AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

114TH CONGRESS
1ST SESSION

S. 1407

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

IN THE SENATE OF THE UNITED STATES

MAY 20, 2015

Mr. HELLER (for himself, Mr. RISCH, Mr. HEINRICH, and Mr. TESTER) 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.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Public Land Renewable Energy Development Act of 2015".

(b) TABLE OF CONTENTS.—The table of contents 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 GEOTHERMAL, SOLAR, AND WIND ENERGY ON PUBLIC LAND

Subtitle A—Environmental Reviews and Permitting

Sec. 201. Definitions.
Sec. 202. Land use planning; supplements to programmatic environmental impact statements.
Sec. 203. Environmental review on covered land.
Sec. 204. Program to improve renewable energy project permit coordination.

Subtitle B—Revenues and Enforcement

Sec. 211. Definitions.
Sec. 212. Disposition of revenues.
Sec. 213. Royalties.
Sec. 214. Enforcement of royalty and payment provisions.
Sec. 215. Enforcement.
Sec. 216. Segregation from appropriation under mining and Federal land laws.
Sec. 217. Study and report on conservation banking.
Sec. 218. Applicability of law.

TITLE I—GEOTHERMAL ENERGY

SEC. 101. EXTENSION OF FUNDING FOR IMPLEMENTATION OF GEOTHERMAL STEAM ACT OF 1970.

(a) IN GENERAL.—Section 234(a) of the Energy Policy Act of 2005 (42 U.S.C. 15873(a)) is amended by striking ''in the first 5 fiscal years beginning after the date of enactment of this Act'' and inserting ''through fiscal year 2020''.

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

(1) by striking ''Amounts'' and inserting the following:

''(1) IN GENERAL.—Amounts''; and

(2) by adding at the end the following:

"(2) AUTHORIZATION.—Effective for fiscal year 2015 and each fiscal year thereafter, amounts deposited under subsection (a) shall be available to the Secretary of the Interior for expenditure, subject to appropriation and without fiscal year limitation, to implement the Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.) and this Act.".

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

Subtitle A—Environmental Reviews and Permitting

SEC. 201. DEFINITIONS.

In this subtitle:

(1) COVERED LAND.—The term "covered land" means land that is—

(A) public land administered by the Secretary; and

(B) not excluded from the development of geothermal, solar, or wind energy under—

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

(ii) other Federal law.

(2) DIRECTOR.—The term ''Director'' means the Director of the Bureau of Land Management.

(3) EXCLUSION AREA.—The term ''exclusion area'' means covered land that is identified by the Bureau of Land Management as not suitable for development of renewable energy projects.

(4) PRIORITY AREA.—The term ''priority area'' means covered land identified by the land use planning process of the Bureau of Land Management as being a preferred location for a renewable energy project.

(5) RENEWABLE ENERGY PROJECT.—The term ''renewable energy project'' means a project carried out on covered land that uses wind, solar, or geothermal energy to generate energy.

(6) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(7) VARIANCE AREA.—The term ''variance area'' means covered land that is—

(A) not an exclusion area; and

(B) not a priority area.

SEC. 202. LAND USE PLANNING; SUPPLEMENTS TO PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENTS.

(a) PRIORITY AND VARIANCE AREAS.—

(1) IN GENERAL.—The Director shall establish priority and variance areas on covered land for geothermal, solar, and wind energy projects.

(2) DEADLINE.—

(A) GEOTHERMAL ENERGY.—For geothermal energy, the Director shall establish priority and variance areas as soon as practicable, but not later than 5 years, after the date of enactment of this Act.

(B) SOLAR ENERGY.—For solar energy, the 2012 western solar plan of the Bureau of Land Management shall be considered to establish priority and variance areas for solar energy projects.

(C) WIND ENERGY.—For geothermal energy, the Director shall establish priority and variance areas as soon as practicable, but not later than 5 years, after the date of enactment of this Act.

(3) REVIEW AND MODIFICATION.—Not less frequently than once every 10 years, the Director shall—

(A) review the adequacy of land allocations for geothermal, solar, and wind energy priority and variance areas; and

(B) based on the review carried out under subparagraph (A), add, modify, or eliminate priority and variance areas.

(b) COMPLIANCE WITH THE NATIONAL ENVIRONMENTAL POLICY ACT.—For purposes of this section, compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall be accomplished—

(1) for geothermal energy, by supplementing the October 2008 final programmatic environmental impact statement for geothermal leasing in the western United States;

(2) for solar energy, by supplementing the July 2012 final programmatic environmental impact statement for solar energy projects; and

(3) for wind energy, by supplementing the July 2005 final programmatic environmental impact statement for wind energy projects.

(c) NO EFFECT ON PROCESSING APPLICATIONS.—A requirement to prepare a supplement to a programmatic environmental impact statement under this section shall not result in any delay in processing an application for a renewable energy project.

(d) COORDINATION.—In developing a supplement required by this section, the Secretary shall coordinate, on an ongoing basis, with appropriate State, tribal, and local

governments, transmission infrastructure owners and operators, developers, and other appropriate entities to ensure that priority areas identified by the Secretary are—

(1) economically viable (including having access to transmission);

(2) likely to avoid or minimize conflict with habitat for animals and plants, recreation, and other uses of covered land; and

(3) consistent with local planning efforts.

(e) REMOVAL FROM CLASSIFICATION.—In carrying out subsections (a), (b), and (c), if the Secretary determines an area previously suited for development should be removed from priority or variance classification, not later than 90 days after the date of the determination, the Secretary shall submit to Congress a report on the determination.

SEC. 203. ENVIRONMENTAL REVIEW ON COVERED LAND.

(a) IN GENERAL.—If the Director determines that a proposed renewable energy project has been sufficiently analyzed by a programmatic environmental impact statement conducted under section 202(b), the head of the applicable Federal agency shall not require any additional review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(b) ADDITIONAL ENVIRONMENTAL REVIEW.—If the Director determines that additional environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) is necessary for a proposed renewable energy project, the head of the applicable Federal agency shall rely on the analysis in the programmatic environmental impact statement conducted under section 202(b), to the maximum extent practicable when analyzing the potential impacts of the project.

SEC. 204. PROGRAM TO IMPROVE RENEWABLE ENERGY PROJECT PERMIT COORDINATION.

(a) ESTABLISHMENT.—The Secretary shall establish a program to improve Federal permit coordination with respect to renewable energy projects on covered land.

(b) MEMORANDUM OF UNDERSTANDING.—

(1) IN GENERAL.—Not later than 90 days after the date of enactment of this Act, the Secretary shall enter into a memorandum of understanding for purposes of this section with—

(A) the Secretary of Agriculture;

(B) the Administrator of the Environmental Protection Agency; and

(C) the Chief of Engineers.

(2) STATE PARTICIPATION.—The Secretary may request the Governor of any interested State to

be a signatory to the memorandum of understanding under paragraph (1).

(c) INTERAGENCY COORDINATION.—The Secretary shall establish an ombudsperson in the Office of the Secretary, who shall be responsible for resolving interagency disputes between 2 or more of the following agencies:

(1) The United States Fish and Wildlife Service.

(2) The National Park Service.

(3) The Bureau of Land Management.

(d) VARIANCE AREAS.—

(1) IN GENERAL.—In carrying out subsections (b) and (c), the heads of the Federal agencies described in those subsections shall consider entering into agreements and memoranda of understanding to expedite the environmental analysis of applications for projects proposed on covered land determined by the Secretary to be a variance area under section 202.

(2) AVAILABILITY FOR RENEWABLE ENERGY PROJECT DEVELOPMENT.—To the maximum extent practicable, the variance areas described in paragraph (1) shall be made available for renewable energy project development, after completion of an environmental impact statement or similar analysis re-

quired under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), and subject to the policies and procedures set forth by the Secretary for evaluating variance applications in the programmatic environmental impact statement described in section 202(b).

(e) DESIGNATION OF QUALIFIED STAFF.—

(1) IN GENERAL.—Not later than 30 days after the date on which the memorandum of understanding under subsection (b) is executed, all Federal signatories, as appropriate, shall assign to each of the field offices described in subsection (f) an employee who has expertise in the regulatory issues relating to the office in which the employee is employed, including, as applicable, particular expertise in—

(A) consultation regarding, and preparation of, biological opinions under section 7 of the Endangered Species Act of 1973 (16 U.S.C. 1536);

(B) permits under section 404 of Federal Water Pollution Control Act (33 U.S.C. 1344);

(C) regulatory matters under the Clean Air Act (42 U.S.C. 7401 et seq.);

(D) planning under section 14 of the National Forest Management Act of 1976 (16 U.S.C. 472a);

(E) the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.);

(F) the Migratory Bird Treaty Act (16 U.S.C. 703 et seq.); and

(G) the preparation of analyses under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.).

(2) DUTIES.—Each employee assigned under paragraph (1) shall—

(A) not later than 90 days after the date of assignment, report to field managers of the Bureau of Land Management in the office to which the employee is assigned;

(B) be responsible for all issues relating to the jurisdiction of the home office or agency of the employee; and

(C) participate as part of the team of personnel working on proposed energy projects, planning, monitoring, inspection, enforcement, and environmental analyses.

(f) FIELD OFFICES.—The field offices referred to in subsection (e)(1) shall include field offices of the Bureau

of Land Management in, at a minimum, the States of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

(g) ADDITIONAL PERSONNEL.—The Secretary shall assign to each field office described in subsection (f) such additional personnel as are necessary to ensure the effective implementation of any programs administered by the field offices, including inspection and enforcement relating to renewable energy project development on covered land, in accordance with the multiple use mandate of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.).

(h) REPORT TO CONGRESS.—

(1) IN GENERAL.—Not later than February 1 of the first fiscal year beginning after the date of enactment of this Act, and each February 1 thereafter, the Secretary shall submit to the Chairperson and Ranking Member of the Committee on Energy and Natural Resources of the Senate and the Committee on Natural Resources of the House of Representatives a report describing the progress made pursuant to the program under this subtitle during the preceding year.

(2) INCLUSIONS.—Each report under this subsection shall include—

(A) projections for renewable energy production and capacity installations; and

(B) a description of any problems relating to leasing, permitting, siting, or production.

Subtitle B—Revenues and Enforcement

SEC. 211. DEFINITIONS.

In this subtitle:

(1) COVERED LAND.—The term ''covered land'' means land that is—

(A)(i) public land administered by the Secretary; or

(ii) National Forest System land administered by the Secretary of Agriculture; and

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

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

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

(iii) other Federal law.

(2) FEDERAL LAND.—The term ''Federal land'' means—

(A) land of the National Forest System (as defined in section 11(a) of the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1609(a))); or

(B) public land.

(3) FUND.—The term ''Fund'' means the Renewable Energy Resource Conservation Fund established by section 212(c)(1).

(4) PUBLIC LAND.—The term ''public land'' has the meaning given the term ''public lands'' in section 103 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702).

(5) SECRETARIES.—The term ''Secretaries'' means—

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

(B) in the case of National Forest System land administered by the Secretary of Agriculture, the Secretary of Agriculture.

(6) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

SEC. 212. DISPOSITION OF REVENUES.

(a) DISPOSITION OF REVENUES.—Without further appropriation or fiscal year limitation, of the amounts collected as bonus bids, royalties, rentals, fees, or other payments under a right-of-way, permit, lease, or other authorization for the development of wind or solar energy on covered land—

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

(2) 25 percent shall be paid by the Secretary of the Treasury to the 1 or more counties within the boundaries of which the revenue is derived, to be allocated among the counties based on the percentage of land from which the revenue is derived;

(3) to be deposited in the Treasury and be made available to the Secretary to carry out the program established by section 204, including the transfer of the funds by the Bureau of Land Management to other Federal agencies and State agencies to facilitate the processing of renewable energy permits on Federal land, with priority given to using the amounts, to the maximum extent practicable, to reducing the backlog of renewable energy permits that have not been processed in the State from which the revenues are derived—

(A) 15 percent for each of fiscal years 2015 through 2030;

(B) 14 percent for fiscal year 2031;

(C) 13 percent for fiscal year 2032;

(D) 12 percent for fiscal year 2033;

(E) 11 percent for fiscal year 2034; and

(F) 10 percent for fiscal year 2035 and each fiscal year thereafter; and

(4) to be deposited in the Renewable Energy Resource Conservation Fund established by subsection (c)—

(A) 35 percent for each of fiscal years 2015 through 2030;

(B) 36 percent for fiscal year 2031;

(C) 37 percent for fiscal year 2032;

(D) 38 percent for fiscal year 2033;

(E) 39 percent for fiscal year 2034; and

(F) 40 percent for fiscal year 2035 and each fiscal year thereafter.

(b) PAYMENTS TO STATES AND COUNTIES.—

(1) IN GENERAL.—Amounts paid to States and counties under subsection (a) shall be used consistent with section 35 of the Mineral Leasing Act (30 U.S.C. 191).

(2) PAYMENTS IN LIEU OF TAXES.—A payment to a county under paragraph (1) shall be in addition to a payment in lieu of taxes received by the county under chapter 69 of title 31, United States Code.

(c) RENEWABLE ENERGY RESOURCE CONSERVATION FUND.—

(1) IN GENERAL.—There is established in the Treasury a fund, to be known as the ''Renewable Energy Resource Conservation Fund'', to be administered by the Secretary, in consultation with the Secretary of Agriculture, for use in regions affected by the development of wind or solar energy on Federal land.

(2) USE.—

(A) IN GENERAL.—Amounts in the Fund shall be available to the Secretary, who may make amounts available to the Secretary of Agriculture, to other Federal or State agencies, and other interested persons in an impacted region, as appropriate, for the purposes of—

(i) protecting and restoring important fish and wildlife habitat on Federal land in the impacted region; and

(ii) ensuring and improving right-of-way access to Federal land and water in

the impacted region for fishing, hunting, and other forms of outdoor recreation in a manner consistent with the conservation of fish and wildlife habitat.

(B) ADVISORY BOARD.—The Secretaries shall establish an independent advisory board composed of key stakeholders and technical experts to provide recommendations and guidance on the disposition of any amounts expended from the Fund.

(3) INVESTMENT OF FUND.—

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

(B) USE.—Any interest earned under subparagraph (A) may be expended in accordance with this subsection.

(4) INTENT OF CONGRESS.—It is the intent of Congress that the revenues deposited and used in the Fund shall supplement and not supplant annual appropriations for conservation activities described in paragraph (2)(A).

SEC. 213. ROYALTIES.

(a) IN GENERAL.—The Secretaries shall require as a term and condition of any lease, right-of-way, permit, or other authorization for the development of wind or solar energy on covered land the payment of a royalty.

(b) RATE CONSIDERATIONS.—The Secretary, in consultation with the Secretary of Agriculture, shall establish, through rulemaking, a royalty payable under subsection (a) that shall be a percentage of the gross proceeds from the sale of electricity at a rate that—

(1) encourages production of solar or wind energy;

(2) ensures a fair return to the public comparable to the return that would be obtained on State and private land; and

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

(c) DIFFERENT ROYALTY RATES.—The Secretaries shall establish—

(1) a different royalty rate for wind or solar energy generation, which takes into account relative capacity factors for the respective generation sources; and

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

(d) EXCLUSIVE PAYMENT ON SALE OF ELECTRICITY.—During the period of production, a royalty paid under subsection (a) shall be the only rent, royalty, or similar payment to the Federal Government required with respect to the sale of electricity produced under a lease.

(e) ROYALTY RELIEF.—To promote the generation of renewable energy, the Secretaries may reduce any royalty otherwise required on a showing by clear and convincing evidence by the person holding a lease, right-of-way, permit, or other authorization for the development of wind or solar energy on covered land under which the generation of energy is or will be produced in commercial quantities that—

(1) collection of the full royalty would unreasonably burden energy generation; and

(2) the royalty reduction is in the public interest.

(f) PERIODIC REVIEW AND REPORT.—

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

(A) complete a review of collections and impacts of the royalty and fees provided under this subtitle; and

(B) submit to the Committees on Energy and Natural Resources and Agriculture, Nutrition, and Forestry of the Senate and the Committees on Natural Resources and Agriculture of the House of Representatives a report describing the results of the review.

(2) TOPICS.—The report shall address—

(A) the total revenues received (by category) on an annual basis as royalties from wind, solar, and geothermal development and production (specified by energy source) on covered land;

(B) whether the revenues received for the development of wind, solar, and geothermal development are comparable to the revenues received for similar development on State and private land;

(C) any impact on the development of wind, solar, and geothermal development and production on covered land as a result of the royalties; and

(D) any recommendations with respect to changes in Federal law (including regulations) relating to the amount or method of collection (including auditing, compliance, and enforcement) of the royalties.

(g) REGULATIONS.—Not later than 2 years after the date of enactment of this Act, the Secretaries shall jointly issue final regulations to carry out this section.

SEC. 214. ENFORCEMENT OF ROYALTY AND PAYMENT PROVISIONS.

(a) DUTIES OF THE SECRETARY.—The Secretary shall establish a comprehensive inspection, collection, fiscal, and production accounting and auditing system—

(1) to accurately determine royalties, interest, fines, penalties, fees, deposits, and other payments owed under this subtitle; and

(2) to collect and account for the payments in a timely manner.

(b) APPLICABILITY OF OTHER LAW.—The Federal Oil and Gas Royalty Management Act of 1982 (30 U.S.C. 1701 et seq.) (including the civil and criminal enforcement provisions of that Act) shall apply to leases, permits, rights-of-way, or other authorizations issued for the development of solar or wind energy on covered land and the holders and operators of the leases, permits, rights-of-way,

or other authorizations (and designees) under this subtitle, except that in applying that Act—

(1) ''wind or solar leases, permits, rights-of-way, or other authorizations'' shall be substituted for ''oil and gas leases'';

(2) ''electricity generated from wind or solar resources'' shall be substituted for ''oil and gas'' (when used as nouns);

(3) ''lease, permit, right-of-way, or other authorization for the development of wind or solar energy'' shall be substituted for ''lease'' and ''lease for oil and gas'' (when used as nouns); and

(4) ''lessee, permittee, right-of-way holder, or holder of an authorization for the development of wind or solar energy'' shall be substituted for ''lessee''.

SEC. 215. ENFORCEMENT.

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

(b) APPLICABILITY OF OTHER ENFORCEMENT PROVISIONS.—Nothing in this subtitle reduces or limits the enforcement authority vested in the Secretary or the Attorney General by any other law.

SEC. 216. SEGREGATION FROM APPROPRIATION UNDER MINING AND FEDERAL LAND LAWS.

(a) IN GENERAL.—On covered land identified by the Secretary or the Secretary of Agriculture for the development of renewable energy projects under this subtitle or other applicable law, the Secretary or the Secretary of Agriculture may temporarily segregate the identified land from appropriation under the mining and public land laws.

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

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

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

SEC. 217. STUDY AND REPORT ON CONSERVATION BANKING.

(a) STUDY.—

(1) IN GENERAL.—Not later than 180 days after the date of enactment of this Act, the Secretaries shall carry out a study on the siting, development, and management of projects to determine the feasibility of carrying out a conservation banking program on Federal land.

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

(A) identify areas in which—

(i) privately owned land is not available to fully offset the impacts of solar or wind energy development on federally administered land; or

(ii) mitigation investments on Federal land are likely to provide greater conservation value for impacts of solar or wind energy development on federally administered land; and

(B) examine—

(i) the effectiveness of laws (including regulations) and policies in effect on the date of enactment of this Act in facilitating the development and effective operation of conservation banks;

(ii) the advantages and disadvantages of using conservation banks on Federal land to mitigate impacts to natural resources on State, tribal, and private land; and

(iii) any changes in Federal law (including regulations) or policy necessary to further develop a Federal conservation banking program.

(b) REPORT TO CONGRESS.—Not later than 18 months after the date of enactment of this Act, the Secretaries shall jointly submit to Congress a report that includes—

(1) the recommendations of the Secretaries relating to—

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

(B) any change to Federal law (including regulations) or policy necessary to address more effectively the siting, development, and management of conservation banking programs on Federal land to mitigate impacts to natural resources on State, tribal, and private land; and

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

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

SEC. 218. APPLICABILITY OF LAW.

Wind or solar generation projects with a capacity of 20 megawatts or more that are issued a lease, right-of-way, permit, or other authorization under applicable law shall not be subject to the rental fee exemption for rights-of-way under section 504(g) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1764(g)).

○