



## Section by Section Summary

### The Consolidated Land, Energy, and Aquatic Resources Act of 2009 As Proposed by House Natural Resources Committee Majority Staff August 2009

On July 28, 2009, House Natural Resources Committee Democratic staff, under the direction of Chairman Nick Rahall (D-WV) released draft legislation impacting the development of renewable energy projects on public lands and in federal waters. This document summarizes the sections of the bill impacting onshore wind projects.

#### **Title I – Consolidation of Department of the Interior Energy and Minerals Leasing Programs**

##### **Section 101. Establishment of the Office of Federal Energy and Minerals Leasing**

This section creates a new office within the Department of the Interior (DOI), the Office of Federal Energy and Minerals Leasing (OFEML). OFEML will consolidate the leasing, inspection, enforcement and revenue collection for all energy activities (oil, gas, renewable) into a single entity. OFEML will have the leasing and related functions previously done by the Bureau of Land Management (BLM), the U.S. Forest Service (USFS), and the Minerals and Management Service (MMS). Requires this to be done within one year after the date of enactment.

With respect to renewable energy projects, OFEML is specifically empowered to (i) establish the fair market value for onshore lease sales (ii) conduct lease sales (iii) issue and oversight of onshore leases...and engage in (v) compliance activities, including timely payments of rentals, royalties and other fees, production verification, inspection and enforcement.

Requires BLM and USFS to (1) Establish best management practices for environmentally sound energy production (2) Review and approve general land use plans that identify areas in which energy development would not conflict with other land uses... (5) Establish and enforce reclamation requirements (6) Establish and enforce financial assurances sufficient to assure the completion of reclamation and restoration, among other duties.

## **Section 102. Officers and Employees**

Requires the Secretary of DOI to transfer “such personnel as necessary” from BLM and MMS to OFEML.

Requires leasing office employees to meet professional auditor standards.

## **Title V – New Onshore Leasing Authority** **Subtitle A – Solar and Wind Leasing**

### **Section 501. Authority to Issue Commercial Leases for Wind and Solar Projects on Federal Lands**

Authorizes the Secretary of DOI to issue competitive leases for wind and solar development on federal lands.

Requires final regulations to be published not later than 18 months after the date of enactment.

Requires lease sales to be offered not later than 90 days after the regulations are completed.

Upon completion of regulations, prohibits easements, special-use permits and rights-of-way “except for the placement and operation of testing or data collection devices or facilities that will not result in the commercial sale of electric power.”

Allows non-competitive leases only if (A) the lease is for resource data collection or equipment testing (B) the lease will not result in the commercial sale of electric power (C) the lease has a term of not more than 5 years; and (D) the Secretary, after public notice of a proposed lease, determines that there is no competitive interest.

In a competitive lease situation, the Secretary may give preference to the holder of a lease for data collection.

A grandfathering provision is provided under which the Secretary may issue an easement, special-use permit, or right-of-way for a commercial wind or solar project for which (1) a plan of development has been submitted to the relevant Secretary before the date of enactment of this act or (2) a met tower or other data collection device has been installed under an approved easement, a special-use permit, or right-of-way before the date of enactment.

Requires the establishment of work requirements and milestones to ensure diligent development is carried out under each lease that is issued.

## **Section 502. Land Management**

Requires BLM and USFS to issue regulations (1) establishing the duration of the lease (2) requiring the lease holder to submit a surety bond to provide for the restoration of the area to the condition in which the area existed before the granting of the lease or to fund mitigation activities if restoration to such condition is impractical (3) establish best management practices and require renewable energy operators to comply with those practices.

## **Section 503. Revenues**

Requires the establishment of “royalties, fees, rentals, bonus bids, or other payments for leases” that shall (1) encourage development of solar and wind energy on public lands (2) ensure a fair return to the United States; and (3) be commensurate with similar payments for the development of solar and wind energy on State and private lands.

Deposits these revenues in the U.S. Treasury.

## **Section 504. Recording-keeping and Reporting Requirements**

Requires lessee, permit holder or operator to maintain records with pertinent technical and financial data. Records must be maintained for 7 years and must be turned over if requested by the government.

## **Section 505. Audits**

Authorizes audits. Requires access to “books, papers, and other documents” that relate to compliance.

## **Section 506. Trade Secrets**

“Trade secrets, proprietary information, and other confidential information” protected from disclosure under the Freedom of Information Act “shall be made available by the Secretary to other Federal agencies as necessary to assure compliance with this Act and other Federal laws.”

## **Section 507. Interest and Substantial Under-Reporting Assessments**

Requires Secretary to charge interest when royalty payments are not received when due. Interest is charged and computed only on the amount of the deficiency and not on the total amount.

Authorizes penalties to be assessed of not greater than 25 percent of the amount of any under-reporting.

Under-reporting is defined as “the difference between the royalty on the value of the production that should have been reported and the royalty on the value of the production that was reported, if the value that should have been reported is greater than the value that was reported.”