

PROTECTING STATES' RIGHTS TO PROMOTE AMERICAN  
ENERGY SECURITY ACT

---

NOVEMBER 12, 2013.—Committed to the Committee of the Whole House on the  
State of the Union and ordered to be printed

---

Mr. HASTINGS of Washington, from the Committee on Natural  
Resources, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 2728]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 2728) to recognize States' authority to regulate oil and gas operations and promote American energy security, development, and job creation, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Protecting States' Rights to Promote American Energy Security Act".

**SEC. 2. STATE AUTHORITY FOR HYDRAULIC FRACTURING REGULATION.**

The Mineral Leasing Act (30 U.S.C. 181 et seq.) is amended by redesignating section 44 as section 45, and by inserting after section 43 the following:

**"SEC. 44. STATE AUTHORITY FOR HYDRAULIC FRACTURING REGULATION.**

"(a) **IN GENERAL.**—The Department of the Interior shall not enforce any Federal regulation, guidance, or permit requirement regarding hydraulic fracturing, or any component of that process, relating to oil, gas, or geothermal production activities on or under any land in any State that has regulations, guidance, or permit requirements for that activity.

"(b) **STATE AUTHORITY.**—The Department of the Interior shall recognize and defer to State regulations, permitting, and guidance, for all activities related to hydraulic fracturing, or any component of that process, relating to oil, gas, or geothermal pro-

duction activities on Federal land regardless of whether those rules are duplicative, more or less restrictive, shall have different requirements, or do not meet Federal guidelines.

“(c) HYDRAULIC FRACTURING DEFINED.—In this section the term ‘hydraulic fracturing’ means the process by which fracturing fluids (or a fracturing fluid system) are pumped into an underground geologic formation at a calculated, predetermined rate and pressure to generate fractures or cracks in the target formation and thereby increase the permeability of the rock near the wellbore and improve production of natural gas or oil.”

#### SEC. 3. TRIBAL AUTHORITY ON TRUST LAND.

The Department of the Interior shall not enforce any Federal regulation, guidance, or permit requirement regarding the underground injection of fluids or propping agents as part of the hydraulic fracturing process, or any component of that process, relating to oil, gas, or geothermal production activities on any land held in trust or restricted status for the benefit of Indians except with the express consent of the beneficiary on whose behalf such land is held in trust or restricted status.

#### PURPOSE OF THE BILL

The purpose of H.R. 2728 is to recognize States’ authority to regulate oil and gas operations and promote American energy security, development, and job creation.

#### BACKGROUND AND NEED FOR LEGISLATION

The United States has some of the largest reserves of shale oil and shale gas in the world. Recent innovations combining horizontal drilling with hydraulic fracturing (HF) technology in coal beds, tight gas sands and unconventional gas shale formations have unlocked previously inaccessible, vast new supplies of natural gas. This technology is enabling the development of unconventional domestic oil resources, such as the Bakken Formation in North Dakota and Montana, which is thought to hold 4 billion barrels of oil (second only to Alaska) and has kept North Dakota’s unemployment rate the lowest in the nation. However, much of this production occurs on private and state land, as developers aim to avoid burdensome and time-consuming federal regulations. Currently, 93% of shale wells are located on private land, with 7% located on federal land.

While these technological advances in horizontal drilling have helped spawn the economic development of shale oil, it has primarily benefited and revolutionized domestic natural gas production by delivering vast amounts of cheap natural gas from U.S. underground shale-rock formations. Shale gas production is one of the most rapidly expanding trends in onshore domestic oil and gas exploration and production today. In some areas, this has included bringing exploration, production and energy to regions of the country that have seen little or no activity in the past. In 2000, shale gas provided 1% of our nation’s gas supplies; today it is 25%. Half of the natural gas consumed today is produced from wells drilled within the last 3.5 years. Prior to the shale breakthrough, U.S. natural gas reserves were in decline, prices exceeded \$15 per million btu and investors were building ports to import liquid natural gas. Today proven reserves are the highest since 1971, and prices have fallen close to \$4 per million btu.

Currently, states are responsible for regulating oil and natural gas development stemming from the use of hydraulic fracturing. These state regulations have proven successful in overseeing hydraulic fracturing and stemming concerns related to the chemical

composition of fracturing fluid, as there have been no confirmed reports of groundwater contamination from hydraulic fracturing. Administration officials such as former Environmental Protection Agency heds Lisa Jackson and Carol Browner have testified to this fact.

Critics say environmental regulators and the industry have failed to ensure that hydraulic fracturing is safe and does not have adverse effects on water resources, particularly with respect to the fracturing fluid contaminating drinking water. Horizontal drilling or directional drilling enters the debate as it generally relies on the practice of hydraulic fracturing. However, federal, state, and local laws address every aspect of exploration and production operations. These include well design, location, water and waste management and disposal, air emissions, wildlife protection, surface impact and health and safety. In addition to government oversight, new industry standards advance operation and practices. The industry has created a number of guidance documents and other initiatives relating to hydraulic fracturing, including recommended practices for environmental protection for onshore oil and natural gas production and leases, well construction and well integrity, water use management, and surface environmental considerations.

Additionally, oil and natural gas companies voluntarily comply with FracFocus and state regulations to publicly disclose chemicals used in the hydraulic fracturing process.

While the states have demonstrated an ability to implement effective and efficient regulations for development on their own lands, nonetheless, the Obama Administration continues to pursue implementation of its own burdensome and duplicative regulations for hydraulic fracturing on federal land. The Administration claims these regulations will have minimal impacts on economic development, job creation, cost, and energy production, estimating the regulations will cost only \$11,000 per well. However, state regulators strongly disagree. An economic analysis done by John Dunham & Associates estimates the proposed regulations will cost \$253,800 per well.

States have repeatedly voiced their strong bipartisan opposition to the Administration's hydraulic fracturing regulations, as these regulations could significantly hinder oil and natural gas development within their borders. Small, independent producers will likely bear the brunt of these regulations as they are less able to absorb the additional regulatory cost and depend largely on federal land for their production. Further, each state is unique in geography and energy production considerations. States have carefully crafted state-specific regulations for energy production taking into account the specific needs and characteristics of each state. A one size fits all approach to energy regulation will not work and would be difficult to implement across the country.

Furthermore, state regulations have proven sufficient and effective in managing hydraulic fracturing on their lands. The Lieutenant Governor of Utah, Greg Bell, has testified before the House Committee on Natural Resources that there have been no reports of environmental contamination due to hydraulic fracturing in Utah. In addition, at a 2012 Natural Resources Committee hearing in Denver, Colorado, acting Director of the Colorado Oil and Gas Conservation Commission, Tom Kerr, testified that of over 2,000

samples of water wells, there has been no statistically significant increase in chemical concentrations. Many state officials have also testified regarding their concerns that federal hydraulic fracturing regulations will slow and greatly reduce energy development, job creation and economic development in their states.

H.R. 2728 would prohibit the Bureau of Land Management from enforcing federal regulations on federal lands in states that already have state hydraulic regulations in place.

#### COMMITTEE ACTION

H.R. 2728 was introduced on July 18, 2013, by Congressman Bill Flores (R-TX). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Energy and Mineral Resources. On July 25, 2013, the Subcommittee held a hearing on the bill. On July 31, 2013, the Full Natural Resources Committee met to consider the bill. The Subcommittee on Energy and Mineral Resources was discharged by unanimous consent. Congressman Alan Lowenthal (D-CA) offered an amendment designated \_\_011 to the bill; the amendment was not adopted by a bipartisan roll call vote of 13 to 22, as follows:

## Committee on Natural Resources

U.S. House of Representatives

113th Congress

Date: July 31, 2013

Recorded Vote #: 1

Meeting on / Amendment on: H.R. 2728 - LOWENTHAL.011, Not agreed to by a vote of 13 yeas and 22 nays

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
<b>Mr. Hastings, WA, Chairman</b>		X		<b>Mr. Duncan of SC</b>		X	
<i>Mr. Defazio, OR, Ranking</i>	X			<i>Mr. Cardenas, CA</i>			
<b>Mr. Young, AK</b>				<b>Mr. Tipton, CO</b>		X	
<i>Mr. Faleomavaega, AS</i>				<i>Mr. Horsford, NV</i>			
<b>Mr. Gohmert, TX</b>				<b>Mr. Gosar, AZ</b>		X	
<i>Mr. Pallone, NJ</i>	X			<i>Mr. Huffman, CA</i>	X		
<b>Mr. Bishop, UT</b>		X		<b>Mr. Labrador, ID</b>		X	
<i>Mrs. Napolitano, CA</i>	X			<i>Mr. Ruiz, CA</i>	X		
<b>Mr. Lamborn, CO</b>		X		<b>Mr. Southerland, FL</b>		X	
<i>Mr. Holt, NJ</i>				<i>Ms. Shea-Porter, NH</i>	X		
<b>Mr. Wittman, VA</b>		X		<b>Mr. Flores, TX</b>		X	
<i>Mr. Grijalva, AZ</i>	X			<i>Mr. Lowenthal, CA</i>	X		
<b>Mr. Broun, GA</b>		X		<b>Mr. Runyan, NJ</b>		X	
<i>Ms. Bordallo, GU</i>	X			<i>Mr. Garcia, FL</i>	X		
<b>Mr. Fleming, LA</b>		X		<b>Mr. Amodei, NV</b>			
<i>Mr. Costa, CA</i>		X		<i>Mr. Cartwright, PA</i>	X		
<b>Mr. McClintock, CA</b>		X		<b>Mr. Mullin, OK</b>		X	
<i>Mr. Sablan, CNMI</i>				<b>Mr. Stewart, UT</b>			
<b>Mr. Thompson, PA</b>		X		<b>Mr. Daines, MT</b>		X	
<i>Ms. Tsongas, MA</i>	X			<b>Mr. Cramer, ND</b>			
<b>Ms. Lummis, WY</b>		X		<b>Mr. LaMalfa, CA</b>		X	
<i>Mr. Pierluisi, PR</i>				<b>Mr. Smith, MO</b>		X	
<b>Mr. Benishek, MI</b>		X					
<i>Ms. Hanabusa, HI</i>	X						
				<b>TOTALS</b>	13	22	

Congressman Markwayne Mullin (R-OK) offered an amendment designated 001 to the bill; the amendment was adopted by a bipartisan roll call vote of 23 to 14, as follows:

**Committee on Natural Resources**

U.S. House of Representatives

113th Congress

Date: July 31, 2013

Recorded Vote #: 2

Meeting on / Amendment on: H.R. 2728 - MULLIN\_001, Agreed to by a vote of 23 yeas and 14 nays

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
<b>Mr. Hastings, WA, Chairman</b>	X			<b>Mr. Duncan of SC</b>	X		
<i>Mr. Defazio, OR, Ranking</i>		X		<i>Mr. Cardenas, CA</i>			
<b>Mr. Young, AK</b>				<b>Mr. Tipton, CO</b>	X		
<i>Mr. Faleomavaega, AS</i>				<i>Mr. Horsford, NV</i>			
<b>Mr. Gohmert, TX</b>				<b>Mr. Gosar, AZ</b>	X		
<i>Mr. Pallone, NJ</i>		X		<i>Mr. Huffman, CA</i>		X	
<b>Mr. Bishop, UT</b>	X			<b>Mr. Labrador, ID</b>	X		
<i>Mrs. Napolitano, CA</i>		X		<i>Mr. Ruiz, CA</i>	X		
<b>Mr. Lamborn, CO</b>	X			<b>Mr. Southerland, FL</b>	X		
<i>Mr. Holt, NJ</i>				<i>Ms. Shea-Porter, NH</i>		X	
<b>Mr. Wittman, VA</b>	X			<b>Mr. Flores, TX</b>	X		
<i>Mr. Grijalva, AZ</i>		X		<i>Mr. Lowenthal, CA</i>		X	
<b>Mr. Broun, GA</b>	X			<b>Mr. Runyan, NJ</b>		X	
<i>Ms. Bordallo, GU</i>		X		<i>Mr. Garcia, FL</i>		X	
<b>Mr. Fleming, LA</b>	X			<b>Mr. Amodei, NV</b>			
<i>Mr. Costa, CA</i>	X			<i>Mr. Cartwright, PA</i>		X	
<b>Mr. McClintock, CA</b>	X			<b>Mr. Mullin, OK</b>	X		
<i>Mr. Sablan, CNMI</i>				<b>Mr. Stewart, UT</b>	X		
<b>Mr. Thompson, PA</b>	X			<b>Mr. Daines, MT</b>	X		
<i>Ms. Tsongas, MA</i>		X		<b>Mr. Cramer, ND</b>			
<b>Ms. Lummis, WY</b>	X			<b>Mr. LaMalfa, CA</b>	X		
<i>Mr. Pierluisi, PR</i>		X		<b>Mr. Smith, MO</b>	X		
<b>Mr. Benishek, MI</b>	X						
<i>Ms. Hanabusa, HI</i>		X					
				<b>TOTALS</b>	23	14	

Congressman Matt Cartwright (D-PA) offered an amendment designated \_\_035 to the bill; the amendment was not adopted by a roll call vote of 14 to 22, as follows:



## Committee on Natural Resources

U.S. House of Representatives

113th Congress

Date: July 31, 2013

Recorded Vote #: 3

Meeting on / Amendment on: H.R. 2728 - CARTWRIGHT\_035, Not agreed to by a vote of 14 yeas and 22 nays

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
<b>Mr. Hastings, WA, Chairman</b>		X		<b>Mr. Duncan of SC</b>		X	
<i>Mr. Defazio, OR, Ranking</i>	X			<i>Mr. Cardenas, CA</i>			
<b>Mr. Young, AK</b>				<b>Mr. Tipton, CO</b>		X	
<i>Mr. Faleomavaega, AS</i>				<i>Mr. Horsford, NV</i>			
<b>Mr. Gohmert, TX</b>				<b>Mr. Gosar, AZ</b>		X	
<i>Mr. Pallone, NJ</i>	X			<i>Mr. Huffman, CA</i>	X		
<b>Mr. Bishop, UT</b>		X		<b>Mr. Labrador, ID</b>			
<i>Mrs. Napolitano, CA</i>	X			<i>Mr. Ruiz, CA</i>	X		
<b>Mr. Lamborn, CO</b>		X		<b>Mr. Southerland, FL</b>		X	
<i>Mr. Holt, NJ</i>				<i>Ms. Shea-Porter, NH</i>	X		
<b>Mr. Wittman, VA</b>		X		<b>Mr. Flores, TX</b>		X	
<i>Mr. Grijalva, AZ</i>	X			<i>Mr. Lowenthal, CA</i>	X		
<b>Mr. Broun, GA</b>		X		<b>Mr. Runyan, NJ</b>		X	
<i>Ms. Bordallo, GU</i>	X			<i>Mr. Garcia, FL</i>	X		
<b>Mr. Fleming, LA</b>		X		<b>Mr. Amodei, NV</b>			
<i>Mr. Costa, CA</i>	X			<i>Mr. Cartwright, PA</i>	X		
<b>Mr. McClintock, CA</b>		X		<b>Mr. Mullin, OK</b>		X	
<i>Mr. Sablan, CNMI</i>				<b>Mr. Stewart, UT</b>		X	
<b>Mr. Thompson, PA</b>		X		<b>Mr. Daines, MT</b>		X	
<i>Ms. Tsongas, MA</i>				<b>Mr. Cramer, ND</b>		X	
<b>Ms. Lummis, WY</b>		X		<b>Mr. LaMalfa, CA</b>		X	
<i>Mr. Pierluisi, PR</i>	X			<b>Mr. Smith, MO</b>		X	
<b>Mr. Benishek, MI</b>		X					
<i>Ms. Hanabusa, HI</i>	X						
				<b>TOTALS</b>	14	22	

Congressman Cartwright offered an amendment designated 036 to the bill; the amendment was not adopted by a bipartisan roll call vote of 13 to 24, as follows:

## Committee on Natural Resources

U.S. House of Representatives

113th Congress

Date: July 31, 2013

Recorded Vote #: 4

Meeting on / Amendment on: H.R. 2728 - CARTWRIGHT\_036, Not agreed to by a vote of 13 yeas and 24 nays

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
<b>Mr. Hastings, WA, Chairman</b>		X		<b>Mr. Duncan of SC</b>		X	
<i>Mr. Defazio, OR, Ranking</i>	X			<i>Mr. Cardenas, CA</i>			
<b>Mr. Young, AK</b>				<b>Mr. Tipton, CO</b>		X	
<i>Mr. Faleomavaega, AS</i>				<i>Mr. Horsford, NV</i>			
<b>Mr. Gohmert, TX</b>				<b>Mr. Gosar, AZ</b>		X	
<i>Mr. Pallone, NJ</i>	X			<i>Mr. Huffman, CA</i>	X		
<b>Mr. Bishop, UT</b>		X		<b>Mr. Labrador, ID</b>		X	
<i>Mrs. Napolitano, CA</i>	X			<i>Mr. Ruiz, CA</i>	X		
<b>Mr. Lamborn, CO</b>		X		<b>Mr. Southerland, FL</b>		X	
<i>Mr. Holt, NJ</i>				<i>Ms. Shea-Porter, NH</i>	X		
<b>Mr. Wittman, VA</b>		X		<b>Mr. Flores, TX</b>		X	
<i>Mr. Grijalva, AZ</i>	X			<i>Mr. Lowenthal, CA</i>	X		
<b>Mr. Broun, GA</b>		X		<b>Mr. Runyan, NJ</b>		X	
<i>Ms. Bordallo, GU</i>	X			<i>Mr. Garcia, FL</i>	X		
<b>Mr. Fleming, LA</b>		X		<b>Mr. Amodei, NV</b>			
<i>Mr. Costa, CA</i>		X		<i>Mr. Cartwright, PA</i>	X		
<b>Mr. McClintock, CA</b>		X		<b>Mr. Mullin, OK</b>		X	
<i>Mr. Sablan, CNMI</i>				<b>Mr. Stewart, UT</b>		X	
<b>Mr. Thompson, PA</b>		X		<b>Mr. Daines, MT</b>		X	
<i>Ms. Tsongas, MA</i>				<b>Mr. Cramer, ND</b>		X	
<b>Ms. Lummis, WY</b>		X		<b>Mr. LaMalfa, CA</b>		X	
<i>Mr. Pierluisi, PR</i>	X			<b>Mr. Smith, MO</b>		X	
<b>Mr. Benishek, MI</b>		X					
<i>Ms. Hanabusa, HI</i>	X						
				<b>TOTALS</b>	13	24	

No further amendments were offered, and the bill, as amended, was then adopted and ordered favorably reported to the House of Representatives by a bipartisan roll call vote of 23 to 15, as follows:

**Committee on Natural Resources**

U.S. House of Representatives

113th Congress

Date: July 31, 2013

Recorded Vote #: 5

Meeting on / Amendment on: H.R. 2728 - To adopt and favorably report the bill to the House, as amended, by a vote of 23 yeas and 15 nays

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
<b>Mr. Hastings, WA, Chairman</b>	X			<b>Mr. Duncan of SC</b>	X		
<i>Mr. Defazio, OR, Ranking</i>		X		<i>Mr. Cardenas, CA</i>		X	
<b>Mr. Young, AK</b>				<b>Mr. Tipton, CO</b>	X		
<i>Mr. Faleomavaega, AS</i>				<i>Mr. Horsford, NV</i>			
<b>Mr. Gohmert, TX</b>				<b>Mr. Gosar, AZ</b>	X		
<i>Mr. Pallone, NJ</i>		X		<i>Mr. Huffman, CA</i>		X	
<b>Mr. Bishop, UT</b>	X			<b>Mr. Labrador, ID</b>	X		
<i>Mrs. Napolitano, CA</i>		X		<i>Mr. Ruiz, CA</i>		X	
<b>Mr. Lamborn, CO</b>	X			<b>Mr. Southerland, FL</b>	X		
<i>Mr. Holt, NJ</i>				<i>Ms. Shea-Porter, NH</i>		X	
<b>Mr. Wittman, VA</b>	X			<b>Mr. Flores, TX</b>	X		
<i>Mr. Grijalva, AZ</i>		X		<i>Mr. Lowenthal, CA</i>		X	
<b>Mr. Broun, GA</b>	X			<b>Mr. Runyan, NJ</b>		X	
<i>Ms. Bordallo, GU</i>		X		<i>Mr. Garcia, FL</i>		X	
<b>Mr. Fleming, LA</b>	X			<b>Mr. Amodei, NV</b>			
<i>Mr. Costa, CA</i>	X			<i>Mr. Cartwright, PA</i>		X	
<b>Mr. McClintock, CA</b>	X			<b>Mr. Mullin, OK</b>	X		
<i>Mr. Sablan, CNMI</i>				<b>Mr. Stewart, UT</b>	X		
<b>Mr. Thompson, PA</b>	X			<b>Mr. Daines, MT</b>	X		
<i>Ms. Tsongas, MA</i>				<b>Mr. Cramer, ND</b>	X		
<b>Ms. Lummis, WY</b>	X			<b>Mr. LaMalfa, CA</b>	X		
<i>Mr. Pierluisi, PR</i>		X		<b>Mr. Smith, MO</b>	X		
<b>Mr. Benishek, MI</b>	X						
<i>Ms. Hanabusa, HI</i>		X					
				<b>TOTALS</b>	23	15	

## 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

1. Cost of Legislation. Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

*H.R. 2728—Protecting States' Rights to Promote American Energy Security Act*

H.R. 2728 would prevent the Department of the Interior (DOI) from enforcing regulations related to hydraulic fracturing in any state where those activities are governed by state regulations. Hydraulic fracturing involves pumping liquids into the ground to generate cracks within geologic formations to increase access to liquids and gases trapped within those formations.

Because there are currently no federal regulations directly related to hydraulic fracturing, CBO estimates that implementing H.R. 2728 would have no significant impact on the federal budget. The Department of the Interior has proposed regulations concerning hydraulic fracturing on federal and Indian lands. If those, or similar regulations, were to go into force in the future, H.R. 2728 could limit the implementation of those regulations, possibly reducing federal costs. Enacting the legislation would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

H.R. 2728 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Jeff LaFave. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

2. Section 308(a) of Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures. CBO estimates that implementing H.R. 2728 would have no significant impact on the federal budget.

3. 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 recognize States' authority to regulate oil and gas

operations and promote American energy security, development, and job creation.

#### 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.

#### COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates.

#### COMPLIANCE WITH H. RES. 5

**Directed Rule Making.** The Chairman does not believe that this bill directs any executive branch official to conduct any specific rule-making proceedings.

**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.

#### PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in roman):

#### MINERAL LEASING ACT

\* \* \* \* \*

#### **SEC. 44. STATE AUTHORITY FOR HYDRAULIC FRACTURING REGULATION.**

(a) *IN GENERAL.*—*The Department of the Interior shall not enforce any Federal regulation, guidance, or permit requirement regarding hydraulic fracturing, or any component of that process, relating to oil, gas, or geothermal production activities on or under any land in any State that has regulations, guidance, or permit requirements for that activity.*

(b) *STATE AUTHORITY.*—*The Department of the Interior shall recognize and defer to State regulations, permitting, and guidance, for all activities related to hydraulic fracturing, or any component of that process, relating to oil, gas, or geothermal production activities on Federal land regardless of whether those rules are duplicative, more or less restrictive, shall have different requirements, or do not meet Federal guidelines.*

(c) *HYDRAULIC FRACTURING DEFINED.*—*In this section the term “hydraulic fracturing” means the process by which fracturing fluids (or a fracturing fluid system) are pumped into an underground geologic formation at a calculated, predetermined rate and pressure to generate fractures or cracks in the target formation and thereby increase the permeability of the rock near the wellbore and improve production of natural gas or oil.*

**SEC. [44.] 45. SHORT TITLE.**

This Act may be cited as the “Mineral Leasing Act”.



## DISSENTING VIEWS

We oppose H.R. 2728 because it is bad policy, a bad precedent, and based on a poor understanding of how oil and gas regulation actually operates in this country.

The bill is an attempt to halt a deliberative, public rule-making process before it is even completed. The Department of the Interior first proposed fracking regulations in May 2012, and proposed a revised set of regulations in May 2013. Out of 1.3 million comments on the latest proposal, nearly 1.2 million people called for increased federal oversight of the widespread and highly controversial practice of fracking. Despite this overwhelming ground swell of support for strong federal fracking regulations, H.R. 2728 would move in precisely the opposite direction, and preclude the federal government from having any oversight, inspection, or enforcement responsibility for fracking whatsoever.

Natural gas reserves have become more accessible through the use of hydraulic fracturing techniques, and America is producing more natural gas today than ever before. We support expanded development of domestic energy resources, including natural gas, but we must develop this resource in a way that protects public health, safety and the environment.

Many states with fracking activity have enacted their own regulations to oversee this practice, but those requirements vary widely, and do not provide assurance to the Federal government or the American people that a common-sense baseline of protection exists on over 750 million acres of land containing federal minerals.

This bill, as written, does not even require a state to have reasonably stringent regulations for fracking—or any regulations at all. The bill states that federal regulations are forbidden “in any State that has regulations, guidance, or permit requirements” for fracking. This means that a state with one page, or even one sentence, of guidance for fracking is therefore exempt from federal oversight of federal resources.

Furthermore, the federal government is required to defer to the states on an overly broad suite of issues: “all activities related to hydraulic fracturing.” That could be read to encompass everything from site preparation, to water sourcing and disposal, to air emissions, and more, as long as it is considered related to fracking. Given that roughly 90% of the wells in this country are fracked, this would effectively eliminate federal regulations on 90% of the drilling activity in the United States. With one short paragraph, this bill would destroy the foundation of environmental oversight and enforcement which has been built cooperatively over decades by the federal government, the states, and the public.

The fundamental premise of this bill—that states with strong fracking regulations should be allowed to regulate the activity themselves—is based on a fundamentally flawed understanding of

how oil and gas regulation actually works. Those states with fracking regulations more stringent than the proposed federal fracking rule would see virtually no impact from this rule whatsoever.

Oil and gas drillers abide by the laws of the state in which they operate, and if they are drilling into federal minerals, they also must meet any additional federal regulations. The Bureau of Land Management (BLM) routinely includes language into leases and permits expressly requiring drillers to adhere to all state and local laws. If a state already has regulations that exceed the BLM's requirements, drillers do nothing differently on federal land. Nothing. There is no need for a variance, or additional analysis, or anything else for that matter. A federal fracking rule would place no new requirements on states with good regulations in place; it would only provide a necessary floor in states without good regulations on the books.

This is not just how it would work for fracking. This is how it works for every federal oil and gas regulation on the books. Oil and gas companies have operated under this situation of federal and state regulation for decades, and they have driven federal onshore oil production up 16% in the past four years.

During consideration of H.R. 2728 by the Committee, Representative Lowenthal's (D-CA) amendment to allow public disclosure of fracking chemicals, and Representative Cartwright's (D-PA) amendments to allow federal regulation of well safety and to protect National Parks, wilderness areas, and endangered species were defeated on nearly party line votes.

Instead of ham-handed legislative attempts to kick the federal government out of the management of federal resources, the states and the federal government should be working together to improve the safety of oil and gas operations. The BLM has memoranda of understanding with multiple states, and in the preamble of the fracking rule they encourage creating new memoranda where they don't exist, and updating those that do.

There is nothing to be gained from eliminating the ability of the federal government to regulate fracking, and much to be lost. We strongly oppose H.R. 2728.

PETER DEFAZIO.  
RUSH HOLT.  
JARED HUFFMAN.  
RAÚL M. GRIJALVA.  
MADELEINE Z. BORDALLO.  
NIKI TSONGAS.  
CAROL SHEA-PORTER.  
MATTHEW A. CARTWRIGHT.  
ALAN LOWENTHAL.