112TH CONGRESS
*1st Session*
HOUSE OF REPRESENTATIVES
REPORT
112–250

# CUTTING FEDERAL RED TAPE TO FACILITATE RENEWABLE ENERGY ACT

OCTOBER 14, 2011.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HASTINGS of Washington, from the Committee on Natural Resources, submitted the following

# R E P O R T

together with

## DISSENTING VIEWS

[To accompany H.R. 2170]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 2170) streamlining Federal review to facilitate renewable energy projects, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Cutting Federal Red Tape to Facilitate Renewable Energy Act".

**SEC. 2. ENVIRONMENTAL REVIEW FOR RENEWABLE ENERGY PROJECTS.**

(a) COMPLIANCE WITH NEPA FOR RENEWABLE ENERGY PROJECTS.—In complying with the National Environmental Policy Act of 1969 (41 U.S.C. 4321 et seq.) with respect to any action authorizing or facilitating a proposed renewable energy project, at the election of the applicant a Federal agency shall—

(1) consider only the proposed action and the no action alternative;

(2) analyze only the proposed action and the no action alternative; and

(3) identify and analyze potential mitigation measures only for the proposed action and the no action alternative.

(b) PUBLIC COMMENT.—In complying with the National Environmental Policy Act of 1969 with respect to a proposed renewable energy project, a Federal agency shall only consider public comments that specifically address the proposed action or the no action alternative (or both) and are filed within 30 days after publication of a draft environmental assessment or draft environmental impact statement.

(c) DEFINITIONS.—For purposes of this section:

(1) FEDERAL WATERS.—The term "Federal waters" means waters seaward of the coastal zone (as that term is defined in section 304 of the Coastal Zone Management Act of 1972 (16 U.S.C. 1453)), to the limits of the exclusive economic zone or the Outer Continental Shelf, whichever is farther.

(2) OUTER CONTINENTAL SHELF.—The term "Outer Continental Shelf" has the meaning the term "outer Continental Shelf" has in the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.).

(3) RENEWABLE ENERGY PROJECT.—The term "renewable energy project" means a project on Federal lands or in Federal waters, including a project on the Outer Continental Shelf, using wind, solar power, geothermal power, biomass, or marine and hydrokinetic energy to generate energy, that is constructed encouraging the use of equipment and materials manufactured in the United States.

## PURPOSE OF THE BILL

The purpose of H.R. 2170, as ordered reported, is to streamline federal review to facilitate renewable energy projects.

## BACKGROUND AND NEED FOR LEGISLATION

The Cutting Federal Red Tape to Facilitate Renewable Energy Act (H.R. 2170) streamlines the National Environmental Policy Act (NEPA) process by allowing a renewable energy developer to choose to do a NEPA review only for the specific location where a renewable energy project would be located and not require analysis of alternative locations. A renewable energy project on federal lands and waters includes wind, solar, geothermal, biomass and tidal projects. This bill allows the applicant and the agency to direct their resources on analyzing the ideal project location, rather than expending resources on several locations that may not be economically or environmentally feasible simply to meet arbitrary regulatory standards. The applicant can resubmit a plan for additional project locations if his first choice is rejected.

Committee hearings found that government bureaucratic red tape and uncertainty is delaying the production of renewable energy production on federal lands, and costly regulations are greatly increasing the financial burden on companies aiming to develop renewable energy projects. The same policies that block and delay access to our oil and natural gas resources are also being used to hinder renewable energy production on federal lands and waters. These policies cost American jobs and increase our dependence on foreign sources of energy.

The Administration claims to have placed a priority on the expeditious development of renewable energy. However, efforts in this arena have been slow to result in increased development of renewable energy. Regulatory roadblocks and lawsuits have held these projects up at every turn. The average permitting timeline for renewable projects is three to six years, and oftentimes it is years before a project can even start construction. In 2011, the Bureau of Land Management (BLM), in consultation with the Fish and Wildlife Service (FWS) and the National Park Service (NPS), gave "priority status" to 20 projects (10 solar, five wind, and five geothermal). So far this year, only one project has been approved (for geothermal).

NEPA is being used to slow down, disrupt, and outright block renewable energy projects on public lands. Under the current NEPA review process, a developer must analyze numerous project options

for a single renewable energy project, even if these options are not economically or environmentally feasible. Special interest groups can then bring lengthy, burdensome lawsuits against individual project plans, regardless of whether the developer can or will follow through project construction on the various submitted sites. These lawsuits slow down or halt the development of renewable energy projects. Narrowing the scope of consideration for each renewable energy project can only lead to decreased lawsuits and quicker agency response time since it reduces the options available for lawsuits.

The current overbearing regulatory process is discouraging energy companies from investing in projects and hampering our ability to produce renewable energy on public lands. Many companies choose to develop projects on private land solely to avoid the regulatory process. H.R. 2170 aims to address this burdensome approval process.

## COMMITTEE ACTION

H.R. 2170 was introduced on June 14, 2011, by Congressman Doc Hastings (R–WA). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Energy and Mineral Resources. On June 23, 2011, the Subcommittee on Energy and Mineral Resources held a hearing on the bill. On July 13, 2011, the Full Resources Committee met to consider the bill. The Subcommittee on Energy and Mineral Resources was discharged by unanimous consent. Congressman Doc Hastings (R–WA) offered an amendment; the amendment was adopted by voice vote. Congressman Rush Holt (D–NJ) offered amendment designated .002; the amendment was not adopted by a roll call vote of 14–21, as follows:

**Committee on Natural Resources**
U.S. House of Representatives
112th Congress

Date: July 13, 2011 Recorded Vote #: 1
Meeting on / Amendment: **HR 2170** – An amendment offered by Mr. Holt.002 was NOT AGREED TO by a roll call vote of 14 yeas and 21 nays.

| MEMBERS | Yea | Nay | Pres | MEMBERS | Yea | Nay | Pres |
|---|---|---|---|---|---|---|---|
| **Mr. Hastings, WA Chairman** | | X | | *Mr. Heinrich, NM* | X | | |
| *Mr. Markey, MA Ranking* | X | | | **Mr. Benishek, MI** | | X | |
| **Mr. Young, AK** | | X | | *Mr. Lujan, NM* | X | | |
| *Mr. Kildee, MI* | | | | **Mr. Rivera, FL** | | X | |
| **Mr. Duncan of TN** | | | | *Mr. Sarbanes, MD* | X | | |
| *Mr. Defazio, OR* | X | | | **Mr. Duncan of SC** | | X | |
| **Mr. Gohmert, TX** | | | | *Ms. Sutton, OH* | X | | |
| *Mr. Faleomavaega, AS* | | | | **Mr. Tipton, CO** | | X | |
| **Mr. Bishop, UT** | | X | | *Ms. Tsongas* | X | | |
| *Mr. Pallone, NJ* | X | | | **Mr. Gosar, AZ** | | X | |
| **Mr. Lamborn, CO** | | | | *Mr. Pierluisi, PR* | X | | |
| *Mrs. Napolitano, CA* | X | | | **Mr. Labrador, ID** | | X | |
| **Mr. Wittman, VA** | | X | | *Mr. Garamendi, CA* | | | |
| *Mr. Holt, NJ* | | | | **Ms. Noem** | | X | |
| **Mr. Broun, GA** | | | | *Ms. Hanabusa, HI* | X | | |
| *Mr. Grijalva, AZ* | X | | | **Mr. Southerland** | | X | |
| **Mr. Fleming, LA** | | X | | **Mr. Flores, TX** | | X | |
| *Ms. Bordallo, GU* | X | | | **Mr. Harris, TX** | | | |
| **Mr. Coffman, CO** | | X | | **Mr. Landry, LA** | | | |
| *Mr. Costa, CA* | X | | | **Mr. Fleischmann, TX** | | X | |
| **Mr. McClintock, CA** | | X | | **Mr. Runyan, NJ** | | X | |
| *Mr. Boren, OK* | | | | **Mr. Johnson, OH** | | X | |
| **Mr. Thompson, PA** | | X | | | | | |
| *Mr. Sablan, CNMI* | | | | | | | |
| **Mr. Denham, CA** | | X | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | **TOTALS** | 14 | 21 | |

Congressman John Garamendi (D–CA) offered an amendment designated .054. Congressman Scott Tipton (R–CO) offered an amendment to that amendment, which was adopted by voice vote. The amendment offered by Congressman Garamendi, as amended, was adopted by voice vote. Congressman Ed Markey (D–MA) offered an amendment designated .006; the amendment was withdrawn. The bill, as amended, was ordered favorably reported to the House of Representatives by a bipartisan roll call vote of 24–16, as follows:

**Committee on Natural Resources**
U.S. House of Representatives
112th Congress

Date: July 13, 2011 Recorded Vote #: 2
Meeting on / Amendment: **HR 2170** – Favorably reported to the House of Representatives, as amended, by a roll call vote of 24 yeas and 16 nays.

| MEMBERS | Yea | Nay | Pres | MEMBERS | Yea | Nay | Pres |
|---|---|---|---|---|---|---|---|
| **Mr. Hastings, WA Chairman** | X | | | *Mr. Heinrich, NM* | | X | |
| *Mr. Markey, MA Ranking* | | X | | **Mr. Benishek, MI** | X | | |
| **Mr. Young, AK** | X | | | *Mr. Lujan, NM* | | X | |
| *Mr. Kildee, MI* | | | | **Mr. Rivera, FL** | X | | |
| **Mr. Duncan of TN** | | | | *Mr. Sarbanes, MD* | | X | |
| *Mr. Defazio, OR* | | X | | **Mr. Duncan of SC** | X | | |
| **Mr. Gohmert, TX** | | | | *Ms. Sutton, OH* | | X | |
| *Mr. Faleomavaega, AS* | | | | **Mr. Tipton, CO** | X | | |
| **Mr. Bishop, UT** | X | | | *Ms. Tsongas* | | X | |
| *Mr. Pallone, NJ* | | X | | **Mr. Gosar, AZ** | X | | |
| **Mr. Lamborn, CO** | X | | | *Mr. Pierluisi, PR* | | X | |
| *Mrs. Napolitano, CA* | | X | | **Mr. Labrador, ID** | X | | |
| **Mr. Wittman, VA** | X | | | *Mr. Garamendi, CA* | | X | |
| *Mr. Holt, NJ* | | | | **Ms. Noem** | X | | |
| **Mr. Broun, GA** | | | | *Ms. Hanabusa, HI* | | X | |
| *Mr. Grijalva, AZ* | | X | | **Mr. Southerland** | X | | |
| **Mr. Fleming, LA** | X | | | **Mr. Flores, TX** | X | | |
| *Ms. Bordallo, GU* | | X | | **Mr. Harris, TX** | | | |
| **Mr. Coffman, CO** | X | | | **Mr. Landry, LA** | X | | |
| *Mr. Costa, CA* | | X | | **Mr. Fleischmann, TX** | X | | |
| **Mr. McClintock, CA** | X | | | **Mr. Runyan, NJ** | X | | |
| *Mr. Boren, OK* | X | | | **Mr. Johnson, OH** | X | | |
| **Mr. Thompson, PA** | X | | | | | | |
| *Mr. Sablan, CNMI* | | X | | | | | |
| **Mr. Denham, CA** | X | | | | | | |
| | | | | | | | |
| | | | | | | | |
| | | | | **TOTALS** | 24 | 16 | |

## SECTION-BY-SECTION ANALYSIS

*Section 1. Short title*

This Act may be cited as "Cutting Federal Red Tape to Facilitate Renewable Energy Act."

*Section 2. Environmental Review for Renewable Energy Projects*

This section waives the NEPA requirement for renewable energy projects to consider alternatives when submitting a proposal for a renewable energy project. It specifically allows the applicant the option of requiring federal agencies to consider, analyze potential mitigation measures for, and consider public comments for only the specific proposed action and no alternative plan.

## COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

## COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

*H.R. 2170—Cutting Federal Red Tape to Facilitate Renewable Energy Act*

H.R. 2170 would narrow the scope of environmental reviews conducted by the Bureau of Land Management (BLM) for proposed renewable energy projects. Based on information provided by the agency, CBO estimates that implementing the legislation would have no significant impact on the federal budget. Enacting H.R. 2170 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

Under current law, BLM analyzes a range of alternatives when reviewing proposed renewable energy projects under the National Environmental Policy Act (NEPA). Under the bill, such reviews would be limited to the proposed project and an alternative where no project is developed. The bill also would reduce the time period for the public to provide comments to BLM on draft NEPA analyses for renewable energy projects. Based on information provided by BLM, CBO expects that implementing the legislation could reduce the workload of certain BLM offices; however, we estimate that the budgetary impact of any such effects would be negligible.

H.R. 2170 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Jeff LaFaye. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

2. Section 308(a) of Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures. CBO estimates that implementing the legislation would have no significant impact on the federal budget. Enacting H.R. 2170 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

3. General Performance Goals and Objectives. This bill does not authorize funding and therefore, clause 3(c)(4) of rule XIII of the Rules of the House of Representatives does not apply.

## EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

## COMPLIANCE WITH PUBLIC LAW 104–4

This bill contains no unfunded mandates.

## PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

## CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

## DISSENTING VIEWS

We oppose H.R. 2170 because it would set a reckless and counterproductive new precedent for development of public lands by dismantling a core function of the environmental review process and limiting the ability of the public to participate in decisions regarding the use of public lands. The bill would introduce greater uncertainty into the permitting process for renewable energy development, driving up financing costs and reducing the viability of projects. The bill is likely to lead to increased litigation against renewable energy projects on public lands as well as more projects being unnecessarily blocked by federal permitting agencies that would be handcuffed as a result of the bill. No renewable energy industry groups have endorsed the legislation.

H.R. 2170 would require any Federal agency that is considering whether or not to authorize a renewable energy project, either onshore or offshore, to limit the scope of its consideration, NEPA analysis, and identification of mitigation measures to only the project as it is proposed or to a "no action alternative." This effectively guts a core function of the review process required under the National Environmental Policy Act (NEPA), which is to have the agency present the environmental impacts of the proposal and the possible alternatives in comparative form so that issues are sharply defined and the project developer and the public are provided clear choices.

Fully considering a range of alternatives is not a pointless exercise in red tape, as this bill asserts, but rather a process that typically leads to optimal results for both the public and the project developer. By constraining all federal agencies from considering alternatives during the NEPA review process, the agencies would be unable to make fully informed decisions about the best course of action and renewable energy projects would more frequently be rejected or be developed in sub-optimal locations.

The majority maintains that H.R. 2170 would accelerate renewable energy development on public lands. However, curtailing the NEPA alternatives analysis would likely lead to two consequences that would have the opposite effect. The first consequence is that permitting agencies will reject more renewable energy proposals because they would be unable to suggest changes to the project that would mitigate environmental or public health and safety impacts that might otherwise make the project viable. Secondly, there will be more litigation challenging any approved renewable energy projects since the agency's decision making process would be less fully informed and more vulnerable to legal challenges. The two leading federal land management agencies, the Bureau of Land Management and the Forest Service, echoed both of these concerns during the Committee's legislative hearing on this bill on June 23, 2011.

Additionally, increased litigation is almost certain to result from a separate aspect of the bill: the short-circuiting of the public participation process. The role of land management agencies is to manage public lands for the benefit of the American people, and NEPA provides the American people with their best opportunity to provide input to the land management agencies on how these lands should be utilized. Currently, the minimum amount of time for public comment is 45 days, but agencies often provide 60–90 days or longer for controversial projects. H.R. 2170 would cap public comment periods at 30 days. Additionally, a second round of public comment typically occurs following the publication of a Final Environmental Impact Statement because this allows the public to comment on an agency's preliminary decision as to how it will proceed on a project. H.R. 2170 eliminates this round of public comment altogether. If the public is not given a meaningful opportunity to comment during the NEPA process, then it is more likely that they will take recourse in the only remaining venue available: the courts.

During full committee mark-up of this bill on July 13, 2011, an amendment was offered by Chairman Hastings to give the project developer the option of whether or not, in considering the proposed project, the federal agency would analyze a full range of alternatives. This amendment, which was agreed to by voice vote, essentially concedes that waving the ability of permitting agencies to consider a full range of alternatives, as the bill proposes, might not be in the best interest of project developers. Representative Holt took this one step further, offering an amendment that would make the proposed "all or nothing" permitting approach in the underlying bill contingent upon the Secretary of Interior certifying that doing so would actually increase the production of renewable energy on public lands. This amendment was defeated 21–14, with all Republicans opposing.

Ranking Member Markey also offered an amendment to add two new sections that would incorporate into the bill key language supported by renewable energy industries from H.R. 2196 and H.R. 2176. The amendment would increase the federal renewable electricity standard on federal agencies through 2025, at which point the federal government would be required to obtain 25 percent of their electricity from renewable resources by 2025. This would build on a provision originally passed in the 2005 Republican Energy Bill that currently mandates federal agencies obtain 5 percent of their electricity from renewable sources. The other provision of the amendment would establish a mechanism for ensuring adequate human resources are available at the Interior Department to process wind and solar project applications. Onshore oil and gas permitting already has a similar funding mechanism in place. This amendment was withdrawn as a result of a point of order raised by the Republican majority.

H.R. 2170 is a predictable solution from a majority that has misidentified environmental protection as the cause of almost any problem. This bill guts key environmental and public health and safety protections that have been in place for decades in favor of a process that is likely to actually reduce the number of renewable energy projects that are developed on public lands. The renewable

energy industry has not suggested this solution and does not support the legislation. We oppose it as well.

EDWARD J. MARKEY.
GREGORIO KILILI CAMACHO SABLAN.
COLLEEN W. HANABUSA.
RUSH HOLT.
GRACE F. NAPOLITANO.
NIKI TSONGAS.
FRANK PALLONE, JR.
MADELEINE Z. BORDALLO.
BETTY SUTTON.
BEN R. LUJÁN.
RAÚL M. GRIJALVA.

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