

PROVIDING FOR OUR WORKFORCE AND ENERGY
RESOURCES 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

ADDITIONAL VIEWS

[To accompany H.R. 2360]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 2360) to amend the Outer Continental Shelf Lands Act to extend the Constitution, laws, and jurisdiction of the United States to installations and devices attached to the seabed of the Outer Continental Shelf for the production and support of production of energy from sources other than oil and gas, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 2360 is to amend the Outer Continental Shelf Lands Act to extend the Constitution, laws, and jurisdiction of the United States to installations and devices attached to the seabed of the Outer Continental Shelf for the production and support of production of energy from sources other than oil and gas.

BACKGROUND AND NEED FOR LEGISLATION

The Outer Continental Shelf Lands Act (OCSLA, 43 U.S.C. 1331 *et seq.*) ensures that the Constitution and laws and civil and political jurisdiction of the United States are extended to the subsoil

and seabed of the Outer Continental Shelf (OCS) for the purpose of exploring for, developing, or producing resources from there.

While there is no doubt that under the OCSLA, the laws of the United States apply to offshore oil and gas platforms and mobile offshore drilling units, there has been some debate whether offshore wind energy turbines or other offshore renewable energy ventures would be affected by the OCSLA.

The Committee on Natural Resources has determined legislation is needed to further clarify the application of OCSLA to all offshore energy development to eliminate uncertainty and to further clarify that the existing laws governing energy development on the OCS must be applied fully and fairly. As such, the intent of this legislation is to clarify existing law to ensure that all offshore energy development projects, including offshore wind energy and other future offshore renewable energy production, are held to the same standard as oil and gas development projects.

U.S. Customs and Border Protection submitted comments expressing that the agency has no objection to the bill as written, though it reserves the right to submit additional comments regarding the implementation of this legislation in the future.

COMMITTEE ACTION

H.R. 2360 was introduced on June 24, 2011, by Congressman Jeff Landry (R-LA). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Energy and Mineral Resources. On September 13, 2011, the Subcommittee held a hearing on the bill. On October 5, 2011, the Full Natural Resources Committee met to consider the bill. The Subcommittee on Energy and Mineral Resources was discharged by unanimous consent. No amendments were offered to the bill and the bill was ordered favorably reported to the House of Representatives by unanimous consent.

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. 2360—POWER Act

H.R. 2360 would affirm federal jurisdiction and authority over the siting of certain facilities in the Outer Continental Shelf (OCS). It would amend existing law to expressly authorize the production of energy in the OCS from sources other than oil and natural gas and allow the siting of facilities for transmitting as well as transporting such resources.

CBO estimates that enacting this bill would have no budgetary impact because the Department of the Interior currently approves alternative energy projects, such as offshore wind generation and transmission facilities, under existing law. Enacting H.R. 2360 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

HR. 2360 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Kathleen Gramp. 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 enacting this bill would have no budgetary impact because the Department of the Interior currently approves alternative energy projects, such as offshore wind generation and transmission facilities, under existing law.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to amend the Outer Continental Shelf Lands Act to extend the Constitution, laws, and jurisdiction of the United States to installations and devices attached to the seabed of the Outer Continental Shelf for the production and support of production of energy from sources other than oil and gas.

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 MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic

and existing law in which no change is proposed is shown in roman):

**SECTION 4 OF THE OUTER CONTINENTAL SHELF LANDS
ACT**

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SEC. 4. LAWS APPLICABLE TO OUTER CONTINENTAL SHELF.—
 (a)(1) The Constitution and laws and civil and political jurisdiction of the United States are hereby extended to the subsoil and seabed of the outer Continental Shelf and to all artificial islands, and all installations and other devices permanently or temporarily attached to the seabed which may be erected thereon for the purpose of exploring for, developing, or producing resources therefrom *or producing or supporting production of energy from sources other than oil and gas*, or any such installation or other device (other than a ship or vessel) for the purpose of transporting such resources *or transmitting such energy*, to the same extent as if the outer Continental shelf were an area of exclusive Federal jurisdiction located within a state: *Provided, however*, That mineral *and other energy* leases on the outer Continental Shelf shall be maintained or issued only under the provisions of this Act.

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ADDITIONAL VIEWS

H.R. 2360 would amend the Outer Continental Shelf Lands Act (OCSLA) to explicitly extend the Constitution, laws, and civil and political jurisdiction of the United States to installations attached to the seabed of the Outer Continental Shelf (OCS) which may be erected to produce or support the production or transmission of energy from sources other than oil and gas.

The Department of the Interior has testified before this Committee that OCSLA already applies to offshore renewable energy installations. The Interior Department has also testified that H.R. 2360 would not expand current law but that it would simply clarify that section 4(a) of OCSLA applies to renewable energy production offshore, to the extent there is any uncertainty. Comments from U.S. Customs and Border Protection submitted for the record echo the Interior Department's interpretation that H.R. 2360 would simply clarify that the Jones Act applies to offshore wind farms. The Customs and Border Protection comments also reaffirm the interpretation that H.R. 2360 would not expand current law to cover vessels responsible for laying transmission lines or other vessels assisting in the construction process, beyond what the current law provides.

We share these interpretations of H.R. 2360 and of the underlying statutes.

In practicality, the legislation would clarify, to the extent that there is ambiguity, that a wind farm is a "coastwise point" for purposes of interpreting and enforcing the Jones Act,¹ meaning that the transportation of merchandise, supplies, construction materials, and maintenance materials, between the U.S. mainland and wind farms would have to be done in a vessel that was built in and documented under the laws of the United States and owned by persons who are citizens of the United States.

The American Wind Energy Association has indicated that their member companies currently operate in compliance with Jones Act requirements. In comments for the hearing record on this bill, the Offshore Wind Development Coalition stated that offshore wind developers accept the applicability of the Jones Act for offshore wind farms.

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¹46 U.S.C. § 55102.