

PROTECTING AMERICAN ENERGY PRODUCTION ACT

JANUARY 31, 2024.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. WESTERMAN, from the Committee on Natural Resources,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 1121]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, 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.

PURPOSE OF THE LEGISLATION

The purpose of H.R. 1121 is to prohibit a moratorium on the use of hydraulic fracturing.

BACKGROUND AND NEED FOR LEGISLATION

Hydraulic fracturing (fracking) has had a transformative impact on the U.S. economy and the oil and gas sector, positioning the United States as one of the world's leading producers of natural gas and oil. The technique has been employed since 1947 but combined with the more recent advent of horizontal drilling, it has unlocked vast reserves of previously inaccessible hydrocarbons, leading to increased domestic production and reduced reliance on foreign energy sources. This surge in supply has contributed to lower energy prices for consumers, stimulating economic growth, and improving the quality of life for Americans.

In 2015, the Bureau of Land Management (BLM), under the Obama administration, finalized a regulation to address fracking

on federal lands.¹ However, the rule's effective date was postponed due to the issuance of a stay by a Wyoming federal judge² and then was struck down by U.S. District Court Judge Scott Skavdahl in 2016.³ Judge Skavdahl's decision stated "Congress has not delegated to the Department of the Interior the authority to regulate hydraulic fracturing. The BLM's effort to do so through the Fracking Rule is in excess of its statutory authority and contrary to law."⁴ The regulation was formally revoked by the Trump administration in 2017.⁵ Aside from its legal issues, the regulation was highly duplicative as it would have allowed the BLM to make unilateral decisions concerning state regulations and would have created unnecessary costs and delays for producers.

H.R. 1121 expresses a Sense of Congress that fracking should be regulated by states on state and private land, not the federal government through the BLM, while also preventing the Biden administration or future administrations from banning hydraulic fracturing without Congressional direction.

COMMITTEE ACTION

H.R. 1121 was introduced on February 21, 2023, by Rep. Jeff Duncan (R-SC). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Energy and Mineral Resources. The bill was also referred to the Committee on Energy and Commerce. On September 28, 2023, the Subcommittee on Energy and Mineral Resources held a hearing on the bill. On November 8, 2023, the Committee on Natural Resources met to consider the bill. The Subcommittee on Energy and Mineral Resources was discharged from further consideration of H.R. 1121 by unanimous consent. Representative Sydney Kamlager-Dove (D-CA) offered an amendment designated Kamlager-Dove #1. The amendment was not adopted by roll call vote of 18 to 20 as follows:

¹ 80 Fed. Reg. 16127 (2015), <https://www.federalregister.gov/documents/2015/03/26/2015-06658/oil-and-gas-hydraulic-fracturing-on-federal-land-indian-lands>.

² Order Postponing Effective Date of Agency Action, Wyoming v. Jewell, No. 15-043 (D.Wyo. June 24, 2015).

³ Case 2:15-cv-00043-SWS, 6/21/16, <https://www.ipaa.org/wp-content/uploads/2016/12/BLM-HF-Rule-Final-Agency-Action-ReviewRuling.pdf>.

⁴ *Id.*

⁵ 82 Fed. Reg. 34464 (2017), <https://www.federalregister.gov/documents/2017/07/25/2017-15696/oil-and-gas-hydraulic-fracturing-on-federal-land-indian-lands-rescission-of-a-2015-rule>.

Committee on Natural Resources
U.S. House of Representatives
118th Congress

Date: November 8, 2023

Roll Call #1

Meeting on / Amendment: Kalmager-Dove #1 to H.R. 1121 (Rep. Duncan), "Protecting American Energy Production Act"

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
Mr. Westerman, AR, Chairman		X		Mr. Grijalva, AZ, Ranking	X		
Mr. Lamborn, CO		X		Ms. Napolitano, CA	X		
Mr. Wittman, VA				Mr. Sablan, CNMI	X		
Mr. McClintock, CA		X		Mr. Huffman, CA	X		
Mr. Gosar, AZ		X		Mr. Gallego, AZ	X		
Mr. Graves, LA		X		Mr. Neguse, CO			
Mrs. Radewagen, AS		X		Mr. Levin, CA	X		
Mr. LaMalfa, CA				Ms. Porter, CA	X		
Mr. Webster, FL		X		Ms. Leger Fernandez, NM	X		
Ms. González-Colón, PR		X		Ms. Stansbury, NM	X		
Mr. Fulcher, ID		X		Mrs. Peltola, AK	X		
Mr. Stauber, MN		X		Ms. Ocasio-Cortez, NY	X		
Mr. Curtis, UT		X		Mr. Mullin, CA	X		
Mr. Tiffany, WI		X		Ms. Hoyle, OR	X		
Mr. Carl, AL		X		Ms. Kalmager-Dove, CA	X		
Mr. Rosendale, MI		X		Mr. Magaziner, RI	X		
Mrs. Boebert, CO				Ms. Velázquez, NY			
Mr. Bentz, OR		X		Mr. Case, HI	X		
Ms. Kiggans, VA		X		Mrs. Dingell, MI	X		
Mr. Moylan, Guam		X		Ms. Lee, NV	X		
Mr. Hunt, TX							
Mr. Collins, GA							
Ms. Luna, FL		X					
Mr. Duarte, CA		X					
Ms. Hageman, WY		X					
				TOTAL:	18	20	

Representative Mike Levin (D-CA) offered an amendment designated Levin 050. The amendment was not adopted by roll call vote of 18 to 20 as follows:

H.R. 1121 was ordered favorably reported to the House of Representatives by a roll call vote of 21 to 17, as follows:

Committee on Natural Resources
U.S. House of Representatives
118th Congress

Date: November 8, 2023

Roll Call #3

Meeting on / Amendment: On Favorably Reporting H.R. 1121 (Rep. Duncan), "Protecting American Energy Production Act"

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
Mr. Westerman, AR, Chairman	X			Mr. Grijalva, AZ, Ranking		X	
Mr. Lamborn, CO	X			Ms. Napolitano, CA		X	
Mr. Wittman, VA				Mr. Sablan, CNMI		X	
Mr. McClintock, CA	X			Mr. Huffman, CA		X	
Mr. Gosar, AZ	X			Mr. Gallego, AZ		X	
Mr. Graves, LA	X			Mr. Neguse, CO			
Mrs. Radewagen, AS	X			Mr. Levin, CA		X	
Mr. LaMalfa, CA				Ms. Porter, CA		X	
Mr. Webster, FL	X			Ms. Leger Fernandez, NM		X	
Ms. González-Colón, PR	X			Ms. Stansbury, NM		X	
Mr. Fulcher, ID	X			Mrs. Peltola, AK	X		
Mr. Stauber, MN	X			Ms. Ocasio-Cortez, NY		X	
Mr. Curtis, UT	X			Mr. Mullin, CA		X	
Mr. Tiffany, WI	X			Ms. Hoyle, OR		X	
Mr. Carl, AL	X			Ms. Kamlager-Dove, CA		X	
Mr. Rosendale, MT	X			Mr. Magaziner, RI		X	
Mrs. Boebert, CO				Ms. Velázquez, NY			
Mr. Bentz, OR	X			Mr. Case, HI		X	
Ms. Kiggans, VA	X			Mrs. Dingell, MI		X	
Mr. Moylan, Guam	X			Ms. Lee, NV		X	
Mr. Hunt, TX							
Mr. Collins, GA							
Ms. Luna, FL	X						
Mr. Duarte, CA	X						
Ms. Hageman, WY	X						
				TOTAL:	21	17	

HEARINGS

For the purposes of clause 3(c)(6) of House rule XIII, the following hearing was used to develop or consider this measure: hearing by the Subcommittee on Energy and Mineral Resources held on September 28, 2023.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 establishes the short title of the bill as the “Protecting American Energy Production Act”.

Section 2. Protecting American energy production

Section 2 expresses a Sense of Congress that states should maintain primacy for regulating hydraulic fracturing on state and private lands. Prohibits the President from declaring a moratorium on the use of hydraulic fracturing unless authorized by Congress.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources’ oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII AND CONGRESSIONAL BUDGET ACT

1. *Cost of Legislation and the Congressional Budget Act.* With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for the bill from the Director of the Congressional Budget Office:

H.R. 1121, Protecting American Energy Production Act			
As ordered reported by the House Committee on Natural Resources on November 8, 2023			
By Fiscal Year, Millions of Dollars	2024	2024-2028	2024-2033
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	0	0	0
Increases <i>net direct spending</i> in any of the four consecutive 10-year periods beginning in 2034?	No	Statutory pay-as-you-go procedures apply? No	
		Mandate Effects	
Increases <i>on-budget deficits</i> in any of the four consecutive 10-year periods beginning in 2034?	No	Contains intergovernmental mandate? No	
		Contains private-sector mandate? No	

H.R. 1121 would prohibit the President from declaring a moratorium on hydraulic fracturing unless authorized to do so by law. (Hydraulic fracturing involves pumping liquids into the ground to

generate cracks within geologic formations, facilitating access to oil and gas.)

Under current law, states are the primary regulators for oil and natural gas production using hydraulic fracturing. Because there are currently no proposed or final federal regulations preventing its use, CBO estimates enacting H.R. 1121 would not affect the federal budget.

On March 23, 2023, CBO transmitted a cost estimate for H.R. 1, the Lower Energy Costs Act, as posted on the website of the House Committee on Rules on March 14, 2023. Section 10002 of H.R. 1 is similar to H.R. 1121 and CBO's estimates of the budgetary effects of those provisions are the same.

The CBO staff contact for this estimate is Lilia Ledezma. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

PHILLIP L. SWAGEL,
Director, Congressional Budget Office.

2. *General Performance Goals and Objectives.* As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to prohibit a moratorium on the use of hydraulic fracturing.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

UNFUNDED MANDATES REFORM ACT STATEMENT

According to the Congressional Budget Office, H.R. 1121 contains no unfunded mandates as defined in the Unfunded Mandates Reform Act.

EXISTING PROGRAMS

Directed Rule Making. This bill does not contain any directed rule makings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95–220, as amended by Public Law 98–169) as relating to other programs.

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.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

Any preemptive effect of this bill over state, local, or tribal law is intended to be consistent with the bill's purposes and text and the Supremacy Clause of Article VI of the U.S. Constitution.

CHANGES IN EXISTING LAW

As ordered reported by the Committee on Natural Resources, H.R. 1121 makes no changes in existing law.

DISSENTING VIEWS

H.R. 1121 would prohibit the President from declaring a moratorium on the use of hydraulic fracturing unless Congress specifically authorizes the moratorium. The bill was referred to the Committee on Natural Resources because the President has the authority to enact a moratorium on only federal land. The legislation also expresses the sense of Congress that the states should maintain primacy for the regulation of hydraulic fracturing for oil and natural gas production on state and private lands. The bill language was part of H.R. 1, Republicans' extreme industry giveaway known as the Polluters over People Act.

Hydraulic fracturing, or fracking, is a method of extracting both oil and natural gas from deep underground. Fracking involves injecting a mixture of water, sand, and chemical additives into a well under enough pressure to fracture the formation and extract oil or natural gas. For the last 50–60 years, fracking has been used at the end of the life cycle of a well to extract the last remaining oil or gas from a deposit.¹ Since around 2008, the use of fracking has become more widespread to extract oil or gas from tight rock, where fossil fuels were previously inaccessible. According to the Bureau of Land Management (BLM), 90 percent of the wells drilled on public lands were completed using fracking techniques in FY 2017.²

In 2015, the Obama administration published a rule regulating fracking on public lands.³ The rule was challenged in the U.S. District Court for the District of Wyoming, struck down, and appealed.⁴ The District Court of Wyoming interpreted language in the Safe Drinking Water Act as implying that no federal agency has authority to regulate fracking.⁵ While on appeal, the Trump BLM rescinded the rule.

There are many unknowns about the impact of fracking on public health and on the environment. Fracking fluid contains chemical additives like methanol, ethylene glycol, and propargyl alcohol—all considered hazardous to human health. Significant data gaps and uncertainties remain about the impact of fracking on drinking water. Spills, leaks, and injections of fracking fluid into inadequately built wells create the most significant risks. In addition, fracking can create earthquakes strong enough to cause property

¹ USGS, Hydraulic Fracturing, March 2, 2019 <https://www.usgs.gov/mission-areas/water-resources/science/hydraulic-fracturing>.

² BLM, Press Release, BLM Rescinds Rule on Hydraulic Fracturing, December 28, 2017 <https://www.blm.gov/press-release/blm-rescinds-rule-hydraulic-fracturing>.

³ Federal Register, Oil and Gas; Hydraulic Fracturing on Federal and Indian Lands, March 26, 2015 <https://www.federalregister.gov/documents/2015/03/26/2015-06658/oil-and-gas-hydraulic-fracturing-on-federal-and-indian-lands>.

⁴ *Wyoming v. U.S. Dep't of the Interior*, No. 2:15-cv-00043.

⁵ Energy & Environmental Law Program, Harvard, Hydraulic Fracturing (Fracking) on Federal and Indian Lands, Last Accessed September 22, 2023 <https://eelp.law.harvard.edu/2017/09/hydraulic-fracturing-on-federal-and-indian-lands/>.

damage and injuries in states often ill-equipped to deal with seismic activity.⁶ Despite these risks, a Safe Water Drinking Act loophole prevents EPA from regulating fracking fluid unless it contains diesel.⁷ The president should have the full range of tools to protect public health and combat the climate crisis, including fracking bans, as necessary.

RAÚL M. GRIJALVA,
Ranking Member, House Committee on Natural Resources.



⁶NRDC, Fracking 101, April 19, 2019 <https://www.nrdc.org/stories/fracking-101>.

⁷NRDC, Policy Basics, Fracking, February 2013 <https://www.nrdc.org/sites/default/files/policy-basics-fracking-FS.pdf>.