

NACo FEDERAL POLICY UPDATE

THE LATEST FROM WASHINGTON, D.C.

MARCH 29, 2023



THE LOWER ENERGY COSTS ACT (H.R. 1)

Overview

- Sponsored by Majority Leader Scalise (R-La.) and written by the:
 - Committee on Energy and Commerce
 - Committee on Natural Resources
 - Committee on Transportation and Infrastructure
- Primary goals include:
 - Aims to increase production and export of energy resources
 - Reform and streamline the current infrastructure regulatory and permitting framework
 - Resumes onshore and offshore oil and gas leasing

H.R. 1 repeals the following Inflation Reduction Act programs:

- Greenhouse Gas Reduction Fund
- Methane Emissions Reduction program
- Assistance for latest and zero building energy code adoption
- High-Efficiency Electric Home Rebate Program

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Energy & Commerce

- Amend the Natural Gas Act to expand FERC's exclusive authority to approve or deny a permit to site, construct, expand or operate an LNG terminal
- Authorize EPA to issue temporary Clean Air Act and Solid Waste Disposal Act waivers to critical energy resource facilities if the ERPA determines facility operations are necessary
- Repeal the following IRA programs:
 - **Greenhouse Gas Reduction Fund:** Counties are both indirectly and directly eligible for funds
 - **Methane Emissions Reduction program:** Counties are eligible for funds
 - **Assistance for latest and zero building energy code adoption:** Counties are directly eligible for funds
 - **High-Efficiency Electric Home Rebate Program:** Counties are eligible to receive rebates

Counties are concerned that several provisions in this division would create a situation of preemption and remove local governments' ability to weigh in on projects that would have negative health and environmental impacts on our residents and communities.

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Natural Resources

- Require DOI to conduct quarterly lease sales and mandates a minimum of four lease sales in Wyo., N.M., Colo., Utah, Mont., N.D., Okla. And Ark.
- Require DOI to conduct all lease sales under the 2017 – 2022 Outer Continental Shelf Oil and Gas Lease Proposed Final Program by September 30, 2023
- Require DOI to hold at least two annual region-wide Gulf of Mexico leases from 2023 to 2028, with the Final Programmatic Environmental Impact Statement to be issued no later than July 1, 2023
 - DOI would also need to develop a five-year plan with 36-months of the 2023-2028 plan's issuance and for it to be approved prior to 2028
- Require DOI to enter into a memorandum of agreement with a mining project applicant and adds a project determined by DOD to be critical to the defense supply chain to the list of "covered projects" under the FAST Act.

Counties have urged the federal government to resume onshore and offshore leasing and complete a new five-year plan. Additionally, counties have urged Congress to immediately pass legislation instructing the administration to hold multiple commercially viable lease sales each year.

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Permit Streamlining

- Codifies Trump 2020 changes in their entirety (85 FR 43304), including:
 - Applies **"One Federal Decision"** (BUILDER Act/Sec. 20202) to all transportation and infrastructure projects, including:
 - **Limiting the timeline** for reviews (two years whenever possible)
 - **Limiting the number of pages** for environmental impact statements (150 pages or 300 in "extraordinary circumstances") and environmental assessments (75 pages)
 - Establishing a **lead agency** for review and requiring the preparation of a **single environmental impact statement and joint Record of Decision** to the extent practicable
 - Enabling counties participate in the schedule planning process for NEPA through designation as a **cooperating agency** or, in some case, a **joint lead agency**
 - Creating procedures to **elevate delays or disputes**

Counties have long urged the federal government to make commonsense reforms to the NEPA process that will expedite local project delivery of critical infrastructure projects while preserving excellent environmental stewardship in our local communities.

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Permit Streamlining

- Establishes consequences for federal agencies unable to adhere to the established timelines where the agency could seek permission from the applicant to extend the timeline
 - Should the applicant deny this request, the **agency must pay \$100/day (subject to appropriations) the review is delayed.**
Agencies must identify these failures in a report to congress.
- Limits **judicial review** of NEPA decisions by barring it outright unless filed by a party who submitted comments putting the lead agency on notice of impending judicial review as part of the public comments process
 - The claim must be filed within **120 days** of the final agency action.
- Standardizes definition of **cooperating agencies** across the federal government and mandates lead agencies meet with cooperating agencies at the latter's request
- Broadens the use of **categorical exclusions**

Counties own and operate nearly half of all roads and bridges in America and strongly support streamlining of the federal permitting process.

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Legislative Outlook

- House Rules Committee held a hearing on H.R. 1, designating it as legislation to be considered under a structured rule with 37 amendments plus a Manager's Amendment made in order for the ensuing seven hours of debate
- Upon passage of the rule, debate began and is ongoing today. The House is expected to pass the legislation along party lines this Thursday, March 30th
- Senate Majority Leader Chuck Schumer has said H.R. 1 is dead on arrival in the Upper Chamber, making it virtually impossible for the legislation to receive the 60 votes it would need to pass the Senate and, even in this scenario, it would ultimately be vetoed by President Biden
- NACo is monitoring the amendment process and working with our federal partners to advance provisions of H.R. 1 that would accomplish county goals around permit streamlining

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