture.

20 (3) CONSULTATION AND CONSIDERATIONS.—In
21 making the determinations required under this sub-
22 section, the Secretary shall—

23 (A) consult with—

24 (i) appropriate Federal agencies, in-
25 cluding the Department of Defense;

- 1 (ii) affected States and counties;
- 2 (iii) Indian tribes;
- 3 (iv) representatives of the wind and
- 4 solar industry;
- 5 (v) representatives of the environ-
- 6 mental, conservation, and fish and wildlife
- 7 conservation communities;
- 8 (vi) representatives of the motorized
- 9 and nonmotorized outdoor recreation com-
- 10 munities;
- 11 (vii) representatives of the ranching
- 12 and agricultural communities; and
- 13 (viii) the public; and

14 (B) consider the results of the report pro-
 15 vided under subsection (b)(6) and the results of
 16 the pilot program.

17 (4) REQUIREMENTS.—If the Secretary deter-
 18 mines under this subsection that a leasing program
 19 should be established, the program shall be carried
 20 out in accordance with subsections (d) through (i).
 21 (d) COMPETITIVE LEASES.—

22 (1) IN GENERAL.—Except as provided in para-
 23 graph (2), leases for wind or solar energy develop-
 24 ment under this section shall be issued on a competi-

1 tive basis with a single round of bidding in any lease
2 sale.

3 (2) EXCEPTIONS.—Paragraph (1) shall not
4 apply to Federal land if the Secretary determines
5 that—

6 (A) there is no competitive interest for the
7 Federal land;

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

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

15 (D) meteorological testing tower or other
16 data collection device has been installed under
17 an approved easement, special-use permit, or
18 right-of-way issued before the date of enact-
19 ment of this Act; or

20 (E) the Federal land is eligible to be grant-
21 ed a noncompetitive lease under subsection
22 (e)(3).

23 (e) TRANSITION TO LEASING.—

24 (1) IN GENERAL.—The Secretary shall continue
25 to accept applications for rights-of-way, review the

1 applications, and provide for the issuance of rights-
2 of-way for the development of wind or solar energy
3 on Federal land in accordance with each require-
4 ment described in title V of the Federal Land Policy
5 and Management Act of 1976 (43 U.S.C. 1761 et
6 seq.) during the pilot program and until the Sec-
7 retary determines to establish wind and solar leasing
8 programs under subsection (c).

9 (2) ADMINISTRATION.—If the Secretary deter-
10 mines under subsection (c) that a leasing program
11 should be established, the Secretary shall provide for
12 a reasonable transition from the use of rights-of-way
13 to leases, taking into account paragraphs (3) and
14 (4) and the status of the project, including wheth-
15 er—

16 (A) rights-of-way for testing or construc-
17 tion have been granted;

18 (B) a plan of development has been sub-
19 mitted; or

20 (C) a draft environmental impact state-
21 ment has been published.

22 (3) EXISTING RIGHTS-OF-WAY.—

23 (A) IN GENERAL.—Effective beginning on
24 the date on which the wind and solar leasing
25 programs are established, the Secretary shall

1 not renew an existing right-of-way authorization
2 for wind and solar energy development at the
3 end of the term of the authorization.

4 (B) LEASE.—

5 (i) IN GENERAL.—Subject to clause
6 (ii), at the end of the term of the right-of-
7 way authorization for the wind or solar en-
8 ergy project, the Secretary may grant,
9 without a competitive process, a lease to
10 the holder of the right-of-way for the same
11 Federal land as was authorized under the
12 right-of-way authorization.

13 (ii) TERMS AND CONDITIONS.—Any
14 lease described in clause (i) shall be sub-
15 ject to the terms and conditions generally
16 applicable to other lease sales for similar
17 projects at the time the lease is issued.

18 (4) PENDING RIGHTS-OF-WAY.—Effective begin-
19 ning on the date on which the wind and solar leasing
20 programs are established, the Secretary may provide
21 any applicant that has filed a plan of development
22 for a right-of-way for a wind or solar energy project
23 with an option to acquire a noncompetitive lease,
24 under such terms and conditions as are required by

1 this section and the Secretary, for the same Federal
2 land included in the plan of development, if—

3 (A) the plan of development has been de-
4 termined by the Secretary to be adequate for
5 the initiation of environmental review; and

6 (B) granting the lease is consistent with all
7 applicable land use planning, environmental,
8 and other laws.

9 (f) REQUIREMENTS.—If the Secretary establishes a
10 leasing program under subsection (c), the Secretary shall
11 ensure that any activity under the wind and solar leasing
12 program is carried out in a manner that—

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

15 (2) provides for—

16 (A) safety;

17 (B) protection of the environment;

18 (C) prevention of waste;

19 (D) diligent development of the resource,
20 with specific milestones determined by the Sec-
21 retary;

22 (E) coordination with applicable Federal
23 agencies;

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

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

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

9 (I) protection of fish and wildlife habitat;
10 and

11 (J) efficient use of water resources.

12 (g) LEASE DURATION, SUSPENSION, AND CANCELLA-
13 TION.—

14 (1) IN GENERAL.—If the Secretary establishes
15 a leasing program under subsection (c), subject to
16 paragraph (2), the Secretary shall establish terms
17 and conditions for the duration, issuance, transfer,
18 renewal, suspension, and cancellation of a lease
19 under this section.

20 (2) MINIMUM TERM.—A wind or solar project
21 with a total capacity of 100 megawatts or more shall
22 be leased for not less than 30 years under this sec-
23 tion.

1 (h) SECURITY.—If the Secretary establishes a leasing
2 program under subsection (c), the Secretary shall require
3 the holder of a lease issued under this section—

4 (1) to furnish a reclamation bond or other form
5 of security determined to be appropriate by the Sec-
6 retary;

7 (2) on completion of the activities authorized by
8 the lease—

9 (A) to restore the Federal land that is sub-
10 ject to the lease to the condition in which the
11 Federal land existed before the lease was grant-
12 ed; or

13 (B) to conduct mitigation activities (or
14 payment of funds to be transferred to the Fund
15 in lieu of the activities) if the Secretary deter-
16 mines that restoration of the Federal land to
17 the condition described in subparagraph (A) is
18 impracticable; and

19 (3) to comply with such other requirements as
20 the Secretary considers necessary to protect the in-
21 terests of the public and the United States.

22 (i) BEST MANAGEMENT PRACTICES.—The Secretary
23 shall—

24 (1) establish best management practices to en-
25 sure the sound, efficient, and environmentally re-

1 sponsible development of wind and solar resources
2 on the Federal land in a manner that will minimize
3 consumptive water use, and avoid, minimize, and
4 mitigate actual and anticipated impacts to fish and
5 wildlife habitat and ecosystem function, resulting
6 from development under a lease issued under this
7 section; and

8 (2) include—

9 (A) provisions in the lease requiring renew-
10 able energy operators to comply with the prac-
11 tices established under paragraph (1); and

12 (B) such other provisions as the Secretary
13 considers appropriate.

14 (j) PAYMENTS.—

15 (1) IN GENERAL.—The Secretary shall establish
16 royalties, fees, rentals, bonuses, or other payments
17 to ensure a fair return to the United States, States,
18 and counties for any right-of-way or lease issued for
19 a wind or solar project on Federal land.

20 (2) COLLECTION OF PAYMENTS.—

21 (A) IN GENERAL.—Prior to the collection
22 of royalties under paragraph (4), the Secretary
23 shall collect payments for wind and solar
24 projects in accordance with section 504(g) of

1 the Federal Land Policy and Management Act
2 of 1976 (43 U.S.C. 1764(g)).

3 (B) EXCEPTION.—Wind or solar energy
4 leases issued under this section shall not be
5 subject to the rental fee exemption for rights-
6 of-way under section 504(g) of the Federal
7 Land Policy and Management Act of 1976 (43
8 U.S.C. 1764(g)).

9 (3) BONUS BIDS.—The Secretary may grant
10 credit toward any bonus bid for a qualified expendi-
11 ture by the holder of a lease described in subsection
12 (d)(2)(C) in any competitive lease sale held for a
13 long-term lease covering the same Federal land cov-
14 ered by the lease described in subsection (d)(2)(C).

15 (4) ROYALTIES.—Except as provided in para-
16 graph (6), the Secretary shall develop and enforce a
17 royalty on electricity produced by wind and solar
18 projects on Federal land that—

19 (A) encourages production of wind or solar
20 energy;

21 (B) encourages the maximum energy gen-
22 eration using the least quantity of Federal land
23 and other natural resources, including water;

24 (C) ensures a fair return (comparable to
25 the return that would be obtained on State and

1 private land) to the public, States, and counties
2 eligible to receive a portion of the revenues
3 under section 3(a); and

4 (D) encourages the use of energy storage
5 technologies that increase the capacity factor of
6 wind or solar energy generation facilities.

7 (5) RULEMAKING.—Not later than 1 year after
8 the date of enactment of this Act, the Secretary
9 shall complete a rulemaking for wind energy and
10 solar energy royalty rates.

11 (6) ROYALTY RELIEF.—Subject to paragraph
12 (2)(B), to promote the greatest generation of renew-
13 able energy, the Secretary may, until fiscal year
14 2040, provide that no royalty or a reduced royalty
15 is required for a period not to exceed 5 years begin-
16 ning on the date on which wind or solar generation
17 is initially commenced on the Federal land.

18 (k) SEGREGATION FROM APPROPRIATION UNDER
19 MINING AND FEDERAL LAND LAWS.—

20 (1) IN GENERAL.—On selection of Federal land
21 for leasing under this section, the Secretary may
22 temporarily segregate the selected Federal land from
23 appropriation under the mining and public land
24 laws.

1 (2) ADMINISTRATION.—Segregation of Federal
2 land under this subsection—

3 (A) may only be made for a period of not
4 to exceed 10 years; and

5 (B) shall be subject to valid existing rights
6 as of the date of the segregation.

7 **SEC. 3. DISPOSITION OF REVENUE.**

8 (a) DISTRIBUTION OF PROCEEDS AND PAYMENTS.—

9 (1) IN GENERAL.—Effective beginning on the
10 date of enactment of this Act, all amounts collected
11 by the Secretary as royalties, fees, rentals, bonuses,
12 or other payments for wind and solar projects on
13 Federal land, including any fees associated with
14 wind and solar energy rights-of-way, shall be distrib-
15 uted as follows:

16 (A) 25 percent shall be paid by the Sec-
17 retary of the Treasury to the State within the
18 boundaries of which the income is derived.

19 (B) 25 percent shall be paid by the Sec-
20 retary of the Treasury to the 1 or more coun-
21 ties within the boundaries of which the income
22 is derived.

23 (C) 15 percent shall—

24 (i) for the period beginning on the
25 date of enactment of this Act and ending

on the date specified in clause (ii), be deposited in the Treasury of the United States to help facilitate the processing of renewable energy permits by the Bureau of Land Management, subject to paragraph (2)(A)(i), including the transfer of the funds by the Bureau of Land Management to other Federal and State agencies to facilitate the processing of renewable energy permits on Federal land; and

(ii) beginning on the date that is 10 years after the date of enactment of this Act, be deposited in the Fund.

(D) 35 percent shall be deposited in the Fund.

(2) LIMITATIONS.—

(A) RENEWABLE ENERGY PERMITS.—For purposes of clause (i) of paragraph (1)(C):

(i) Not more than \$50,000,000 shall be deposited in the Treasury at any 1 time under that clause.

(ii) The following shall be deposited in the Fund:

(I) Any amounts collected under that subclause that are not obligated

1 by the date specified in paragraph
2 (1)(C)(ii).

3 (II) Any amounts that exceed the
4 \$50,000,000 deposit limit under
5 clause (i).

6 (III) Any amounts provided by
7 the lease holder pursuant to section
8 2(h)(2)(B).

9 (B) FUND.—Any amounts deposited in the
10 Fund under subparagraph (A)(ii) or paragraph
11 (1)(C)(ii) shall be in addition to amounts depos-
12 ited in the Fund under paragraph (1)(D).

13 (3) AVAILABILITY OF FUNDS.—Funds under
14 this subsection shall be available for expenditure
15 without further appropriation and without fiscal
16 year limitation.

17 (b) RENEWABLE ENERGY MITIGATION AND FISH
18 AND WILDLIFE FUND.—

19 (1) ESTABLISHMENT.—There is established in
20 the Treasury of the United States a fund, to be
21 known as the “Renewable Energy Mitigation and
22 Fish and Wildlife Fund”, to be administered by the
23 Secretary, for use in the State.

24 (2) USE OF FUNDS.—Amounts in the Fund
25 shall be available to the Secretary, who may make

1 the amounts available to the State, Federal agencies,
2 or other interested parties for the purposes of—

3 (A) mitigating impacts of renewable energy
4 on Federal land, including—

5 (i) protecting fish and wildlife cor-
6 ridors and other sensitive land;

7 (ii) restoring fish and wildlife habitat;
8 and

9 (iii) securing recreational access to
10 Federal land through easement, right of
11 way, or fee title acquisition from willing
12 sellers for the purpose of providing en-
13 hanced public access to existing Federal
14 land that is inaccessible or significantly re-
15 stricted; and

16 (B) carrying out activities authorized
17 under the Land and Water Conservation Fund
18 Act of 1965 (16 U.S.C. 460l–4 et seq.) in the
19 State.

20 (3) AVAILABILITY OF AMOUNTS.—Amounts in
21 the Fund shall be available for expenditure, in ac-
22 cordance with this subsection, without further appro-
23 priation, and without fiscal year limitation.

24 (4) INVESTMENT OF FUND.—

1 (A) IN GENERAL.—Any amounts deposited
2 in the Fund shall earn interest in an amount
3 determined by the Secretary of the Treasury on
4 the basis of the current average market yield on
5 outstanding marketable obligations of the
6 United States of comparable maturities.

7 (B) USE.—Any interest earned under sub-
8 paragraph (A) may be expended in accordance
9 with this subsection.

10 **SEC. 4. BUDGETARY EFFECTS.**

11 The budgetary effects of this Act, for the purpose of
12 complying with the Statutory Pay-As-You-Go Act of 2010,
13 shall be determined by reference to the latest statement
14 titled “Budgetary Effects of PAYGO Legislation” for this
15 Act, submitted for printing in the Congressional Record
16 by the Chairman of the Senate Budget Committee, pro-
17 vided that such statement has been submitted prior to the
18 vote on passage.

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