

Committee on Natural Resources

Rob Bishop Chairman
Mark-Up Memorandum

July 24, 2017

To: All Natural Resources Committee Members

From: Majority Committee Staff—Ashley Nichols
Subcommittee on Energy and Mineral Resources (x5-9292)

Mark-Up: **H.R. 825 (Rep. Paul Gosar)**, To promote the development of renewable energy on public land, and for other purposes.
July 25 & 26, 2017; 1324 Longworth House Office Building

H.R. 825, *Public Land Renewable Energy Development Act of 2017*

Summary of the Bill

On February 2, 2017, Congressman Gosar introduced H.R. 825, the “*Public Land Renewable Energy Development Act of 2017*.” This bill streamlines the permitting process for wind, solar, and geothermal energy generation on federal land. It establishes a Renewable Energy Resource Conservation Fund (Fund) to be used to conserve land affected by renewable development, and directs revenues, including bonus bids and rental payments, collected by the Secretary to counties, the states, and the Fund.

Cosponsors

Rep. Amodei (R-NV), Rep. Biggs (R-AZ), Rep. Brown (D-MD), Rep. Cardenas (D-CA), Rep. Cartwright (D-PA), Rep. Comstock (R-VA), Rep. Cook (R-CA), Rep. Costa (D-CA), Rep. DeFazio (D-OR), Rep. DeGette (D-CO), Rep. DelBene (D-WA), Rep. Franks (R-AZ), Rep. Grijalva (D-AZ), Rep. Hice (R-GA), Rep. Huffman (D-CA), Rep. Kihuen (D-NV), Rep. Labrador (R-ID), Rep. LaMalfa (R-CA), Rep. Lieu (D-CA), Rep. Love (R-UT), Rep. Lowenthal (D-CA), Rep. Lujan (D-NM), Rep. McGovern (D-MA-2), Rep. Napolitano (D-CA), Rep. Pearce (R-NM), Rep. Perlmutter (D-CO), Rep. Polis (D-CO), Rep. Rosen (D-NV), Rep. Schrader (D-OR), Rep. Schweikert (R-AZ), Rep. Sinema (D-AZ), Rep. Thompson (D-CA), Rep. Tipton (R-CO), Rep. Titus (D-NV), Rep. Tsongas (D-MA), Rep. Valadao (R-CA)

Background

Renewable generation comprises one of the many facets of the Committee on Natural Resources’ “all-of-the-above” energy strategy to ensure American energy independence. As such, the Committee supports “expanding opportunities for renewable energy production . . . on both onshore and offshore federal lands.”¹ H.R. 825 achieves this goal by encouraging the

¹ House Committee on Natural Resources, All-Of-The-Above Energy Approach, *available at* <http://naturalresources.house.gov/energy/>.

development of renewable generation on federal land through the expediting of the permitting process, while ensuring states and their respective taxpayers receive fair value for the energy produced. The Committee held a legislative hearing on a previous version of the Public Lands Renewable Energy Development Act on July 13, 2016.

No Existing Statutory Leasing Program for Solar or Wind Generation on Federal Land

The BLM has identified 20.6 million acres of public land with wind potential² and over 19 million acres with solar potential.³ However, the current lack of a regulatory and statutory structure governing renewable access to federal land has hindered the rapid development of renewables, reflected by the fact that only 1.4% of installed wind energy capacity in 2012 was found on public lands.⁴

Unlike the statutory leasing processes governing oil and gas,⁵ or geothermal production,⁶ no leasing authority exists to encourage the disbursement of federal land for the use of wind or solar energy. Rather, a land use planning statute, the Federal Land Policy and Management Act (FLPMA), governs the process to develop wind and solar on federal land. Specifically, Title V of FLPMA authorizes the acquisition of rights-of-way over federal lands for “systems for generation, transmission and distribution of electric energy.”⁷

Applying for a right-of-way is an often lengthy and cumbersome process requiring environmental review under the National Environmental Policy Act (NEPA).⁸ Furthermore, the BLM retains many rights over the land once a right-of-way has been authorized. For instance, the BLM may access the lands covered by the right-of-way at any time, may change the terms and conditions of the right-of-way pending future regulatory or statutory changes, or require common use of the land.⁹ As such, holders of rights-of-way typically have less control over the rented land than would a lessee seeking the production of natural resources.

One additional concern is the lack of any revenue structure that would ensure a fair return to the states and counties affected by the development of renewable generation. Whereas geothermal currently has a revenue structure ensuring fair payment to states and counties, there is no similar revenue sharing structure for wind and solar facilities. As such, the rental fees paid by the renewable developer are returned directly to the U.S. Treasury.

² U.S. Department of Energy, WINDEXchange, available at <https://apps2.eere.energy.gov/wind/windexchange/wind-projects-public-lands.asp>

³ U.S. Bureau of Land Management, Solar Energy, available at <https://www.blm.gov/programs/energy-and-minerals/renewable-energy/solar-energy>

⁴ American Wind Energy Association, Public Lands and Wind Energy, available at <http://www.awea.org/Issues/Content.aspx?ItemNumber=858>.

⁵ Mineral Leasing Act of 1920, 30 U.S.C. § 181 *et seq.*

⁶ Geothermal Steam Act of 1970, 30 U.S.C. § 1001 *et seq.*

⁷ 43 U.S.C. § 1761(a)(5).

⁸ American Wind Energy Association, Public Lands and Wind Energy, available at <http://www.awea.org/Issues/Content.aspx?ItemNumber=858>

⁹ 34 C.F.R. § 2804.15.

H.R. 825 Expedites the Permitting Process and Ensures a Fair Return to States

The purposes of H.R. 825 are two-fold: first, to provide certainty to the right-of-way process currently faced by renewable developers on federal land; and second, to establish a fair revenue structure that benefits the states and counties affected by renewable development.

H.R. 825 achieves certainty for developers by limiting the environmental review required by NEPA through the use of programmatic environmental impact statements (PEIS), which exist for each type of renewable generation. This bill would require the Department of the Interior to review and modify each PEIS, and grant interested developers the ability to rely on the respective PEIS. As such, developers would not need to initiate environmental review for projects that would be covered by such PEIS.

H.R. 825 also imposes a new revenue structure to ensure a fair return to the States and counties affected by renewable energy development. Bonus bids, rentals, fees, or other payments returned to the treasury under a right-of-way, permit or lease will be disbursed in the following manner: 25% to the affected state, 25% to the affected counties, 25% to the treasury, and 25% to a new Fund – the “Renewable Energy Resource Conservation Fund”, which the bill establishes to mitigate the impacts of renewable development.¹⁰

Major Provisions/Section-by-Section Analysis of H.R. 825

Section 1: Short title

This section defines the short title as the “Public Land Renewable Energy Development Act of 2017.”

Section 2: Definitions

This section defines terms used throughout the Act.

Section 3: Extension of funding for implementation of Geothermal Steam Act of 1970

This section extends funding for the Implementation of the Geothermal Steam Act of 1970 through 2022 and deposits the funds into an account available to the Secretary of the Interior subject to appropriation.

Section 4: Land use planning; supplements to programmatic environmental impact statements

This section requires the BLM to review and update the programmatic environmental impact statements affecting geothermal, wind, and solar development on federal land once every ten years. Furthermore, the Secretary of the Interior is directed to coordinate with state, tribal, and local governments, and other interested stakeholders in identifying public land areas that are economically viable for the development of renewable resources, and will have minimal impact on animal and plant habitat, or recreation.

¹⁰ *Id.* at § 212.

Section 5: Environmental review on covered land

This section authorizes the Secretary of the Interior to determine whether a PEIS has satisfied the requisite level of environmental review for a proposed renewable project on federal land. If the Secretary determines so, such project shall not be required to conduct any further environmental review as required by NEPA.

Section 6: Program to improve renewable energy project permit coordination

This section mandates the establishment of a federal program to improve permit coordination between agencies. The Secretary of the Interior shall enter into a memorandum with the Secretary of Agriculture and the Assistant Secretary of the Army for Civil Works intended to improve the permitting process and expedite environmental review. The Secretary may invite the Governor of an interested State to join the memorandum as well. Federal signatories to such a memorandum must designate qualified staff to handle matters related to renewable energy project development on covered land. This section also requires a report be made to Congress on the actions taken by the agencies to improve the permitting process and coordination.

Section 7: Disposition of Revenues

This section requires that bonus bids, rentals, fees, or other payments returned, be disbursed in the following manner: 25% to the affected state, 25% to the affected counties, 25% to the Treasury, and 25% to a new fund – the “Renewable Energy Resource Conservation Fund.” After 2027, the disbursements to the Treasury and the Fund are as follows: 20% to the Treasury and 30% to the Fund from 2028 through 2032; 15% to the Treasury and 35% to the Fund from 2033 through 2037; and 10% to the Treasury and 40% to the Fund from 2028 onward. The bill establishes the Fund to mitigate the impacts of renewable development. Specifically, the Fund can be used to restore and protect fish and wildlife habitat and water resources, and to improve recreational access to Federal land.

Cost

Unknown at this time.

Administration Position

Unknown at this time.

Anticipated Amendments

- 1) Rep. Gosar (R-AZ) - This amendment: 1) revises the definition of “variance area” to require that such areas are available for renewable energy development and could be approved for renewable energy development without a land use plan amendment under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.); 2) requires that, when reviewing the programmatic environmental impact statements affecting geothermal, wind, and solar development on federal land, the Secretary should

also take into account any regional analysis conducted by Federal agencies since the PEIS in question was finalized; 3) ensures that payments from the Renewable Energy Resource Conservation Fund cannot be used to purchase real property for purposes not authorized in the bill; 4) requires that the Secretary issue a report to Congress regarding the amount collected in the Fund, how payments from the Fund were expended, and the amount remaining in the fund at the end of each fiscal year; and 5) updates the fiscal years and dates referenced in the bill.

Effect on Current Law (Ramseyer)

Showing Current Law as Amended by H.R. 825

[new text highlighted in yellow; text to be deleted bracketed and highlighted in blue]

Section 234 of the Energy Policy Act of 2005 (42 U.S.C. 15873)

§15873. Deposit and use of geothermal lease revenues for 5 fiscal years

(a) Deposit of geothermal resources leases

Notwithstanding any other provision of law, amounts received by the United States [in the first 5 fiscal years beginning after August 8, 2005] through fiscal year 2022, as rentals, royalties, and other payments required under leases under the Geothermal Steam Act of 1970 [30 U.S.C. 1001 et seq.], excluding funds required to be paid to State and county governments, shall be deposited into a separate account in the Treasury.

(b) Use of deposits

[Amounts] (1) IN GENERAL.—Amounts deposited under subsection (a) shall be available to the Secretary of the Interior for expenditure, without further appropriation and without fiscal year limitation, to implement the Geothermal Steam Act of 1970 [30 U.S.C. 1001 et seq.] and this Act.

(2) AUTHORIZATION.— Effective for fiscal year 2017 and each fiscal year thereafter, amounts deposited under subsection (a) shall be available to the Secretary of the Interior for expenditure, without further appropriation or fiscal year limitation, to implement the Geothermal Steam Act of 1970 (30 U.S.C. 1001 et seq.) and this Act.

(c) Transfer of funds

For the purposes of coordination and processing of geothermal leases and geothermal use authorizations on Federal land the Secretary of the Interior may authorize the expenditure or transfer of such funds as are necessary to the Forest Service.