

UTILIZING AMERICA'S FEDERAL LANDS FOR WIND
ENERGY ACT

DECEMBER 1, 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. 2172]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 2172) to facilitate the development of wind energy resources on Federal lands, 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 "Utilizing America's Federal Lands for Wind Energy Act".

SEC. 2. ONSHORE METEOROLOGICAL SITE TESTING AND MONITORING PROJECT.

(a) DEFINITION OF METEOROLOGICAL SITE TESTING AND MONITORING PROJECT.—
In this section, the term "meteorological site testing and monitoring project" means a project carried out on land administered by the Bureau of Land Management or the Forest Service to test or monitor weather (including wind and solar energy) using towers or other devices, that—

(1) causes—

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

(B) not more than 5 acres of soil or disruption within the proposed right-of-way for the project;

(2) is installed—

- (A) to the maximum extent practicable, using existing access roads;
- (B) in a manner that does not require off-road motorized access other than 1 installation activity and 1 decommissioning activity along an identified off-road route approved by the Director of the Bureau of Land Management or Chief of the Forest Service;
- (C) without construction of new roads other than upgrading of existing minor drainage crossings for safety purposes; and
- (D) without the use of digging or drilling equipment vehicles other than rubber-tired vehicles with gross weight ratings under 8,500 pounds;
- (3) is decommissioned not more than 5 years after the date of commencement of the project, including—
 - (A) removal of any towers, devices, or other surface infrastructure from the site; and
 - (B) restoration of the site to approximately the condition that existed at the time the project began; and
 - (4) provides meteorological information obtained by the permitted project to the Bureau of Land Management and the Forest Service.
- (b) 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 a meteorological site testing and monitoring project.
- (c) PERMIT TIMELINE AND CONDITIONS.—
 - (1) IN GENERAL.—The Director of the Bureau of Land Management or Chief of the Forest Service, as applicable, shall decide whether to issue a permit for a project that is a meteorological site testing and monitoring project within 30 days after receiving an application for the permit.
 - (2) PUBLIC COMMENT AND CONSULTATION.—During the period referred to in paragraph (1), the Director of the Bureau of Land Management or the Chief of the Forest Service, as applicable, shall—
 - (A) provide an opportunity for submission of comments by the public; and
 - (B) consult with the heads of other Federal, State, and local agencies that would be affected by the issuance of the permit.
 - (3) DENIAL OF APPLICATION.—If the application is denied, the Director or Chief, respectively, shall provide the applicant—
 - (A) in writing, clear and comprehensive reasons why the application was not approved and detailed information concerning any deficiencies, and
 - (B) an opportunity to remedy any deficiencies.
- (d) PROTECTION OF INFORMATION.—The information provided to the Bureau of Land Management and the Forest Service pursuant to subsection (a)(4) shall be treated by such agency as proprietary information and protected against disclosure.

PURPOSE OF THE BILL

The purpose of H.R. 2172, as ordered reported, is to facilitate the development of wind energy resources on Federal lands.

BACKGROUND AND NEED FOR LEGISLATION

The Utilizing America's Federal Lands for Wind Energy Act (H.R. 2172) facilitates the development of onshore wind power on Bureau of Land Management (BLM) and U.S. Forest Service land. Current regulations require a full National Environmental Policy Act (NEPA) review for the installation of a simple temporary meteorological tower that creates minimal environmental disturbance and is required to test an area's viability for a large scale wind project. This permitting process alone can add up to three years to the project development. The legislation will waive NEPA for meteorological towers that cause less than one acre 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 while still allowing time for public comment and interagency consultation. This could shorten the process for installing an onshore wind project by at least two years.

The U.S. Energy Information Administration (EIA) estimates that U.S. electricity demand will grow by 39% from 2005 to 2030, reaching 5.8 billion megawatt-hours by 2030. Wind energy reduces

reliance on foreign energy sources, has a domestic energy source, requires no imported fuel and the turbine components can be produced on U.S. soil.

Wind farms already have to clear a number of obstacles, such as land-use laws, airspace regulations and competition with other users for the land whose uses may be more highly valued than electricity generation. Resolving these wind power project siting issues is an important part of expanding wind energy development. The principles applied to wind energy siting issues must promote efficient and fair permitting processes at the federal level.

In 2005, BLM published a Programmatic Environmental Impact Statement for wind, proposing a Wind Energy Development Program to establish policies to address environmental impacts, and wildlife, visual and land use issues surrounding wind development activities.

Further, BLM concerns over the golden eagle have significantly delayed wind project development on public lands. In summer 2010, BLM issued a new policy requiring approval from the U.S. Fish and Wildlife Service on specific plans for addressing eagles. This sudden change in policy has resulted in significant delays to numerous wind projects, including some projects selected by the BLM as “fast track” projects for receiving permit approvals.

Because of burdensome, time consuming and unpredictable regulations, some developers seek to develop projects on private land solely to avoid the regulatory process which can add years to the development timeline. Streamlining the permitting process will enable the construction of onshore wind projects on federal lands, and greater energy production for American consumers.

COMMITTEE ACTION

H.R. 2172 was introduced on June 14, 2011, by Congresswoman Kristi Noem (R-SD). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Energy and Mineral Resources. The bill was also referred to the Committee on Agriculture. 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 Doug Lamborn (R-CO) offered an amendment; the amendment was adopted by voice vote. Congressman John Garamendi (D-CA) offered amendment designated .058; the amendment was withdrawn. Congressman Rush Holt (D-NJ) offered amendment designated .001; the amendment was not adopted by a bipartisan roll call vote of 15-27, as follows:

Committee on Natural Resources

U.S. House of Representatives

112th Congress

Date: July 13, 2011

Recorded Vote #: 5

Meeting on / Amendment: **HR 2172** – An amendment offered by Mr. Holt.001 was NOT AGREED TO by a roll call vote of 15 yeas and 27 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	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					
				TOTALS	15	27	

Congresswoman Kristi Noem (R-SD) offered an amendment; the amendment was adopted by voice vote. The bill, as amended, was ordered favorably reported to the House of Representatives by a bipartisan roll call vote of 26-16, as follows:

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

Date: July 13, 2011

Recorded Vote #: 6

Meeting on / Amendment: HR 2172 – Favorably reported to the House of Representatives, as amended, by a roll call vote of 26 yeas and 16 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	X		
Mr. Duncan of TN				<i>Mr. Sarbanes, MD</i>		X	
<i>Mr. Defazio, OR</i>		X		Mr. Duncan of SD	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	26	16	

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This Act may be cited as the “Utilizing America’s Federal Lands for Wind Energy Act.”

Section 2. Meteorological site testing and monitoring project exclusion

This section waives NEPA requirements for any meteorological testing tower that is installed on land administered by BLM or the U.S. Forest Service to test or monitor weather. It requires that permits submitted to install a tower must be acted on in 30 days and if denied, a written reason must be provided to the applicant. The section also requires that any information provided to BLM and the U.S. Forest Service be treated as proprietary information and protected from disclosure.

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. 2172—Utilizing America’s Federal Lands for Wind Energy Act

H.R. 2172 would exempt certain weather testing and monitoring activities on federal land from compliance with provisions of the National Environmental Policy Act (NEPA). Based on information from the Bureau of Land Management (BLM) and the Forest Service, CBO estimates that implementing the legislation would have no significant impact on the federal budget. Enacting H.R. 2172 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 federal land that meet certain requirements related to the duration of the activities, the amount of land disturbed, and the restoration of the project site. The bill also would reduce the amount of time the agency administering the affected lands would have to determine whether to grant permits for weather testing and monitoring activities. Based on information provided by BLM and the Forest Service, CBO expects that implementing the legislation could affect

the workload of certain offices within those agencies; however, we estimate that the budgetary impact of any such effects would be negligible.

H.R. 2172 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. 2172 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. 2172 because it would exempt certain meteorological testing activities on public lands from any federal review under the National Environmental Policy Act (NEPA). This bill eliminates the ability of federal land managers to review certain projects to ensure that they do not threaten the environment or public health and safety. The bill further jeopardizes public safety by attempting to short-circuit the Federal Aviation Administration's (FAA) hazard assessment process, which is designed to ensure that meteorological towers do not interfere with air traffic. The wind industry has not endorsed the bill, which leaves in doubt the claims of bill proponents that the measure will increase the development of wind energy on public lands.

This bill is a solution in search of a problem. The Bureau of Land Management (BLM) and the U.S. Forest Service (USFS) already have the authority to use the "categorical exclusion" process to expedite permitting and limit NEPA review for meteorological towers. Since 2008, the BLM has granted a categorical exclusion for 149 out of 181 applications to build meteorological towers on public lands, and the USFS has granted categorical exclusions for all 15 applications they have received in that time. That means 84 percent of projects are already receiving the expedited treatment this bill seeks. In exchange for guaranteeing that those final 16 percent of projects are expedited, H.R. 2172 would remove the ability of federal land managers to review meteorological projects *entirely*, including in those rare instances when a project may have significant impacts on the safety of commercial and military air traffic, significant impacts on park lands or cultural artifacts, and significant impact on endangered species and critical habitat.

There is a critically important difference between providing for expedited permitting most of the time, and exempting an entire category of projects from NEPA review all of the time. By adopting the latter approach H.R. 2172, turns a blind eye to those rare situations where extraordinary circumstances may exist, indicating that significant environmental impacts might occur. By waiving NEPA, H.R. 2172 removes the flexibility of the permitting agencies to address and mitigate any potential extraordinary circumstances that exist surrounding a proposed project. Since the BLM and USFS still possess the final authority to approve or deny a project, H.R. 2172 may also have the unintended consequence of causing more meteorological testing facilities to be denied.

H.R. 2172 ignores the critical public safety role of the FAA, which evaluates the potential hazards of any structure that may impact critical aviation operations. The FAA is required to conduct an independent hazard analysis of all proposed meteorological towers and wind farms prior to construction under 49 U.S.C. 44718. This process usually requires 60–90 days once the FAA receives a

completed application from an applicant. If the FAA determines that a proposed meteorological tower poses a threat to aviation, then such a project will, as a matter of course, be unable to receive insurance or financing. By imposing an arbitrary 30 day deadline on the BLM and USFS to either approve or deny a meteorological tower prior to the completion of the FAA review, H.R. 2172 injects more uncertainty into the approval process, not less. It is very possible that the BLM or USFS may approve a project under the restructured process proposed in this bill, only to later have the very same project denied by the FAA. The FAA has expressed similar concerns.

During the mark-up of this bill, an amendment was offered by Subcommittee Ranking Member Holt that would have addressed this concern by making clear that the Secretary of Interior would consult with the FAA with respect to the approval of meteorological towers without an arbitrary deadline for concluding any required consultations. The amendment was defeated 27–15, with all Republicans opposing. Representative Noem offered an amendment, which was adopted on a voice vote, which requires the BLM and USFS to consult with all other Federal, State, and local agencies that would be affected by the permit. This amendment does not resolve the underlying problem with the FAA’s independent review process since the BLM and USFS are still required to either approve or deny a project at the end of the 30 day period. The Secretary has no power to compel other agencies to expedite their own review processes, meaning that this new, required consultation will be a rather empty exercise.

H.R. 2172 strips from the BLM and USFS their ability to use NEPA, the agencies’ most important planning tool, in their decision making process when they evaluate meteorological towers. H.R. 2172 ignores the FAA’s critical role in ensuring our skies remain safe for air travel. The renewable energy industry has not suggested this solution and has not endorsed the legislation. We oppose it as well.

EDWARD J. MARKEY.
 GREGORIO KILILI CAMACHO
 SABLAN.
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TODD YOUNG
CHIEF OF STAFF

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

November 10, 2011

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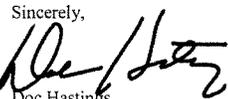
The Honorable Frank Lucas
Chairman
Committee on Agriculture
1301 Longworth HOB
Washington, D.C. 20515

Dear Mr. Chairman:

On July 13, 2011, the Committee on Natural Resources ordered reported, with amendment, H.R. 2172, the Utilizing America's Federal Lands for Wind Energy Act, by a bipartisan vote of 26-16. The bill was referred primarily to the Committee on Natural Resources, with an additional referral to the Committee on Agriculture. I have forwarded a copy of the reported text and draft bill report to your Committee staff for review.

I ask that you allow the Agriculture Committee to be discharged from further consideration of the bill so that it may be scheduled by the Majority Leader. This discharge in no way affects your jurisdiction over the subject matter of the bill, and it will not serve as precedent for future referrals. In addition, should a conference on the bill be necessary, I would support your request to have the Committee on Agriculture represented on the conference committee. Finally, I would be pleased to include this letter and any response in the bill report filed by the Committee on Natural Resources to memorialize our understanding.

Thank you for your consideration of my request.

Sincerely,

Doc Hastings
Chairman

