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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.

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

19 Members present: Representatives Upton, Olson, Barton,
20 Shimkus, Latta, Harper, McKinley, Kinzinger, Griffith, Johnson,
21 Long, Bucshon, Flores, Mullin, Hudson, Cramer, Walberg, Duncan,
22 Walden (ex officio), Rush, McNerney, Peters, Green, Doyle,
23 Castor, Sarbanes, Welch, Tonko, Loeb sack, Schrader, Kennedy,
24 Butterfield, and Pallone (ex officio).

25 Staff present: Mike Bloomquist, Deputy Staff Director;
26 Samantha Bopp, Staff Assistant; Daniel Butler, Staff Assistant;
27 Karen Christian, General Counsel; Kelly Collins, Legislative
28 Clerk, Energy/Environment; Zachary Dareshori, Staff Assistant;
29 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 Consumer
33 Protection; Adam Fromm, Director of Outreach and Coalitions; Ali
34 Fulling, Legislative Clerk, Oversight & Investigations, Digital
35 Commerce and Consumer Protection; Jordan Haverly, Policy
36 Coordinator, Environment; Zach Hunter, Director of
37 Communications; Peter Kielty, Deputy General Counsel; Ryan Long,
38 Deputy Staff Director; Mary Martin, Chief Counsel,
39 Energy/Environment; Drew McDowell, Executive Assistant; Brandon
40 Mooney, Deputy Chief Counsel, Energy; Mark Ratner, Policy
41 Coordinator; Annelise Rickert, Counsel, Energy; Dan Schneider,
42 Press Secretary; Peter Spencer, Professional Staff Member,
43 Energy; Jason Stanek, Senior Counsel, Energy; Austin Stonebraker,
44 Press Assistant; Evan Viau, Legislative Clerk, Communications &
45 Technology; Hamlin Wade, Special Advisor, External Affairs;
46 Everett Winnick, Director of Information Technology; Jeff
47 Carroll, Minority Staff Director; Elizabeth Ertel, Minority
48 Deputy Clerk; Jean Fruci, Minority Energy and Environment Policy

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49 Advisor; Tiffany Guarascio, Minority Deputy Staff Director and
50 Chief Health Advisor; Caitlin Haberman, Minority Professional
51 Staff Member; Rick Kessler, Minority Senior Advisor and Staff
52 Director, Energy and Environment; John Marshall, Minority Policy
53 Coordinator; Dan Miller, Minority Policy Analyst; Alexander
54 Ratner, Minority Policy Analyst; Tim Robinson, Minority Chief
55 Counsel; Andrew Souvall, Minority Director of Communications,
56 Outreach and Member Services; and Tuley Wright, Minority Energy
57 and Environment Policy Advisor.

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

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

69 [Applause.]

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

76 I want to start by focusing my comments on one of the bills
77 that we are calling up today, H.R. 5175, the Pipeline and LNG
78 Facility Cybersecurity Preparedness Act which I introduced with
79 Mr. Loeb sack. And as we have learned in classified hearings and
80 a good number of other events, certainly through the recent
81 testimonies of Secretary Perry and FERC Commissioners, cyber

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82 attacks are a real and a growing threat.

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

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

96 Today's markup will include four other bills focused on these
97 same themes, including a bill introduced by Mr. Walberg and Mr.
98 Rush that updates the DOE Organization Act to strengthen its
99 emergency response capabilities.

100 Mr. Latta and Mr. McNerney have taken the lead on two
101 important bills related to the cybersecurity of our nation's
102 electricity grid. H.R. 5239, the Cyber Sense Act, establishes
103 a voluntary DOE that tests the cybersecurity of products and
104 technologies intended for use in the bulk-power system. H.R.
105 5240, the Enhancing Grid Security through Public-Private

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106 Partnerships Act, requires DOE to establish a program to
107 facilitate and encourage public-private partnerships to promote
108 and advance the physical and cybersecurity of electric utilities
109 that have fewer resources due to size or region. And finally,
110 Mr. Johnson's bill which will streamline DOE's process for
111 approving small-scale shipments of LNG, which will open new
112 markets in the Caribbean, Central America, and South America for
113 cleaner-burning natural gas.

114 Collectively, these bills represent an important step in the
115 right direction in better protecting our nation's energy
116 infrastructure against cyber and physical threats and
117 strengthening our nation's security.

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

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

121

122 *****INSERT 1*****

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

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

131 And thank you, Mr. Chairman, as you know, in our hearing with
132 FERC Commissioners yesterday, Chairman McIntyre cited
133 cybersecurity issues as one of the biggest concerns confronting
134 him and the agency.

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

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

144 With all the focus on protecting our infrastructure, I
145 believe it is fitting and appropriate to elevate the person
146 responsible for this task up to the assistant secretary level in

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147 the Department of Energy.

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

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

157 Thank you, Mr. Chairman. I yield back the balance of my
158 time.

159 Mr. Upton. The gentleman yields back. The chair would
160 recognize the ranking member of the full committee, Mr. Pallone
161 from New Jersey.

162 Mr. Pallone. Thank you, Mr. Chairman. Today, the
163 subcommittee will consider four cybersecurity bills and one bill
164 addressing liquefied natural gas exports. I was hoping this
165 would be a bipartisan markup of consensus cybersecurity
166 legislation. But unfortunately, the majority added the Ensuring
167 Small Scale LNG Certainty and Access Act to this markup just before
168 it was noticed and that is a bill I can't support.

169 The four bipartisan cybersecurity bills before us today will
170 enhance the Department of Energy's efforts to strengthen the

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171 cybersecurity of our nation's electricity grid and pipeline
172 network. It is critical that we ensure our nation's energy
173 infrastructure is sufficiently protected from cyber threats and
174 I support these four bipartisan bills and commend my colleagues
175 who have taken leadership on this issue.

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

186 Let me speak to that. It would allow expedited approval of
187 small LNG facilities so long as the proposal is below a certain
188 threshold and does not require an environmental review under NEPA.
189 That is the Trump administration rule. And that rule is also a
190 concerning carve-out for a subset of LNG applications,
191 specifically it declares that all small scale exports are always
192 in the public interest, removes long standing consumer
193 protections, and prevents the public from having an opportunity
194 to know about or provide input on export proposals. But despite

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195 its flaws, the administration's small scale LNG rule is a far
196 better option than this legislation which would keep the volume
197 limit, but completely abandon the requirement that applications
198 qualify for a categorical exclusion from NEPA. In other words,
199 this bill would allow for the approval of facilities that would
200 currently undergo serious environmental review. And I adamantly
201 oppose any efforts to remove these environmental protections.

202 But leave it to the Republican leadership of this committee
203 to mark up the bill that has even fewer environmental safeguards
204 than a Trump administration's proposal. Who is going to benefit
205 from this legislation? According to the Congressional Research
206 Service, only one project currently meets the capacity
207 requirements of the administration's small scale LNG rule, but
208 does not qualify for a categorical exclusion and that is Eagle
209 LNG Partners in Jacksonville. It is essentially a private bill,
210 an earmark, which I thought Republicans opposed.

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

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

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219 Mr. Upton. The gentleman yields back. The chair
220 recognizes the chairman of the full committee, Mr. Walden, for
221 an opening statement.

222 Mr. Walden. Good morning, Mr. Chairman. I want to thank
223 you for this markup. And the five bipartisan bills, I think,
224 reflect two key themes in our DOE modernization effort: ensuring
225 the Department of Energy has the tools it needs to execute its
226 core energy security mission, and reorienting DOE's approach
227 towards domestic energy infrastructure to capitalize on our
228 nation's energy abundance.

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

233 When you consider the rapid deployment of digital
234 technology, the interconnected nature of our oil and gas and
235 electricity systems, and the role of electricity across all
236 sectors of our domestic economy, DOE's responsibilities for
237 ensuring the reliable delivery of energy is much more
238 complicated than the fuel supply disruptions of the late 1970s.

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

242 Four of the bills we will consider today take practical steps

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243 to ensure the Department of Energy can more effectively carry out
244 its emergency and security activities in the energy sector and
245 ensure the continued safe and reliable flow of energy across the
246 United States.

247 H.R. 5174, the Energy Emergency Leadership Act, by Mr.
248 Walberg and Ranking Member Rush, elevates the leadership of DOE's
249 emergency response and cybersecurity operations to the assistant
250 secretary level, which reflects the importance of this mission
251 across the department and in interagency coordination.

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

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

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

266 Finally, turning to the energy abundance issue, we are also

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267 considering H.R. 4606, Ensuring Small Scale LNG Certainty and
268 Access Act, introduced by Mr. Johnson. This bipartisan bill would
269 codify a proposed DOE regulation to encourage small shipments of
270 LNG to countries in Latin America and the Caribbean, putting small
271 scale LNG exports on a level playing field with pipeline exports
272 to Canada and Mexico.

273 Taken together, these bills represent important energy
274 security and energy infrastructure reforms that will better
275 position the Department of Energy to serve the nation's interests
276 going forward. I commend our members for working on this
277 legislation and I urge my colleagues to support these measures.

278 And Mr. Chairman, before I yield back, I want to draw special
279 attention and thank you for the service of Dan Schneider who has
280 been a terrific member of our committee staff for the last 3 years
281 and will be leaving. He has been a real important part of our
282 communications team and in fact, I think he is longest-serving
283 member of the communications team. And while we hate to see him
284 leave, we are excited for his new opportunity. And so I hope the
285 committee will join me in thanking Dan for service to the Energy
286 and Commerce Committee.

287 [Applause.]

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

289

290 *****INSERT 2*****

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

295 Mr. Latta is recognized for 1 minute.

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

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

308 We are also considering H.R. 5240 which would direct DOE to
309 facilitate and encourage public-private partnerships in order to
310 improve cybersecurity of electric utilities. These bills will
311 foster a collaborative relationship between DOE and the utilities
312 and ensure that our grid becomes increasingly resilient in the
313 face of cyber attacks.

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

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316 Mr. Upton. Mr. McNerney.

317 Mr. McNerney. I thank the chair. I am going to basically
318 say the same thing as Bob Latta. But I am going to say it anyway.
319 I thank the chairman and the ranking member for their leadership
320 on the bills that we have before us today.

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

328 Cyber Sense requires the Department of Energy to determine
329 a testing process for Cyber Sense products and to establish a
330 cybersecurity vulnerability reporting process database, though
331 currently, a voluntary program. I hope the public and private
332 energy holders recognize the importance of being secure against
333 cyber threats. The Enhancing Grid Security through
334 Public-Private Partnerships Act provides cybersecurity training
335 to electric utilities and promotes sharing best practices and data
336 collection in the electric sector.

337 While this is also voluntary. I hope that if it proves
338 successful, Congress will fund this program in the future. It
339 also instructs the Secretary to update the internet cost estimate

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340 calculator at least every 2 years. This calculator is used by
341 electric utilities in planning for interruption costs and
342 estimating cost benefits associated with the reliability
343 investments.

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

345 Mr. Upton. Mr. Johnson.

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

352 Creating regulatory certainty around small scale exports
353 will help encourage industries involved in this technology to
354 strongly consider further investments and new opportunities.

355 This bill is about helping to fully realize that potential
356 and can bring about positive geopolitical, economic, and even
357 environmental benefits as Venezuelan fuel oil is displaced which
358 has been used to gain influence in the region.

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

363 Lastly, H.R. 4606 is about updating the Natural Gas Act which

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364 currently does not differentiate between large and small scale
365 LNG projects. In this day and age, when the U.S. has become the
366 world's leading producer of oil and natural gas, does that really
367 still make sense? I think not, Mr. Chairman, and I urge my
368 colleagues to vote yes on this important bill. I yield back.

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

370 Mr. Green. Thank you, Mr. Chairman. Today, we are marking
371 up four different cybersecurity bills. It will strengthen the
372 grid and our country's security in a variety of ways. We also
373 are considering H.R. 4606, the Ensuring Small Scale LNG Certainty
374 and Access Act. H.R. 5174, the Energy Emergency Leadership Act
375 by Mr. Walberg and Mr. Rush, would create a new assistant secretary
376 of DOE tasked with overseeing all energy emergencies and security
377 functions related to the energy supply, infrastructure, and
378 cybersecurity. A coordinated approach to these issues would help
379 us defend against the new emerging cyber threats we have seen in
380 the last year and I support the bill and thank both of our
381 colleagues, Mr. Walberg and Ranking Member Rush, for their hard
382 word.

383 H.R. 5175, the Pipeline and LNG Facility Cybersecurity
384 Preparedness Act by our chair of our committee and Representative
385 Loeb sack, will establish a program that further strengthens the
386 physical and cybersecurity of the natural gas transmission and
387 distribution system in our country. I support that bill.

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

392 I also support H.R. 5240 the Enhancing Grid Security through
393 Public-Private Partnerships Act. The security of the grid cannot
394 be guaranteed by the Federal Government alone. A cooperative
395 effort is the best way to move forward in ensuring secure energy
396 for all Americans.

397 Unfortunately, at this point I cannot support the last bill
398 being considered, H.R. 4606 Ensuring Small Scale LNG Certainty
399 and Access Act. The bill would codify the recently proposed
400 program at DOE which expedites the export of LNG from small-scale
401 facilities. I am a proponent of this DOE program, but this bill
402 removes protections that are currently in place at the Department.
403 The Department of Energy currently requires any small scale LNG
404 facility that wants to use this expedited approval to qualify for
405 this categorical exclusion under DOE's National Environmental
406 Policy Act regulations.

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

410 I hope to clarify here that I am a big supporter of LNG. I
411 want to support this bill and I think the rule at DOE is a

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412 well-balanced approach and I wish the legislation reflected that.
413 I hope the majority will work with me on this issue so the bill
414 might move forward in the future in a bipartisan basis. It is
415 possible to remove barriers and increase competition for
416 small-scale operators in the LNG market while still following
417 standard environmental regulations.

418 I thank you and I yield back my time.

419 Mr. Upton. The gentleman's time has expired. The chair
420 recognizes Mr. Walberg.

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

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

425 Mr. Walberg. I was going to say that, Mr. Chairman. I am
426 glad to see this committee is taking a hard look at cybersecurity
427 at DOE. My colleague, Mr. Rush, and I introduced H.R. 5174, the
428 Energy Emergency Leadership Act. This is a bipartisan and
429 practical amendment to DOE's core statute to elevate DOE's energy
430 security emergency functions to a level and agency leadership that
431 is reflective of its importance across the agency, the government,
432 and the nation.

433 DOE is creating a new Office of Cybersecurity, Energy
434 Security, and Emergency Response which the Secretary plans to
435 assign to an assistant secretary. Our bill complements this

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436 effort while recognizing that because this energy emergency
437 mission will remain vital to the nation for years to come, it
438 should be established in the Department of Energy Organization
439 Act so we can have continuity of leadership through future
440 administrations with the appropriate level of accountability. I
441 urge its support and thanks to the chairman for bringing it up.
442 I yield back.

443 Mr. Upton. The gentleman yields back. Other members
444 wishing to give an opening statement? The gentleman from Texas,
445 Mr. Olson.

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

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

452 [The bill follows:]

453

454 *****COMMITTEE INSERT 3*****

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

458 Mr. Upton. Without objection, the first reading of the bill
459 is dispensed with. The bill will be open for amendment at any
460 point. So ordered. Are there any bipartisan amendments to the
461 bill? Seeing none, are there any other amendments to the bill?

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

464 Those opposed, say no?

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

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

468 [The bill follows:]

469

470 *****COMMITTEE INSERT 4*****

471 The Clerk. H.R. 5175 to require the Secretary of Energy to
472 carry out a program relating to physical security and
473 cybersecurity for pipelines and liquefied natural gas facilities.

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

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

480

481 *****COMMITTEE INSERT 5*****

482 The Clerk. Amendment in the nature of a substitute to H.R.
483 5175 offered by Mr. Upton.

484 Mr. Upton. Without objection, the reading of the amendment
485 is dispensed with and the chair is recognized for 5 minutes in
486 support of his amendment.

487 This amendment clarifies that the policies and procedures
488 to coordinate federal agencies, states, and the energy sector
489 includes councils or other entities engaging and sharing analysis
490 or sector coordinating. The amendment also clarifies that the
491 Secretary of Energy shall provide technical tools to help the
492 energy sector evaluate, prioritize, and improve physical security
493 and cybersecurity.

494 Are there any bipartisan amendments to this amendment in the
495 nature of a substitute?

496 Seeing none, are there any amendments?

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

499 All those in favor shall signify by saying aye.

500 Those opposed say no.

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

502 The question now occurs on forwarding H.R. 5175, as amended,
503 to the full committee.

504 All those in favor will say aye.

505 All those opposed say no.

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

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

509 [The bill follows:]

510

511 *****COMMITTEE INSERT 6*****

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

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

519 The gentleman from Ohio.

520 Mr. Latta. Mr. Chairman, I have an amendment in the nature
521 of a substitute.

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

523

524 *****COMMITTEE INSERT 7*****

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

526 The Clerk. Amendment in the nature of a substitute to H.R.
527 5239 offered by Mr. Latta.

528 Mr. Upton. Without objection, the reading of the amendment
529 is dispensed with and Mr. Latta is recognized for 5 minutes in
530 support of the amendment.

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

535 The amendment focuses the intent of the program on testing
536 the cybersecurity of products and technologies for the use in
537 bulk-power systems. The amendment also ensures that
538 technologies are included in the testing and not only products.
539 These changes reflect technical assistance that can be received
540 from the Department of Energy. The Cyber Sense program
541 complements and builds upon the DOE program currently under
542 development related to cybersecurity testing. And I would move
543 the amendment in for acceptance.

544 Mr. Upton. The gentleman yields back. Are there any
545 bipartisan amendments to the amendment in the nature of a
546 substitute?

547 Seeing none, are there any amendments? Seeing none. If
548 there is no further discussion, a vote occurs on the amendment

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549 in the nature of a substitute. All those in favor will say aye.

550 Those opposed, say no.

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

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

554 Those opposed say no.

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

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

557 [The bill follows:]

558

559 *****COMMITTEE INSERT 8*****

560 The Clerk. H.R. 5240 to provide for certain programs and
561 developments in the Department of Energy concerning the
562 cybersecurity and vulnerabilities of and physical threats to the
563 electric grid and for other purposes.

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

567 Are there any bipartisan amendments to the bill? Are there
568 any amendments to the bill? The question now occurs on forwarding
569 H.R. 5240 to the full committee.

570 All those in favor will say aye.

571 Those opposed say no.

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

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

574 [The bill follows:]

575

576 *****COMMITTEE INSERT 9*****

577 The Clerk. H.R. 4606 to provide that applications under the
578 Natural Gas Act for the importation or exportation of small
579 volumes of natural gas shall be granted without modification or
580 delay.

581 Mr. Upton. Without objection, the first reading of the bill
582 is dispensed with. The bill will be open for amendment at any
583 point. So ordered. Are there any bipartisan amendments to the
584 bill? Any amendments to the bill? Seeing none, the question now
585 occurs -- the gentleman from New Jersey strikes the last word.
586 The gentleman is recognized for 5 minutes.

587 Mr. Pallone. As I noted, Mr. Chairman, in my opening, this
588 bill appears to be an attempt to codify the Trump administration's
589 proposed rule to expedite the approval of small scale natural gas
590 exports and that rule would deem certain lower volume exports to
591 be non-FTA countries in the public interest, so long as DOE's
592 approval of the application does not require an environmental
593 review under NEPA. I have a lot of concerns about the Trump rule,
594 but it is a model of restraint compared to this legislation which
595 would keep DOE's volume limit, but completely jettison the
596 requirement that applications qualify for a categorical exclusion
597 from NEPA.

598 The bill also fails to prevent applicants from using this
599 new process to evade the public interest determinations required
600 for large-scale exports by segmenting a large volume

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601 gas export into a series of smaller proposals.

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

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

614 Mr. Green. Will the gentleman yield?

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

616 Mr. Green. I thank my colleague and ranking member for
617 yielding. Our office has looked at the DOE and over the years,
618 some of you may remember, I wasn't a fan of the DOE in our effort
619 to export LNG, but DOE's language is much better than in the bill.
620 And it also concerns me that this one exclusion may only impact
621 one company and I just ask the majority if you would work with
622 us to see how we can go from what the DOE language is instead of
623 the language that is in this bill before we get the markup. I
624 yield back. Thank you.

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

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

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

637 And I would also just a word of caution. If you believed
638 in the importance of liquefied natural gas as part of our energy
639 mix and being able to support it, you don't want to undermine
640 safety standards and environmental standards because then
641 something is going to happen. There is going to be a backlash
642 with the greater regulation. It is important to stick with the
643 current process, allow people to have an opportunity to comment,
644 allow the public to have notice, allow for a public interest
645 determination.

646 There is also another problem here. This is kind of
647 masquerading under the term small, but actually there is no limit
648 on the number of small-scale applications an entity could have

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649 and an applicant could skirt requirements for larger exports by
650 breaking a proposal into smaller pieces.

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

658 Mr. Pallone. Just reclaiming my time in the few seconds
659 remaining, it is just sort of totally hypocritical in my opinion
660 to deem something in the public interest that has avoided all these
661 things. In other words, the whole process is to have some kind
662 of review before you say that this project is in the public
663 interest and this is just being completely nullified, the way this
664 bill sets it up. It just says okay, well, this is clearly in the
665 public interest without having any of these reviews. So I yield
666 back, Mr. Chairman.

667 Mr. Upton. The gentleman yields back. The chair
668 recognizes Mr. Johnson from Ohio.

669 Mr. Johnson. Mr. Chairman, I move to strike the last word.
670 Again, this is about realizing our full economic potential on
671 small scale LNG technology. It is about what can be accomplished.
672 There is interest and potential in the Caribbean and Central

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673 America for American LNG, although not in the large quantities
674 that the current large scale domestics exporting facilities were
675 built to address. Creating regulatory certainty around
676 small-scale exports can help encourage the industries involved
677 in small-scale technology to move forward with investments and
678 new opportunities.

679 This is especially crucial when you consider that currently
680 in the Caribbean exporters can only freely ship to the Dominican
681 Republic. Small scale American LNG can provide the Caribbean and
682 Central America with a stable source of energy as many are reliant
683 on Venezuelan fuel oil which has been used to gain influence in
684 the region. As that fuel is displaced, American LNG will help
685 reduce emissions throughout the region and that is a fact that
686 I think is lost on those who say this bill would gut NEPA.

687 Additionally, renewables can become possible when you have
688 access to American natural gas. This should not be a partisan
689 issue. Former Vice President Biden was a proponent of helping
690 the Caribbean use more clean energy including natural gas.
691 Recognizing the need for U.S. engagement, the former
692 administration formed the Caribbean Energy Security Initiative.

693 Additionally, U.S. LNG exports to the Caribbean were a
694 recommendation of the first quadrennial energy review undertaken
695 by the Obama administration. Neither side of the aisle can deny
696 that American small scale LNG provides geopolitical, economic,

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697 and environmental benefits.

698 I also think it is important for my colleagues to remember
699 that the Natural Gas Act does not specify an amount threshold for
700 requiring a public interest determination. So projects, whether
701 exporting small or larger amounts natural gas, undergo the same
702 process.

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

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

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

717 Mr. Rush. Mr. Chairman, I want to thank you. I am not able
718 to support H.R. 4606. The bill would amend section 3 of the
719 Natural Gas Act to consider application for exports of small-scale
720 volume of natural gas consistent of 0.14 billion cubic feet per

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721 day or less to be in the public interest.

722 At first glance, Mr. Chairman, this legislation appears to
723 be an attempt to codify DOE's small scale LNG rule. However, this
724 bill does not include the requirements that applications must
725 quantify for categorical exclusion from NEPA. This bill, Mr.
726 Chairman, will be nothing. It would end run NEPA and allow for
727 future projects to do the same.

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

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

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

737 Mr. Barton. Mr. Chairman?

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

740 Mr. Barton. I appreciate that. I want to ask some
741 questions of the counsel. I am not a co-sponsor of this bill.
742 I am generally aware of it, but I don't really have a dog in the
743 hunt. It seems that the minority concern is that it would affect
744 only one company. Is that true?

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745 Counsel. The legislation doesn't name any one company
746 specifically. It may be true that there is only one company with
747 an application before DOE at this moment, but it is staff's
748 impression that this legislation is forward looking and that it
749 could potentially encourage other companies and other
750 applications.

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

755 Counsel. That is correct.

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

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

760 Mr. Barton. I will ask Mr. Flores. He is an expert. Mr.
761 Cramer may be. Mr. Green may be.

762 I am told an average natural gas well in South Texas is about
763 10 million cubic feet a day. Is that correct?

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

766 Mr. Barton. Billion, but that is generic. That is for the
767 whole country. I am just trying to get how much one average
768 natural gas well, and I should know. I think it is

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769 10 million cubic feet a day is a good number.

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

773 Mr. Barton. Well, if it is 10 million cubic feet a day, that
774 would be 14 gas wells. That is not a lot. This is obviously small
775 and if somebody wants to put the capital in to building, since
776 it is exporting of LNG -- it says natural gas, but to export it,
777 you have got to condense it. You have got to liquefy it. You
778 have got to cool it. So you are going to put quite a bit of money
779 in for not a lot of natural gas to be exported. And if somebody
780 wants to do that, well, I understand my minority friends= concern
781 about helping one company. I don't really see that that should
782 be a limitation because if collectively the subcommittee wanted
783 to create a natural gas export company and apply for this, we would
784 be able to do so, because there is no prohibition.

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

787 Mr. Upton. If the gentleman will yield, and the clock isn't
788 right, so I just wanted you to know. But if the gentleman will
789 yield, I am hearing a couple of concerns from all sides. I am
790 willing to listen to a couple of ideas. And one of the things
791 that particularly a number of us saw when we went down to the
792 Caribbean to look at the hurricane damage and they still don't

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793 have electricity in good parts of it, they don't have -- they are
794 not generating electricity from natural gas. They are using
795 other means that are more expensive, more harmful to the
796 environment, and maybe there are some things that we can do to
797 our friends and neighbors down there. So let's -- it is a little
798 while before we get to full committee, there are a couple ideas
799 that I think we can bounce back and forth between the two of us
800 and I am willing to listen.

801 Mr. Barton. If I can reclaim my time briefly, I will say
802 this.

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

804 Mr. Barton. I will say this. In some of these Caribbean
805 nations, their primary fuel for generating electricity is fuel
806 oil. Fuel oil is orders of magnitude, like 10 to 15 to 20 times
807 more expensive than natural gas.

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

809 Mr. Barton. If I have time.

810 Mr. Upton. You do.

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

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

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

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817 Mr. Green. We will fight that battle and I will let Joe take
818 care of that. But there is a need in the Caribbean. In fact,
819 with Puerto Rico, to rebuild their grid and to get them on to
820 something that is much less expensive and natural gas would be
821 the one. But my concern is the Department of Energy and like I
822 said over the years, I complained about their slowness in getting
823 export facilities. But they actually have some rules that are
824 addressing this. I don't know why we would put in a statute until
825 we at least see how those rules are working. That is all I want
826 to do. I want to make sure this -- there is an environmental
827 process and I don't want to have John Dingell walk into this room
828 and say we messed with the NEPA process.

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

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

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

834 Mr. Rush. Will the gentleman yield?

835 Mr. Barton. I am loving this. So I would be happy to yield
836 to Mr. Rush.

837 Mr. Rush. I want the gentleman and others to understand that
838 one of my concerns is the future. And I am feeling that if we
839 pass this legislation, then you will have what is to prevent a
840 large project from subdividing to become a smaller project and

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841 still end run or subvert NEPA? And so it is not just this project
842 which I don't see the reason or the rationale of the project
843 especially in light of when the gentleman --

844 Mr. Barton. If I can reclaim my time. I feel very
845 comfortable between now and the full committee with Mr. Walden
846 and Mr. Upton, if you have got a NEPA concern and Mr. Johnson,
847 the sponsor of the bill, that is a whole different kettle of fish,
848 but we can address that. I still think it is a good bill to pass
849 in subcommittee.

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

851 Mr. Barton. Sure.

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

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

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

864 Mr. Pallone. But it wasn't put on the agenda though until

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865 the last minute at the time of notice. We weren't notified you
866 were going to put it on.

867 Mr. Upton. If I just might correct the gentleman. I think
868 we had both the legislative -- we had a couple of different
869 hearings on this. We pulled the larger one off. This is the
870 smaller one and I am willing to entertain some discussions between
871 now and when the full committee markup --

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

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

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

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

883 Mr. Rush. Mr. Chairman, Mr. Chairman, Mr. Chairman.

884 Mr. Upton. A roll call is requested. the Clerk will call
885 the roll.

886 The Clerk. Mr. Olson?

887 Mr. Olson. Aye.

888 The Clerk. Mr. Olson votes aye.

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889 Mr. Barton.
890 Mr. Barton. Aye.
891 The Clerk. Mr. Barton votes aye.
892 Mr. Shimkus.
893 Mr. Shimkus. Aye.
894 The Clerk. Mr. Shimkus votes aye.
895 Mr. Latta.
896 Mr. Latta. Aye.
897 The Clerk. Mr. Latta votes aye.
898 Mr. Harper.
899 Mr. Harper. Aye.
900 The Clerk. Mr. Harper votes aye.
901 Mr. McKinley.
902 Mr. McKinley. Aye.
903 The Clerk. Mr. McKinley votes aye.
904 Mr. Kinzinger.
905 Mr. Kinzinger. Aye.
906 The Clerk. Mr. Kinzinger votes aye.
907 Mr. Griffith.
908 Mr. Griffith. Aye.
909 The Clerk. Mr. Griffith votes aye.
910 Mr. Johnson.
911 Mr. Johnson. Aye.
912 The Clerk. Mr. Johnson votes aye.

913 Mr. Long.
914 Mr. Long. Aye.
915 The Clerk. Mr. Long votes aye.
916 Mr. Bucshon.
917 Mr. Bucshon. Aye.
918 The Clerk. Mr. Bucshon votes aye.
919 Mr. Flores.
920 Mr. Flores. Aye.
921 The Clerk. Mr. Flores votes aye.
922 Mr. Mullin.
923 Mr. Mullin. Aye.
924 The Clerk. Mr. Mullin votes aye.
925 Mr. Hudson.
926 Mr. Hudson. Aye.
927 The Clerk. Mr. Hudson votes aye.
928 Mr. Cramer.
929 Mr. Cramer. Aye.
930 The Clerk. Mr. Cramer votes aye.
931 Mr. Walberg.
932 Mr. Walberg. Aye.
933 The Clerk. Mr. Walberg votes aye.
934 Mr. Duncan.
935 Mr. Duncan. Aye.
936 The Clerk. Mr. Duncan votes aye.

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937 Mr. Walden.
938 Mr. Walden. Aye.
939 The Clerk. Mr. Walden votes aye.
940 Mr. Rush.
941 Mr. Rush. No.
942 The Clerk. Mr. Rush votes no.
943 Mr. McNerney.
944 Mr. McNerney. No.
945 The Clerk. Mr. McNerney votes no.
946 Mr. Peters.
947 Mr. Peters. No.
948 The Clerk. Mr. Peters votes no.
949 Mr. Green.
950 Mr. Green. No.
951 The Clerk. Mr. Green votes no.
952 Mr. Doyle.
953 Mr. Doyle. No.
954 The Clerk. Mr. Doyle votes no.
955 Ms. Castor.
956 Ms. Castor. No.
957 The Clerk. Ms. Castor votes no.
958 Mr. Sarbanes.
959 Mr. Sarbanes. No.
960 The Clerk. Mr. Sarbanes votes no.

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961 Mr. Welch.
962 [No response.]
963 Mr. Tonko.
964 Mr. Tonko. No.
965 The Clerk. Mr. Tonko votes no.
966 Mr. Loeb sack.
967 Mr. Loeb sack. No.
968 The Clerk. Mr. Loeb sack votes no.
969 Mr. Schrader.
970 Mr. Schrader. No.
971 The Clerk. Mr. Schrader votes no.
972 Mr. Kennedy.
973 Mr. Kennedy. No.
974 The Clerk. Mr. Kennedy votes no.
975 Mr. Butterfield.
976 Mr. Butterfield. No.
977 The Clerk. Mr. Butterfield votes no.
978 Mr. Pallone.
979 Mr. Pallone. No.
980 The Clerk. Mr. Pallone votes no.
981 Chairman Upton.
982 Mr. Upton. Votes aye.
983 The Clerk. Chairman Upton votes aye.
984 Mr. Upton. Other members wishing to vote? Mr. Welch?

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985 Mr. Welch. No.

986 The Clerk. Mr. Welch votes no.

987 Mr. Upton. Other members wishing to cast a vote. Seeing
988 none, the Clerk will report the tally.

989 The Clerk. Mr. Chairman, on that vote there were 14 nos and
990 19 ayes.

991 Mr. Upton. Nineteen ayes, 14 nos. The bill is passed and
992 without objection the staff is authorized to make technical and
993 conforming changes to the legislation approved by the
994 subcommittee today. So ordered.

995 Without objection, the subcommittee stands adjourned.

996 Thank you.

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