

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

Page 113, after line 17, insert the following:

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

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

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

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

10 “(1) INPUT REQUIRED.—The Secretary of De-
11 fense shall provide formal input to the Secretary of
12 Transportation to help inform the hazard determina-
13 tion process provided for under part 77 of title 14,
14 Code of Federal Regulations, and pursuant to sec-
15 tion 44718 of title 49, United States Code, for any
16 proposed wind turbine that would be located within
17 a 50-nautical-mile radius of a military installation,
18 military-owned or military-operated air traffic con-
19 trol radar site, or navigation aid.

1 “(2) TIME FRAMES FOR APPLICATIONS.—The
2 Secretary of Transportation shall establish an appro-
3 priate time frame for applications submitted pursu-
4 ant to section 44718 of title 49, United States Code,
5 and shall provide notice to Congress of such time
6 frame by not later than 30 days after the time
7 frame is established. Such time frames shall be suffi-
8 cient to enable both the Secretary of Transportation
9 and the Secretary of Defense to have time to review
10 applications.

11 “(3) SUBMITTAL OF APPLICATIONS AND NO-
12 TICES.—The Secretary of Transportation shall sub-
13 mit to the senior official designated pursuant to sub-
14 section (b) and to Congress notice of each applica-
15 tion or noticed filed with the Secretary of Transpor-
16 tation pursuant to section 44718 of title 49, United
17 States Code, for the construction of any wind tur-
18 bine that would be located within a 50-nautical-mile
19 radius of a military installation, military-owned or
20 military-operated air traffic control radar site, or
21 navigation aid shall be provided. The Secretary of
22 Transportation shall establish a reasonable time
23 frame for the submittal of notice under this para-
24 graph and shall submit to Congress notice in writing
25 of such time frame.

1 “(4) SUBMITTAL TO SECRETARY CON-
2 CERNED.—Not later than five days after receiving
3 notice under paragraph (3), the senior official des-
4 ignated pursuant to subsection (b) shall provide a
5 copy of the application or notice to the Secretary
6 concerned with primary responsibility for the af-
7 fected military installation, military-owned or mili-
8 tary-operated air traffic control radar site, or navi-
9 gation aid.

10 “(5) HAZARD ASSESSMENT.—

11 “(A) IN GENERAL.—Except as provided in
12 subparagraph (B), not later than 120 days
13 after receiving a copy of any application or no-
14 tice described in paragraph (3), the Secretary
15 concerned shall review the proposed wind tur-
16 bine project and provide a hazard assessment to
17 the senior official designated pursuant to sub-
18 section (b).

19 “(B) EXCEPTIONS.—If the Secretary con-
20 cerned determines after a preliminary review
21 that there is no reasonable probability that the
22 proposed wind turbine would have any adverse
23 aeronautical effects or other impacts described
24 in paragraph (6)(A)(i) and (A)(ii) on the mili-
25 tary installation, military-owned or military-op-

1 erated air traffic control radar site, or naviga-
2 tion aid described in paragraph (3), the Sec-
3 retary concerned is not required to provide a
4 hazard assessment. In the case of such a deter-
5 mination, the Secretary concerned shall submit
6 to the senior official designated pursuant to
7 subsection (b) notice in writing of the deter-
8 mination and the reasons for the determination.

9 “(6) CONTENTS OF HAZARD ASSESSMENT.—
10 Each hazard assessment under paragraph (5) shall
11 include—

12 “(A) an analysis of—

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

19 “(ii) any other adverse impacts of the
20 proposed wind turbine on military oper-
21 ations, safety, and readiness, including ad-
22 verse effects to instrument or visual flight
23 operations; and

24 “(iii) what alterations could be made
25 to the proposed wind turbine project, in-

1 cluding its location and physical proximity
2 to the affected military installation, mili-
3 tary-owned or military-operated air traffic
4 control radar site, or navigation aid, to
5 sufficiently mitigate any adverse impacts
6 described under subparagraphs (i) and (ii);

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

12 “(C) a recommendation to the senior offi-
13 cial designated pursuant to subsection (b) re-
14 garding whether or not to object to the pro-
15 posed wind turbine project.

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

18 “(A) REVIEW AND NOTICE.—Not later
19 than 30 days after receiving a hazard assess-
20 ment under paragraph (5), the senior official
21 designated pursuant to subsection (b) shall re-
22 view the hazard assessment and submit to the
23 Secretary of Transportation notice in writing as
24 to whether the proposed wind turbine would

1 have any adverse aeronautical effects or other
2 significant military operational impacts.

3 “(B) DETERMINATION OR NOTICE OF PRE-
4 SUMED HAZARD.—If the Secretary concerned
5 determines under paragraph (6)(B) that the
6 proposed wind turbine would have adverse aero-
7 nautical effects or other significant military
8 operational impacts, then the Secretary of
9 Transportation shall issue a determination or
10 notice of presumed hazard pursuant to part 77
11 of title 14, Code of Federal Regulations, and
12 section 44718 of title 49, United States Code.

13 “(8) DETERMINATION BY SECRETARY OF DE-
14 FENSE.—The procedures established by subsection
15 (c) shall ensure that the Secretary of Defense only
16 objects to a project filed with the Secretary of
17 Transportation pursuant to section 44718 of title
18 49, United States Code, if the Secretary of Defense
19 first determines, after giving full consideration to
20 mitigation actions identified pursuant to this section
21 that such project would have adverse aeronautical
22 effects, as described in paragraph (6)(A)(i) and (ii),
23 or other significant military operational impacts.

24 “(9) CONGRESSIONAL NOTICE REQUIREMENT.—
25 Not later than 30 days after making a determination

1 under paragraph (8), the Secretary of Defense shall
2 submit to the congressional defense committees a re-
3 port on such determination and the basis for such
4 determination. Such a report shall include an expla-
5 nation of the operational impact that led to the de-
6 termination, a discussion of the mitigation options
7 considered, and an explanation of why the mitigation
8 options were not feasible or did not resolve the con-
9 flict.

10 “(10) NONDELEGATION OF DETERMINA-
11 TIONS.—The responsibility for making a determina-
12 tion under paragraph (8) may only be delegated to
13 an appropriate senior officer of the Department of
14 Defense, on the recommendation of the senior offi-
15 cial designated pursuant to subsection (b). The fol-
16 lowing individuals are appropriate senior officers of
17 the Department of Defense for the purposes of this
18 paragraph:

19 “(A) The Deputy Secretary of Defense.

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

22 “(C) The Principal Deputy Under Sec-
23 retary of Defense for Acquisition, Technology,
24 and Logistics.”.

1 (2) in subsection (f)(2)(A)(ii), by striking “re-
2 sult in an unacceptable risk to the national security”
3 and inserting “have adverse aeronautical effects or
4 other significant military operational impacts”;

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

7 (4) by inserting after subsection (g) the fol-
8 lowing new subsections:

9 “(h) **AUTHORIZATION TO CHARGE APPLICATION**
10 **FEEES.**—The Secretary of Transportation is authorized to
11 charge any applicant for a wind turbine project filed pur-
12 suant to section 44718 of title 49, United States Code,
13 an application fee, if the proposed wind turbine would be
14 located within a 50-nautical-mile radius of a military in-
15 stallation, military-owned or military-operated air traffic
16 control radar site, or navigation aid, as described in sub-
17 section (e)(3). The amount of the fee shall be determined
18 by the Secretary of Transportation, and the resulting rev-
19 enue shall be provided to the Secretary of Defense, who
20 shall use it to offset the costs incurred in conducting haz-
21 ard assessments under subsection (e).

22 “(i) **FEDERAL FINANCIAL SUPPORT FOR WIND TUR-**
23 **BINE PROJECTS.**—

24 “(1) **NOTICE OF APPLICATION.**—Within 30 cal-
25 endar days of receiving an application for Federal fi-

1 nancial assistance, including a grant, loan guar-
2 antee, or tax credit, for the construction of a wind
3 turbine that would be located within a 50-nautical-
4 mile radius of a military installation, military-owned
5 or military-operated air traffic control radar site, or
6 navigation aid, the head of the Federal agency re-
7 ceiving the application shall submit to the senior of-
8 ficial designated pursuant to subsection (b) notice in
9 writing of the application and and a copy of the ap-
10 plication. Within 15 calendar days of receiving such
11 notice, the senior official designated pursuant to
12 subsection (b) shall submit to the Secretary con-
13 cerned with primary responsibility for the affected
14 military installation, military-owned or military-oper-
15 ated air traffic control radar site, or navigation aid
16 notice in writing of the application and a copy of the
17 application.

18 “(2) PROHIBITION ON PROVISION OF FEDERAL
19 FINANCIAL SUPPORT FOR CERTAIN WIND TUR-
20 BINES.—No Federal financial support, including a
21 grant, loan guarantee, or tax credit, shall be pro-
22 vided for the construction of a wind turbine that
23 would be located within a 50-mile radius of a mili-
24 tary installation, military-owned or military-operated
25 air traffic control radar site, or navigation aid, prior

1 to the issuance by the Secretary of Transportation
2 of a determination of no hazard under part 77 of
3 title 14, Code of Federal Regulations, pursuant to
4 section 44718 of title 49, United States Code. If
5 such Federal financial support is provided prior to
6 the issuance by the Secretary of Transportation of
7 a determination of no hazard, and a determination
8 or notice of presumed hazard is subsequently issued,
9 the Federal agency that provided the financial sup-
10 port shall seek to recover the Federal financial sup-
11 port.”.

