

AMENDMENT TO H.R. 8800
OFFERED BY MR. COURTNEY OF CONNECTICUT

At the appropriate place in title III, insert the following new section:

1 **SEC. 3 ____ . IMPROVEMENTS TO REVIEW PROCESS OF MILI-**
2 **TARY AVIATION AND INSTALLATION ASSUR-**
3 **ANCE CLEARINGHOUSE.**

4 (a) IMPROVEMENTS.—Section 183a of title 10,
5 United States Code, is amended—

6 (1) in subsection (c)(4), by striking “If,” and
7 inserting “Subject to the deadline for a final deter-
8 mination in subsection (h)(1), if,”;

9 (2) in subsection (e)(2)(A)—

10 (A) by striking “30 days” and inserting
11 “five days”;

12 (B) by inserting “, including a specific
13 identification of any military installation, sys-
14 tem, or operational mission affected and a de-
15 scription of the nature and magnitude of such
16 operational impact based on documented tech-
17 nical analysis” after “operational impact that
18 led to the finding”; and

1 (C) by striking “were not feasible or did
2 not resolve the conflict.” and inserting “were
3 not feasible, did not resolve the conflict, or were
4 otherwise insufficient to reduce the operational
5 impact to an acceptable level, and shall be ac-
6 companied by a written certification by the
7 Commander of United States Northern Com-
8 mand, or a designated designee thereof, that
9 such operational impact represents a specific
10 and material degradation to the affected mili-
11 tary installation, system, or operational mission
12 that cannot be adequately addressed through
13 such mitigation options.”;

14 (3) by redesignating subsections (g) and (h) as
15 subsections (m) and (n), respectively; and

16 (4) by inserting after subsection (f) the fol-
17 lowing new subsections:

18 “(g) CONSIDERATION OF POTENTIAL BENEFITS.—In
19 conducting any review for a proposed energy project or
20 antenna structure project under this section, the Secretary
21 of Defense and the Clearinghouse shall consider, in addi-
22 tion to any potential adverse impact on military operations
23 and readiness or unacceptable risk to the national security
24 of the United States, the potential benefits of the proposed
25 project to the Department of Defense, including—

1 “(1) potential opportunities for enhanced use-
2 leases of affected military installations;

3 “(2) potential training value, including the po-
4 tential use of any structure or associated infrastruc-
5 ture to be constructed under the proposed project
6 for military exercises, low-observable operations
7 training, or radar signature characterization and
8 analysis;

9 “(3) potential benefits to the security and resil-
10 ience of energy supply chains for affected military
11 installations, including with respect to grid security
12 for such military installations hosting critical de-
13 fense infrastructure; and

14 “(4) potential economic benefits to local com-
15 munities surrounding affected military installations.

16 “(h) FINAL DETERMINATION; TIMELINES.—(1)(A)
17 For any energy project or antenna structure project that
18 the Clearinghouse finds may have an adverse impact on
19 military operations and readiness as a result of the pre-
20 liminary review under subsection (c), the Secretary of De-
21 fense shall ensure the review is complete and any mitiga-
22 tion discussions the Secretary determines appropriate are
23 concluded, and shall issue the final determination de-
24 scribed in paragraph (2), by not later than 9 months after

1 the date on which the Clearinghouse received the applica-
2 tion for such project.

3 “(B) For any energy project or antenna structure
4 project that the Clearinghouse finds does not have an ad-
5 verse impact on military operations and readiness as a re-
6 sult of the preliminary review under subsection (c), the
7 Secretary of Defense shall issue the final determination
8 described in paragraph (2) by not later than five days
9 after the date on which the Clearinghouse completed such
10 preliminary review.

11 “(C) For purposes of subparagraph (A), an applica-
12 tion shall be deemed to received on the earlier of the fol-
13 lowing:

14 “(i) The actual date on which the Clearing-
15 house received the application from the Secretary of
16 Transportation.

17 “(ii) The date that is 60 days after the date on
18 which the applicant provides notice to the Clearing-
19 house that the applicant has submitted information
20 sufficient to initiate a preliminary review under sub-
21 section (c).

22 “(2) The final determination described in this para-
23 graph is, with respect to an application for an energy
24 project or antenna structure project, a determination as
25 to—

1 “(A) whether the project will have an adverse
2 impact on military operations and readiness, con-
3 sistent with subsection (c); and

4 “(B) whether the project presents an unaccept-
5 able risk to the national security of the United
6 States, as required under subsection (e).

7 “(3)(A) If the Secretary fails to issue a final deter-
8 mination described in paragraph (2) with respect to an
9 application for an energy project or antenna structure
10 project by the applicable deadline under paragraph (1) (or,
11 in the case of an application that has been extended con-
12 sistent with subsection (i), by such extended deadline)—

13 “(i) not later than five days after the date of
14 such lapsed deadline, the matter shall be referred
15 automatically to the Deputy Secretary of Defense;

16 “(ii) not later than five days after the date of
17 such automatic referral, the Secretary of Defense
18 shall submit to the Committees on Armed Services
19 of the Senate and House of Representatives a writ-
20 ten notification that includes—

21 “(I) an identification of the project and the
22 applicant;

23 “(II) an identification of the date on which
24 the Clearinghouse commenced the preliminary
25 review of the application; and

1 “(III) a description of any reason the Sec-
2 retary of Defense failed to issue a final deter-
3 mination by the prescribed deadline; and

4 “(iii) not later than 30 days after the date of
5 such automatic referral under subparagraph (A), the
6 Deputy Secretary of Defense shall issue a final de-
7 termination described in paragraph (2) in lieu of
8 such a final determination by the Secretary of De-
9 fense.

10 “(B) If the Deputy Secretary of Defense fails to issue
11 a final determination required under subparagraph (A)(iii)
12 with respect to an application for an energy project or an-
13 tenna structure project by the prescribed deadline—

14 “(i) the Department of Defense shall be deemed
15 to have completed and concluded each review re-
16 quired under this section without recommendation;
17 and

18 “(ii) not later than 5 days after such lapsed
19 deadline, the Secretary of Defense shall submit to
20 the Committees on Armed Services of the Senate
21 and House of Representatives, and transmit to rel-
22 evant Federal departments and agencies, a written
23 notification stating that—

24 “(I) the Department failed to issue a final
25 determination by the prescribed deadline; and

1 “(II) the Department has concluded the
2 reviews required under this section without rec-
3 ommendation.

4 “(i) EXCEPTIONS TO TIMELINES.—

5 “(1) APPLICANT CONSENT EXTENSIONS.—The
6 Secretary of Defense may extend a deadline under
7 subsection (h)(1) with respect to a given application
8 for an energy project or antenna structure project
9 only if the Secretary proposes a new deadline and
10 the applicant agrees in writing to such extension.

11 “(2) DEFICIENCY-BASED OR MITIGATION-BASED
12 TOLLING.—

13 “(A) A deadline under subsection (h)(1)
14 may be tolled with respect to an application for
15 an energy project or antenna structure project
16 only if the Clearinghouse, the Secretary of De-
17 fense, or the Deputy Secretary of Defense—

18 “(i) identifies one or more material
19 deficiencies in such application that mate-
20 rially prevent the issuance of a final deter-
21 mination described under subsection (h)(1)
22 and are not the result of information pre-
23 viously requested by and submitted to, or
24 otherwise reasonably available to, the De-
25 partment of Defense;

1 “(ii) determines that the Department
2 of Defense and the applicant are actively
3 engaged in mitigation discussions but have
4 not yet reached agreement on mitigation
5 measures; or

6 “(iii) identifies a specific, articulated,
7 and material degradation to an identified
8 military system or mission posed by the
9 project for which mitigation measures are
10 not yet available or validated; and

11 “(iv) not later than 90 days after the
12 date on which the Clearinghouse received
13 the application for such project, identifies
14 the basis for tolling under clause (i), (ii),
15 or (iii) in writing to the applicant.

16 “(B) Any tolling under subparagraph
17 (A)—

18 “(i) shall be limited to the period rea-
19 sonably necessary to cure the identified de-
20 ficiency, conclude mitigation discussions, or
21 develop and validate mitigation measures,
22 as applicable;

23 “(ii) shall terminate immediately upon
24 submission by the applicant of information
25 curing the identified deficiency, agreement

1 on mitigation measures, or validation of
2 mitigation measures, as applicable;

3 “(iii) may not restart or otherwise ex-
4 tend any deadline under this subsection be-
5 yond the period referred to in clause (i);
6 and

7 “(iv) may not apply with respect to
8 any deadline relating to escalation, con-
9 gressional notification, the legal effect of a
10 failure to issue a final determination de-
11 scribed in subsection (h)(2), or the comple-
12 tion and conclusion of a review under sub-
13 section (h)(3)(B).

14 “(C) In the case of a deadline tolled on the
15 basis of an identification under subparagraph
16 (A)(iii), the Clearinghouse shall (on an expe-
17 dited basis and in coordination with the Sec-
18 retary concerned and relevant technical experts
19 and other entities from private industry and
20 academia) initiate the development and valida-
21 tion of mitigation measures reasonably capable
22 of addressing the degradation so identified.

23 “(D) Following the conclusion of the 90-
24 day period under clause (iv) of subparagraph
25 (A) with respect to a tolled deadline, such dead-

1 line may not be further tolled on the basis of
2 a subsequently identified deficiency or degrada-
3 tion pursuant to clause (i) or (iii) of such sub-
4 paragraph, respectively, unless such deficiency
5 arises directly from new information submitted
6 by the applicant following such period.

7 “(j) REOPENING OF EXECUTED MITIGATION AGREE-
8 MENTS.—(1) The Secretary of Defense may not reopen,
9 modify, suspend, terminate, or require the renegotiation
10 of an executed mitigation agreement relating to an energy
11 project or antenna structure project unless the Sec-
12 retary—

13 “(A) issues a project-specific determination,
14 supported by clear and convincing evidence (rather
15 than generalized or conclusory assertions), that—

16 “(i) the project has been materially modi-
17 fied in a manner directly relevant to national
18 security considerations; or

19 “(ii) specific and material national security
20 information not reasonably available to the De-
21 partment as of the date on which the mitigation
22 agreement was executed demonstrates that con-
23 tinued operation of the project under the exe-
24 cuted mitigation agreement would result in an
25 unacceptable risk to military operations or na-

1 tional security that cannot reasonably be ad-
2 dressed through existing mitigation measures or
3 less restrictive means; and

4 “(B) not later than five days after issuing such
5 determination, submits to the project applicant and
6 the Committees on Armed Services of the Senate
7 and House of Representatives such determination in
8 writing.

9 “(2) A determination under paragraph (1) shall in-
10 clude the following:

11 “(A) A specific identification of the military
12 system, installation, or operational mission affected.

13 “(B) A description of the nature and magnitude
14 of the projected effect, based on documented tech-
15 nical analysis.

16 “(C) An explanation as to why existing mitiga-
17 tion measures are insufficient to address the identi-
18 fied concern.

19 “(k) PUBLIC TRANSPARENCY.—The Secretary shall
20 maintain, and update on a basis that is not less frequently
21 than monthly, a publicly accessible website that provides,
22 for each application for an energy project or antenna
23 structure project received under this section, the following
24 information:

25 “(1) The identity of the project.

1 “(2) The date on which the Clearinghouse re-
2 ceived such application for a preliminary review.

3 “(3) The applicable deadline for a final deter-
4 mination under subsection (h).

5 “(4) The current status of the review of such
6 application.

7 “(5) If a final determination has been issued
8 with respect to the application, the date of issuance
9 and a summary of the determination.

10 “(1) CLARIFICATION OF ADVERSE IMPACT DETER-
11 MINATIONS.—No determination or finding of adverse im-
12 pact on military operations and readiness under this sec-
13 tion may be based solely on general, speculative, or hypo-
14 thetical operational requirements or threats, or on capa-
15 bilities not budgeted and programmed in the future-years
16 defense program as of the date of such determination or
17 finding.”.

18 (b) APPLICABILITY.—The amendments made by sub-
19 section (a) shall apply with respect to applications for en-
20 ergy projects or antenna structure projects received by the
21 Secretary of Defense—

22 (1) on or after the date of the enactment of this
23 Act; or

1 (2) prior to such date, if such application is
2 pending as of the date that is 180 days after the
3 date of the enactment of this Act.

4 (c) DEADLINE FOR WEBSITE ESTABLISHMENT.—

5 The Secretary of Defense shall establish the website re-
6 quired under section 183a(k) of title 10, United States
7 Code, as amended by subsection (a), by not later than 90
8 days after the date of the enactment of this Act.

