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6 MARKUP OF: H.R. 4606, H.R. 5174,

7 H.R. 5175, H.R. 5239, AND H.R. 5240

8 WEDNESDAY, APRIL 18, 2018

9 House of Representatives

10 Subcommittee on Energy

11 Committee on Energy and Commerce

12 Washington, D.C.

13

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16 The subcommittee met, pursuant to call, at 10:00 a.m.,
17 in Room 2123 Rayburn House Office Building, Hon. Fred Upton
18 [chairman of the subcommittee] presiding.

19 Members present: Representatives Upton, Olson, Barton,
20 Shimkus, Latta, Harper, McKinley, Kinzinger, Griffith,
21 Johnson, Long, Bucshon, Flores, Mullin, Hudson, Cramer,
22 Walberg, Duncan, Walden (ex officio), Rush, McNerney, Peters,

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23 Green, Doyle, Castor, Sarbanes, Welch, Tonko, Loeb sack,
24 Schrader, Kennedy, Butterfield, and Pallone (ex officio).
25 Staff present: Mike Bloomquist, Deputy Staff Director;
26 Samantha Bopp, Staff Assistant; Daniel Butler, Staff
27 Assistant; Karen Christian, General Counsel; Kelly Collins,
28 Legislative Clerk, Energy/Environment; Zachary Dareshori,
29 Staff Assistant; Jordan Davis, Director of Policy and
30 External Affairs; Wyatt Ellertson, Professional Staff,
31 Energy/Environment; Margaret Tucker Fogarty, Staff Assistant;
32 Melissa Froelich, Chief Counsel, Digital Commerce and
33 Consumer Protection; Adam Fromm, Director of Outreach and
34 Coalitions; Ali Fulling, Legislative Clerk, Oversight &
35 Investigations, Digital Commerce and Consumer Protection;
36 Jordan Haverly, Policy Coordinator, Environment; Zach Hunter,
37 Director of Communications; Peter Kielty, Deputy General
38 Counsel; Ryan Long, Deputy Staff Director; Mary Martin, Chief
39 Counsel, Energy/Environment; Drew McDowell, Executive
40 Assistant; Brandon Mooney, Deputy Chief Counsel, Energy; Mark
41 Ratner, Policy Coordinator; Annelise Rickert, Counsel,
42 Energy; Dan Schneider, Press Secretary; Peter Spencer,
43 Professional Staff Member, Energy; Jason Stanek, Senior
44 Counsel, Energy; Austin Stonebraker, Press Assistant; Evan

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45 Viau, Legislative Clerk, Communications & Technology; Hamlin
46 Wade, Special Advisor, External Affairs; Everett Winnick,
47 Director of Information Technology; Jeff Carroll, Minority
48 Staff Director; Elizabeth Ertel, Minority Deputy Clerk; Jean
49 Fruci, Minority Energy and Environment Policy Advisor;
50 Tiffany Guarascio, Minority Deputy Staff Director and Chief
51 Health Advisor; Caitlin Haberman, Minority Professional Staff
52 Member; Rick Kessler, Minority Senior Advisor and Staff
53 Director, Energy and Environment; John Marshall, Minority
54 Policy Coordinator; Dan Miller, Minority Policy Analyst;
55 Alexander Ratner, Minority Policy Analyst; Tim Robinson,
56 Minority Chief Counsel; Andrew Souvall, Minority Director of
57 Communications, Outreach and Member Services; and Tuley
58 Wright, Minority Energy and Environment Policy Advisor.

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59 Mr. Upton. Good morning, Mr. Shimkus. So the
60 subcommittee is going to come to order. And the chair
61 recognizes himself for an opening statement.

62 Before we get started, I want to wish our friend, Dan
63 Schneider, where is Dan? There he is. One of our press
64 secretaries farewell. He has been here 3 years. This is his
65 last week at Energy and Commerce. He did a wonderful job in
66 that role for me, as chair of the full committee, and he has
67 continued to do a terrific job under Chairman Walden. Thank
68 you for your hard work. We look forward to seeing you again,
69 but not with your hand up like that. So welcome and thank
70 you.

71 [Applause.]

72 So today's markup is going to include five important
73 energy bills addressing cyber, emergency preparedness, energy
74 security. All five bills are bipartisan and build upon the
75 committee's impressive record of oversight hearings in
76 previously enacted bills aimed at protecting and
77 strengthening our nation's energy infrastructure.

78 I want to start by focusing my comments on one of the
79 bills that we are calling up today, H.R. 5175, the Pipeline
80 and LNG Facility Cybersecurity Preparedness Act which I

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81 introduced with Mr. Loeb sack. And as we have learned in
82 classified hearings and a good number of other events,
83 certainly through the recent testimonies of Secretary Perry
84 and FERC Commissioners, cyber attacks are a real and a
85 growing threat.

86 To quote Secretary Perry: "As the nation's top 100
87 pipelines alone supply nearly 84 percent of the nation's
88 energy, pipelines represent a critical part of North
89 America's energy backbone. A coordinated government approach
90 to the cyber and physical security of pipelines, led by the
91 DOE, is essential to ensuring the safe and reliable flow of
92 energy across the U.S.

93 My intent with this legislation is to strengthen DOE's
94 role to coordinate cyber-response, collaborate, and build
95 capacity within States and the energy sector. This is not a
96 regulatory program, and we are not authorizing DOE to develop
97 mandatory minimum standards. This bill is about conducting
98 research, communicating threats, and coordinating the
99 response across government.

100 Today's markup will include four other bills focused on
101 these same themes, including a bill introduced by Mr. Walberg
102 and Mr. Rush that updates the DOE Organization Act to

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103 strengthen its emergency response capabilities.

104 Mr. Latta and Mr. McNerney have taken the lead on two
105 important bills related to the cybersecurity of our nation's
106 electricity grid. H.R. 5239, the Cyber Sense Act,
107 establishes a voluntary DOE that tests the cybersecurity of
108 products and technologies intended for use in the bulk-power
109 system. H.R. 5240, the Enhancing Grid Security through
110 Public-Private Partnerships Act, requires DOE to establish a
111 program to facilitate and encourage public-private
112 partnerships to promote and advance the physical and
113 cybersecurity of electric utilities that have fewer resources
114 due to size or region. And finally, Mr. Johnson's bill which
115 will streamline DOE's process for approving small-scale
116 shipments of LNG, which will open new markets in the
117 Caribbean, Central America, and South America for cleaner-
118 burning natural gas.

119 Collectively, these bills represent an important step in
120 the right direction in better protecting our nation's energy
121 infrastructure against cyber and physical threats and
122 strengthening our nation's security.

123 I want to thank all members for their work and I
124 recognize Mr. Rush for an opening statement.

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125 [The prepared statement of Mr. Upton follows:]

126

127 *****INSERT 1*****

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128 Mr. Rush. Good morning. Thank you, Mr. Chairman. Mr.
129 Chairman, this is a quite important markup today on the
130 legislation addressing cybersecurity and emergency response
131 issues on H.R. 4606 ensuring small scale LNG projects.

132 I support the four cybersecurity bills that are before
133 us and they will help to address one of the most pressing
134 issues we face, attacking our energy grid from those who
135 might wish to do us harm.

136 And thank you, Mr. Chairman, as you know, in our hearing
137 with FERC Commissioners yesterday, Chairman McIntyre cited
138 cybersecurity issues as one of the biggest concerns
139 confronting him and the agency.

140 So Mr. Chairman, I would like to commend all the
141 sponsors and the co-sponsors of the cybersecurity bills being
142 marked up today, for their thoughtful attention to this
143 critical issue.

144 I want to specifically acknowledge Mr. Walberg of
145 Michigan for working with my office on the Energy Emergency
146 and Leadership Act. As you know, Mr. Chairman, this bill
147 will establish a new DOE Assistant Secretary position with
148 jurisdiction over all energy emergency and security functions
149 relating to energy supply, infrastructure, and cybersecurity.

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150 With all the focus on protecting our infrastructure, I
151 believe it is fitting and appropriate to elevate the person
152 responsible for this task up to the assistant secretary level
153 in the Department of Energy.

154 Mr. Chairman, you mentioned that all five of these bills
155 are bipartisan agreement, but unfortunately, Mr. Chairman, I
156 am not able to support H.R. 4606, Ensuring Small Scale LNG
157 Certainty and Access Act. This bill would amend Section 3(c)
158 of the Natural Gas Act to consider application for exports of
159 small volumes of natural gas consisting of 0.14 billion cubic
160 feet per day or less to be in the public interest.

161 This bill appears to be nothing but a pretty obvious
162 legislative earmark and I can't support it.

163 Thank you, Mr. Chairman. I yield back the balance of my
164 time.

165 Mr. Upton. The gentleman yields back. The chair would
166 recognize the ranking member of the full committee, Mr.
167 Pallone from New Jersey.

168 Mr. Pallone. Thank you, Mr. Chairman. Today, the
169 subcommittee will consider four cybersecurity bills and one
170 bill addressing liquefied natural gas exports. I was hoping
171 this would be a bipartisan markup of consensus cybersecurity

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172 legislation. But unfortunately, the majority added the
173 Ensuring Small Scale LNG Certainty and Access Act to this
174 markup just before it was noticed and that is a bill I can't
175 support.

176 The four bipartisan cybersecurity bills before us today
177 will enhance the Department of Energy's efforts to strengthen
178 the cybersecurity of our nation's electricity grid and
179 pipeline network. It is critical that we ensure our nation's
180 energy infrastructure is sufficiently protected from cyber
181 threats and I support these four bipartisan bills and commend
182 my colleagues who have taken leadership on this issue.

183 But the small scale LNG bill is another situation. My
184 opposition to LNG exports is probably no surprise to anyone.
185 I have long voiced my concern that an unrestricted export
186 policy could significantly impact domestic natural gas prices
187 and adversely affect American consumers and manufacturers.
188 This bill appears to be an attempt to codify the Trump
189 administration's recently proposed rule to expedite the
190 approval of small scale natural gas exports. In my opinion,
191 that rule is already problematic. But this bill is even
192 worse to the environment than the proposed rule.

193 Let me speak to that. It would allow expedited approval

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194 of small LNG facilities so long as the proposal is below a
195 certain threshold and does not require an environmental
196 review under NEPA. That is the Trump administration rule.
197 And that rule is also a concerning carve-out for a subset of
198 LNG applications, specifically it declares that all small
199 scale exports are always in the public interest, removes long
200 standing consumer protections, and prevents the public from
201 having an opportunity to know about or provide input on
202 export proposals. But despite its flaws, the
203 administration's small scale LNG rule is a far better option
204 than this legislation which would keep the volume limit, but
205 completely abandon the requirement that applications qualify
206 for a categorical exclusion from NEPA. In other words, this
207 bill would allow for the approval of facilities that would
208 currently undergo serious environmental review. And I
209 adamantly oppose any efforts to remove these environmental
210 protections.

211 But leave it to the Republican leadership of this
212 committee to mark up the bill that has even fewer
213 environmental safeguards than a Trump administration's
214 proposal. Who is going to benefit from this legislation?
215 According to the Congressional Research Service, only one

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216 project currently meets the capacity requirements of the
217 administration=s small scale LNG rule, but does not qualify
218 for a categorical exclusion and that is Eagle LNG Partners in
219 Jacksonville. It is essentially a private bill, an earmark,
220 which I thought Republicans opposed.

221 I brought this up during our legislative hearing and
222 still to this day, no one has been able to explain why this
223 particular project deserves such special treatment. I am
224 still waiting for an answer.

225 So Mr. Chairman, I think that bill is unnecessary. It
226 is bad policy. And it is a legislative earmark and we should
227 not advance it to the full committee. And I urge my
228 colleagues to oppose it. I yield back.

229 Mr. Upton. The gentleman yields back. The chair
230 recognizes the chairman of the full committee, Mr. Walden,
231 for an opening statement.

232 Mr. Walden. Good morning, Mr. Chairman. I want to
233 thank you for this markup. And the five bipartisan bills, I
234 think, reflect two key themes in our DOE modernization
235 effort: ensuring the Department of Energy has the tools it
236 needs to execute its core energy security mission, and
237 reorienting DOE's approach towards domestic energy

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238 infrastructure to capitalize on our nation's energy
239 abundance.

240 The potential for cyber attacks by foreign nations and
241 other actors against our nation's business and energy systems
242 highlights one of the significant and growing threats to the
243 reliable supply of energy in the United States.

244 When you consider the rapid deployment of digital
245 technology, the interconnected nature of our oil and gas and
246 electricity systems, and the role of electricity across all
247 sectors of our domestic economy, DOE's responsibilities for
248 ensuring the reliable delivery of energy is much more
249 complicated than the fuel supply disruptions of the late
250 1970s.

251 We have heard from Secretary Perry and the FERC
252 Commissioners that we can, and should, do more to combat
253 cyber threats to our nation's energy infrastructure.

254 Four of the bills we will consider today take practical
255 steps to ensure the Department of Energy can more effectively
256 carry out its emergency and security activities in the energy
257 sector and ensure the continued safe and reliable flow of
258 energy across the United States.

259 H.R. 5174, the Energy Emergency Leadership Act, by Mr.

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260 Walberg and Ranking Member Rush, elevates the leadership of
261 DOE's emergency response and cybersecurity operations to the
262 assistant secretary level, which reflects the importance of
263 this mission across the department and in interagency
264 coordination.

265 H.R. 5175, the Pipeline and LNG Facility Cybersecurity
266 Preparedness Act, by Chairman Upton and Mr. Loeb sack,
267 establishes DOE's leadership in coordinating the government
268 and energy sector's approach to cyber and physical security
269 of pipelines.

270 H.R. 5239, the Cyber Sense Act, by Chairman Latta and
271 Mr. McNerney, establishes a voluntary program to help
272 utilities and other stakeholders identify and promote cyber-
273 secure products for use in the bulk-power grid and industrial
274 control systems.

275 And H.R. 5240, the Enhancing Grid Security through
276 Public-Private Partnership Act, also introduced by Mr.
277 McNerney and Mr. Latta, would help bring DOE's technical
278 know-how through public-private partnerships to help improve
279 the cybersecurity of electric utilities, especially those
280 utilities that have fewer resources due to their size or
281 region of the country.

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282 Finally, turning to the energy abundance issue, we are
283 also considering H.R. 4606, Ensuring Small Scale LNG
284 Certainty and Access Act, introduced by Mr. Johnson. This
285 bipartisan bill would codify a proposed DOE regulation to
286 encourage small shipments of LNG to countries in Latin
287 America and the Caribbean, putting small scale LNG exports on
288 a level playing field with pipeline exports to Canada and
289 Mexico.

290 Taken together, these bills represent important energy
291 security and energy infrastructure reforms that will better
292 position the Department of Energy to serve the nation's
293 interests going forward. I commend our members for working on
294 this legislation and I urge my colleagues to support these
295 measures.

296 And Mr. Chairman, before I yield back, I want to draw
297 special attention and thank you for the service of Dan
298 Schneider who has been a terrific member of our committee
299 staff for the last 3 years and will be leaving. He has been
300 a real important part of our communications team and in fact,
301 I think he is longest-serving member of the communications
302 team. And while we hate to see him leave, we are excited for
303 his new opportunity. And so I hope the committee will join

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304 me in thanking Dan for service to the Energy and Commerce
305 Committee.

306 [Applause.]

307 [The prepared statement of Mr. Walden follows:]

308

309 *****INSERT 2*****

310

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311 Mr. Upton. The chair would remind members that pursuant
312 to committee rules, all members' opening statements will be
313 made part of the record. Are there further opening
314 statements?

315 Mr. Latta is recognized for 1 minute.

316 Mr. Latta. Well, thank you, Mr. Chairman. And I thank
317 the chairman for holding today's markup. I am pleased to see
318 the markup of two bills I have introduced and worked on
319 closely with Congressman McNerney, the first being H.R. 5239,
320 the Cyber Sense Act; and the second, H.R. 5240, the Enhancing
321 Grid Security through Public-Private Partnerships Act.

322 H.R. 5239 directs the Secretary of Energy to establish a
323 voluntary Cyber Sense program to test the cybersecurity of
324 products and technologies intended for use in the bulk-power
325 system. At recent subcommittee hearings, both Secretary
326 Perry and the FERC Commissioners expressed support for this
327 policy as a way to help improve the grid's resiliency.

328 We are also considering H.R. 5240 which would direct DOE
329 to facilitate and encourage public-private partnerships in
330 order to improve cybersecurity of electric utilities. These
331 bills will foster a collaborative relationship between DOE
332 and the utilities and ensure that our grid becomes

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333 increasingly resilient in the face of cyber attacks.

334 And Mr. Chairman, I thank you for the markup today and
335 look forward to moving these bills.

336 Mr. Upton. Mr. McNerney.

337 Mr. McNerney. I thank the chair. I am going to
338 basically say the same thing as Bob Latta. But I am going to
339 say it anyway. I thank the chairman and the ranking member
340 for their leadership on the bills that we have before us
341 today.

342 I have worked closely with my colleague, Bob Latta, on
343 both of the Cyber Sense Act and the Enhanced Grid Security
344 through Public-Private Partnerships Act. These bills work to
345 ensure that our grid is protected against cyber attacks. We
346 have recently seen how vulnerable our society and internet
347 are to foreign interference. If an outside entity were to
348 attack our electrical grid, we could go dark without
349 electricity for months.

350 Cyber Sense requires the Department of Energy to
351 determine a testing process for Cyber Sense products and to
352 establish a cybersecurity vulnerability reporting process
353 database, though currently, a voluntary program. I hope the
354 public and private energy holders recognize the importance of

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355 being secure against cyber threats. The Enhancing Grid
356 Security through Public-Private Partnerships Act provides
357 cybersecurity training to electric utilities and promotes
358 sharing best practices and data collection in the electric
359 sector.

360 While this is also voluntary. I hope that if it proves
361 successful, Congress will fund this program in the future.
362 It also instructs the Secretary to update the internet cost
363 estimate calculator at least every 2 years. This calculator
364 is used by electric utilities in planning for interruption
365 costs and estimating cost benefits associated with the
366 reliability investments.

367 Thank you, Mr. Chairman. I yield back.

368 Mr. Upton. Mr. Johnson.

369 Mr. Johnson. Thank you, Mr. Chairman. I urge my
370 colleagues to support H.R. 4606, Ensuring Small Scale LNG
371 Certainty and Access Act. There is interest and potential in
372 the Caribbean and Central America for American LNG although
373 not in the large quantities that the current large scale
374 domestic exporting facilities were built to address.

375 Creating regulatory certainty around small scale exports
376 will help encourage industries involved in this technology to

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377 strongly consider further investments and new opportunities.

378 This bill is about helping to fully realize that
379 potential and can bring about positive geopolitical,
380 economic, and even environmental benefits as Venezuelan fuel
381 oil is displaced which has been used to gain influence in the
382 region.

383 This should not be a partisan vote. The previous
384 administration recognized the need for U.S. energy engagement
385 with its creation of the Caribbean Energy Security
386 Initiative. This bill helps achieve these goals.

387 Lastly, H.R. 4606 is about updating the Natural Gas Act
388 which currently does not differentiate between large and
389 small scale LNG projects. In this day and age, when the U.S.
390 has become the world's leading producer of oil and natural
391 gas, does that really still make sense? I think not, Mr.
392 Chairman, and I urge my colleagues to vote yes on this
393 important bill. I yield back.

394 Mr. Upton. Any members wishing to speak? Mr. Green.

395 Mr. Green. Thank you, Mr. Chairman. Today, we are
396 marking up four different cybersecurity bills. It will
397 strengthen the grid and our country's security in a variety
398 of ways. We also are considering H.R. 4606, the Ensuring

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399 Small Scale LNG Certainty and Access Act. H.R. 5174, the
400 Energy Emergency Leadership Act by Mr. Walberg and Mr. Rush,
401 would create a new assistant secretary of DOE tasked with
402 overseeing all energy emergencies and security functions
403 related to the energy supply, infrastructure, and
404 cybersecurity. A coordinated approach to these issues would
405 help us defend against the new emerging cyber threats we have
406 seen in the last year and I support the bill and thank both
407 of our colleagues, Mr. Walberg and Ranking Member Rush, for
408 their hard work.

409 H.R. 5175, the Pipeline and LNG Facility Cybersecurity
410 Preparedness Act by our chair of our committee and
411 Representative Loeb sack, will establish a program that
412 further strengthens the physical and cybersecurity of the
413 natural gas transmission and distribution system in our
414 country. I support that bill.

415 Representative Latta's and Representative McNerney's
416 Cyber Sense Act of 2018 will create a voluntary Cyber Sense
417 program in DOE to identify cybersecure products that could be
418 used in the bulk-power system and I support the bill.

419 I also support H.R. 5240 the Enhancing Grid Security
420 through Public-Private Partnerships Act. The security of the

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421 grid cannot be guaranteed by the Federal Government alone. A
422 cooperative effort is the best way to move forward in
423 ensuring secure energy for all Americans.

424 Unfortunately, at this point I cannot support the last
425 bill being considered, H.R. 4606 Ensuring Small Scale LNG
426 Certainty and Access Act. The bill would codify the recently
427 proposed program at DOE which expedites the export of LNG
428 from small-scale facilities. I am a proponent of this DOE
429 program, but this bill removes protections that are currently
430 in place at the Department. The Department of Energy
431 currently requires any small scale LNG facility that wants to
432 use this expedited approval to qualify for this categorical
433 exclusion under DOE's National Environmental Policy Act
434 regulations.

435 As it is currently written, this protection will no
436 longer be required and it is for this reason I cannot support
437 the bill in its current form.

438 I hope to clarify here that I am a big supporter of LNG.
439 I want to support this bill and I think the rule at DOE is a
440 well-balanced approach and I wish the legislation reflected
441 that. I hope the majority will work with me on this issue so
442 the bill might move forward in the future in a bipartisan

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443 basis. It is possible to remove barriers and increase
444 competition for small-scale operators in the LNG market while
445 still following standard environmental regulations.

446 I thank you and I yield back my time.

447 Mr. Upton. The gentleman's time has expired. The chair
448 recognizes Mr. Walberg.

449 Mr. Walberg. Thank you, Mr. Chairman. A lot has
450 changed in cyber and in energy since Mr. Latta was born on
451 this day, many years ago. And I am glad to see you.

452 Mr. Upton. At least his time has not expired yet.

453 Mr. Walberg. I was going to say that, Mr. Chairman. I
454 am glad to see this committee is taking a hard look at
455 cybersecurity at DOE. My colleague, Mr. Rush, and I
456 introduced H.R. 5174, the Energy Emergency Leadership Act.
457 This is a bipartisan and practical amendment to DOE's core
458 statute to elevate DOE's energy security emergency functions
459 to a level and agency leadership that is reflective of its
460 importance across the agency, the government, and the nation.

461 DOE is creating a new Office of Cybersecurity, Energy
462 Security, and Emergency Response which the Secretary plans to
463 assign to an assistant secretary. Our bill complements this
464 effort while recognizing that because this energy emergency

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465 mission will remain vital to the nation for years to come, it
466 should be established in the Department of Energy
467 Organization Act so we can have continuity of leadership
468 through future administrations with the appropriate level of
469 accountability. I urge its support and thanks to the
470 chairman for bringing it up. I yield back.

471 Mr. Upton. The gentleman yields back. Other members
472 wishing to give an opening statement? The gentleman from
473 Texas, Mr. Olson.

474 Mr. Olson. Very briefly, for the record, Maria Latta
475 works at my alma mater, Rice University. She just sent me a
476 text message to tell the committee, her dad, Bob, turned 62
477 years old today. That is 3 score and 2 years, for the
478 record. I yield back.

479 Mr. Upton. The gentleman yields back and the chair
480 would now call up H.R. 5174 and ask the Clerk to report.

481 [The bill follows:]

482

483 *****COMMITTEE INSERT 3*****

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484 The Clerk. H.R. 5174 to amend the Department of Energy
485 Organization Act with respect to functions assigned to
486 assistant secretaries and for other purposes.

487 Mr. Upton. Without objection, the first reading of the
488 bill is dispensed with. The bill will be open for amendment
489 at any point. So ordered. Are there any bipartisan
490 amendments to the bill? Seeing none, are there any other
491 amendments to the bill?

492 Seeing none, the question now occurs in forwarding H.R.
493 5174 to the full committee. All those in favor will say aye.

494 Those opposed, say no?

495 The ayes have it and the bill is agreed to.

496 The chair now will call up H.R. 5175 and ask the Clerk
497 to report.

498 [The bill follows:]

499

500 *****COMMITTEE INSERT 4*****

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501 The Clerk. H.R. 5175 to require the Secretary of Energy
502 to carry out a program relating to physical security and
503 cybersecurity for pipelines and liquefied natural gas
504 facilities.

505 Mr. Upton. Without objection, the first reading of the
506 bill is again dispensed with. The bill be open for amendment
507 at any point. So ordered. And the chair will recognize
508 himself to offer an amendment in the nature of a substitute
509 and the Clerk will report the amendment.

510 [The amendment offered by Mr. Upton follows:]

511

512 *****COMMITTEE INSERT 5*****

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513 The Clerk. Amendment in the nature of a substitute to
514 H.R. 5175 offered by Mr. Upton.

515 Mr. Upton. Without objection, the reading of the
516 amendment is dispensed with and the chair is recognized for 5
517 minutes in support of his amendment.

518 This amendment clarifies that the policies and
519 procedures to coordinate federal agencies, states, and the
520 energy sector includes councils or other entities engaging
521 and sharing analysis or sector coordinating. The amendment
522 also clarifies that the Secretary of Energy shall provide
523 technical tools to help the energy sector evaluate,
524 prioritize, and improve physical security and cybersecurity.

525 Are there any bipartisan amendments to this amendment in
526 the nature of a substitute?

527 Seeing none, are there any amendments?

528 Seeing none, if there is no further discussion, the vote
529 occurs on the amendment in the nature of a substitute.

530 All those in favor shall signify by saying aye.

531 Those opposed say no.

532 The amendment in the nature of a substitute is agreed
533 to.

534 The question now occurs on forwarding H.R. 5175, as

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535 amended, to the full committee.

536 All those in favor will say aye.

537 All those opposed say no.

538 The ayes appear to have it. The ayes have it and the
539 bill is agreed to.

540 The chair now calls up H.R. 5239 and ask the Clerk to
541 report.

542 [The bill follows:]

543

544 *****COMMITTEE INSERT 6*****

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545 The Clerk. H.R. 5239, to require the Secretary of
546 Energy to establish a voluntary Cyber Sense program to
547 identify and promote cybersecure products intended for the
548 use in the bulk-power system and for other purposes.

549 Mr. Upton. Without objection the first reading of the
550 bill is dispensed with. The bill will be open for amendment
551 at any point. Are there any bipartisan amendments to the
552 bill?

553 The gentleman from Ohio.

554 Mr. Latta. Mr. Chairman, I have an amendment in the
555 nature of a substitute.

556 [The amendment offered by Mr. Latta follows:]

557

558 *****COMMITTEE INSERT 7*****

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559 Mr. Upton. The Clerk will report that amendment.

560 The Clerk. Amendment in the nature of a substitute to
561 H.R. 5239 offered by Mr. Latta.

562 Mr. Upton. Without objection, the reading of the
563 amendment is dispensed with and Mr. Latta is recognized for 5
564 minutes in support of the amendment.

565 Mr. Latta. Well, thank you very much, Mr. Chairman.
566 The amendment in the nature of a substitute, H.R. 5239, the
567 Cyber Sense Act makes several changes to clarify the scope of
568 the program under the proposed language.

569 The amendment focuses the intent of the program on
570 testing the cybersecurity of products and technologies for
571 the use in bulk-power systems. The amendment also ensures
572 that technologies are included in the testing and not only
573 products. These changes reflect technical assistance that
574 can be received from the Department of Energy. The Cyber
575 Sense program complements and builds upon the DOE program
576 currently under development related to cybersecurity testing.
577 And I would move the amendment in for acceptance.

578 Mr. Upton. The gentleman yields back. Are there any
579 bipartisan amendments to the amendment in the nature of a
580 substitute?

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581 Seeing none, are there any amendments? Seeing none. If
582 there is no further discussion, a vote occurs on the
583 amendment in the nature of a substitute. All those in favor
584 will say aye.

585 Those opposed, say no.

586 The ayes have it, and the amendment is agreed to.

587 The question now occurs on H.R. 5239, as amended, to the
588 full committee. All those in favor will say aye.

589 Those opposed say no.

590 The ayes appear to have it and the bill is agreed to.

591 The chair now calls up H.R. 5240 and asks the Clerk to
592 report.

593 [The bill follows:]

594

595 *****COMMITTEE INSERT 8*****

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596 The Clerk. H.R. 5240 to provide for certain programs
597 and developments in the Department of Energy concerning the
598 cybersecurity and vulnerabilities of and physical threats to
599 the electric grid and for other purposes.

600 Mr. Upton. Without objection, the first reading of the
601 bill is dispensed with. The bill will be open for amendment
602 at any point. So ordered.

603 Are there any bipartisan amendments to the bill? Are
604 there any amendments to the bill? The question now occurs on
605 forwarding H.R. 5240 to the full committee.

606 All those in favor will say aye.

607 Those opposed say no.

608 The ayes have it and the bill is agreed to.

609 The chair calls up H.R. 4606 and ask the Clerk to
610 report.

611 [The bill follows:]

612

613 *****COMMITTEE INSERT 9*****

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614 The Clerk. H.R. 4606 to provide that applications under
615 the Natural Gas Act for the importation or exportation of
616 small volumes of natural gas shall be granted without
617 modification or delay.

618 Mr. Upton. Without objection, the first reading of the
619 bill is dispensed with. The bill will be open for amendment
620 at any point. So ordered. Are there any bipartisan
621 amendments to the bill? Any amendments to the bill? Seeing
622 none, the question now occurs -- the gentleman from New
623 Jersey strikes the last word. The gentleman is recognized
624 for 5 minutes.

625 Mr. Pallone. As I noted, Mr. Chairman, in my opening,
626 this bill appears to be an attempt to codify the Trump
627 administration's proposed rule to expedite the approval of
628 small scale natural gas exports and that rule would deem
629 certain lower volume exports to be non-FTA countries in the
630 public interest, so long as DOE's approval of the application
631 does not require an environmental review under NEPA. I have
632 a lot of concerns about the Trump rule, but it is a model of
633 restraint compared to this legislation which would keep DOE's
634 volume limit, but completely jettison the requirement that
635 applications qualify for a categorical exclusion from NEPA.

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636 The bill also fails to prevent applicants from using
637 this new process to evade the public interest determinations
638 required for large-scale exports by segmenting a large volume
639 gas export into a series of smaller proposals.

640 And I said earlier, this bill is essentially a
641 legislative earmark. Only one project currently meets the
642 capacity requirements of the administration=s small scale LNG
643 rule, but at the same time does not qualify for a categorical
644 exclusion and that is a project being developed by Eagle LNG
645 Partners in Jacksonville, Florida.

646 Unless you happen to be an investor in that project,
647 there appears to be no useful purpose to this legislation
648 except to make the Trump administration's policy look
649 enlightened by comparison and this is legislating at its
650 worse. I even compare it to a private bill. And I would
651 urge my colleagues to vote against the bill for all these
652 reasons.

653 Mr. Green. Will the gentleman yield?

654 Mr. Pallone. Yes, I yield to the gentleman from Texas.

655 Mr. Green. I thank my colleague and ranking member for
656 yielding. Our office has looked at the DOE and over the
657 years, some of you may remember, I wasn't a fan of the DOE in

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658 our effort to export LNG, but DOE's language is much better
659 than in the bill. And it also concerns me that this one
660 exclusion may only impact one company and I just ask the
661 majority if you would work with us to see how we can go from
662 what the DOE language is instead of the language that is in
663 this bill before we get the markup. I yield back. Thank
664 you.

665 Mr. Pallone. I yield, I guess I still have time, to the
666 gentlewoman from Florida?

667 Ms. Castor. Well, thank you, Mr. Pallone, and I believe
668 you are correct. This bill also is not needed. As far as I
669 have heard, there is no backlog right now for permitting of
670 these type of projects. And it isn't appropriate to carve
671 out some special dispensation to a single company per the
672 legislative process.

673 According to the Congressional Research Service, this is
674 the only project that does not merit a categorical exclusion,
675 but would still meet the capacity requirements of the small
676 scale LNG rule. And they say explicitly would be the only
677 current project to benefit from this new expedited process.

678 And I would also just a word of caution. If you
679 believed in the importance of liquefied natural gas as part

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680 of our energy mix and being able to support it, you don't
681 want to undermine safety standards and environmental
682 standards because then something is going to happen. There
683 is going to be a backlash with the greater regulation. It is
684 important to stick with the current process, allow people to
685 have an opportunity to comment, allow the public to have
686 notice, allow for a public interest determination.

687 There is also another problem here. This is kind of
688 masquerading under the term small, but actually there is no
689 limit on the number of small-scale applications an entity
690 could have and an applicant could skirt requirements for
691 larger exports by breaking a proposal into smaller pieces.

692 There is also a concern we are hearing from
693 manufacturers that this could lead to higher domestic natural
694 gas crises and adversely affect manufacturing operations and
695 consumers. So for that reason, I agree with Mr. Green.
696 There might be an opportunity to work on something here, but
697 Mr. Pallone is, in the end, very correct. It is
698 inappropriate to have a bill for a single project. I will
699 yield back my time.

700 Mr. Pallone. Just reclaiming my time in the few seconds
701 remaining, it is just sort of totally hypocritical in my

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702 opinion to deem something in the public interest that has
703 avoided all these things. In other words, the whole process
704 is to have some kind of review before you say that this
705 project is in the public interest and this is just being
706 completely nullified, the way this bill sets it up. It just
707 says okay, well, this is clearly in the public interest
708 without having any of these reviews. So I yield back, Mr.
709 Chairman.

710 Mr. Upton. The gentleman yields back. The chair
711 recognizes Mr. Johnson from Ohio.

712 Mr. Johnson. Mr. Chairman, I move to strike the last
713 word. Again, this is about realizing our full economic
714 potential on small scale LNG technology. It is about what
715 can be accomplished. There is interest and potential in the
716 Caribbean and Central America for American LNG, although not
717 in the large quantities that the current large scale
718 domestics exporting facilities were built to address.
719 Creating regulatory certainty around small-scale exports can
720 help encourage the industries involved in small-scale
721 technology to move forward with investments and new
722 opportunities.

723 This is especially crucial when you consider that

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724 currently in the Caribbean exporters can only freely ship to
725 the Dominican Republic. Small scale American LNG can provide
726 the Caribbean and Central America with a stable source of
727 energy as many are reliant on Venezuelan fuel oil which has
728 been used to gain influence in the region. As that fuel is
729 displaced, American LNG will help reduce emissions throughout
730 the region and that is a fact that I think is lost on those
731 who say this bill would gut NEPA.

732 Additionally, renewables can become possible when you
733 have access to American natural gas. This should not be a
734 partisan issue. Former Vice President Biden was a proponent
735 of helping the Caribbean use more clean energy including
736 natural gas. Recognizing the need for U.S. engagement, the
737 former administration formed the Caribbean Energy Security
738 Initiative.

739 Additionally, U.S. LNG exports to the Caribbean were a
740 recommendation of the first quadrennial energy review
741 undertaken by the Obama administration. Neither side of the
742 aisle can deny that American small scale LNG provides
743 geopolitical, economic, and environmental benefits.

744 I also think it is important for my colleagues to
745 remember that the Natural Gas Act does not specify an amount

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746 threshold for requiring a public interest determination. So
747 projects, whether exporting small or larger amounts natural
748 gas, undergo the same process.

749 In this day and age when the U.S. has become the world's
750 leading producer of oil and natural gas, and we are projected
751 to become a net energy exporter in just a few short years, I
752 don't think that makes sense. Natural gas production is at
753 an all-time high and reserves are so large that they are
754 predicted to meet domestic demand for almost a century. And
755 we have already begun to see the enormous benefits of LNG
756 exports at home and abroad. I think it is about time that we
757 better define the Natural Gas Act's involvement in LNG
758 exports within this age of abundance, especially as it
759 relates to small scale LNG.

760 And with that, Mr. Chairman, I urge my colleagues to
761 support this important bill and I yield back.

762 Mr. Upton. The gentleman yields back. Let me go to Mr.
763 Rush and then Mr. Barton to strike the last word.

764 Mr. Rush. Mr. Chairman, I want to thank you. I am not
765 able to support H.R. 4606. The bill would amend section 3 of
766 the Natural Gas Act to consider application for exports of
767 small-scale volume of natural gas consistent of 0.14 billion

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768 cubic feet per day or less to be in the public interest.

769 At first glance, Mr. Chairman, this legislation appears
770 to be an attempt to codify DOE's small scale LNG rule.

771 However, this bill does not include the requirements that
772 applications must quantify for categorical exclusion from
773 NEPA. This bill, Mr. Chairman, will be nothing. It would
774 end run NEPA and allow for future projects to do the same.

775 Mr. Chairman, this is an extraordinary example of
776 proverbial and perpetual carve-out which undercuts and
777 undermines NEPA.

778 Mr. Chairman, according to the CIS, there is really only
779 one project that would meet the requirements underlining H.R.
780 4606, the Eagle LNG Partners, Jacksonville LLC.

781 Mr. Chairman, this seems to me, private legislation and
782 a carve-out from NEPA, and therefore, I am absolutely opposed
783 to this bill. Unless someone else wants to use my time, then
784 I yield back.

785 Mr. Barton. Mr. Chairman?

786 Mr. Upton. The gentleman from Texas, Mr. Barton, is
787 recognized to strike the last word.

788 Mr. Barton. I appreciate that. I want to ask some
789 questions of the counsel. I am not a co-sponsor of this

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790 bill. I am generally aware of it, but I don't really have a
791 dog in the hunt. It seems that the minority concern is that
792 it would affect only one company. Is that true?

793 Counsel. The legislation doesn't name any one company
794 specifically. It may be true that there is only one company
795 with an application before DOE at this moment, but it is
796 staff's impression that this legislation is forward looking
797 and that it could potentially encourage other companies and
798 other applications.

799 Mr. Barton. So there may be only one applicant, but
800 there is no prohibition against other applicants if they
801 wanted to comply with this .14 billion cubic feet per day
802 limitation, is that correct?

803 Counsel. That is correct.

804 Mr. Barton. Okay, does the counsel happen to know what
805 an average natural gas well produces in a day?

806 Counsel. Good question. I don't have that number in
807 front of me, but what I do have --

808 Mr. Barton. I will ask Mr. Flores. He is an expert.
809 Mr. Cramer may be. Mr. Green may be.

810 I am told an average natural gas well in South Texas is
811 about 10 million cubic feet a day. Is that correct?

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812 Counsel. What I do have is CIA says that on average in
813 2018 we are expected to produce 81.1 billion.

814 Mr. Barton. Billion, but that is generic. That is for
815 the whole country. I am just trying to get how much one
816 average natural gas well, and I should know. I think it is
817 10 million cubic feet a day is a good number.

818 Mr. Flores. Well, it varies by basin and it also varies
819 by the age of the well. So I don't know that I can give you
820 a number at this point in time.

821 Mr. Barton. Well, if it is 10 million cubic feet a day,
822 that would be 14 gas wells. That is not a lot. This is
823 obviously small and if somebody wants to put the capital in
824 to building, since it is exporting of LNG -- it says natural
825 gas, but to export it, you have got to condense it. You have
826 got to liquefy it. You have got to cool it. So you are
827 going to put quite a bit of money in for not a lot of natural
828 gas to be exported. And if somebody wants to do that, well,
829 I understand my minority friends= concern about helping one
830 company. I don't really see that that should be a limitation
831 because if collectively the subcommittee wanted to create a
832 natural gas export company and apply for this, we would be
833 able to do so, because there is no prohibition.

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834 So I think we ought to pass the bill and then work with
835 the minority to clarify language in the full committee.

836 Mr. Upton. If the gentleman will yield, and the clock
837 isn't right, so I just wanted you to know. But if the
838 gentleman will yield, I am hearing a couple of concerns from
839 all sides. I am willing to listen to a couple of ideas. And
840 one of the things that particularly a number of us saw when
841 we went down to the Caribbean to look at the hurricane damage
842 and they still don't have electricity in good parts of it,
843 they don't have -- they are not generating electricity from
844 natural gas. They are using other means that are more
845 expensive, more harmful to the environment, and maybe there
846 are some things that we can do to our friends and neighbors
847 down there. So let's -- it is a little while before we get
848 to full committee, there are a couple ideas that I think we
849 can bounce back and forth between the two of us and I am
850 willing to listen.

851 Mr. Barton. If I can reclaim my time briefly, I will
852 say this.

853 Mr. Upton. The gentleman from Texas has the time.

854 Mr. Barton. I will say this. In some of these
855 Caribbean nations, their primary fuel for generating

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856 electricity is fuel oil. Fuel oil is orders of magnitude,
857 like 10 to 15 to 20 times more expensive than natural gas.

858 Mr. Green. Mr. Chairman, will the gentleman yield?

859 Mr. Barton. If I have time.

860 Mr. Upton. You do.

861 Mr. Barton. I will yield to Mr. Green.

862 Mr. Green. I agree with my colleague from Texas. Fuel
863 oil, of course, that is where New England a lot of their
864 electricity generated from fuel oil because we can't get a
865 pipeline up there. But --

866 Mr. Barton. That is a bill in itself.

867 Mr. Green. We will fight that battle and I will let Joe
868 take care of that. But there is a need in the Caribbean. In
869 fact, with Puerto Rico, to rebuild their grid and to get them
870 on to something that is much less expensive and natural gas
871 would be the one. But my concern is the Department of Energy
872 and like I said over the years, I complained about their
873 slowness in getting export facilities. But they actually
874 have some rules that are addressing this. I don't know why
875 we would put in a statute until we at least see how those
876 rules are working. That is all I want to do. I want to make
877 sure this -- there is an environmental process and I don't

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878 want to have John Dingell walk into this room and say we
879 messed with the NEPA process.

880 Mr. Barton. I think John Dingell would agree with Mr.
881 Johnson that it is always good for Congress to tell the
882 Executive Branch what it needs to --

883 Mr. Green. I don't have any problem with that.

884 Mr. Barton. Dingell be for what Mr. Johnson is --

885 Mr. Rush. Will the gentleman yield?

886 Mr. Barton. I am loving this. So I would be happy to
887 yield to Mr. Rush.

888 Mr. Rush. I want the gentleman and others to understand
889 that one of my concerns is the future. And I am feeling that
890 if we pass this legislation, then you will have what is to
891 prevent a large project from subdividing to become a smaller
892 project and still end run or subvert NEPA? And so it is not
893 just this project which I don't see the reason or the
894 rationale of the project especially in light of when the
895 gentleman --

896 Mr. Barton. If I can reclaim my time. I feel very
897 comfortable between now and the full committee with Mr.
898 Walden and Mr. Upton, if you have got a NEPA concern and Mr.
899 Johnson, the sponsor of the bill, that is a whole different

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900 kettle of fish, but we can address that. I still think it is
901 a good bill to pass in subcommittee.

902 Mr. Pallone. Will the gentleman yield one more time?

903 Mr. Barton. Sure.

904 Mr. Pallone. The problem that I have is that this came
905 up the last minute. It was added to a consensus agenda. We
906 had four bills. I think what you should do is pull it and
907 let's have an opportunity to see if there is something we can
908 work out.

909 I mean at this point we can't support this. We would
910 have to vote no. So if you think you want to send it up
911 there and we are going to vote no, and you try to work on it
912 between now and then, but I don't even know why we are moving
913 it all. I mean the bottom line is it just came up the last
914 minute and we haven't had a chance to really confer with you.
915 Why don't you just pull it and we will --

916 Mr. Barton. Well, the bill was introduced on December
917 11th.

918 Mr. Pallone. But it wasn't put on the agenda though
919 until the last minute at the time of notice. We weren't
920 notified you were going to put it on.

921 Mr. Upton. If I just might correct the gentleman. I

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922 think we had both the legislative -- we had a couple of
923 different hearings on this. We pulled the larger one off.
924 This is the smaller one and I am willing to entertain some
925 discussions between now and when the full committee markup --

926 Mr. Pallone. That is fine, but I am just saying we
927 can't support the bill as currently --

928 Mr. Upton. I understand. I understand. But I am just
929 telling the gentleman, we are willing to listen to a couple
930 different ideas that might improve it and may get some of
931 your members on your side to be for it.

932 Mr. Barton. I yield back, Mr. Chairman.

933 Mr. Upton. The gentleman yields back. Are there
934 additional members wishing to speak? If not, the question
935 occurs on forwarding this bill, H.R. 4606 to the full
936 committee. All those in favor will say aye.

937 Mr. Rush. Mr. Chairman, Mr. Chairman, Mr. Chairman.

938 Mr. Upton. A roll call is requested. the Clerk will
939 call the roll.

940 The Clerk. Mr. Olson?

941 Mr. Olson. Aye.

942 The Clerk. Mr. Olson votes aye.

943 Mr. Barton.

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944 Mr. Barton. Aye.
945 The Clerk. Mr. Barton votes aye.
946 Mr. Shimkus.
947 Mr. Shimkus. Aye.
948 The Clerk. Mr. Shimkus votes aye.
949 Mr. Latta.
950 Mr. Latta. Aye.
951 The Clerk. Mr. Latta votes aye.
952 Mr. Harper.
953 Mr. Harper. Aye.
954 The Clerk. Mr. Harper votes aye.
955 Mr. McKinley.
956 Mr. McKinley. Aye.
957 The Clerk. Mr. McKinley votes aye.
958 Mr. Kinzinger.
959 Mr. Kinzinger. Aye.
960 The Clerk. Mr. Kinzinger votes aye.
961 Mr. Griffith.
962 Mr. Griffith. Aye.
963 The Clerk. Mr. Griffith votes aye.
964 Mr. Johnson.
965 Mr. Johnson. Aye.

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966 The Clerk. Mr. Johnson votes aye.

967 Mr. Long.

968 Mr. Long. Aye.

969 The Clerk. Mr. Long votes aye.

970 Mr. Bucshon.

971 Mr. Bucshon. Aye.

972 The Clerk. Mr. Bucshon votes aye.

973 Mr. Flores.

974 Mr. Flores. Aye.

975 The Clerk. Mr. Flores votes aye.

976 Mr. Mullin.

977 Mr. Mullin. Aye.

978 The Clerk. Mr. Mullin votes aye.

979 Mr. Hudson.

980 Mr. Hudson. Aye.

981 The Clerk. Mr. Hudson votes aye.

982 Mr. Cramer.

983 Mr. Cramer. Aye.

984 The Clerk. Mr. Cramer votes aye.

985 Mr. Walberg.

986 Mr. Walberg. Aye.

987 The Clerk. Mr. Walberg votes aye.

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988 Mr. Duncan.

989 Mr. Duncan. Aye.

990 The Clerk. Mr. Duncan votes aye.

991 Mr. Walden.

992 Mr. Walden. Aye.

993 The Clerk. Mr. Walden votes aye.

994 Mr. Rush.

995 Mr. Rush. No.

996 The Clerk. Mr. Rush votes no.

997 Mr. McNerney.

998 Mr. McNerney. No.

999 The Clerk. Mr. McNerney votes no.

1000 Mr. Peters.

1001 Mr. Peters. No.

1002 The Clerk. Mr. Peters votes no.

1003 Mr. Green.

1004 Mr. Green. No.

1005 The Clerk. Mr. Green votes no.

1006 Mr. Doyle.

1007 Mr. Doyle. No.

1008 The Clerk. Mr. Doyle votes no.

1009 Ms. Castor.

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1010 Ms. Castor. No.

1011 The Clerk. Ms. Castor votes no.

1012 Mr. Sarbanes.

1013 Mr. Sarbanes. No.

1014 The Clerk. Mr. Sarbanes votes no.

1015 Mr. Welch.

1016 [No response.]

1017 Mr. Tonko.

1018 Mr. Tonko. No.

1019 The Clerk. Mr. Tonko votes no.

1020 Mr. Loeb sack.

1021 Mr. Loeb sack. No.

1022 The Clerk. Mr. Loeb sack votes no.

1023 Mr. Schrader.

1024 Mr. Schrader. No.

1025 The Clerk. Mr. Schrader votes no.

1026 Mr. Kennedy.

1027 Mr. Kennedy. No.

1028 The Clerk. Mr. Kennedy votes no.

1029 Mr. Butterfield.

1030 Mr. Butterfield. No.

1031 The Clerk. Mr. Butterfield votes no.

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1032 Mr. Pallone.

1033 Mr. Pallone. No.

1034 The Clerk. Mr. Pallone votes no.

1035 Chairman Upton.

1036 Mr. Upton. Votes aye.

1037 The Clerk. Chairman Upton votes aye.

1038 Mr. Upton. Other members wishing to vote? Mr. Welch?

1039 Mr. Welch. No.

1040 The Clerk. Mr. Welch votes no.

1041 Mr. Upton. Other members wishing to cast a vote.

1042 Seeing none, the Clerk will report the tally.

1043 The Clerk. Mr. Chairman, on that vote there were 14 nos
1044 and 19 ayes.

1045 Mr. Upton. Nineteen ayes, 14 nos. The bill is passed
1046 and without objection the staff is authorized to make
1047 technical and conforming changes to the legislation approved
1048 by the subcommittee today. So ordered.

1049 Without objection, the subcommittee stands adjourned.

1050 Thank you.

1051 [Whereupon, at 10:53 a.m., the subcommittee was
1052 adjourned.]