

112TH CONGRESS  
1ST SESSION

# S. 1126

To amend the Energy Independence and Security Act of 2007 to authorize the Secretary of Energy to insure loans for financing of renewable energy systems leased for residential use, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MAY 26, 2011

Mr. WHITEHOUSE (for himself, Mr. ALEXANDER, and Mr. UDALL of Colorado) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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## A BILL

To amend the Energy Independence and Security Act of 2007 to authorize the Secretary of Energy to insure loans for financing of renewable energy systems leased for residential use, 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 “Renewable Energy Ac-  
5       cess through Leasing Act of 2011” or the “REAL Act  
6       of 2011”.

1 **SEC. 2. LOANS FOR FINANCING OF RENEWABLE ENERGY**  
2 **SYSTEMS LEASED FOR RESIDENTIAL USE.**

3 Subtitle A of title IV of the Energy Independence and  
4 Security Act of 2007 is amended by inserting after section  
5 413 (42 U.S.C. 17071) the following:

6 **“SEC. 414. LOANS FOR FINANCING OF RENEWABLE ENERGY**  
7 **SYSTEMS LEASED FOR RESIDENTIAL USE.**

8 “(a) PURPOSES.—The purposes of this section are—

9 “(1) to encourage residential use of renewable  
10 energy systems by minimizing upfront costs and pro-  
11 viding immediate utility cost savings to consumers  
12 through leasing of those systems to homeowners;

13 “(2) to reduce carbon emissions and the use of  
14 nonrenewable resources;

15 “(3) to encourage energy-efficient residential  
16 construction and rehabilitation;

17 “(4) to encourage the use of renewable re-  
18 sources by homeowners;

19 “(5) to minimize the impact of development on  
20 the environment;

21 “(6) to reduce consumer utility costs; and

22 “(7) to encourage private investment in the  
23 green economy.

24 “(b) DEFINITIONS.—In this section:

25 “(1) AUTHORIZED RENEWABLE ENERGY LEND-  
26 ER.—The term ‘authorized renewable energy lender’

1 means a lender authorized by the Secretary to make  
2 a loan under this section.

3 “(2) RENEWABLE ENERGY SYSTEM LEASE.—

4 The term ‘renewable system energy lease’ means an  
5 agreement between an authorized renewable energy  
6 system owner and a homeowner for a term of not  
7 less than 5 years, under which the homeowner—

8 “(A) grants an easement to the renewable  
9 energy system owner to install, maintain, use,  
10 and otherwise access the renewable energy sys-  
11 tem; and

12 “(B) agrees to—

13 “(i) lease the use of the system from  
14 the renewable energy system owner; or

15 “(ii) a power purchase agreement.

16 “(3) RENEWABLE ENERGY MANUFACTURER.—

17 The term ‘renewable energy manufacturer’ means a  
18 manufacturer of renewable energy systems.

19 “(4) RENEWABLE ENERGY SYSTEM.—The term  
20 ‘renewable energy system’ means a system of energy  
21 derived from—

22 “(A) a wind, solar (including photovoltaic  
23 and solar thermal), biomass (including bio-  
24 diesel), or geothermal source; or

1           “(B) hydrogen derived from biomass or  
2           water using an energy source described in sub-  
3           paragraph (A).

4           “(5) RENEWABLE ENERGY SYSTEM OWNER.—  
5           The term ‘renewable energy system owner’ means a  
6           homebuilder, a manufacturer or installer of a renew-  
7           able energy system, or any other person, as deter-  
8           mined by the Secretary.

9           “(c) AUTHORITY.—

10           “(1) IN GENERAL.—The Secretary may, on ap-  
11           plication by an authorized renewable energy system  
12           owner, insure or make a commitment to insure a  
13           loan made by an authorized renewable energy lender  
14           to a renewable energy system owner to finance the  
15           acquisition of a renewable energy system for lease to  
16           a homeowner for use at the residence of the home-  
17           owner.

18           “(2) TERMS AND CONDITIONS.—The Secretary  
19           may prescribe such terms and conditions for insur-  
20           ance under paragraph (1) as are consistent with the  
21           purposes of this section.

22           “(d) LIMITATION ON PRINCIPAL AMOUNT.—

23           “(1) LIMITATION.—The principal amount of a  
24           loan insured under this section shall not exceed the

1 residual value of the renewable energy system to be  
2 acquired with the loan.

3 “(2) RESIDUAL VALUE.—For purposes of this  
4 subsection—

5 “(A) the residual value of a renewable en-  
6 ergy system shall be the fair market value of  
7 the future revenue stream from the sale of the  
8 expected remaining electricity production from  
9 the system, pursuant to the easement granted  
10 in accordance with subsection (e); and

11 “(B) the fair market value of the future  
12 revenue stream for each year of the remaining  
13 life of the renewable energy system shall be de-  
14 termined based on the net present value of the  
15 power output production warranty for the re-  
16 newable energy system provided by the renew-  
17 able energy manufacturer and the forecast of  
18 regional residential electricity prices made by  
19 the Energy Information Administration of the  
20 Department.

21 “(e) EASEMENT.—

22 “(1) IN GENERAL.—The Secretary may not in-  
23 sure a loan under this section unless the renewable  
24 energy system owner certifies, in accordance with  
25 such requirements as the Secretary shall establish,

1 consistent with the purposes of this section, that the  
2 renewable energy system financed will be leased only  
3 to a homeowner that grants an easement to install,  
4 maintain, use, and otherwise access the renewable  
5 energy system that includes the right to sell elec-  
6 tricity produced during the life of the renewable en-  
7 ergy system to a wholesale or retail electrical power  
8 grid.

9 “(2) ASSUMABLE LEASE.—The renewable en-  
10 ergy system lease shall specify that the renewable  
11 energy system lease can be assumed by new home-  
12 owners.

13 “(f) DISCOUNT OR PREPAYMENT.—

14 “(1) IN GENERAL.—To encourage the use of re-  
15 newable energy systems, the Secretary shall ensure  
16 that a discount given to a homeowner by a renew-  
17 able energy system owner or other investor or pre-  
18 payment of a renewable energy system lease by a re-  
19 newable energy system owner does not adversely af-  
20 fect the mortgage requirements of the homeowner.

21 “(2) CONSULTATION.—In carrying out this sub-  
22 section, the Secretary may consult with agencies and  
23 entities involved in oversight of home mortgages.

24 “(g) ELIGIBILITY OF LENDERS.—The Secretary may  
25 not insure a loan under this section unless the lender mak-

1 ing the loan is an institution that meets such requirements  
2 as the Secretary shall establish for participation of renew-  
3 able energy lenders in the program under this section.

4 “(h) CERTIFICATE OF INSURANCE.—

5 “(1) IN GENERAL.—The Secretary shall issue  
6 to a lender that is insured under this section a cer-  
7 tificate that serves as evidence of insurance coverage  
8 under this section.

9 “(2) CONTENTS OF CERTIFICATE.—The certifi-  
10 cate required under paragraph (1) shall describe the  
11 fair market value of the future revenue stream for  
12 each year of the remaining life of the renewable en-  
13 ergy system.

14 “(3) FULL FAITH AND CREDIT.—The certificate  
15 required under paragraph (1) shall be backed by the  
16 full faith and credit of the United States.

17 “(i) PAYMENT OF INSURANCE CLAIM.—

18 “(1) FILING OF CLAIM.—The Secretary shall  
19 provide for the filing of claims for insurance under  
20 this section and the payment of the claims.

21 “(2) PAYMENT OF CLAIM.—A claim under  
22 paragraph (1) may be paid only on a default under  
23 the loan insured under this section and the assign-  
24 ment, transfer, and delivery to the Secretary of—

1           “(A) all rights and interests arising under  
2 the loan; and

3           “(B) all claims of the lender or the assigns  
4 of the lender against the borrower or others  
5 arising under the loan transaction.

6           “(3) LIEN.—

7           “(A) IN GENERAL.—On payment of a  
8 claim for insurance of a loan under this section,  
9 the Secretary shall hold a lien on the underlying  
10 renewable energy system assets and any associ-  
11 ated revenue stream from the use of the sys-  
12 tem, which shall be superior to all other liens  
13 on the assets.

14           “(B) RESIDUAL VALUE.—The residual  
15 value of the renewable energy system and the  
16 revenue stream from the use of the system shall  
17 be not less than the unpaid balance of the loan  
18 amount covered by the certificate of insurance.

19           “(C) REVENUE FROM SALE.—The Sec-  
20 retary shall be entitled to any revenue gen-  
21 erated by the renewable energy system from  
22 selling electricity to the grid when an insurance  
23 claim has been paid out.

24           “(j) ASSIGNMENT AND TRANSFERABILITY OF INSUR-  
25 ANCE.—A renewable energy system owner or an author-

1 ized renewable energy lender that is insured under this  
2 section may assign or transfer the insurance, in whole or  
3 in part, to another owner or lender, subject to such re-  
4 quirements as the Secretary may prescribe.

5 “(k) PREMIUMS AND CHARGES.—

6 “(1) INSURANCE PREMIUMS.—

7 “(A) IN GENERAL.—The Secretary shall  
8 fix and collect premiums for insurance of loans  
9 under this section, that shall be—

10 “(i) paid by the applicant renewable  
11 energy system owner at the time of  
12 issuance of the certificate of insurance to  
13 the lender; and

14 “(ii) adequate, as determined by the  
15 Secretary, to cover the expenses and prob-  
16 able losses of administering the program  
17 under this section.

18 “(B) DEPOSIT OF PREMIUM.—The Sec-  
19 retary shall deposit any premiums collected  
20 under this subsection in the Renewable Energy  
21 Lease Insurance Fund established by subsection  
22 (1).

23 “(2) PROHIBITION ON OTHER CHARGES.—Ex-  
24 cept as provided in paragraph (1), the Secretary  
25 may not assess any other fee (including a user fee),

1 insurance premium, or charge in connection with  
2 loan insurance provided under this section.

3 “(1) RENEWABLE ENERGY LEASE INSURANCE  
4 FUND.—

5 “(1) FUND ESTABLISHED.—There is estab-  
6 lished in the Treasury of the United States the Re-  
7 newable Energy Lease Insurance Fund (referred to  
8 in this subsection as the ‘Fund’), which shall be  
9 available to the Secretary without fiscal year limita-  
10 tion, for the purpose of providing insurance under  
11 this section.

12 “(2) CREDITS.—The Fund shall be credited  
13 with—

14 “(A) any premiums collected under sub-  
15 section (k)(1);

16 “(B) any amounts collected by the Sec-  
17 retary under subsection (i)(3); and

18 “(C) any associated interest or earnings.

19 “(3) AVAILABILITY.—Amounts in the Fund  
20 shall be available to the Secretary for—

21 “(A) fulfilling any obligations with respect  
22 to insurance for loans provided under this sec-  
23 tion; and

24 “(B) paying administrative expenses in  
25 connection with this section.

1           “(4) EXCESS AMOUNTS.—The Secretary may  
2 invest in obligations of the United States any  
3 amounts in the Fund determined by the Secretary to  
4 be in excess of amounts required at the time of the  
5 determination to carry out this section.

6           “(m) INELIGIBILITY FOR PURCHASE BY FEDERAL  
7 FINANCING BANK.—Notwithstanding any other provision  
8 of law, no debt obligation that is insured or committed  
9 to be insured by the Secretary under this section shall be  
10 subject to the Federal Financing Bank Act of 1973 (12  
11 U.S.C. 2281 et seq.).

12           “(n) REGULATIONS.—

13           “(1) IN GENERAL.—The Secretary shall issue  
14 such regulations as are necessary to carry out this  
15 section.

16           “(2) MULTIFAMILY HOUSING.—In issuing the  
17 regulations, the Secretary shall ensure that multi-  
18 family housing units are eligible for programs estab-  
19 lished by this section.

20           “(3) TIMING.—Not later than 180 days after  
21 the date of enactment of this section, the Secretary  
22 shall issue interim or final regulations.

23           “(o) TERMINATION OF AUTHORITY.—The authority  
24 of the Secretary to insure and make commitments to in-  
25 sure new loans under this section shall terminate on the

1 date that is 10 years after the date of enactment of this  
2 section.”.

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