



Amendments to H.R. 5055: Fiscal Year 2017 Energy and Water Appropriations (Rep. Simpson, R-ID) – Part III

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The Committee Report can be found [here](#), and the text of the legislation can be found [here](#). The Legislative Bulletin on the bill can be found [here](#).

This Legislative Bulletin includes summaries of amendments for which votes remain pending. Additional amendments will be summarized in Legislative Bulletins as they become available.

SUMMARY AND ANALYSIS OF AMENDMENTS:

1. **[Weber \(R-TX\)](#)**: Would reduce funding for the Title 17 Loan Guarantee Program by \$7 million, which would eliminate the net appropriation for administrative expenses, thereby preventing any new loans from being made under the program.

The [RSC Budget](#) proposed eliminating this program, stating: “This is the program that gave us the Solyndra scandal that resulted in the taxpayers losing more than \$500 million after the administration gambled on a politically favored company.” Several conservative groups have supported eliminating this program, including [American Energy Alliance](#), [Americans for Prosperity](#), [Cato](#), [Heritage](#), [Mercatus](#), and [Taxpayers for Common Sense](#).

Key Vote Yes: [National Taxpayers Union](#)

2. **[Ellison \(D-MN\)](#)**: Would establish Congressional intent that \$1 million of DOE Departmental Administration funding would be to create an “Office of Good Jobs”.

Such an office has been advocated for by the [leadership PAC associated with the Congressional Progressive Caucus](#) on a federal government-wide basis.

3. **[Farr \(D-CA\)](#)**: Would strike the rider in the bill inserted in the base bill by RSC Chairman Flores to prohibit the use of funds to carry out the [National Ocean Policy](#) under Executive Order 13547.

The National Ocean Policy was established by an Executive Order that mandates new priorities for all federal agencies to follow when issuing permits or authorizing activities for any activity which might affect ocean quality – including inland activities. In addition to creating a further level of

bureaucracy without statutory authorization, these policies would create more uncertainty for inland businesses, mandating where activities can and cannot occur in the ocean and coastal zones, could over-ride local and state zoning authorities, and will lead to litigation attempting to stop or needlessly delay Federally-permitted activities.

Outside Group Opposition: Council for Citizens Against Government Waste (CCAGW)

4. [Garamendi \(D-CA\)](#): Would prohibit funds made available by the bill to expand plutonium pit production capacity at the [PF-4 facility](#) at the Los Alamos National Laboratory. These pits are at the core of weapons in the U.S. strategic arsenal, and an increase in production may be necessary to accommodate the [life extension programs](#) for various warheads, including the W78 and W88.
5. [Pittenger \(R-NC\)](#): Would state that “none of the funds made available by this Act may be used to revoke funding previously awarded, to or within the State of North Carolina.”

Earlier this year, the City of Charlotte passed an [ordinance](#) that requires private businesses and non-profits in the city to make accommodations based on sexual orientation, gender identity, and gender expression, including by allowing individuals to use facilities such as bathrooms and locker rooms of their choosing.

In response, the state enacted [HB 2](#), the [Public Facilities Privacy and Security Act](#), which would [allow](#) “the private sector free to do what they think best with their bathrooms, and it says government-run facilities will operate according to biological sex.”

The Department of Justice (DOJ) then [sued](#) the state. Despite the fact that the state has *not* been found guilty of violating any federal law, [Attorney General Loretta Lynch stated](#) that the DOJ retains “the option of curtailing federal funding to the North Carolina Department of Public Safety and the University of North Carolina as this case proceeds.”

In addition, multiple other officials have attempted to coerce North Carolina in the midst of pending litigation. These officials include:

- [Department of Transportation Secretary Anthony Foxx;](#)
- [Department of Education Spokesperson Dorie Nolt;](#)
- [Department of Housing and Urban Development spokesperson Cameron French;](#)
- [White House Press Secretary Josh Earnest; and](#)
- [Senior Advisor to the President Valerie Jarrett.](#)

6. [Gosar \(R-AZ\)](#): Would prohibit the use of funds for regulations that reference or rely on the administration’s “[Social Cost of Carbon](#)”. This analysis requires regulators to assign a dollar value to carbon emissions to justify regulations such as the EPA’s recent Methane Rule. The administration recently moved to increase the dollar value of carbon emissions without following the Administrative Procedures Act. A Heritage Foundation event on the problems with the Social Cost of Carbon can be viewed online [here](#). A Democrat amendment to the FY 2016 Interior Appropriations bill supporting the Social Cost of Carbon failed by a [186 – 243](#) vote.

Outside Group Support: Americans for Limited Government, Americans for Tax Reform, Arch Coal, the Council for Citizens Against Government Waste, FreedomWorks, the National Taxpayers Union, the Taxpayers Protection Alliance, Concerned Citizens for America Arizona Chapter, the Gila County Cattle Growers Association, and the Sulphur Springs Valley Electric Cooperative.

7. **[Foster \(D-IL\)](#)**: Would prohibit funds provided by the bill for the Experimental Program to Stimulate Competitive Research (**[EPSCoR](#)**) program. This program is run by the National Science Foundation (NSF) and determines grant eligibility based on the level of NSF funding that has been given to a state over the last three years. According to the amendment sponsor, it is meant to steer funding to small population states.

Currently, Alabama, Alaska, Arkansas, Delaware, Hawaii, Idaho, Kansas, Kentucky, Louisiana, Maine, Mississippi, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Dakota, Oklahoma, Rhode Island, South Carolina, South Dakota, Vermont, West Virginia, and Wyoming are [eligible](#) for EPSCoR funding.

A dear colleague in support for the amendment can be found [here](#) and a dear colleague in opposition to the amendment can be found [here](#).

A similar amendment to the FY 2016 Commerce, Justice, Science Appropriations bill failed by a [195 – 232](#) vote.

8. **[Maloney \(D-NY\)](#)**: The amendment would give Congressional approval and grant statutory legitimacy, to the extent covered by the scope of the bill to an [Obama Executive Order](#) that added sexual orientation and gender identity to an earlier Executive Order that prohibits federal contractors from discriminating against employment of certain protected statuses. Prior to the Obama amendment, the protected status were: race, color, religion, sex, or national origin, which mirrored the [Civil Rights Act](#).

If adopted and enacted into law, the amendment would place into law, by reference, the expansion of protected class status based on characteristics of sexual orientation and gender identity. It is likely that this expansion would then remain in force to the extent covered by the scope of the bill, even if the underlying executive order is later changed or amended.

Many members may be concerned that the practical effect of including the substance of this Executive Order in statute is that it would elevate sexual orientation and gender identity as a protected class and prevent federal contractors from employing individuals who follow the organizations' religious teachings or adhere to its beliefs. Organizations that could be affected include service providers, chaplain services, universities, and landlords, among others.

It is possible that, even if adopted, the amendment would not survive in conference with the Senate, as was the case for a similar amendment offered by Representative Peters to the FY 2016 T-HUD appropriations bill.

An identical amendment to the FY 2017 Military Contraction and Veterans Affairs Appropriations bill failed by a [212 – 213](#) vote. This Maloney amendment was key voted against by [Heritage Action](#) and the [Family Research Council](#).

According to Heritage Action, "Heritage experts are convinced that if the Maloney amendment is adopted, there is no amendment language (within the artificial constraints of legislating on appropriations) that would totally mitigate the damage. When asked about this effort, Roger Severino, director of the Devos Center for Religion and Civil Society, said "Religious liberty protections can never completely counteract the religious liberty lost from elevating SOGI as a protected class. Exemptions only mitigate at best, they don't undo, the loss suffered from codifying SOGI language."

Second Degree Amendment [Pitts \(R-PA\)](#): A [second degree](#) amendment to the Maloney Amendment was adopted by a voice vote so that the amendment now reads: “None of the funds made available by this Act may be used in contravention of Executive Order No. 13672 of July 21, 2014 (Further Amendments to Executive Order 11478, Equal Employment Opportunity in the Federal Government, and Executive Order 11246, Equal Employment Opportunity), *except as required by the First Amendment, the Fourteenth Amendment, and Article I of the Constitution.* [Emphasis added to show language added by Pitts second degree amendment].

As modified as by the second degree amendment offered by Representative Pitts, it would be up to the administration and the judgement of any courts in which litigation may arise as to whether the expansion of protected classes contemplated by the underlying executive order is in fact in compliance with Article 1, and the 1st and 14th amendments to the U.S. Constitution.

Key Vote No:

- [Heritage Action: “NO” on Maloney Anti-Religious Freedom Amendment, as modified](#)
- Family Research Council

9. [Byrne \(R-AL\)](#): Would prohibit the use of funds in contravention of several provisions of law and executive orders that are meant to protect First Amendment rights for religious corporations, religious associations, religious educational institutions, or religious societies.

The provisions include:

- the Religious Freedom Restoration Act,
- Executive Order 13279,
- Sections 702(a) and 703(e)(2) of the Civil Rights Act of 1964 ([42 U.S.C. 2000e-1\(a\)](#), [42 U.S.C. 2000e-2\(e\)\(2\)](#)), or
- Section 103(d) of the Americans with Disabilities Act of 1990 ([42 U.S.C. 12113\(d\)](#)).

Some conservatives may be concerned that while this amendment would reaffirm the House’s support for religious liberty; it would not necessarily remedy the legal issues caused by the Maloney Amendment. To the extent the Maloney amendment, and its underlying executive order, is in violation of these existing statutes and orders, it should already be prohibited without a new funding limitation.

10. [Blackburn \(R-TN\)](#): Would reduce spending in the bill by one percent across the board. This would reduce spending by \$374 million.

The underlying bill provides \$37.444 billion in discretionary budget authority. That is \$168 million above the president’s budget request, \$259 million above the current FY16 enacted level, and \$2.041 billion above the level originally proposed by the House Appropriations Committee in FY16.

11. [Smith \(R-MO\)](#): Would prohibit the use of funds by the Army Corps of Engineers to intentionally breach levees under the Birds Point-New Madrid Floodway Operations Plan, without the existence of expressed appropriations to do so in advance. Violations of this prohibition would be punishable under the penalties of the Anti-Deficiency Act (31 USC 1350).

12. [Walker \(R-NC\)](#): Would reduce spending for unauthorized programs funded by the bill so that no unauthorized program receives more than its FY 2016 currently enacted level. Specifically, this would save \$185 million by cutting nine programs:

- EERE Weatherization Activities – \$400,000
- Nuclear Energy – \$25,455,000
- Fossil Energy – \$13,000,000
- Strategic Petroleum Reserve – \$45,000,000
- Office of Science – \$49,800,000
- Advanced Research Projects Agency-Energy – \$14,889,000
- Non-Defense Environmental Cleanup– \$2,400,000
- Power Marketing Administrations: Western Area – \$2,209,000
- Nuclear Regulatory Commission – \$32,132,000

The underlying bill includes \$9.035 billion in appropriations for 22 non-defense programs that are not authorized by law. Several of these programs have not been authorized since the 1980's and one has never been authorized by Congress.

The inclusion of appropriations for these programs in the reported bill is in violation of [clause 2\(a\)\(1\) of rule XXI of the Rules of the House](#).

Key Vote Support: National Taxpayers Union

13. [DeSantis \(R-FL\)](#): Would prohibit funds made available by the bill to purchase heavy water from Iran. This amendment is identical to the [Cotton Amendment](#) offered in the Senate, which was defeated by a [57 – 42](#) vote (subject to a 60 vote threshold).

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