

Committee on Natural Resources

Rob Bishop Chairman
Markup Memorandum

June 25, 2018

To: All Subcommittee on Energy and Mineral Resources Members

From: Majority Committee Staff – Rebecca Konolige (x61879)
Subcommittee on Energy and Mineral Resources

Hearing: **Legislative hearing on H.R. 5859 (Rep. Scott R. Tipton)**, To amend the Mineral Leasing Act to require that a portion of revenues from new Federal mineral and geothermal leases be paid to States for use to supplement the education of students in kindergarten through grade 12 and public support of institutions of higher education, and for other purposes.
June 27, 2018, at 2:00 PM; 1324 Longworth House Office Building

H.R. 5859, *Education and Energy Act of 2018*

Summary of the Bill

On May 17, 2018, Representative Scott R. Tipton (R-CO) introduced H.R. 5859, the Education and Energy Act of 2018. This bill would require that a portion of revenues from new mineral and geothermal leases be redistributed to States to use in support of K-12 funding and public support of higher education. Of the federal share of revenues exceeding the Congressional Budget Office (CBO) estimate for a given fiscal year, 33 percent shall be returned to the State where the energy was produced, and 17 percent shall be redistributed to the 50 States in equal amounts.

Cosponsors:

Rep. Paul Gosar (R-AZ), Rep. Stevan Pearce (R-NM)

Background

The public school system is one of the most important, and most unevenly funded, national services in the United States. The struggle for more resources has been highlighted by recent teacher strikes in West Virginia, Kentucky, Oklahoma, Arizona and Colorado.¹ Among other factors, the State where a school is located is a major indicator in the amount of resources each student may receive. According to a Department of Education report released in January 2018, expenditures per pupil range from \$6,751 in Utah to \$20,744 in New York.²

¹ Frederick Hess, The Facts Behind The Teacher Strikes. Forbes. April 30, 2018.

<https://www.forbes.com/sites/frederickhess/2018/04/30/the-facts-behind-the-teacher-strikes/#7e5475a27639>

² U.S. Department of Education, National Center for Education Statistics. Revenues and Expenditures for Public Elementary and Secondary Education: School Year 2014–15 (Fiscal Year 2015) (2018).

<https://nces.ed.gov/pubs2018/2018301.pdf>

Although this disparity in available resources is attributable to multiple causes, one is the difference in the amount of taxable land per State.³ In the 2014-15 school year, out of \$664 billion⁴ in revenues collected for elementary and secondary public school, only 8 percent came from federal sources, while 47 percent came from State sources and 45 percent from local sources.⁵ For States like Nevada and Utah, with approximately 80 percent and 63 percent of non-taxable federal land respectively, this can have a critical impact on available revenue for use in State services, schools included.⁶

H.R. 5859, the Education and Energy Act of 2018, will help enable States' support K-12 schools and higher education through responsible energy development. The bill reallocates a greater share of federal mineral and geothermal revenues back to the State in which they were generated, specifically to support public education.

Background of Mineral Leasing Act Revenue Sharing

Revenue sharing between onshore energy-producing States and the federal government is governed by the terms of the Mineral Leasing Act (MLA, 30 U.S.C. 181 et seq.). Revenues are generated by the rentals, bonuses, and royalties on onshore mineral resource production on federal public lands.⁷ The MLA specifically applies to oil, gas, and coal leasing, as well as certain minerals including phosphates, sodium, sulfur, and potash.⁸

States historically received 50 percent of the revenues generated by leasing and production of onshore energy resources on federal land within their borders, except Alaska, which received 90 percent. However, a 2014 amendment to the MLA authorized the Secretary of the Interior to charge a 2 percent fee on the collection of these revenues, reducing the States' share to 48 percent.⁹

Aside from the States' share, another 40 percent of onshore mineral revenues (except Alaska) is reserved for payment into the Reclamation Fund. Established by the Reclamation Act of 1902 (Public Law 57-161) and administered by the Bureau of Reclamation under the Department of the Interior, the Reclamation Fund was created to fund irrigation projects on arid regions in the West.¹⁰ Remaining revenues not paid to the States or the Reclamation Fund are directed into the U.S. Treasury.¹¹

³ U.S. Department of Education, Office of Elementary and Secondary Education. About Impact Aid (updated March 21, 2017). <https://www2.ed.gov/about/offices/list/oese/impactaid/whatisia.html?exp=7#a>

⁴ In constant 2016-17 dollars.

⁵ U.S. Department of Education, National Center for Education Statistics. Public School Revenue Sources (updated April 2018). https://nces.ed.gov/programs/coe/indicator_cma.asp#f1

⁶ Carol Hardy Vincent et al, Federal Land Ownership: Overview and Data (2017). <http://www.crs.gov/reports/pdf/R42346>

⁷ Marc Humphries, Energy and Mineral Development on Federal Land (2015). <http://www.crs.gov/Reports/IF10127?source=search&guid=ab1ee1f40564437797071c178c8fa2ad&index=>

⁸ Briefing by Marc Humphries, Specialist in Energy Policy, Congressional Research Service received by Energy and Mineral Resources Subcommittee Majority Staff on August 20, 2017.

⁹ 30 U.S.C. 191.

¹⁰ Charles V. Stern, The Reclamation Fund (2015). Congressional Research Service.

¹¹ 30 U.S.C. 191.

The Education and Energy Act of 2018 would leave the established State and Reclamation Fund allocation percentages the same. It applies specifically to mineral resource revenues otherwise slated for the Treasury, and only in years when actual revenues generated exceed the CBO estimates.

Onshore State Usage of Mineral Revenues

Almost half of the land in the West is owned by the federal government.¹² The vast amount of tax-exempt federal land in this region makes much of the western United States reliant on alternative sources of State income to offset losses in private tax revenue.¹³ Some relief comes in the form of revenues from energy production. These revenues go toward the maintenance and improvement of local communities and critical public services. In energy-producing States, a portion of the revenues are utilized to mitigate the risks of energy development, as well as funding for roads and infrastructure,¹⁴ public safety, housing, transportation, and public school systems and community colleges.¹⁵

Many States that depend on these revenues to support necessary services also maintain mineral trust funds dedicated for future uses. For instance, Colorado allocates a share of its mineral revenues to its Local Government Permanent Fund, School Trust Permanent Fund, and Higher Education Maintenance and Reserve Fund.¹⁶

The difference in funds available for some States' public services, specifically schools, is striking. Given that the average State receives approximately 90 percent of its school funding from State and local sources,¹⁷ States with large amounts of nontaxable federal land are at a decided disadvantage when finding resources for in-State education.

H.R. 5859 would amend the MLA to require a portion of new federal mineral and geothermal revenues be paid back to States to support public K-12 and higher education institutions. This would only apply to revenues slated for the Treasury, and not already obligated to the States' revenue sharing formulas or the Reclamation Fund. Further, of this amount (approximately 10 percent of the total revenues produced), this bill will only apply to revenues exceeding the CBO estimated revenue for the leases in the previous fiscal year. Specifically, H.R. 5859 requires that 33 percent of revenues above the CBO estimate be sent back to the State where the energy was generated. An additional 17 percent would be split evenly among the 50 States.

¹² Carol Hardy Vincent, Federal Land Ownership: Overview and Data (CRS Report R42346)(Washington, D.C.: Congressional Research Service, 2014),p.1

¹³ Marc Humphries, Mineral Royalties on Federal Lands: Issues for Congress (2015).
<http://www.crs.gov/reports/pdf/R43891>

¹⁴ Marc Humphries, Mineral Royalties on Federal Lands: Issues for Congress (2015).
<http://www.crs.gov/reports/pdf/R43891>

¹⁵ The United States Extractive Industries Transparency Initiative. Explore Data, Wyoming.
<https://useiti.doi.gov/explore/WY/#disbursements> (Accessed August 29, 2017).

¹⁶ U.S. Department of Interior. Office of Natural Resources Revenue. Natural Resources Revenue Data. Colorado.
<https://revenue.data.doi.gov/explore/CO/>

¹⁷ https://nces.ed.gov/programs/coe/indicator_cma.asp#f1

By returning a portion of revenues from energy production to specifically support public education, H.R. 5859 would bolster State education using State-created value. While energy-producing States understandably have a larger percentage returned than non-producing States, this bill would also assist public school funding in the country at large.

Revenues from energy production are made by hardworking Americans in a minority of States for the benefit of the entire nation. H.R. 5859 helps ensure members of energy-producing States have fair returns for use in State services, specifically to support K-12 and higher education opportunities for their students.

Cost

CBO has not scored this legislation.

Administration Position

Unknown.

Major Provisions of H.R. 5859

- Amends the MLA to redistribute a percentage of the federal share of revenues from new leases under the MLA and the Geothermal Steam Act of 1970 back to the States to supplement public K-12 and higher education funding.
- Thirty-three percent of the revenue each fiscal year from these leases which would otherwise be deposited into the general fund of the Treasury shall be paid by the Secretary of the Interior to the State that generated the revenue.
- Seventeen percent of federal revenues from these leases each fiscal year, not including the 33 percent mentioned above, shall be paid to the States in equal amounts.
- The terms of this Act shall only apply to: 1) leases entered into after the enactment of this Act; and 2) federal revenues from new leases that exceed the amount CBO estimated would be received under such leases in the previous fiscal year.
- The terms of this Act shall not apply to revenues that are required to be paid into, reserved, or appropriated as part of the Reclamation Fund.

Anticipated Amendments

Rep. Tipton – Specifies that the share of federal revenues returned to energy-producing States under this Act are tagged to areas of origin where the revenues were produced and makes a technical correction. *Chairman Bishop supports.*

Effect on Current Law (Ramseyer)

Showing Current Law as Amended by H.R. 5859

[new text highlighted in yellow; text to be deleted bracketed and highlighted in blue]

Section 35(a) of the Mineral Leasing Act (30 U.S.C. 191):

§191. Disposition of moneys received

(a) In general

(1) All money received from sales, bonuses, royalties including interest charges collected under the Federal Oil and Gas Royalty Management Act of 1982 [30 U.S.C. 1701 et seq.], and rentals of the public lands under the provisions of this chapter and the Geothermal Steam Act of 1970 [30 U.S.C. 1001 et seq.], shall be paid into the Treasury of the United States; and, subject to the provisions of subsection (b), 50 per centum thereof shall be paid by the Secretary of the Treasury to the State other than Alaska within the boundaries of which the leased lands or deposits are or were located; said moneys paid to any of such States on or after January 1, 1976, to be used by such State and its subdivisions, as the legislature of the State may direct giving priority to those subdivisions of the State socially or economically impacted by development of minerals leased under this chapter, for (i) planning, (ii) construction and maintenance of public facilities, and (iii) provision of public service; and excepting those from Alaska, 40 per centum thereof shall be paid into, reserved, appropriated, as part of the reclamation fund created by the Act of Congress known as the Reclamation Act, approved June 17, 1902, and of those from Alaska, 90 per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof: *Provided*, That all moneys which may accrue to the United States under the provisions of this chapter and the Geothermal Steam Act of 1970 from lands within the naval petroleum reserves shall be deposited in the Treasury as "miscellaneous receipts", as provided by section 7433(b) of title 10. All moneys received under the provisions of this chapter and the Geothermal Steam Act of 1970 not otherwise disposed of by this section shall be credited to miscellaneous receipts. Payments to States under this section with respect to any moneys received by the United States, shall be made not later than the last business day of the month in which such moneys are warranted by the United States Treasury to the Secretary as having been received, except for any portion of such moneys which is under challenge and placed in a suspense account pending resolution of a dispute. Such warrants shall be issued by the United States Treasury not later than 10 days after receipt of such moneys by the Treasury. Moneys placed in a suspense account which are determined to be payable to a State shall be made not later than the last business day of the month in which such dispute is resolved. Any such amount placed in a suspense account pending resolution shall bear interest until the dispute is resolved.

(2)(A) Of amounts otherwise required under paragraph (1) to be deposited into the general fund of the Treasury each fiscal year that are derived from leases for tracts located in a State, the Secretary shall pay to the State 33 percent for use to supplement the education of students in kindergarten through grade 12 and to supplement public support of institutions of higher education.

(B) Of the amounts otherwise required under paragraph (1) to be deposited into the general fund of the Treasury each fiscal year that are not required to be used for payments under subparagraph (A) of this paragraph, the Secretary shall pay to States, in equal amounts, 17 percent for use to supplement the education of students in kindergarten through grade 12 and to supplement public support of institutions of higher education.

(C) Subparagraphs (A) and (B) shall apply only with respect to amounts that—

(i) are received by the United States under leases entered into under this Act or the Geothermal Steam Act of 1970 after the date of enactment of the Education and Energy Act of 2018; and

(ii) exceed the amount of revenues that the Congressional Budget Office previously estimated would be received under such leases in the fiscal year.

(D) Subparagraphs (A) and (B) shall not apply with respect to amounts required by paragraph (1) to be paid into, reserved, appropriated, as part of the reclamation fund.

(b) Deduction for administrative costs

In determining the amount of payments to the States under this section, beginning in fiscal year 2014 and for each year thereafter, the amount of such payments shall be reduced by 2 percent for any administrative or other costs incurred by the United States in carrying out the program authorized by this chapter, and the amount of such reduction shall be deposited to miscellaneous receipts of the Treasury.

(c) Rentals received on or after August 8, 2005

(1) Notwithstanding the first sentence of subsection (a), any rentals received from leases in any State (other than the State of Alaska) on or after August 8, 2005, shall be deposited in the Treasury, to be allocated in accordance with paragraph (2).

(2) Of the amounts deposited in the Treasury under paragraph (1)-

(A) 50 percent shall be paid by the Secretary of the Treasury to the State within the boundaries of which the leased land is located or the deposits were derived; and

(B) 50 percent shall be deposited in a special fund in the Treasury, to be known as the "BLM Permit Processing Improvement Fund" (referred to in this subsection as the "Fund").

(3) Use of fund.-

(A) In general.-The Fund shall be available to the Secretary of the Interior for expenditure, without further appropriation and without fiscal year limitation, for the coordination and processing of oil and gas use authorizations on onshore Federal and Indian trust mineral estate land.

(B) Accounts.-The Secretary shall divide the Fund into-

(i) a Rental Account (referred to in this subsection as the "Rental Account") comprised of rental receipts collected under this section; and

(ii) a Fee Account (referred to in this subsection as the "Fee Account") comprised of fees collected under subsection (d).

(4) Rental account.-

(A) In general.-The Secretary shall use the Rental Account for-

(i) the coordination and processing of oil and gas use authorizations on onshore Federal and Indian trust mineral estate land under the jurisdiction of the Project offices identified under [section 15924\(d\) of title 42](#); and

(ii) training programs for development of expertise related to coordinating and processing oil and gas use authorizations.

(B) Allocation.-In determining the allocation of the Rental Account among Project offices for a fiscal year, the Secretary shall consider-

(i) the number of applications for permit to drill received in a Project office during the previous fiscal year;

- (ii) the backlog of applications described in clause (i) in a Project office;
- (iii) publicly available industry forecasts for development of oil and gas resources under the jurisdiction of a Project office; and
- (iv) any opportunities for partnership with local industry organizations and educational institutions in developing training programs to facilitate the coordination and processing of oil and gas use authorizations.

(5) Fee account.-

(A) In general.-The Secretary shall use the Fee Account for the coordination and processing of oil and gas use authorizations on onshore Federal and Indian trust mineral estate land.

(B) Allocation.-The Secretary shall transfer not less than 75 percent of the revenues collected by an office for the processing of applications for permits to the State office of the State in which the fees were collected.

(d) BLM oil and gas permit processing fee

(1) In general

Notwithstanding any other provision of law, for each of fiscal years 2016 through 2026, the Secretary, acting through the Director of the Bureau of Land Management, shall collect a fee for each new application for a permit to drill that is submitted to the Secretary.

(2) Amount

The amount of the fee shall be \$9,500 for each new application, as indexed for United States dollar inflation from October 1, 2015 (as measured by the Consumer Price Index).

(3) Use

Of the fees collected under this subsection for a fiscal year, the Secretary shall transfer-

(A) for each of fiscal years 2016 through 2019-

(i) 15 percent to the field offices that collected the fees and used to process protests, leases, and permits under this chapter, subject to appropriation; and

(ii) 85 percent to the BLM Permit Processing Improvement Fund established under subsection (c)(2)(B) (referred to in this subsection as the "Fund"); and

(B) for each of fiscal years 2020 through 2026, all of the fees to the Fund.

(4) Additional costs

During each of fiscal years of 2016 through 2026, the Secretary shall not implement a rulemaking that would enable an increase in fees to recover additional costs related to processing applications for permits to drill.