AMENDMENT TO H.R. 1540, AS REPORTED
OFFERED BY MR. FARENTHOLD OF TEXAS

Page 113, after line 17, insert the following:

SEC. 317. MODIFICATION OF REQUIREMENTS RELATING TO
THE CONSTRUCTION OF WIND TURBINES.

Section 358 of the Ike Skelton National Defense Au-
thorization Act for Fiscal Year (Public Law 111–383; 124
Star. 4198; 49 U.S.C. 4417) is amended—

(1) by striking subsection (e) and inserting the
following new subsection (e):

“(e) DEPARTMENT OF DEFENSE HAZARD ASSESS-
MENT.—

“(1) INPUT REQUIRED.—The Secretary of De-
fense shall provide formal input to the Secretary of
Transportation to help inform the hazard determina-
tion process provided for under part 77 of title 14,
Code of Federal Regulations, and pursuant to sec-
tion 44718 of title 49, United States Code, for any
proposed wind turbine that would be located within
a 50-nautical-mile radius of a military installation,
military-owned or military-operated air traffic con-
trol radar site, or navigation aid.
“(2) TIME FRAMES FOR APPLICATIONS.—The Secretary of Transportation shall establish an appropriate time frame for applications submitted pursuant to section 44718 of title 49, United States Code, and shall provide notice to Congress of such time frame by not later than 30 days after the time frame is established. Such time frames shall be sufficient to enable both the Secretary of Transportation and the Secretary of Defense to have time to review applications.

“(3) SUBMITTAL OF APPLICATIONS AND NOTICES.—The Secretary of Transportation shall submit to the senior official designated pursuant to subsection (b) and to Congress notice of each application or noticed filed with the Secretary of Transportation pursuant to section 44718 of title 49, United States Code, for the construction of any wind turbine that would be located within a 50-nautical-mile radius of a military installation, military-owned or military-operated air traffic control radar site, or navigation aid shall be provided. The Secretary of Transportation shall establish a reasonable time frame for the submittal of notice under this paragraph and shall submit to Congress notice in writing of such time frame.
“(4) SUBMITTAL TO SECRETARY CONCERNED.—Not later than five days after receiving notice under paragraph (3), the senior official designated pursuant to subsection (b) shall provide a copy of the application or notice to the Secretary concerned with primary responsibility for the affected military installation, military-owned or military-operated air traffic control radar site, or navigation aid.

“(5) HAZARD ASSESSMENT.—

“(A) IN GENERAL.—Except as provided in subparagraph (B), not later than 120 days after receiving a copy of any application or notice described in paragraph (3), the Secretary concerned shall review the proposed wind turbine project and provide a hazard assessment to the senior official designated pursuant to subsection (b).

“(B) EXCEPTIONS.—If the Secretary concerned determines after a preliminary review that there is no reasonable probability that the proposed wind turbine would have any adverse aeronautical effects or other impacts described in paragraph (6)(A)(i) and (A)(ii) on the military installation, military-owned or military-op-
erated air traffic control radar site, or navigation aid described in paragraph (3), the Secretary concerned is not required to provide a hazard assessment. In the case of such a determination, the Secretary concerned shall submit to the senior official designated pursuant to subsection (b) notice in writing of the determination and the reasons for the determination.

“(6) CONTENTS OF HAZARD ASSESSMENT.—

Each hazard assessment under paragraph (5) shall include—

“(A) an analysis of—

“(i) any electromagnetic interference that the proposed wind turbine would cause for the affected military installation, military-owned or military-operated air traffic control radar site, navigation aid, and approach systems;

“(ii) any other adverse impacts of the proposed wind turbine on military operations, safety, and readiness, including adverse effects to instrument or visual flight operations; and

“(iii) what alterations could be made to the proposed wind turbine project, in-
including its location and physical proximity
to the affected military installation, military-owned or military-operated air traffic
control radar site, or navigation aid, to
sufficiently mitigate any adverse impacts
described under subparagraphs (i) and (ii);

“(B) a determination as to whether the
proposed wind turbine would have any adverse
aeronautical effects, as described in subpara-
graphs (A)(i) and (A)(ii), or other significant
military operational impacts; and

“(C) a recommendation to the senior official
designated pursuant to subsection (b) re-
respecting whether or not to object to the pro-
posed wind turbine project.

“(7) ACTIONS TO BE TAKEN AFTER HAZARD
ASSESSMENT IS SUBMITTED.—

“(A) REVIEW AND NOTICE.—Not later
than 30 days after receiving a hazard assess-
ment under paragraph (5), the senior official
designated pursuant to subsection (b) shall re-
view the hazard assessment and submit to the
Secretary of Transportation notice in writing as
to whether the proposed wind turbine would
have any adverse aeronautical effects or other significant military operational impacts.

“(B) Determination or notice of presumed hazard.—If the Secretary concerned determines under paragraph (6)(B) that the proposed wind turbine would have adverse aeronautical effects or other significant military operational impacts, then the Secretary of Transportation shall issue a determination or notice of presumed hazard pursuant to part 77 of title 14, Code of Federal Regulations, and section 44718 of title 49, United States Code.

“(8) Determination by Secretary of Defense.—The procedures established by subsection (c) shall ensure that the Secretary of Defense only objects to a project filed with the Secretary of Transportation pursuant to section 44718 of title 49, United States Code, if the Secretary of Defense first determines, after giving full consideration to mitigation actions identified pursuant to this section that such project would have adverse aeronautical effects, as described in paragraph (6)(A)(i) and (ii), or other significant military operational impacts.

“(9) Congressional notice requirement.—Not later than 30 days after making a determination
under paragraph (8), the Secretary of Defense shall submit to the congressional defense committees a report on such determination and the basis for such determination. Such a report shall include an explanation of the operational impact that led to the determination, a discussion of the mitigation options considered, and an explanation of why the mitigation options were not feasible or did not resolve the conflict.

“(10) NONDELEGATION OF DETERMINATIONS.—The responsibility for making a determination under paragraph (8) may only be delegated to an appropriate senior officer of the Department of Defense, on the recommendation of the senior official designated pursuant to subsection (b). The following individuals are appropriate senior officers of the Department of Defense for the purposes of this paragraph:

“(A) The Deputy Secretary of Defense.

“(B) The Under Secretary of Defense for Acquisition, Technology, and Logistics.

“(C) The Principal Deputy Under Secretary of Defense for Acquisition, Technology, and Logistics.”.
(2) in subsection (f)(2)(A)(ii), by striking “result in an unacceptable risk to the national security” and inserting “have adverse aeronautical effects or other significant military operational impacts”;

(3) by redesignating subsections (h), (i), and (j), as subsections (j), (k), and (l), respectively; and

(4) by inserting after subsection (g) the following new subsections:

“(h) Authorization to Charge Application Fees.—The Secretary of Transportation is authorized to charge any applicant for a wind turbine project filed pursuant to section 44718 of title 49, United States Code, an application fee, if the proposed wind turbine would be located within a 50-nautical-mile radius of a military installation, military-owned or military-operated air traffic control radar site, or navigation aid, as described in subsection (e)(3). The amount of the fee shall be determined by the Secretary of Transportation, and the resulting revenue shall be provided to the Secretary of Defense, who shall use it to offset the costs incurred in conducting hazard assessments under subsection (e).

“(i) Federal Financial Support for Wind Turbine Projects.—

“(1) Notice of application.—Within 30 calendar days of receiving an application for Federal fi-
financial assistance, including a grant, loan guarantee, or tax credit, for the construction of a wind turbine that would be located within a 50-nautical-mile radius of a military installation, military-owned or military-operated air traffic control radar site, or navigation aid, the head of the Federal agency receiving the application shall submit to the senior official designated pursuant to subsection (b) notice in writing of the application and a copy of the application. Within 15 calendar days of receiving such notice, the senior official designated pursuant to subsection (b) shall submit to the Secretary concerned with primary responsibility for the affected military installation, military-owned or military-operated air traffic control radar site, or navigation aid notice in writing of the application and a copy of the application.

“(2) Prohibition on provision of federal financial support for certain wind turbines.—No Federal financial support, including a grant, loan guarantee, or tax credit, shall be provided for the construction of a wind turbine that would be located within a 50-mile radius of a military installation, military-owned or military-operated air traffic control radar site, or navigation aid, prior
to the issuance by the Secretary of Transportation
of a determination of no hazard under part 77 of
title 14, Code of Federal Regulations, pursuant to
section 44718 of title 49, United States Code. If
such Federal financial support is provided prior to
the issuance by the Secretary of Transportation of
a determination of no hazard, and a determination
or notice of presumed hazard is subsequently issued,
the Federal agency that provided the financial sup-
port shall seek to recover the Federal financial sup-
port.”.