

Subcommittee on Energy and Mineral Resources

Paul Gosar, Chairman
Hearing Memorandum

September 1, 2017

To: All Subcommittee on Energy and Mineral Resource Subcommittee Members

From: Majority Committee Staff, Ashley Nichols (x5-9297)
Subcommittee on Energy and Mineral Resources

Hearing: **Legislative hearing on H.R. 3565 (Rep. Diane Black)**, To achieve domestic energy independence by empowering States to control the exploration, development, and production of oil and gas on all available Federal land, and for other purposes.
September 6, 2017 at 10:00 AM; 1334 Longworth HOB

H.R. 3565 (Rep. Diane Black), “Federal Land Freedom Act”

Summary of the Bill

On July 28, 2017, Representative Diane Black (R-TN) introduced H.R. 3565, the Federal Lands Freedom Act of .” This bill permits a State that has an established leasing, permitting, and regulatory program to seek primacy for the implementation of federal leasing, permitting, and regulatory responsibilities for oil and gas development on Federal lands.

Cosponsors

Rep. Charles Fleischmann (R-TN), Rep. David Kustoff (R-TN), Rep. Pete Sessions (R-TX), Rep. Chris Stewart (R-UT), Rep. Paul Gosar (R-AZ), Rep. Jeff Duncan (R-SC), Rep. David Roe (R-TN), Rep. Marsha Blackburn (R-TN), Rep. John Duncan Jr. (R-TN)

Invited Witnesses

Mr. A.J. Ferate

Vice President of Regulatory Affairs
Oklahoma Independent Petroleum Association
Oklahoma City, Oklahoma

Mr. John Ruple

Associate Professor of Law (Research)
Wallace Stegner Center Fellow
University of Utah S.J. Quinney College of Law
Salt Lake City, Utah

Mr. Mike Smith
Executive Director
Interstate Oil and Gas Compact Commission
Oklahoma City, Oklahoma

Mr. Paul Ulrich
Vice Chairman
Petroleum Association of Wyoming
Casper, Wyoming

Background

The Bureau of Land Management (BLM) is responsible for managing the Federal onshore mineral estate, which includes roughly 700 million acres of land held primarily by the BLM and U.S. Forest Service.¹ BLM leases these lands to developers through quarterly lease sales (when parcels are available for lease)² and issues the necessary federal permits to leaseholders required for oil and gas development. At the end of Fiscal Year (FY) 2016, the BLM managed a total of 40,143 onshore oil and gas leases covering only 27 million acres, the lowest number of leases since FY 1985.³

Onshore Oil and Gas Program Management Under the BLM

In recent years, unnecessary permitting delays, costly regulatory requirements and uncertainty in the leasing process have discouraged oil and gas developers from operating on Federal land.

While the BLM manages a vast mineral estate of 700 million acres, only 113 million acres of onshore Federal land are open and accessible for oil and gas development.⁴ In fact, 166 million acres are off limits or inaccessible to oil and gas development altogether.⁵ Duplicative environmental reviews under the National Environmental Policy Act, along with frivolous protests on the parcels made available for leasing, have resulted in unnecessary delays in the leasing process and an overall decrease in the number of leased parcels. Since 2008, the number of acres of Federal land leased for oil and gas production has decreased by over 40 percent.⁶

¹ Bureau of Land Management. About the BLM Oil and Gas Program. <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/about>. (Accessed July 29, 2017).

² Bureau of Land Management. Oil and Gas Leasing Instructions. <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/leasing/general-leasing>. (Accessed July 29, 2017).

³ Bureau of Land Management. Oil and Gas Statistics. <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/oil-and-gas-statistics> (Accessed July 29, 2017).

⁴ Marc Humphries. U.S. Crude Oil and Natural Gas Production in Federal and Nonfederal Areas. June 22, 2016. <http://www.crs.gov/reports/pdf/R42432>

⁵ Marc Humphries. U.S. Crude Oil and Natural Gas Production in Federal and Nonfederal Areas. June 22, 2016. <http://www.crs.gov/reports/pdf/R42432>

⁶ Bureau of Land Management. Oil and Gas Statistics. <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/oil-and-gas-statistics> (Accessed July 29, 2017).

Uncertainty associated with the issuance of required permits presents additional challenges to oil and gas producers seeking to develop Federal land. For example, the BLM issues Applications for Permits to Drill (APD) in an average of **220 days**.⁷ By contrast, State agencies are able to issue permits in just 30 days, on average.⁸

While oil and gas production has increased in recent years overall, this growth has occurred largely on State and private lands.⁹ These unnecessary leasing reductions coupled with lengthy and unpredictable permitting processes have discouraged producers from developing Federal lands. Instead, they have opted to do business on State and private lands, where higher royalty rates exist.¹⁰

States rely on mineral revenues to fund their schools, universities, infrastructure projects and a host of other necessary public programs and services.¹¹ The overly burdensome leasing, permitting and regulatory processes facing oil and gas producers have resulted in lost revenue for the Federal government and energy producing States. This means lost opportunities for economic development and job creation in communities across the country.

The Federal Lands Freedom Act

The Federal Lands Freedom Act (FLFA) allows States with established leasing, regulatory and permitting programs to assume primacy over leasing and regulatory functions for onshore oil and gas development on Federal lands within their borders. The current one-size-fits-all regulatory scheme is burdensome for States and producers alike and fails to recognize the unique challenges in each State.

States have extensive and sufficient regulatory frameworks for permitting oil and gas development that have been in place, and working well, for decades.¹² Allowing the States to assume primacy authority would ensure the responsible development of oil and gas resources while eliminating the uncertainty and significant costs associated with the Federal regulatory process.

Enabling States to assume these functions for oil and gas development will result in greater certainty for producers and will allow the BLM to focus its limited resources on the agency's core mission of managing federal lands. These much-needed reforms will encourage oil

⁷ Bureau of Land Management. Oil and Gas Statistics. <https://www.blm.gov/programs/energy-and-minerals/oil-and-gas/oil-and-gas-statistics> (Accessed July 29, 2017).

⁸ Western Energy Alliance. Permitting. <https://www.westernenergyalliance.org/knowledge-center/land/onshore-development/permitting>

⁹ Michael Ratner. 21st Century U.S. Energy Sources: A Primer (May 19, 2017). <http://www.crs.gov/reports/pdf/R44854>

¹⁰ Center for Western Priorities. A Fair Share: The Case for Updating Oil and Gas Royalties on Our Public Lands. Page 2. June 18, 2015. http://www.westernpriorities.org/wp-content/uploads/2015/06/Royalties-Report_update.pdf

¹¹ The United States Extractive Industries Transparency Initiative. Explore Data, Montana. <https://useiti.doi.gov/explore/MT/#disbursements> (Accessed August 29, 2017).

¹² Western Energy Alliance. Comments on Bureau of Land Management Regulatory Reform, DOI-2017-0003-0003. August 10, 2017.

and gas development on Federal land and promote economic development and diversification in energy producing States across the country.

Major Provisions of the Bill

- Defines available Federal land as Federal land that is located within the boundaries of a State, is not held in trust for a federally recognized Indian Tribe, is not a unit of the NPS or National Wildlife Refuge System and is not a Congressionally approved wilderness area under the Wilderness Act, and has been identified as land available for lease for exploration, development and production of oil and gas by the BLM under a Resource Management Plan or by the Forest Service under a Forest Management Plan.
- Allows a State to submit a regulatory program to the Secretary of Interior in order to assume jurisdiction over leasing, permitting, and regulation of oil and gas activities on Federal land within that State.
- A State seeking to assume these responsibilities must have: 1) a State law providing for leasing, regulation, and permitting of oil and gas exploration, development and production activities; 2) a State law that provides for the imposition of sanctions for violating oil and gas permit requirements; 3) a State regulatory authority with sufficient resources to enable the State to lease, regulate and permit oil and gas exploration, development and production; and 4) a State law that provides for the implementation and enforcement of an oil and gas permitting system.
- A proposed regulatory program meeting the above criteria will be approved by the Secretary unless the State program is likely to result in decreased royalty payments to the U.S. Treasury, or the State does not have the capacity to carry out the requirements in the bill.
- The Secretary can revoke an approved program after issuing a 60-day notice to the State. If a State regulatory program has resulted in a 20 percent decrease in royalties, the State will have 180 days to correct the deficiency, or else have their program authority revoked.
- States must assess royalties and revenues equal to those required under Federal law and revenues collected under a lease or permit issued by the State must be deposited into Federal accounts just as they would under Federal law. States may also assess a fee to cover administrative costs.

Administration Position

Unknown at this time.

Cost

CBO has not scored the legislation.