

ADVANCING OFFSHORE WIND PRODUCTION 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. 2173]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 2173) to facilitate the development of offshore wind energy resources, 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 at the “Advancing Offshore Wind Production Act”.

SEC. 2. OFFSHORE METEOROLOGICAL SITE TESTING AND MONITORING PROJECTS.

(a) DEFINITION OF AN OFFSHORE METEOROLOGICAL SITE TESTING AND MONITORING PROJECT.—In this section, the term “offshore meteorological site testing and monitoring project” means a project carried out on or in the waters of the Outer Continental Shelf administered by the Department of the Interior to test or monitor weather (including wind, tidal, current, and solar energy) using towers, buoys, or other temporary ocean infrastructure, that—

(1) causes—

(A) less than 1 acre of surface or seafloor disruption at the location of each meteorological tower or other device; and

(B) not more than 5 acres of surface or seafloor disruption within the proposed area affected by for the project (including hazards to navigation);

(2) is decommissioned not more than 5 years after the date of commencement of the project, including—

(A) removal of towers, buoys, or other temporary ocean infrastructure from the project site; and

- (B) restoration of the project site to approximately the original condition of the site; and
- (3) provides meteorological information obtained by the project to the Secretary of the Interior.
- (b) OFFSHORE METEOROLOGICAL PROJECT PERMITTING.—
 - (1) IN GENERAL.—The Secretary of the Interior shall by regulation require that any applicant seeking to conduct an offshore meteorological site testing and monitoring project on the outer Continental Shelf (as that term is defined in the Outer Continental Shelf Lands Act (43 U.S.C. 1331 et seq.)) must obtain a permit and right of way for the project in accordance with this subsection.
 - (2) PERMIT AND RIGHT OF WAY TIMELINE AND CONDITIONS.—
 - (A) DEADLINE FOR APPROVAL.—The Secretary shall decide whether to issue a permit and right of way for an offshore meteorological site testing and monitoring project within 30 days after receiving an application.
 - (B) PUBLIC COMMENT AND CONSULTATION.—During the period referred to in subparagraph (A), the Secretary shall—
 - (i) provide an opportunity for submission of comments by the public; and
 - (ii) consult with the Secretary of Defense, the Commandant of the Coast Guard, and the heads of other Federal, State, and local agencies that would be affected by issuance of the permit and right of way.
 - (C) DENIAL OF PERMIT; OPPORTUNITY TO REMEDY DEFICIENCIES.—If the application is denied, the Secretary shall provide the applicant—
 - (i) in writing, clear and comprehensive reasons why the application was not approved and detailed information concerning any deficiencies in the application; and
 - (ii) an opportunity to remedy such deficiencies.
 - (c) NEPA EXCLUSION.—Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) shall not apply with respect to an offshore meteorological site testing and monitoring project.
 - (d) PROTECTION OF INFORMATION.—The information provided to the Secretary of the Interior pursuant to subsection (a)(3) shall be treated by the Secretary as proprietary information and protected against disclosure.

PURPOSE OF THE BILL

The purpose of H.R. 2173, as ordered reported, is to facilitate the development of offshore wind energy resources.

BACKGROUND AND NEED FOR LEGISLATION

The Advancing Offshore Wind Production Act (H.R. 2173) facilitates the development of offshore wind power by streamlining the process for the Bureau of Ocean Energy Management, Regulation, and Enforcement to develop offshore wind power. The legislation would waive Section 102(2)(C) of the National Environmental Policy Act (NEPA, 42 U.S.C. 4332(2)(C)) for temporary meteorological towers that cause less than five acres of disturbance, are removed within five years of the completion of the project and are installed to test the viability of an area for potential wind power. This could shorten the permitting process for installing an offshore wind project by at least two years.

Obtaining the necessary permits and licenses for an offshore wind farm is a process that spans multiple agencies and potential stumbling blocks and is estimated to take seven years. While the Cape Wind project received approval in April 2011 to begin construction off the coast of Cape Cod in Nantucket Sound, it was a ten year process that was subject to numerous bureaucratic delays and red tape.

Under the National Offshore Wind Strategy, the Department of Energy is pursuing a scenario that includes deployment of 10 gigawatts of offshore wind generating capacity by 2020 and 54 gigawatts by 2030. Those scenarios include development in both

federal and state offshore areas, including along the Atlantic, Pacific and Gulf coasts as well as in Great Lakes and Hawaiian waters. Those levels of development will require an expedited permitting process and the removal of obstacles to meet those goals.

Because of the long duration from inception to construction, a great deal of uncertainty surrounds offshore wind projects. The electricity market, for one, can shift greatly over the course of seven years. Lawsuits can also be brought against the project which could further delay completion or even stop the project. Finally, policies favorable to offshore wind that may currently exist could very well be discontinued by the time a project comes to fruition. Although uncertainty is not prohibitive in and of itself, its combination with large capital costs for offshore wind makes any endeavor a risky proposition. Cape Wind, for instance, is projected to cost \$2.5 billion excluding financing costs, while other projects range between hundreds of millions of dollars to billions of dollars depending on their capacity. Unplanned delays, such as lawsuits, drive costs up even further, not to mention the construction of necessary transmission infrastructure associated with the offshore generation of energy by wind.

This type of regulatory uncertainty discourages developers from investing. Furthermore, it significantly delays this homegrown American energy from getting to American consumers, sometimes by several years. Streamlining the permitting process will enable offshore wind projects to begin construction within a shorter time frame and allow for quicker production of energy for American consumers.

COMMITTEE ACTION

H.R. 2173 was introduced on June 14, 2011, by Congressman Rob Wittman (R-VA). 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 Natural Resources Committee met to consider the bill. The Subcommittee on Energy and Mineral Resources was discharged by unanimous consent. Congressman Rob Wittman (R-VA) offered an amendment; the amendment was adopted by voice vote. Congresswoman Colleen Hanabusa (D-HI) offered an amendment designated .002; the amendment was not adopted by a bipartisan roll call vote of 16–25, as follows:

Committee on Natural Resources

U.S. House of Representatives

112th Congress

Date: July 13, 2011

Recorded Vote #: 7

Meeting on / Amendment: **HR 2173** – An amendment offered by Ms. Hanabusa.002 was NOT AGREED TO by a roll call vote of 16 yeas and 25 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			
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	X			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	X		
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					
					16	25	

Congresswoman Niki Tsongas (D-MA) offered amendment designated .003; the amendment was not adopted by a bipartisan roll call vote of 17–25, as follows:

Committee on Natural Resources

U.S. House of Representatives

112th Congress

Date: July 13, 2011

Recorded Vote #: 8

Meeting on / Amendment: **HR 2173** – An amendment offered by Ms. Tsongas.003 was NOT AGREED TO by a roll call vote of 17 yeas and 25 nays.

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
Mr. Hastings, WA Chairman		X		<i>Mr. Heinrich, NM</i>	X		
<i>Mr. Markey, MA Ranking</i>	X			Mr. Benishek, MI		X	
Mr. Young, AK		X		<i>Mr. Lujan, NM</i>	X		
<i>Mr. Kildee, MI</i>				Mr. Rivera, FL			
Mr. Duncan of TN		X		<i>Mr. Sarbanes, MD</i>	X		
<i>Mr. Defazio, OR</i>	X			Mr. Duncan of SC		X	
Mr. Gohmert, TX				<i>Ms. Sutton, OH</i>	X		
<i>Mr. Faleomavaega, AS</i>				Mr. Tipton, CO		X	
Mr. Bishop, UT		X		<i>Ms. Tsongas</i>	X		
<i>Mr. Pallone, NJ</i>	X			Mr. Gosar, AZ		X	
Mr. Lamborn, CO		X		<i>Mr. Pierluisi, PR</i>	X		
<i>Mrs. Napolitano, CA</i>	X			Mr. Labrador, ID		X	
Mr. Wittman, VA		X		<i>Mr. Garamendi, CA</i>	X		
<i>Mr. Holt, NJ</i>	X			Ms. Noem		X	
Mr. Broun, GA				<i>Ms. Hanabusa, HI</i>	X		
<i>Mr. Grijalva, AZ</i>	X			Mr. Southerland		X	
Mr. Fleming, LA		X		Mr. Flores, TX		X	
<i>Ms. Bordallo, GU</i>	X			Mr. Harris, TX	X		
Mr. Coffman, CO		X		Mr. Landry, LA		X	
<i>Mr. Costa, CA</i>		X		Mr. Fleischmann, TX		X	
Mr. McClintock, CA		X		Mr. Runyan, NJ		X	
<i>Mr. Boren, OK</i>		X		Mr. Johnson, OH		X	
Mr. Thompson, PA		X					
<i>Mr. Sablan, CNMI</i>	X						
Mr. Denham, CA		X					
				TOTALS	17	25	

The bill, as amended, was then ordered favorably reported to the House of Representatives by a bipartisan roll call vote of 24–18, as follows:

Committee on Natural Resources

U.S. House of Representatives

112th Congress

Date: July 13, 2011

Recorded Vote #: 9

Meeting on / Amendment: **HR 2173** – Favorably reported to the House of Representatives, as amended, by a roll call vote of 24 yeas and 18 nays.

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
Mr. Hastings, WA Chairman	X			<i>Mr. Heinrich, NM</i>		X	
<i>Mr. Markey, MA Ranking</i>		X		Mr. Benishek, MI	X		
Mr. Young, AK	X			<i>Mr. Lujan, NM</i>		X	
<i>Mr. Kildee, MI</i>				Mr. Rivera, FL			
Mr. Duncan of TN	X			<i>Mr. Sarbanes, MD</i>		X	
<i>Mr. Defazio, OR</i>		X		Mr. Duncan of SC	X		
Mr. Gohmert, TX				<i>Ms. Sutton, OH</i>		X	
<i>Mr. Faleomavaega, AS</i>				Mr. Tipton, CO	X		
Mr. Bishop, UT	X			<i>Ms. Tsongas</i>		X	
<i>Mr. Pallone, NJ</i>		X		Mr. Gosar, AZ	X		
Mr. Lamborn, CO	X			<i>Mr. Pierluisi, PR</i>		X	
<i>Mrs. Napolitano, CA</i>		X		Mr. Labrador, ID	X		
Mr. Wittman, VA	X			<i>Mr. Garamendi, CA</i>		X	
<i>Mr. Holt, NJ</i>		X		Ms. Noem	X		
Mr. Broun, GA				<i>Ms. Hanabusa, HI</i>		X	
<i>Mr. Grijalva, AZ</i>		X		Mr. Southerland	X		
Mr. Fleming, LA	X			Mr. Flores, TX	X		
<i>Ms. Bordallo, GU</i>		X		Mr. Harris, TX		X	
Mr. Coffman, CO	X			Mr. Landry, LA	X		
<i>Mr. Costa, CA</i>		X		Mr. Fleischmann, TX	X		
Mr. McClintock, CA	X			Mr. Runyan, NJ	X		
<i>Mr. Boren, OK</i>	X			Mr. Johnson, OH	X		
Mr. Thompson, PA	X						
<i>Mr. Sablan, CNMI</i>		X					
Mr. Denham, CA	X						
				TOTALS	24	18	

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This Act may be cited as the “Advancing Offshore Wind Production Act.”

Section 2. Offshore meteorological site testing and monitoring projects

The Secretary of the Interior should decide within 30 days of receiving a permit application whether to approve a permit for a meteorological testing project. During that period the Secretary shall accept public comment and consult with the Secretary of Defense, the Commandant of the Coast Guard and heads of affected Federal, State, and local agencies. If the application is denied, the applicant will receive a notice in writing and an opportunity to remedy any deficiencies. Section 102(2)(C) of the National Environmental Policy Act shall not apply to an offshore meteorological testing project as defined in this section. Any information provided to the Secretary of the Interior as a result of the project will be treated as proprietary information.

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. 2173—Advancing Offshore Wind Production Act

H.R. 2173 would exempt certain weather testing and monitoring activities on the Outer Continental Shelf (OCS) from compliance with provisions of the National Environmental Policy Act (NEPA). Based on information from the Bureau of Ocean Energy Management, Regulation, and Enforcement (BOEMRE), CBO estimates that implementing the legislation would have no significant impact on the federal budget. Enacting H.R. 2173 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

Under the bill, environmental impact reviews under NEPA would not be required for weather testing and monitoring activities on the OCS that meet certain requirements related to the duration of the activities, the amount of seafloor or water surface disturbed, and

the restoration of the project site. The bill also would establish a permitting process for such activities and require BOEMRE to act on permit applications within 30 days. Based on information provided by the agency, CBO expects that implementing the legislation could affect the workload of certain BOEMRE offices; however, we estimate that the budgetary impact of any such effects would be negligible.

H.R. 2173 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 LaFave. 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. 2173 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. 2173 because it would establish a burdensome new permitting scheme that would unduly complicate the process for obtaining a lease to construct an offshore meteorological testing facility. The bill would also exempt certain testing offshore meteorological testing facilities from any review under the National Environmental Policy Act (NEPA) despite the potential impacts offshore facilities can have on military training activities, aviation operations, the laying of underwater telecommunication cables, and fisheries resources. The Majority asserts that this bill is good for offshore wind energy development because it is endorsed by the National Ocean Industries Association. Yet, as the letter plainly states, the organization's members are primarily focused on offshore oil and gas production, not offshore wind development. H.R. 2173 is not endorsed by the Offshore Wind Development Coalition.

The bill demonstrates a fundamental misunderstanding of the needs of the offshore renewable energy industry, as evident in the approach to restructuring how the Bureau of Ocean Energy Management, Regulation, and Enforcement (BOEMRE) reviews and approves projects on the outer continental shelf. Currently, an offshore wind energy developer receives permission to build a meteorological tower as part of its larger lease application to construct a wind farm. This is desirable from an industry perspective because a developer would never want to spend millions of dollars constructing a weather tower on the outer continental shelf (OCS) unless the company had certainty that it could also develop a wind farm on that same parcel. The industry expressed this in its written statement for record when the committee held the legislative hearing on this bill. BOEMRE does not currently offer companies a "permit and right of way" to build offshore meteorological towers or wind farms, and developers have not shown any interest in obtaining them. Yet this is what the bill proposes.

Under H.R. 2173, BOEMRE will have to create a new permitting scheme to build these weather testing facilities and they would have to be torn down within 5 years. Underscoring the absurdity of the new permitting mandate in H.R. 2173, the offshore wind energy industry does not want to install short term testing facilities for only five years. Installing a meteorological tower on the OCS is an expensive and complex construction project, and an offshore wind developer would prefer leaving the meteorological tower in place for the full operating life of the wind farm, rather than tearing it down after 5 years. This was also expressed in the industry's statement for the hearing record.

Here again, the bill's proponents incorrectly identify NEPA as the roadblock to the development of offshore renewable energy. NEPA provides a valuable procedural framework for evaluating the potential impacts of a proposed project, and it serves as one of the

most effective means of coordinating interagency consultations, consultations with States, and consultations with local communities. BOEMRE possesses the statutory authority to utilize the categorical exemption process for projects that it has determined do not cause significant impacts. We recognize that offshore testing facilities are still a relatively new technology, and that because of this, some environmental review is appropriate. Currently, BOEMRE envisions a one year process for reviewing meteorological testing facilities under NEPA. Eventually, a categorical exclusion may be appropriate for such facilities, once BOEMRE has had time to evaluate whether any of these facilities have caused significant environmental impacts. But waiving NEPA altogether, which is what H.R. 2173 does, is not responsible and will lead to BOEMRE rejecting more project applications.

Under H.R. 2173, BOEMRE must make a final decision on an application for an offshore meteorological tower and complete all consultations within 30 days, including reviews under Endangered Species Act, Magnuson-Stevens Fishery Conservation and Management Act, National Historic Preservation Act, National Marine Sanctuaries Act, Marine Mammal Protection Act, and Coastal Zone Management Act. This is not realistic. In addition, during this short time period BOEMRE would have to consult with the Navy on whether a facility would interfere with critical military training activities. The Navy has expressed concerns about the bill in formal written comments. They must consult with the Federal Communications Commission on whether the siting of a facility might compromise a vital telecommunications cable. They must consult with the Federal Aviation Administration (FAA), which is required to conduct an independent hazard analysis of proposed meteorological towers and wind farms prior to construction under 49 § U.S.C. 44718. The FAA has also expressed concerns about the bill. Since BOEMRE has no authority to compel any of these independent agencies to expedite their own reviews, H.R. 2173 ensures that consultations are an empty exercise if they occur at all.

During the mark-up of this bill, an amendment was offered by Representative Hanabusa that would have required the Secretary of Interior to complete its consultations with the FAA notwithstanding the arbitrary 30 day deadline imposed by H.R. 2173. The amendment was defeated 25–16, with virtually all Republicans opposing. An amendment was offered by Representative Tsongas that would have required the Secretary of Interior to complete its consultations with the Secretary of Defense to ensure that critical military training activities are not impacted by the siting of renewable energy testing facilities. Arguing that impacts to military training activities from the siting of a renewable energy facility are only a possibility, and not a certainty, the Majority defeated this amendment 25–16, with virtually all Republicans opposing.

H.R. 2173 is unnecessarily burdensome and fails to address the real needs of the offshore renewable energy industry in facilitating the deployment of renewable energy on the outer continental shelf. The renewable energy industry has not suggested this solution and

does not support the legislation. It has the potential to interfere with the activities of other key agencies, including the Navy, the FAA, and the FCC. We oppose it.

EDWARD J. MARKEY.
GREGORIO KILILI CAMACHO
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