



Testimony before the House Natural Resources Committee –Subcommittee on
Energy and Mineral Resources

Legislative hearing: The Importance of Public Disclosure Requirements for
Protecting Human Health, the Climate, and the Environment
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Mr. Chairman, thank you for the opportunity to participate in this Subcommittee hearing

My name is Kenny Stein, I am the Policy Director for the Institute for Energy Research, a free-market organization that conducts research and analysis on the function, operation, and regulation of energy markets.

The legislation (H.R. 5636) under discussion at this hearing suffers from a number of infirmities. It disregards basic standards of administrative law, and indeed constitutional law, it duplicates existing regulations and disclosure requirements, and in practice it would merely serve to increase the costs and barriers to energy development on federal lands.

Unconstitutional

I will begin with the most egregious of this bill's deficiencies: the outsourcing of federal regulatory power to a non-governmental entity with a clear ideological agenda. Section 2 of the legislation cites disclosure standards created by the Sustainability Accounting Standards Board (SASB) and proposes to mandate that entities seeking or holding leases on federal lands file reports which comply with the SASB standards in effect "*at the date*" of the filing. Thus, if and when the SASB makes changes to its disclosure standards, the disclosure requirements for federal leaseholders and seekers will also change automatically by action of law. This means that the SASB would have the regulatory power to set disclosure standards for federal leasing. The SASB is not a government agency. Its board is not appointed by the President or confirmed by the Senate. It is entirely independent of the federal government.

Put simply this is an unconstitutional delegation of federal regulatory power. While the Supreme Court has historically been very lenient about delegations of congressional authority to executive branch agencies, it has been unequivocal that delegation of legislative powers to private entities is unconstitutional. The delegation of the regulatory power to set disclosure standards to the SASB cannot pass constitutional muster.

The reasoning for this blanket constitutional bar is made obvious by the situation we see before us. The SASB is an explicitly ideological organization. It seeks to promote adoption of its views of what constitutes “sustainability.” It was founded and is funded by foundations like the Rockefeller Foundation and Bloomberg Philanthropies, which are ideologically hostile to conventional energy development. Michael Bloomberg was the chairman of the organization from 2014-2018, and remains chairman emeritus today even as he runs for president on a platform of halting fossil fuel development on federal lands. The legislation would give this ideological organization the unchecked power to set regulatory standards for federal leasing. The conflict here is obvious. Handing regulatory authority to the SASB as proposed in this bill is analogous to a conservative member of Congress proposing a bill to hand over some aspect of federal regulatory authority to the Heritage Foundation.

Duplication not transparency

Both the title of this legislation and the press release from its sponsors imply that there is a lack of transparency in the current leasing process on federal lands, but this is misleading. The disclosures contemplated in the SASB guidelines are in many instances duplicates of information that leaseholders already report to relevant federal agencies, while other parts of the guidelines are completely irrelevant to the operation of a federal lease.

For example, leaseholders already report emissions to the EPA, including for greenhouse gases. Unlike existing reporting requirements, though, the SASB does not have any metrics by which compliance can be assessed. Likewise the SASB standards include disclosures about biodiversity impacts, but federal leases are already subject to the National Environmental Policy Act process. For additional SASB sections like business ethics, community relations, and security and human rights, besides being vague concepts, it is not clear what bearing those subjects have on a company's competency to manage a lease on federal lands.

Additionally, the global nature of these disclosures is of questionable necessity. The SASB guidelines are designed for investors interested in sustainability to evaluate a company holistically on its global operations. The question is what relevance these extraneous disclosures have on the operation of a federal lease. To take one disclosure category from the SASB guidelines, what does the “percentage of proved and probable reserves in or near areas of conflict” have to do with seeking a lease in Utah?

Imposing unnecessary costs

Rather than a genuine bid for transparency, this legislation is more accurately described as an effort to impose higher costs on energy leasing on federal lands.

The vagueness of many of the SASB guidelines serves a dual purpose in raising costs. On the front end, a company has to come up with new accounting and compliance processes in order to collect and produce the information demanded. On the back end, the vagueness opens up new avenues for litigation from anti-development organizations over judgment call calculations or assertions that one of the extraneous disclosure categories is not completed satisfactorily.

Use of the SASB guidelines is also a backdoor effort to achieve regulatory goals under the guise of transparency that otherwise could not pass Congress. For example, one of the primary criticisms of the Obama administration's proposed methane regulations was the steep cost of new monitoring equipment to comply with the rules. Requiring SASB disclosures could impose those very same monitoring costs, though this time not even with a justification of trying to reduce methane emissions.

Conclusion

As drafted, the legislation is very poorly constructed: expensive, duplicative and frankly unconstitutional. Mandating the SASB standards looks suspiciously like using federal power to coerce participation in a private NGO's pet project. If Congress wishes to create standards for sustainability, for federal leasing or any other federal contracting, the appropriate process is to provide a mandate to the relevant federal agencies to develop standards through the administrative process. In addition to having the advantage of being constitutional, such a process has long standing administrative procedure and legal principles that ensure that the rights of companies and individuals impacted by the standards are protected. The approach taken by this legislation should be rejected.

Thank you for this opportunity and look forward to your questions.