



March 27, 2023

The Honorable Steve Scalise
Majority Leader
2049 Rayburn House Office Building
Washington D.C. 20515

The Honorable Hakeem Jeffries
Democratic Minority Leader
2433 Rayburn House Office Building
Washington D.C. 20515

The Honorable Tom Emmer
Majority Whip
H-148, The Capitol Building
Washington D.C. 20515

The Honorable Katherine Clark
Democratic Whip
H-329, The Capitol Building
Washington D.C. 20515

Robin Vos
Speaker
Wisconsin State Assembly
President, NCSL

Anne Sappenfield
Director
Wisconsin Legislative
Council
Staff Chair, NCSL

Tim Storey
Chief Executive Officer
NCSL

RE: The Lower Energy Costs Act

On behalf of the National Conference of State Legislatures (NCSL), the bipartisan organization representing the legislatures of our nation's states, territories and commonwealths, I am encouraged by congressional efforts to usher in a series of energy reforms that can adapt to the nation's evolving needs, while streamlining the federal regulatory permitting process. NCSL acknowledges and appreciates the attempts made to create a more secure and self-reliant energy future and welcomes a number of provisions in the Lower Energy Costs Act also known as HR 1. However, we do have reservations about some of the policy measures in the bill that may preempt or alter existing state authority.

As Congress considers legislation to strengthen the country's energy sector, NCSL urges you to consider the following:

Maintain, or increase, federal energy revenue sharing among energy production states.

NCSL is supportive of language in the Lower Energy Costs Act that would transfer a larger percentage of revenue shares from offshore oil and gas production to states. In increasing revenue shares, it is imperative that state legislatures have a say in the appropriation of these funds, enabling lawmakers to allocate these resources according to their states' natural resource priorities. NCSL urges the inclusion of language that requires the funds be "subject to appropriation by the state legislature." Furthermore, should Outer Continental Shelf (OCS) revenue sharing be increased, it should be in addition to, and not a replacement for, other federal funding programs.

Moreover, NCSL expresses gratitude for the proposed framework in the Lower Energy Costs Act that outlines the participation of coastal states in offshore wind revenue sharing, allowing for 50% of revenues from offshore wind leasing to be shared with coastal states. NCSL advocates that the decision-making power regarding imposing moratoriums, or allowing mineral exploration, development and production activities on the OCS rest with impacted states.

Preserve state primacy for energy production on state and private lands, and facilitate meaningful consultation with states, acknowledging their geographic expertise in energy and mineral production.

NCSL supports the current language in the Lower Energy Costs Act outlining the sense of Congress which acknowledges that states should maintain primacy in regulating hydraulic fracturing for oil and natural gas production on state and private lands.

Additionally, NCSL supports the provision ensuring that should the Environmental Protection Agency issue national security or energy security waivers to produce critical energy resources, the agency would take care to not conflict with existing state or local environmental laws or regulations.

NCSL is particularly appreciative for the reliance upon and recognition of state expertise in Section 20302, which aims to enhance the quality and timeliness of federal permitting and review processes for critical mineral production. The provision calls for deferring to and relying on baseline data, analyses and reviews conducted by state agencies with jurisdiction over the environmental or reclamation permits for the proposed mineral project.

Streamline federal permitting processes without preempting existing state authority to certify infrastructure projects.

NCSL appreciates the financial support for core infrastructure systems provided by Congress to states through both the Infrastructure Investment and Jobs Act and the Inflation Reduction Act. It is no secret that timelines for critical infrastructure projects have continued to increase over the past half century, and our nation is approaching an inflection point where court-required changes to this permitting structure are leading to ever higher costs. These costs, in certain circumstances, outweigh their benefits. NCSL supports the implementation of the One Federal Decision Framework to address delays in the federal permitting processes and believes these provisions should be expanded.

Though there is consensus that permitting reform efforts must move forward so projects can be realized on time and on budget, NCSL remains strongly opposed to Congress preempting existing state authority to certify infrastructure projects. State legislatures urge you to avoid going down this road and stand ready to work with you to ensure that America's 21st century is powered by 21st century infrastructure.

As relates to provisions impacting Section 401 of the Clean Water Act, NCSL supports the model of cooperative federalism enshrined in the act and acknowledging that a singular, universal approach to water protection and management does not consider the unique water challenges individual states face. The CWA affords states the flexibility required to address their unique water needs by relying on state and local expertise to protect the unique chemical, physical and biological integrity of the nation's waters.

By allowing states to certify, or condition, "any activity" that "may result in any discharge into the [nation's] navigable waters," Section 401 gives states a useful tool for protecting their waters from adverse impacts. Federal policy should not strip states of their role as integrators and managers of all programs affecting their water resources. Instead, federal policy should be directed toward strengthening this capacity. Any alteration of Section 401 should be done with great care to avoid unintended consequences for states and to preserve states' rights to use the law to protect their waters.

Should Congress act, states must be allowed to publish their own requirements for water quality certification requests, ensuring that they can incorporate their own water quality laws and regulations. However, a 30-day time period, as indicated in Section 30001 of HR 1, does not recognize the intricacies of state legislative or

regulatory processes. NCSL also encourages Congress to allow for a state's certification decision to be based on the water quality effects of a project as a whole, not just specific discharges from a proposed project.

Concerning transmission siting, NCSL strongly opposes any future action that would eliminate state authority over the siting of electric transmission projects. To alleviate delays in the siting process, the administration and the Federal Energy Regulatory Commission should work together with states to ensure a seamless system of regulatory action.

Allow for the new funding opportunities in the Inflation Reduction Act to take effect, as states are planning to access the new funding mechanisms.

NCSL requests that Congress refrain from repealing the \$27 billion for the Environmental Protection Agency's Greenhouse Gas Reduction Fund, particularly as it relates to the \$7 billion reserved as competitive grants for state, municipalities and tribal governments. States across the nation are discussing ways to leverage Inflation Reduction Act funding to support their communities. Rescinding the funding after it has been announced would undermine the work already done by state and local governments in planning processes.

NCSL supports a diversified national energy system that encourages domestic energy production and reduces the reliance on foreign imports. NCSL stands ready to work with you to ensure that America's 21st century is powered by 21st century infrastructure. If you have any questions, please do not hesitate to contact NCSL staff Kristen Hildreth at 202-624-3597, or kristen.hildreth@ncsl.org.

Sincerely,

A handwritten signature in blue ink that reads "Tim Storey". The signature is written in a cursive style with a long horizontal line above the first name.

Tim Storey
Chief Executive Officer
National Conference of State Legislatures

CC:

Chair Rodgers
Chair Westermann
Chair Graves
Ranking Member Pallone
Ranking Member Grijalva
Ranking Member Larsen