

PROTECTING AMERICAN ENERGY PRODUCTION ACT

MARCH 23, 2023.—Ordered to be printed

Mrs. RODGERS of Washington, from the Committee on Energy and
Commerce, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 1121]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 1121) to prohibit a moratorium on the use of hydraulic fracturing, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

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PURPOSE AND SUMMARY

H.R. 1121 was introduced by Rep. Jeff Duncan (SC-03) on February 21, 2023. The purpose of H.R. 1121 is to prevent the President from implementing a national ban on hydraulic fracturing. The bill prohibits the President from declaring a moratorium on the use of hydraulic fracturing unless Congress authorizes the moratorium. The bill also expresses the sense of Congress that states should maintain primacy for the regulation of hydraulic fracturing for oil and natural gas production on state and private lands.

BACKGROUND AND NEED FOR LEGISLATION

Hydraulic fracturing, or fracking, is a process to extract underground resources such as oil or gas from a geologic formation by injecting water, a propping agent (e.g., sand), and chemical additives into a well under enough pressure to fracture the formation. States decide whether to permit or ban hydraulic fracturing (fracking) on State and private land. Under current law, each State has primary regulatory authority over oil and natural gas production. Congress made this clear in the bipartisan Energy Policy Act of 2005. This bill maintains the Congressional intent of the bipartisan Energy Policy Act of 2005, as each State has primary regulatory authority over oil and natural gas production using hydraulic fracturing. It also prevents the President from unilaterally declaring a moratorium on hydraulic fracturing.

Hydraulic fracturing in the production of both oil and natural gas predicated the “Shale Revolution”, propelling the United States to be a world leader in both. America became the global leader in crude oil and natural gas production. It is estimated the shale revolution saved U.S. consumers \$203 billion dollars annually, breaking down to \$2,500 per family of four. It also lowered energy-related greenhouse gas emissions by 527 metric tons per year.

Despite the successes and benefits of hydraulic fracturing, the Federal Government has sought to regulate it by ignoring existing laws and Congressional intent. The Committee finds that to increase American energy production and restore energy leadership the authority of the States to regulate production on State and private land within their borders must be preserved. H.R. 1121 protects this authority and curtails the overreach of the Executive Branch by prohibiting the President from declaring a moratorium on hydraulic fracturing unless it is authorized by Congress.

COMMITTEE ACTION

On February 7, 2023, the Subcommittees on Energy, Climate, and Grid Security and Environment, Manufacturing, and Critical Materials held a joint hearing entitled, “Unleashing American Energy, Lowering Energy Costs, and Strengthening Supply Chains,” on 17 pieces of legislation, including H.R. 1121. The Subcommittees received testimony from:

- The Honorable Mark Menezes, Former United States Deputy Secretary of Energy, Department of Energy;
- The Honorable Bernard McNamee, Former Commissioner, Federal Energy Regulatory Commission;
- Jeffrey Eshelman, II, President and Chief Executive Officer, Independent Petroleum Association of America;

- Katie Sweeney, Executive Vice President and Chief Operating Officer, National Mining Association;
- Raul Garcia, Legislative Director for Healthy Communities, Earthjustice; and
- Tyson Slocum, Director of the Energy Program, Public Citizen.

On February 28, 2023, the Subcommittee on Energy, Climate, and Grid Security met in open markup session and forwarded H.R. 1121, without amendment, to the full Committee by a record vote of 16 yeas and 11 nays. On March 9, 2023, the full Committee on Energy and Commerce met in open markup session and ordered H.R. 1121, without amendment, favorably reported to the House by a record vote of 29 yeas and 19 nays.

COMMITTEE VOTES

Clause 3(b) of rule XIII requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The following reflects the record votes taken during the Committee consideration:

**COMMITTEE ON ENERGY AND COMMERCE
118TH CONGRESS
ROLL CALL VOTE # 7**

BILL: H.R. 1121, the Protecting American Energy Production Act

AMENDMENT: A motion by Mrs. Rodgers to order H.R. 1121 favorably reported to the House, without amendment (Final Passage).

DISPOSITION: AGREED TO, by a roll call vote of 29 yeas and 19 nays

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Rep. Rodgers	X			Rep. Pallone		X	
Rep. Burgess	X			Rep. Eshoo		X	
Rep. Latta	X			Rep. DeGette		X	
Rep. Guthrie	X			Rep. Schakowsky			
Rep. Griffith	X			Rep. Matsui		X	
Rep. Bilirakis	X			Rep. Castor		X	
Rep. Johnson	X			Rep. Sarbanes		X	
Rep. Bucshon	X			Rep. Tonko		X	
Rep. Hudson	X			Rep. Clarke		X	
Rep. Walberg	X			Rep. Cárdenas		X	
Rep. Carter	X			Rep. Ruiz		X	
Rep. Duncan	X			Rep. Peters		X	
Rep. Palmer	X			Rep. Dingell		X	
Rep. Dunn	X			Rep. Veasey		X	
Rep. Curtis	X			Rep. Kuster		X	
Rep. Lesko	X			Rep. Kelly		X	
Rep. Pence	X			Rep. Barragán		X	
Rep. Crenshaw				Rep. Blunt Rochester			
Rep. Joyce	X			Rep. Soto		X	
Rep. Armstrong	X			Rep. Craig		X	
Rep. Weber	X			Rep. Schrier			
Rep. Allen	X			Rep. Trahan		X	
Rep. Balderson	X			Rep. Fletcher	X		
Rep. Fulcher	X						
Rep. Pfluger	X						
Rep. Harshbarger	X						
Rep. Miller-Meeks	X						
Rep. Cammack	X						
Rep. Obernolte	X						

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OVERSIGHT FINDINGS AND RECOMMENDATIONS

Pursuant to clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII, the Committee held hearings and made findings that are reflected in this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY,
AND TAX EXPENDITURES

Pursuant to clause 3(c)(2) of rule XIII, the Committee finds that H.R. 1121 would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII, at the time this report was filed, the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974 was not available.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII, the general performance goal or objective of this legislation is to increase American energy production and restore energy leadership by prohibiting the President from declaring a moratorium on the use of hydraulic fracturing and protecting State primacy of the regulation of hydraulic fracturing for oil and natural gas production on state and private lands.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII, no provision of H.R. 1121 is known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of Public Law 111–139 or the most recent Catalog of Federal Domestic Assistance.

RELATED COMMITTEE AND SUBCOMMITTEE HEARINGS

Pursuant to clause 3(c)(6) of rule XIII:

(1) the following hearings were used to develop or consider H.R. 1121:

On January 31, 2023, the Committee on Energy and Commerce held a hearing entitled, “American Energy Expansion: Strengthening Economic, Environmental, and National Security.” The Committee received testimony from:

- The Honorable Paul Dabbar, Former Under Secretary of Energy, Department of Energy;
- Robert McNalley, President, Rapidan Energy Group, LLC;
- Donna Jackson, Director of Membership Development—National Center for Public Policy Research, Project 21; and
- Ana Unruh Cohen, Former Majority Staff Director, U.S. House Select Committee on the Climate Crisis.

On February 16, 2023, the Subcommittee on Energy, Climate, and Grid Security held a field hearing in Midland, Texas, entitled, “American Energy Expansion: Improving Local Economies and Communities’ Way of Life.” The Committee received testimony from:

- The Honorable Lori Blong, Mayor of Midland, Texas, and President of Octane Energy;
- Adrian Carrasco, Chairman Midland Hispanic Chamber of Commerce, and President of Premier Energy Services;
- Steven Pruett, President and CEO, Elevation Resources, and Chairman of the Board for Independent Petroleum Association of America; and
- Dr. Michael Zavada, Professor of Biology and Geosciences, and Chair, Department of Geosciences at The University of Texas—Permian Basin.

(2) The following related hearing was held:

On February 7, 2023, the Subcommittees on Energy, Climate, and Grid Security and Environment, Manufacturing, and Critical Materials held a joint hearing entitled, “Unleashing American Energy, Lowering Energy Costs, and Strengthening Supply Chains,” on 17 pieces of legislation, including H.R. 1121. The Subcommittees received testimony from:

- The Honorable Mark Menezes, Former United States Deputy Secretary of Energy, Department of Energy;
- The Honorable Bernard McNamee, Former Commissioner, Federal Energy Regulatory Commission;
- Jeffrey Eshelman, II, President and Chief Executive Officer, Independent Petroleum Association of America;
- Katie Sweeney, Executive Vice President and Chief Operating Officer, National Mining Association;
- Raul Garcia, Legislative Director for Healthy Communities, Earthjustice; and
- Tyson Slocum, Director of the Energy Program, Public Citizen.

COMMITTEE COST ESTIMATE

Pursuant to clause 3(d)(1) of rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974. At the time this report was filed, the estimate was not available.

EARMARK, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

Pursuant to clause 9(e), 9(f), and 9(g) of rule XXI, the Committee finds that H.R. 1121 contains no earmarks, limited tax benefits, or limited tariff benefits.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or

accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

Section 1 provides the short title of “Protecting American Energy Production Act”.

Section 2. Protecting American Energy Production

Section 2(a) expresses the Sense of Congress that States should maintain primacy for the regulation of hydraulic fracturing for oil and natural gas production on State and private lands.

Section 2(b) prohibits the President from declaring a moratorium on the use of hydraulic fracturing unless such moratorium is authorized by an Act of Congress.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

With respect to the requirement of clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, this section was not made available to the Committee in time for the filing of this report.

MINORITY VIEWS

H.R. 1121, which would prohibit the President from implementing any moratorium on fracking unless explicitly authorized by Congress, is a messaging bill and is a solution in search of a problem. The prohibition contained in the bill is overly-broad, and contradicts the sense of Congress contained in the same section.

In its report, the majority claims that “the Federal Government has sought to regulate it by ignoring existing laws and Congressional intent.” We are aware of no efforts from the Biden Administration to impose a ban or a moratorium on the use of hydraulic fracturing on State and private land.

What’s more, the bill goes beyond the limitations the majority claims are embedded within the Energy Policy Act of 2005. As written, the bill prohibits the President from “declare[ing] a moratorium on the use of hydraulic fracturing unless such moratorium is authorized by an Act of Congress”.¹ This language would go beyond the State and private lands that the majority’s report and the sense of Congress contained in section 2(a) specify, and would seem to prohibit the President from enacting limitations on the use of hydraulic fracturing on public lands—an overly broad prohibition that would limit the Federal government’s authority to dictate what occurs on lands it owns.

For the reasons stated above, we dissent from the views contained in the Committee’s report.

FRANK PALLONE, Jr.,

Ranking Member, Committee on Energy and Commerce.

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¹H.R. 1121.