

ENERGY EMERGENCY LEADERSHIP ACT

JUNE 28, 2018.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. WALDEN, from the Committee on Energy and Commerce,
submitted the following

R E P O R T

[To accompany H.R. 5174]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 5174) to amend the Department of Energy Organization Act with respect to functions assigned to Assistant Secretaries, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

H.R. 5174, Energy Emergency Leadership Act, was introduced by Rep. Tim Walberg (R-MI) and Rep. Bobby Rush (D-IL) on March

6, 2018. H.R. 5174 amends the Department of Energy Organization Act to include energy emergency and energy security among the functions that the Secretary of the Department of Energy shall assign to an Assistant Secretary.

H.R. 5174 provides that the functions to be assigned to an Assistant Secretary include responsibilities with respect to infrastructure, cybersecurity, emerging threats, supply, and emergency planning, coordination, response, and restoration. It also provides that these functions include the provision of technical assistance, support, and response capabilities with respect to energy sector threats, risks, and incidents to State, local, and tribal governments and the energy sector.

BACKGROUND AND NEED FOR LEGISLATION

The United States maintains one of the most advanced and complex energy infrastructures in the world. This includes an extensive system transporting oil, natural gas, and refined product to consumers. It involves the storage capacity of more than 600 million barrels of oil and the storage of for natural gas equivalent to nearly 2 months of U.S. consumption. This also includes the vast, complex electricity systems that deliver uninterrupted power from producers to consumers. These intricate and highly interdependent systems enable every aspect of our daily lives.¹ Our nation's economy, security, and the health and safety of its citizens depend upon the reliable and uninterrupted supply of fuels and electricity.

The manner by which energy and power is generated, transmitted, and delivered continues to increase in complexity. As advances in digital and information technologies layer onto existing practices and energy infrastructures, new risks emerge and new vulnerabilities are exposed. Recent high-profile attempts by foreign actors to infiltrate our nation's energy systems and infrastructure further highlight the need for legislation aimed at mitigating these significant and growing threats to the reliable supply of energy in the United States.

The Department of Energy's Authorities for Cybersecurity, Energy Security, and Emergency Response

When the Department of Energy was organized in 1977, energy security concerns revolved around oil supply shortages. As a result, energy security emergency functions in the Department of Energy Organization Act focused on distributing and allocating fuels in an emergency. Over time, these functions in DOE's organic statute remained largely unchanged, but DOE's responsibilities and authorities have evolved substantially beyond what was envisioned forty years ago. Energy delivery systems have become increasingly interconnected and digitized, while society has become more dependent on energy in all its forms—expanding the opportunities for cybersecurity threats and other hazards that may require emergency response.

Today, DOE's mission to advance the national, economic, and energy security of the United States requires it to act as the lead agency for the protection of electric power, oil, and natural gas in-

¹See "Valuation of Energy Security for the United States," Department of Energy, January 2017.

frastructure. DOE has authority and responsibilities for the physical and cybersecurity of energy delivery systems from laws that Congress has passed and Presidential directives. Congress has provided DOE with a wide range of emergency response and cybersecurity authorities affecting multiple segments of the energy sector, including in the Department of Energy Organization Act, the Energy Policy and Conservation Act, the Natural Gas Act, the Federal Power Act, the Defense Production Act, and most recently the Fixing America's Transportation Act (FAST Act).

The FAST Act, which was signed into law in 2015, designated DOE as the Sector-Specific Agency (SSA) for the energy sector and provided the Department with several new energy security authorities to respond to physical and cyberattacks to energy systems. Section 61003 of the FAST Act amended section 215 of the Federal Power Act (FPA) and created a new section 215A entitled, "Critical Electric Infrastructure Security." Section 215 of the FPA states that when the President issues or provides to the Secretary of Energy a written directive or determination identifying a grid security emergency, the Secretary may, with or without notice, hearing, or report, issue orders for emergency measures to protect or restore the reliability of critical electric infrastructure or of defense critical electric infrastructure during an emergency.²

DOE's cybersecurity roles and responsibilities are also guided by the Federal government's operational framework, as provided by the Presidential Policy Directive 41 (PPD-41) issued in 2016 addressing "United States Cyber Incident Coordination." A primary purpose of PPD-41 is to improve coordination across the Federal government by clarifying roles and responsibilities. Under the PPD-41 framework, DOE serves as the lead agency for the energy sector, coordinating closely with other agencies and the private sector to facilitate the response, recovery, and restoration of damaged energy infrastructure.

DOE Leadership in Energy Supply Emergencies

As the Energy SSA and pursuant to its other statutory authorities, DOE coordinates with multiple Federal and State agencies and collaborates with energy infrastructure owners and operators on activities associated with identifying vulnerabilities, mitigating incidents that may impact the energy sector, and assisting with preparation, recovery or restoration to ensure the supply of energy in emergencies.

During the past two presidential administrations, DOE has strengthened these energy emergency functions, including for preparedness, response, and restoration of energy systems against all hazards. However, the growing interconnectedness of energy systems and the national importance of ensuring the supply and delivery of energy against cyber threats, underscore the need to consolidate and elevate the Department's energy emergency functions.

On February 14, 2018, Energy Secretary Rick Perry announced the establishment of a new Office of Cybersecurity, Energy Security, and Emergency Response (CESER) at DOE, noting "DOE plays a vital role in protecting our nation's energy infrastructure from cyber threats, physical attack and natural disaster. This new

² Federal Power Act § 215A, 16 U.S.C. §§ 824o-1.

office best positions the Department to address the emerging threats of tomorrow while protecting the reliable flow of energy to Americans today.” The CESER office will be led by an Assistant Secretary who will focus on energy infrastructure security, support the expanded national security responsibilities assigned to DOE, and report to the Under Secretary of Energy.³

The Committee finds that H.R. 5174 would further enhance the execution of this core energy emergency mission by establishing in statute the assistant-secretary-level leadership of DOE’s emergency response and cybersecurity functions. Given the critical role DOE serves for the nation to coordinate, prepare for, and respond to all hazards to the supply of energy, including cybersecurity, such assistant-secretary level leadership will strengthen coordination across the department, ensure more effective interagency collaborations, and increase accountability to Congress. DOE Undersecretary Mark Menezes, agreed in testimony that elevating functions to Senate-confirmed level leadership would help intergovernmental and interagency communication, and information sharing. He noted further that assistant-secretary level leadership “increases visibility and accountability.”⁴ Therefore, the Committee finds that elevating relevant energy emergency and security functions within DOE leadership will enhance the accountability for and the quality and speed of information sharing with the Department of Homeland Security. This in turn will strengthen the necessary coordination between the Cabinet agencies and the sharing of information across all critical infrastructure sectors.

The Committee also finds that H.R. 5174, by establishing energy emergency leadership explicitly in the Department of Energy Organization Act, ensures the benefits of elevated leadership over the relevant missions will endure. Tristan Vance, Chief Energy Officer of Indiana, testifying on behalf of the National Association of State Energy Officials, testified that the creation of the CSER office “is precisely the type of action needed to modernize and improve our states’ and the nation’s ability to respond to and mitigate the risks of energy supply disruptions from all hazards.” He also noted that the bill “would elevate and make permanent this core DOE function, and NASEO strongly supports the subcommittee’s action.”⁵

COMMITTEE ACTION

On March 14, 2018 the Subcommittee on Energy held a hearing on H.R. 5175 entitled, “DOE Modernization: Legislation Addressing Cybersecurity and Emergency Response.” The Subcommittee received testimony from:

- Mark Menezes, Under Secretary of Energy, U.S. Department of Energy;
- Scott Aaronson, Vice President, Security and Preparedness, Edison Electric Institute;

³See Press Release, U.S. Department of Energy, “Secretary of Energy Rick Perry Forms New Office of Cybersecurity, Energy Security, and Emergency Response.” (Feb. 14, 2018), <https://www.energy.gov/articles/secretary-energy-rick-perry-forms-new-office-cybersecurity-energy-security-and-emergency>.

⁴See oral Testimony of Under Secretary Mark Menezes, U.S. Department of Energy, Before the Subcommittee on Energy, Committee on Energy and Commerce, March 14, 2018.

⁵See Written Testimony of Tristan Vance, Director, Indiana Office of Energy Development, Chief Energy Officer of Indiana, Before the Subcommittee on Energy, Committee on Energy and Commerce, March 14, 2018.

- Mark Engels, Senior Enterprise Security Advisor, Dominion Energy;
- Tristan Vance, Director, Office of Energy Development, State of Indiana on behalf of the National Association of State Energy Officials;
- Zachary Tudor, Associate Laboratory Director for National and Homeland Security, Idaho National Laboratory; and,
- Kyle Pistor, Vice President of Government Relations, National Electrical Manufacturers Association.

On April 18, 2018, the Subcommittee on Energy met in open markup session and forwarded H.R. 5174, without amendment, to the full Committee by a voice vote.

On May 9, 2018, the full Committee on Energy and Commerce met in open markup session and ordered H.R. 5174, without amendment, favorably reported to the House by a voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII requires the Committee to list the record votes on the motion to report legislation and amendments thereto. There were no record votes taken in connection with ordering H.R. 5174 reported.

OVERSIGHT FINDINGS AND RECOMMENDATIONS

Pursuant to clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII, the Committee held a hearing and made findings that are reflected in this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Pursuant to clause 3(c)(2) of rule XIII, the Committee finds that H.R. 5174 would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII, the following is the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 17, 2018.

Hon. GREG WALDEN,
Chairman, Committee on Energy and Commerce, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5174, the Energy Emergency Leadership Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Megan Carroll.

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 5174—Energy Emergency Leadership Act

H.R. 5174 would amend the Department of Energy (DOE) Organization Act to include functions related to energy emergencies and energy security among the duties to be assigned by the Secretary of Energy to one of DOE's assistant secretaries. Under the bill, that assistant secretary would be responsible for activities related to the physical and cybersecurity of energy infrastructure; planning and coordinating responses to energy emergencies; and providing security-related technical assistance to state, local and tribal governments.

Using information from DOE, CBO estimates that enacting H.R. 5174 would not significantly affect the federal budget. H.R. 5174 would not affect the scope or cost of DOE's activities related to energy emergencies or energy security; as a result, CBO expects that any changes in federal spending under the bill—which would be subject to appropriation—would be small.

H.R. 5174 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting H.R. 5174 would not affect direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

H.R. 5174 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Megan Carroll. The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII, the general performance goal or objective of this legislation is to ensure more effective implementation of the Department of Energy's energy emergency and cybersecurity responsibilities.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII, no provision of H.R. 5174 is known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of Public Law 111-139 or the most recent Catalog of Federal Domestic Assistance.

COMMITTEE COST ESTIMATE

Pursuant to clause 3(d)(1) of rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

EARMARK, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

Pursuant to clause 9(e), 9(f), and 9(g) of rule XXI, the Committee finds that H.R. 5174 contains no earmarks, limited tax benefits, or limited tariff benefits.

DISCLOSURE OF DIRECTED RULE MAKINGS

Pursuant to section 3(i) of H. Res. 5, the Committee finds that H.R. 5174 contains no directed rule makings.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 provides the short title of “Energy Emergency Leadership Act.”

Section 2. Functions assigned to assistant secretaries

Section 2 amends the Department of Energy Organization Act to include energy emergency and energy security among the functions that the Secretary of Energy shall assign to an Assistant Secretary; provides that these functions include responsibilities with respect to infrastructure, cybersecurity, emerging threats, supply and emergency planning, coordination, response, and restoration; and provides that these functions also include the provision of technical assistance, support, and response capabilities with respect to energy security threats, risks, and incidents to State, local, and tribal governments and the energy sector.

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):

DEPARTMENT OF ENERGY ORGANIZATION ACT

* * * * *

TITLE II—ESTABLISHMENT OF THE DEPARTMENT

* * * * *

ASSISTANT SECRETARIES

SEC. 203. (a) There shall be in the Department 8 Assistant Secretaries, each of whom shall be appointed by the President, by and with the advice and consent of the Senate; who shall be compensated at the rate provided for at level IV of the Executive Schedule under section 5315 of title 5, United States Code; and who shall perform, in accordance with applicable law, such of the functions transferred or delegated to, or vested in, the Secretary as he shall prescribe in accordance with the provisions of this Act. The functions which the Secretary shall assign to the Assistant Secretaries include, but are not limited to, the following:

(1) Energy resource applications, including functions dealing with management of all forms of energy production and utilization, including fuel supply, electric power supply, enriched uranium production, energy technology programs, and the management of energy resource leasing procedures on Federal lands.

(2) Energy research and development functions, including the responsibility for policy and management of research and development for all aspects of—

- (A) solar energy resources;
- (B) geothermal energy resources;
- (C) recycling energy resources;
- (D) the fuel cycle for fossil energy resources; and
- (E) the fuel cycle for nuclear energy resources.

(3) Environmental responsibilities and functions, including advising the Secretary with respect to the conformance of the Department's activities to environmental protection laws and principles, and conducting a comprehensive program of research and development on the environmental effects of energy technologies and programs.

(4) International programs and international policy functions, including those functions which assist in carrying out the international energy purposes described in section 102 of this Act.

(6) Intergovernmental policies and relations including responsibilities for assuring that national energy policies are reflective of and responsible to the needs of State and local governments, and for assuring that other components of the Department coordinate their activities with State and local governments, where appropriate, and develop intergovernmental communications with State and local governments.

(7) Competition and consumer affairs, including responsibilities for the promotion of competition in the energy industry and for the protection of the consuming public in the energy policymaking processes, and assisting the Secretary in the formulation and analysis of policies, rules, and regulations relating to competition and consumer affairs.

(8) Nuclear waste management responsibilities, including—

- (A) the establishment of control over existing Government facilities for the treatment and storage of nuclear wastes, including all containers, casks, buildings, vehicles, equipment, and all other materials associated with such facilities;

(B) the establishment of control over all existing nuclear waste in the possession or control of the Government and all commercial nuclear waste presently stored on other than the site of a licensed nuclear power electric generating facility, except that nothing in this paragraph shall alter or effect title to such waste;

(C) the establishment of temporary and permanent facilities for storage, management, and ultimate disposal of nuclear wastes;

(D) the establishment of facilities for the treatment of nuclear wastes;

(E) the establishment of programs for the treatment, management, storage, and disposal of nuclear wastes;

(F) the establishment of fees or user charges for nuclear waste treatment or storage facilities, including fees to be charged Government agencies; and

(G) the promulgation of such rules and regulations to implement the authority described in this paragraph, except that nothing in this section shall be construed as granting to the Department regulatory functions presently within the Nuclear Regulatory Commission, or any additional functions than those already conferred by law.

(9) Energy conservation functions, including the development of comprehensive energy conservation strategies for the Nation, the planning and implementation of major research and demonstration programs for the development of technologies and processes to reduce total energy consumption, the administration of voluntary and mandatory energy conservation programs, and the dissemination to the public of all available information on energy conservation programs and measures.

(10) Power marketing functions, including responsibility for marketing and transmission of Federal power.

(11) Public and congressional relations functions, including responsibilities for providing a continuing liaison between the Department and the Congress and the Department and the public.

(12) *Energy emergency and energy security functions, including—*

(A) responsibilities with respect to infrastructure, cybersecurity, emerging threats, supply, and emergency planning, coordination, response, and restoration; and

(B) upon request of a State, local, or tribal government or energy sector entity, and in consultation with other Federal agencies as appropriate, provision of technical assistance, support, and response capabilities with respect to energy security threats, risks, and incidents.

(b) At the time the name of any individual is submitted for confirmation to the position of Assistant Secretary, the President shall identify with particularity the function or functions described in subsection (a) (or any portion thereof) for which such individual will be responsible.

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