



Legislation Proposed by House Democrats Seeks Sweeping Restructuring of Federal Energy Programs: The Federal Lands and Resources Energy Development Act of 2009

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IMPACTS ON RENEWABLE ENERGY, URANIUM AND TRANSMISSION

On May 20, 2009, the majority staff for the Committee on Natural Resources, U.S. House of Representatives, released a discussion draft of a Energy Bill entitled the "Federal Lands and Resource Energy Development Act of 2009" ("Act") (referred to herein as the "Energy Bill"). This proposed legislation is sweeping in seeking to "reform" the planning, leasing, and royalty collection regimes for both onshore and offshore federal minerals.

The Energy Bill includes significant provisions on renewable energy sources, uranium and support for transmission development. It is important to note that the Energy Bill refers to two types of energy: (1) "renewables" (primarily wind and solar) and (2) "nonrenewables," defined as oil and natural gas; coal is not mentioned in the Energy Bill. Key provisions regarding onshore leasing authority for wind and solar projects, formation of Energy Siting and Development Teams for siting of energy facilities on Federal lands and leasing for uranium are briefly summarized below.

House Energy Bill to Require Wind and Solar Project Located on Federal Lands to Obtain Leases

A primary element of the Energy Bill is to create a new Office of Federal Energy and Minerals Leasing in the Department of Interior for the purpose of consolidating administration of various Federal Energy minerals management and leasing programs now dispersed between the Minerals Management Service ("MMS") and the Bureau of Land Management ("BLM").

More importantly to solar and wind developers, the Energy Bill creates new onshore leasing authority for the issuance of commercial leases for wind and solar projects on Federal lands. Therefore, under Title IV of the Energy Bill, onshore solar and wind energy projects located Federal lands would be required to obtain competitive leases. The Energy Bill eliminates the current practice of obtaining easements, rights-of-ways and special use permits by the BLM or Forest Service for all commercial wind and solar projects on Federal lands for which a plan of development is submitted to the appropriate Federal agency following the date of enactment of this Act. For those projects that submitted a plan of development prior to the enactment date, the use of easements, right-of-ways and special use permits will be permitted.

Title IV further requires that the BLM and Forest Service promulgate regulations governing the administration of leases, and establish royalties, fees, rentals and other payments for leases issued under Title IV that are to encourage development of solar and wind energy on Federal lands and ensure a fair return to the United States.

House Energy Bill to Require Formation of Energy Siting and Development Teams For Siting of Energy Facilities on Federal Lands

Title III establishes “comprehensive energy land use planning” for the stated purpose of promoting “coordinated State, tribal, regional, and Federal efforts to improve the siting of energy facilities on Federal lands and development of Federal energy resources . . . for the long-term economic and environmental benefit of the United States.” Section 301 explains further that one of the purposes of this provision is to designate “cost-effective, environmentally sensitive, energy zones on Federal lands.” The term “energy zones” is not defined in the Energy Bill.

Unlike Congress’ clear intent to address solar and wind development on Federal lands, the Energy Bill does not change the current siting and approval methods for transmission development on Federal lands. However, the Energy Bill does provide for an assessment of existing transmission infrastructure and projections for future transmission requirements in the State. Further, designation of energy zones creates the opportunity to design multi-state transmission corridors to carry energy from these designated zones to high density load centers where the energy is needed. Coupled with each State’s infrastructure assessments, this approach could facilitate transmission development by providing a more comprehensive approach to

transmission development in line with the Western Governor's Association Western Renewable Energy Zones project.

Section 302 establishes "Energy Siting and Development Teams" (Team) for each State with federal lands. These Teams are to be comprised of the Director of BLM, the Chief of the Forest Service, a representative from the Bureau of Indian Affairs "and all Federal agencies and departments that have expertise in energy siting and development, land and water resource management, and conservation." The BLM State Director for each State shall be the Chair of the Team for that state. In addition, the BLM Director has authority to invite other representatives to serve on the Team such as "environmental nongovernmental organizations," and those from the "energy, transportation, tourism, and recreation industries."

Section 303(b)(1) requires each Team to develop a "comprehensive energy plan for the Federal lands and resources in the State," called a Strategic Plan. In order to "guide development of a Strategic Plan," the Energy Bill provides for each team to prepare a state-wide assessment of the existing energy infrastructure, the resource potential, predicted load growth and infrastructure requirements, the existing ecosystem and to identify areas off-limits to energy development. Where state level or regional efforts currently exist, States can determine whether the Teams should build upon existing efforts or initiate new efforts. The Strategic Plans are to be implemented by incorporation into land use plans under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.) and the Forest and Rangeland Renewable Resources Planning Act of 1974 (16 U.S.C. 1600 et seq.) as existing plans are revised or amended.

Uranium Located on Federal Lands to Become a Leasable Mineral

Title IV of the Energy Bill also seeks to amend the Mineral Leasing Act (30 U.S.C. 181 *et seq.*) to provide for the leasing of lands administered by the DOI for uranium mining. Federal lands falling under the jurisdiction of other Federal agencies, such as the Forest Service, would not be obligated to issue leases for uranium. Rather, such agencies have the option to provide leases and those leases would be subject to conditions prescribed by the agency for the use and protection of non-mineral interests. In addition, the Act requires that before an uranium lease is issued, DOI is to consider the effects of mining on the area's environment, agricultural, economic activities, community and public services. Title IV, subtitle B, also provides for the issuance of exploratory licenses for uranium on Federal lands, with the limitations that such licenses will not be issued on lands already leased for

uranium, they cannot cause substantial disturbance to the surface, and must furnish copies of all data obtained in the exploration to DOI.

Title IV, subtitle B, provides that owners of mining claims that can prove the existence of a valuable uranium deposit as of the date of enactment of the Act may apply to DOI within two years to have the claim converted to a lease. Mineral claims for uranium that are not converted, or claimants have not applied for conversion, to a lease shall be extinguished three years after the date of enactment. Conversions of claims to leases pursuant to this provision are exempt from making royalty payments for 10 years following the date of conversion. All other uranium leases issued under this subtitle are to pay a royalty rate of not less than 12.5 percent in the amount or value of the uranium removed or sold under the lease.



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