

TIMELY REVIEW OF INFRASTRUCTURE ACT

DECEMBER 8, 2020.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 1426]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 1426) to amend the Department of Energy Organization Act to address insufficient compensation of employees and other personnel of the Federal Energy Regulatory Commission, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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I. PURPOSE AND SUMMARY

Representatives Pete Olson (R-TX) and Michael Doyle (D-PA) introduced H.R. 1426, the “Timely Review of Infrastructure Act” to

address the insufficient compensation of employees and other personnel at the Federal Energy Regulatory Commission (FERC).

II. BACKGROUND AND NEED FOR THE LEGISLATION

FERC is composed of 12 program offices. Many of the employees and other personnel that enable the Commission to complete its mission are highly specialized in fields including archaeology, biology, geology, engineering, and environment. This level of expertise is necessary to support FERC's numerous programs across technology types.

Due to compensation constraints, FERC has trouble recruiting and retaining personnel necessary for the highly specialized nature of its work. For example, the Commission has had difficulty hiring engineers throughout the agency, with only 13 percent of new hires being engineers in 2018, the lowest level in the past four fiscal years. In the Office of Energy Projects, FERC saw about a 30 percent separation rate in its engineering staff. As a result, FERC issued 176 vacancy announcements, of which 39 percent of the postings failed to identify desirable candidates. Additionally, 18 percent of offers were turned down, with most candidates citing compensation rates as the main issue.¹

H.R. 1426 amends section 401 of the Department of Energy Organization Act to grant the FERC Chairman additional authority to adjust compensation for a category of employees and other personnel without regard to certain civil service laws. The Chairman must publicly certify that other approaches to retaining and attracting employees are inadequate and that the adjustment to compensation is necessary to carry out the Commission's functions in a timely, efficient, and effective manner. The bill also requires that the Chairman periodically submit to Congress a report including information related to hiring, vacancies, compensation, and efforts to retain and attract employees.

III. COMMITTEE HEARINGS

For the purposes of section 103(i) of H. Res. 6 of the 116th Congress the following hearings were used to develop or consider H.R. 1426:

On June 12, 2019, the Subcommittee on Energy held a hearing entitled, "Oversight of FERC: Ensuring Its Actions Benefit Consumers and the Environment." The Subcommittee received testimony from the following witnesses:

- The Honorable Neil Chatterjee, Chairman, Federal Energy Regulatory Commission
- The Honorable Cheryl A. LaFleur, Commissioner, Federal Energy Regulatory Commission
- The Honorable Richard Glick, Commissioner, Federal Energy Regulatory Commission
- The Honorable Bernard L. McNamee, Commissioner, Federal Energy Regulatory Commission

¹ Senate Committee on Energy & Natural Resources, *Subcommittee on Energy Legislative Hearing*, 116th Cong. (Sept. 11, 2019).

IV. COMMITTEE CONSIDERATION

Representatives Olson, Doyle, Thompson (D-MS), and Weber (R-TX) introduced H.R. 1426, the “Timely Review of Infrastructure Act”, on February 28, 2019, which was referred to the Committee on Energy and Commerce. Subsequently, on March 1, 2019, H.R. 1426 was referred to the Subcommittee on Energy. A hearing related to the legislation was held by the Subcommittee on June 12, 2019.

The Subcommittee on Energy held an open markup session to consider H.R. 1426 on January 9, 2020. No amendments were offered to the bill and the Subcommittee voted to forward H.R. 1426 favorably to the full Committee, without amendment, by a voice vote.

On July 15, 2020, the full Committee met in virtual open markup session, pursuant to notice, to consider the bill H.R. 1426 as approved by the Subcommittee on Energy. No amendments were offered to the bill during its consideration. At the conclusion of markup of the bill, the Committee on Energy and Commerce agreed to a motion on final passage offered by Mr. Pallone, Chairman of the committee, to order H.R. 1426 favorably reported to the House, without amendment, by a recorded vote of 48 yeas to 3 nays, a quorum being present.

V. COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list each record vote on the motion to report legislation and amendments thereto. The Committee advises that there was one record vote taken on H.R. 1426, on a motion by Mr. Pallone ordering H.R. 1426 be reported favorably to the House, without amendment. The motion on final passage of the bill was approved by a record vote of 48 yeas to 3 nays. The following is the record vote taken during Committee consideration, including the names of those members voting for and against the motion:

COMMITTEE ON ENERGY AND COMMERCE – 116th CONGRESS
ROLL CALL VOTE # 56

BILL: H.R. 1426, the “Timely Review of Infrastructure Act”

MOTION: A motion by Mr. Pallone of New Jersey to order H.R. 1426 reported favorably to the House, without amendment (**Final Passage**).

DISPOSITION: **AGREED TO** by a roll call vote of 48 yeas to 3 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Rep. Pallone	X			Rep. Walden	X		
Rep. Rush	X			Rep. Upton	X		
Rep. Eshoo	X			Rep. Shimkus	X		
Rep. Engel	X			Rep. Burgess	X		
Rep. DeGette	X			Rep. Scalise	X		
Rep. Doyle	X			Rep. Latta	X		
Rep. Schakowsky	X			Rep. Rodgers	X		
Rep. Butterfield	X			Rep. Guthrie	X		
Rep. Matsui	X			Rep. Olson	X		
Rep. Castor	X			Rep. McKinley	X		
Rep. Sarbanes	X			Rep. Kinzinger	X		
Rep. McNerney	X			Rep. Griffith			
Rep. Welch	X			Rep. Bilirakis	X		
Rep. Lujan	X			Rep. Johnson			
Rep. Tonko	X			Rep. Long	X		
Rep. Clarke		X		Rep. Buschon	X		
Rep. Loeb sack	X			Rep. Flores	X		
Rep. Schrader	X			Rep. Brooks	X		
Rep. Kennedy		X		Rep. Mullin	X		
Rep. Cardenas	X			Rep. Hudson	X		
Rep. Ruiz	X			Rep. Walberg	X		
Rep. Peters	X			Rep. Carter			
Rep. Dingell	X			Rep. Duncan	X		
Rep. Veasey	X			Rep. Gianforte	X		
Rep. Kuster	X						
Rep. Kelly	X						
Rep. Barragan		X					
Rep. McEachin							
Rep. Blunt Rochester	X						
Rep. Soto	X						
Rep. O'Halleran	X						

07/15/2020

VI. OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the oversight findings and recommendations of the Committee are reflected in the descriptive portion of the report.

VII. NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Pursuant to 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

VIII. CONGRESSIONAL BUDGET OFFICE ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 27, 2020.

Hon. FRANK PALLONE, Jr.,
*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. 1426, the Timely Review of Infrastructure Act.

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

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

H.R. 1426, Timely Review of Infrastructure Act			
As ordered reported by the House Committee on Energy and Commerce on July 15, 2020			
By Fiscal Year, Millions of Dollars	2021	2021-2025	2021-2030
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	0	0	not estimated
Statutory pay-as-you-go procedures apply?	No	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2031?	No	Contains intergovernmental mandate?	Yes, Under Threshold
		Contains private-sector mandate?	Yes, Under Threshold

H.R. 1426 would authorize the Federal Energy Regulatory Commission (FERC) to increase the compensation for certain positions if the agency certifies that the compensation under current law is

insufficient to retain or attract personnel. The certifications would be valid for five years and could be extended.

FERC employees whose work primarily involves using skills related to science, technology, engineering, or mathematics would be eligible for the higher compensation. Currently, the agency has about 400 positions that fit that description. Implementing the bill would increase FERC's costs to the extent that FERC increases employee compensation using the process authorized in H.R. 1426. According to the agency, the annual median salary for petroleum engineers at FERC is about \$50,000 less than the annual median salary for petroleum engineers in the Washington, D.C. area. Using the assumptions that the pay gap is similar for other affected personnel and that FERC would gradually close the gap over a five-year period, CBO estimates that FERC's real compensation costs would increase by about \$60 million over the 2021–2025 period.

However, because FERC is authorized to recover 100 percent of its costs through user fees, any change in agency costs (which are controlled through annual appropriation acts) would be offset by an equal change in fees that the commission charges. Thus, implementing those provisions would result in no net change in discretionary spending.

If FERC increased fees, it would increase the cost of an existing mandate on public and private entities, such as electric utilities, that are required to pay those fees. CBO estimates that the additional amount collected would average about \$12 million annually and fall well below the annual threshold established in the Unfunded Mandates Reform Act for intergovernmental and private-sector mandates (\$84 million and \$168 million in 2020, respectively, adjusted annually for inflation).

On November 7, 2019, CBO transmitted a cost estimate for S. 607, the Timely Review of Infrastructure Act, as reported by the Senate Committee on Energy and Natural Resources on October 22, 2019. Although the two pieces of legislation are similar, the estimated gross cost of implementing the bill is higher for H.R. 1426, because that estimate includes costs through 2025 whereas the estimate for S. 607 only went through 2024. In both estimates, there would be no net cost to FERC. In addition, S. 607 would impose additional reporting requirements on the Department of Energy that are not in H.R. 1426. CBO's estimated costs reflect that difference.

The CBO staff contacts for this estimate are Aaron Krupkin (for federal costs) and Fiona Forrester (for mandates). The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

IX. 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.

X. 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 address insufficient compensation of employees and other personnel of FERC.

XI. DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII, no provision of H.R. 1426 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.

XII. 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.

XIII. EARMARKS, 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. 1426 contains no earmarks, limited tax benefits, or limited tariff benefits.

XIV. ADVISORY COMMITTEE STATEMENT

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

XV. 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.

XVI. SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section. 1. Short title

Section 1 designates that the short title may be cited as the “Timely Review of Infrastructure Act”.

Sec. 2. Addressing insufficient compensation of employees and other personnel of the Federal Energy Regulatory Commission

Section 2(a) amends section 401 of the Department of Energy Organization Act by enabling the Chairman of FERC to fix the compensation for FERC employees or other personnel. The Chairman may fix compensation if the Chairman publicly certifies that compensation is insufficient to retain or attract employees or other personnel. Section 2(a) establishes that a certification shall apply to employees or other personnel who conduct work of a scientific, technological, engineering, or mathematical nature. The certification shall specify a maximum amount of compensation, be valid for five years, explain why other approaches for retaining and attracting employees and other personnel are inadequate, and not be overly broad. Certifications can be renewed for another five years no later than 90 days before the expiration of a certification. Section 2(a) also states that employees and other personnel hired during periods when the certification expired and was not renewed are not eligible for the level of compensation that would apply if the

certification was in effect. If the certification is renewed, the Chairman may fix the compensation of new hires. Employees or personnel whose compensation was fixed by a certification, may retain the level of compensation at the discretion of the Chairman. Section 2(a) mandates that the Chairman shall consult with the Director of the Office of Personnel Management in implementing this subsection.

Section 2(a) also authorizes the Chairman to obtain the services of experts and consultants. The Chairman shall limit use of experts and consultants and ensure that employment contracts are subject to renewal not less frequently than annually.

Section 2(b) mandates that the Chairman submit a report on hiring, vacancies, and compensation at FERC to the Committee on Energy and Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate no later than one year after enactment, and every two years thereafter for 10 years. Reports should include trends and efforts to retain and attract employees and other personnel.

Section 2(c) establishes that the amendment shall apply beginning 30 days after the date of enactment.

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

DEPARTMENT OF ENERGY ORGANIZATION ACT

* * * * *

TITLE IV—FEDERAL ENERGY REGULATORY COMMISSION

APPOINTMENT AND ADMINISTRATION

SEC. 401. (a) There is hereby established within the Department an independent regulatory commission to be known as the Federal Energy Regulatory Commission.

(b)(1) The Commission shall be composed of five members appointed by the President, by and with the advice and consent of the Senate. One of the members shall be designated by the President as Chairman. Members shall hold office for a term of 5 years and may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office. Not more than three members of the Commission shall be members of the same political party. Any Commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A Commissioner may continue to serve after the expiration of his term until his successor is appointed and has been confirmed and taken the oath of Office, except that such Commissioner shall not serve beyond the end of the session of the Congress in which such term expires. Members of the Commission shall not engage in any other business, vocation, or employment while serving on the Commission.

(2) Notwithstanding the third sentence of paragraph (1), the terms of members first taking office after the date of enactment of the Federal Energy Regulatory Commission Member Term Act of 1990 shall expire as follows:

(A) In the case of members appointed to succeed members whose terms expire in 1991, one such member's term shall expire on June 30, 1994, and one such member's term shall expire on June 30, 1995, as designated by the President at the time of appointment.

(B) In the case of members appointed to succeed members whose terms expire in 1992, one such member's term shall expire on June 30, 1996, and one such member's term shall expire on June 30, 1997, as designated by the President at the time of appointment.

(C) In the case of the member appointed to succeed the member whose term expires in 1993, such member's term shall expire on June 30, 1998.

(c) The Chairman shall be responsible on behalf of the Commission for the executive and administrative operation of the Commission, including functions of the Commission with respect to (1) the appointment and employment of hearing examiners in accordance with the provisions of title 5, United States Code, (2) the selection, appointment, and fixing of the compensation of such personnel as he deems necessary, including an executive director, (3) the supervision of personnel employed by or assigned to the Commission, except that each member of the Commission may select and supervise personnel for his personal staff, (4) the distribution of business among personnel and among administrative units of the Commission, and (5) the procurement of services of experts and consultants in accordance with section 3109 of title 5, United States Code. The Secretary shall provide to the Commission such support and facilities as the Commission determines it needs to carry out its functions.

(d) In the performance of their functions, the members, employees, or other personnel of the Commission shall not be responsible to or subject to the supervision or direction of any officer, employee, or agent of any other part of the Department.

(e) The Chairman of the Commission may designate any other member of the Commission as Acting Chairman to act in the place and stead of the Chairman during his absence. The Chairman (or the Acting Chairman in the absence of the Chairman) shall preside at all sessions of the Commission and a quorum for the transaction of business shall consist of at least three members present. Each member of the Commission, including the Chairman, shall have one vote. Actions of the Commission shall be determined by a majority vote of the members present. The Commission shall have an official seal which shall be judicially noticed.

(f) The Commission is authorized to establish such procedural and administrative rules as are necessary to the exercise of its functions. Until changed by the Commission, any procedural and administrative rules applicable to particular functions over which the Commission has jurisdiction shall continue in effect with respect to such particular functions.

(g) In carrying out any of its functions, the Commission shall have the powers authorized by the law under which such function

is exercised to hold hearings, sign and issue subpoenas, administer oaths, examine witnesses, and receive evidence at any place in the United States it may designate. The Commission may, by one or more of its members or by such agents as it may designate, conduct any hearing or other inquiry necessary or appropriate to its functions, except that nothing in this subsection shall be deemed to supersede the provisions of section 556 of title 5, United States Code relating to hearing examiners.

(h) The principal office of the Commission shall be in or near the District of Columbia, where its general sessions shall be held, but the Commission may sit anywhere in the United States.

(i) For the purpose of section 552b of title 5, United States Code, the Commission shall be deemed to be an agency. Except as provided in section 518 of title 28, United States Code, relating to litigation before the Supreme Court, attorneys designated by the Chairman of the Commission may appear for, and represent the Commission in, any civil action brought in connection with any function carried out by the Commission pursuant to this Act or as otherwise authorized by law.

(j) In each annual authorization and appropriation request under this Act, the Secretary shall identify the portion thereof intended for the support of the Commission and include a statement by the Commission (1) showing the amount requested by the Commission in its budgetary presentation to the Secretary and the Office of Management and Budget and (2) as assessment of the budgetary needs of the Commission. Whenever the Commission submits to the Secretary, the President, or the Office of Management and Budget, any legislative recommendation or testimony, or comments on legislation, prepared for submission to Congress, the Commission shall concurrently transmit a copy thereof to the appropriate committees of Congress.

(k) *ADDRESSING INSUFFICIENT COMPENSATION OF EMPLOYEES AND OTHER PERSONNEL OF THE COMMISSION.*—

(1) *IN GENERAL.*—*Notwithstanding any other provision of law, if the Chairman publicly certifies that compensation for a category of employees or other personnel of the Commission is insufficient to retain or attract employees and other personnel to allow the Commission to carry out the functions of the Commission in a timely, efficient, and effective manner, the Chairman may fix the compensation for the category of employees or other personnel without regard to chapter 51 and subchapter III of chapter 53 of title 5, United States Code, or any other civil service law.*

(2) *CERTIFICATION REQUIREMENTS.*—*A certification issued under paragraph (1) shall—*

(A) apply with respect to a category of employees or other personnel responsible for conducting work of a scientific, technological, engineering, or mathematical nature;

(B) specify a maximum amount of reasonable compensation for the category of employees or other personnel;

(C) be valid for a 5-year period beginning on the date on which the certification is issued;

(D) be no broader than necessary to achieve the objective of retaining or attracting employees and other personnel to allow the Commission to carry out the functions of the

Commission in a timely, efficient, and effective manner; and

(E) include an explanation for why the other approaches available to the Chairman for retaining and attracting employees and other personnel are inadequate.

(3) RENEWAL.—

(A) IN GENERAL.—Not later than 90 days before the date of expiration of a certification issued under paragraph (1), the Chairman shall determine whether the certification should be renewed for a subsequent 5-year period.

(B) REQUIREMENT.—If the Chairman determines that a certification should be renewed under subparagraph (A), the Chairman may renew the certification, subject to the certification requirements under paragraph (2) that were applicable to the initial certification.

(4) NEW HIRES.—

(A) IN GENERAL.—An employee or other personnel that is a member of a category of employees or other personnel that would have been covered by a certification issued under paragraph (1), but was hired during a period in which the certification has expired and has not been renewed under paragraph (3) shall not be eligible for compensation at the level that would have applied to the employee or other personnel if the certification had been in effect on the date on which the employee or other personnel was hired.

(B) COMPENSATION OF NEW HIRES ON RENEWAL.—On renewal of a certification under paragraph (3), the Chairman may fix the compensation of the employees or other personnel described in subparagraph (A) at the level established for the category of employees or other personnel in the certification.

(5) RETENTION OF LEVEL OF FIXED COMPENSATION.—A category of employees or other personnel, the compensation of which was fixed by the Chairman in accordance with paragraph (1), may, at the discretion of the Chairman, have the level of fixed compensation for the category of employees or other personnel retained, regardless of whether a certification described under that paragraph is in effect with respect to the compensation of the category of employees or other personnel.

(6) CONSULTATION REQUIRED.—The Chairman shall consult with the Director of the Office of Personnel Management in implementing this subsection, including in the determination of the amount of compensation with respect to each category of employees or other personnel.

(7) EXPERTS AND CONSULTANTS.—

(A) IN GENERAL.—Subject to subparagraph (B), the Chairman may—

(i) obtain the services of experts and consultants in accordance with section 3109 of title 5, United States Code;

(ii) compensate those experts and consultants for each day (including travel time) at rates not in excess of the rate of pay for level IV of the Executive Schedule under section 5315 of that title; and

(iii) pay to the experts and consultants serving away from the homes or regular places of business of the experts and consultants travel expenses and per diem in lieu of subsistence at rates authorized by sections 5702 and 5703 of that title for persons in Government service employed intermittently.

(B) LIMITATIONS.—The Chairman shall—

(i) to the maximum extent practicable, limit the use of experts and consultants pursuant to subparagraph (A); and

(ii) ensure that the employment contract of each expert and consultant employed pursuant to subparagraph (A) is subject to renewal not less frequently than annually.

* * * * *

