

COAL MINER EMPLOYMENT AND DOMESTIC ENERGY
INFRASTRUCTURE PROTECTION ACT

SEPTEMBER 13, 2012.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. HASTINGS of Washington, from the Committee on Natural
Resources, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 3409]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 3409) to limit the authority of the Secretary of the Interior to issue regulations before December 31, 2013, under the Surface Mining Control and Reclamation Act of 1977, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 3409 is to limit the authority of the Secretary of the Interior to issue regulations before December 31, 2013, under the Surface Mining Control and Reclamation Act of 1977.

BACKGROUND AND NEED FOR LEGISLATION

The Coal Miner Employment and Domestic Energy Infrastructure Protection Act (H.R. 3409) limits the authority of the Secretary of the Interior to issue regulations under the Surface Mining Control and Reclamation Act of 1977 until December 31, 2013. The bill allows additional time for the Office of Surface Mining (OSM) to meet the requirements of the National Environmental Policy Act and generate a legally defensible “Stream Buffer zone” regulation.

It also addresses the concerns raised by the cooperating agencies, coal mining States, citizens and industry raised in the April 2011 Energy and Mineral Resources Subcommittee oversight hearing for the OSM Fiscal Year 2012 budget, and subsequent oversight hearings on the Obama Administration's re-write of the Stream Buffer Zone regulation.

In January 2011, documents prepared by independent contractor, Polu Kai Services, LLC (PKS) to support the Obama Administration's Stream Buffer Zone rule making, were leaked to the press. The press reported that the preferred alternative in the re-written rule would result in the loss of over 7,000 jobs and place an additional 29,000 people below the poverty level in the Appalachian basin. In addition, coal production would decrease or stay flat in 22 states.

Shortly after these figures became public, the Administration backed away from these job loss estimates and began to publicly criticize PKS, who had been hired by OSM to prepare the Environmental Impact Statement (EIS) for the regulation under the National Environmental Policy Act. Eventually OSM and PKS came to a mutual agreement to terminate the contract. While OSM blames the contractor for problems with the EIS, the contractor has raised concerns with OSM's management of the process, in particular the numerous changes to the scope of the rule the EIS was to support.

On November 4, 2011, the Energy and Mineral Resources Subcommittee held an oversight hearing titled "Jobs at Risk: Waste and Mismanagement by the Obama Administration in Rewriting the Stream Buffer Zone Rule." During the hearing, OSM Director Joseph Pizarchik stated to Congressman Doug Lamborn (R-CO) regarding job loss numbers that "the numbers which you refer to were numbers that the contractor put together. Those numbers were fabricated based on placeholder numbers and have no basis in fact." Further, he agreed with Congressman Rush Holt (D-NJ) that the "contractor, PKS, was incomplete and inaccurate."

On March 5, 2012, ENVIRON International Corporation released a summary of the results of a preliminary analysis of the anticipated economic impacts of OSM's proposed rule. ENVIRON's findings support the job loss estimates that were leaked to the press in January 2011. Despite the problems that Director Pizarchik prescribes to the contractors, it does not change that OSM committed, through a legal settlement, to a compressed schedule for what has evolved into a comprehensive re-write of regulations governing coal mining in the United States.

After the release of the ENVIRON report, the Committee held a hearing on July 19, 2012 during which Director Pizarchik backtracked from his previous allegation that the reported numbers were simply placeholders. After discussing documents that show the job loss numbers would be devastating to the American people, Director Pizarchik was asked whether he continued "to assert that those were 'placeholders'." Director Pizarchik responded that, "At the time I made that statement, the information I had that those were placeholders numbers, and as I understood placeholders, that they did not have any basis in fact . . . But I have since learned that their definition of placeholder was different than was my understanding."

As a result, this Administration knows that their preferred regulations would cause thousands of Americans to lose their jobs, and would cause economic harm in at least 22 states and widespread economic displacement to tens of thousands of more Americans. However, according to the OSM Director on July 19th, they still are “making our best efforts to get it completed as soon as possible.”

H.R. 3409 limits the authority of the Secretary of the Interior to issue regulations under the Surface Mining Control and Reclamation Act of 1977 before December 31, 2013, that would: (1) adversely impact employment in coal mines in the United States; (2) cause a reduction in revenue received by the federal government or any State, tribal, or local government, by reducing through regulation the amount of coal in the United States that is available for mining; (3) reduce the amount of coal available for domestic consumption or for export; (4) designate any area as unsuitable for surface coal mining and reclamation operations; or (5) expose the United States to liability for taking the value of privately owned coal through regulation. OSM is not responsible for mine safety regulations.

COMMITTEE ACTION

H.R. 3409 was introduced on November 14, 2011, by Congressman Bill Johnson (R-OH). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Energy and Mineral Resources. On November 18, 2011, the Subcommittee held a hearing on a draft version of the bill. On February 29, 2012, the Full Natural Resources Committee met to consider the bill. The Subcommittee on Energy and Mineral Resources was discharged by unanimous consent. Congressman Rush Holt (D-NJ) offered amendment designated .001 to the bill; the amendment was not adopted by a bipartisan roll call vote of 18 to 26, as follows:

Committee on Natural Resources
U.S. House of Representatives
112th Congress

Date: February 29, 2012

Recorded Vote #: 6

Meeting on / Amendment: **HR 3409** – An amendment offered by Mr. Holt.001 was NOT AGREED TO by a roll call vote of 18 yeas and 26 nays.

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
Mr. Hastings, WA Chairman		X		<i>Mr. Heinrich, NM</i>			
<i>Mr. Markey, MA Ranking</i>	X			Mr. Benishke, MI		X	
Mr. Young, AK				<i>Mr. Lujan, NM</i>	X		
<i>Mr. Kildee, MI</i>				Mr. Rivera, FL		X	
Mr. Duncan of TN		X		<i>Mr. Sarbanes, MD</i>	X		
<i>Mr. Defazio, OR</i>	X			Mr. Duncan of SC		X	
Mr. Gohmert, TX				<i>Ms. Sutton, OH</i>	X		
<i>Mr. Faleomavaega, AS</i>	X			Mr. Tipton, CO		X	
Mr. Bishop, UT		X		<i>Ms. Tsongas, MA</i>	X		
<i>Mr. Pallone, NJ</i>	X			Mr. Gosar, AZ		X	
Mr. Lamborn, CO		X		<i>Mr. Pierluisi, PR</i>	X		
<i>Mrs. Napolitano, CA</i>	X			Mr. Labrador, ID		X	
Mr. Wittman, VA		X		<i>Mr. Garamendi, CA</i>	X		
<i>Mr. Holt, NJ</i>	X			Ms. Noem, SD		X	
Mr. Broun, GA		X		<i>Ms. Hanabusa, HI</i>	X		
<i>Mr. Grijalva, AZ</i>	X			Mr. Southerland, FL		X	
Mr. Fleming, LA		X		<i>Mr. Tonko, NY</i>	X		
<i>Ms. Bordallo, GU</i>	X			Mr. Flores, TX		X	
Mr. Coffman, CO		X		Mr. Harris, MD		X	
<i>Mr. Costa, CA</i>	X			Mr. Landry, LA		X	
Mr. McClintock, CA		X		Mr. Runyan, NJ		X	
<i>Mr. Boren, OK</i>		X		Mr. Johnson, OH		X	
Mr. Thompson, PA		X		Mr. Amodei, NV		X	
<i>Mr. Sablan, CNMI</i>	X						
Mr. Denham, CA		X					
				TOTALS	18	26	

The bill was then adopted and ordered favorably reported to the House of Representatives by a bipartisan roll call vote of 26 to 18, as follows:

Committee on Natural Resources
U.S. House of Representatives
112th Congress

Date: February 29, 2012

Recorded Vote #: 7

Meeting on / Amendment: **HR 3409** – Adopted and favorably reported to the House of Representatives, as amended, by a roll call vote of 26 yeas and 18 nays.

MEMBERS	Yea	Nay	Pres	MEMBERS	Yea	Nay	Pres
Mr. Hastings, WA Chairman	X			<i>Mr. Heinrich, NM</i>			
<i>Mr. Markey, MA Ranking</i>		X		Mr. Benishek, MI	X		
Mr. Young, AK				<i>Mr. Lujan, NM</i>		X	
<i>Mr. Kildee, MI</i>				Mr. Rivera, FL	X		
Mr. Duncan of TN	X			<i>Mr. Sarbanes, MD</i>		X	
<i>Mr. Defazio, OR</i>		X		Mr. Duncan of SC	X		
Mr. Gohmert, TX				<i>Ms. Sutton, OH</i>		X	
<i>Mr. Faleomavaega, AS</i>		X		Mr. Tipton, CO	X		
Mr. Bishop, UT	X			<i>Ms. Tsongas, MA</i>		X	
<i>Mr. Pallone, NJ</i>		X		Mr. Gosar, AZ	X		
Mr. Lamborn, CO	X			<i>Mr. Pterluisi, PR</i>		X	
<i>Mrs. Napolitano, CA</i>		X		Mr. Labrador, ID	X		
Mr. Wittman, VA	X			<i>Mr. Garamendi, CA</i>		X	
<i>Mr. Holt, NJ</i>		X		Ms. Noem, SD	X		
Mr. Broun, GA	X			<i>Ms. Hanabusa, HI</i>		X	
<i>Mr. Grijalva, AZ</i>		X		Mr. Southerland, FL	X		
Mr. Fleming, LA	X			<i>Mr. Tonko, NY</i>		X	
<i>Ms. Bordallo, GU</i>		X		Mr. Flores, TX	X		
Mr. Coffman, CO	X			Mr. Harris, MD	X		
<i>Mr. Costa, CA</i>		X		Mr. Landry, LA	X		
Mr. McClintock, CA	X			Mr. Runyan, NJ	X		
<i>Mr. Boren, OK</i>	X			Mr. Johnson, OH	X		
Mr. Thompson, PA	X			Mr. Amodei, NV	X		
<i>Mr. Sablan, CNMI</i>		X					
Mr. Denham, CA	X						
				TOTALS	26	18	

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources' oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII

1. Cost of Legislation. Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out this bill. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974. Under clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for this bill from the Director of the Congressional Budget Office:

H.R. 3409—Coal Miner Employment and Domestic Energy Infrastructure Protection Act

H.R. 3409 would temporarily prohibit the Secretary of the Interior from issuing new regulations that would have certain impacts on the coal industry. Based on information provided by the Office of Surface Mining (OSM), CBO estimates that implementing the legislation would have no significant impact on the federal budget. Enacting the bill would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

Under the bill, the Secretary could not issue new regulations until the end of 2013 if those regulations would affect the coal industry in certain ways, such as reducing employment or limiting access to coal resources. CBO expects that the bill would probably not affect any proposed regulations currently in the rulemaking process. In addition, based on information provided by OSM, CBO expects that any regulations proposed in the future would not be issued before the end of 2013 and would not be affected by the enactment of the bill. Therefore, we estimate that implementing H.R. 3409 would have at most a minimal impact on the federal budget.

H.R. 3409 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Jeff LaFave. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

2. Section 308(a) of Congressional Budget Act. As required by clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, this bill does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures. Based on information provided by the Office of Surface Mining, CBO estimates that implementing the legislation would have no significant impact on the federal budget.

3. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to limit the authority of the Secretary of the Interior to issue regulations before December 31, 2013, under the Surface Mining Control and Reclamation Act of 1977.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

COMPLIANCE WITH PUBLIC LAW 104-4

This bill contains no unfunded mandates as defined under Public Law 104-4.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

This bill is not intended to preempt any State, local or tribal law.

CHANGES IN EXISTING LAW

If enacted, this bill would make no changes in existing law.

DISSENTING VIEWS

DISSENTING VIEWS—H.R. 3409: COAL MINER EMPLOYMENT AND DOMESTIC ENERGY INFRASTRUCTURE PROTECTION ACT

We oppose H.R. 3409 because it is so broadly drafted that it could have the effect of preventing the Interior Department from issuing almost any rulemaking dealing with coal mining, including regulations that are necessary to ensure states can properly carry out their programs, regulations that would ensure that mining operations are safe and that public health and American taxpayers are protected, and even regulations beneficial to the mining industry.

The intent of H.R. 3409 appears to be to prevent the Interior Department from revising a Bush Administration midnight regulation that significantly weakened protections on the destructive practice of Mountaintop Removal Mining. Mountaintop Removal Mining is one of the most environmentally destructive practices on earth, which has fouled water quality and destroyed nearly 2,000 miles of Appalachian streams since 1992. However, H.R. 3409 is drafted so that its impact would be much broader than just this one rulemaking. H.R. 3409 would prevent the Secretary of the Interior from issuing any regulation under the Surface Mining Control and Reclamation Act (SMCRA) through December 31, 2013, if the regulation would, among other things, prohibit coal mining in any area, reduce employment in coal mines, or reduce coal production.

Prohibiting any rulemaking based upon the criteria in H.R. 3409 would be inconsistent with the purposes of SMCRA as outlined in section 102(f) to “strike a balance between protection of the environment and agricultural productivity and the nation’s need for coal as an essential source of energy.” In fact, this legislation could have far-reaching and significant unintended consequences for the regulation of mining activities in the United States.

According to the Interior Department, this legislation could prevent the Office of Surface Mining (OSM) from approving state program amendments to improve mine-reclamation bonding programs, which could adversely affect the ability of states to ensure that the necessary funds are available to reclaim mine sites. It could prevent OSM from revising regulations governing temporary cessation of operations to ensure that mining operations are temporarily shut down in a way that protects the environment. It could prohibit OSM from developing guidelines and requirements for the use of Coal Combustion Residues for reclamation activities on active and abandoned coal mine sites. According to data from the state of Pennsylvania, disposing of coal ash in a landfill costs industry five times as much as beneficially using it at a mine. So this legislation

could actually lead to increased costs for the mining industry if it were to be enacted.

The Majority rejected an amendment from Energy and Minerals Ranking Member Holt that would have simply ensured that the Secretary can continue to issue regulations that are “necessary to protect public health or safety or to ensure a proper return to American taxpayers.” Mr. Holt’s amendment would have ensured that we don’t completely tie the hands of the Interior Department when it comes to regulating coal mining in the United States and protecting safety and public health, as the underlying bill would do.

We oppose H.R. 3409 because not only would it prevent regulation to protect the economy and the environment of the Appalachia region from destructive Mountaintop Removal Mining practices but it would also make mining less safe and threaten public health. We should allow the Interior Department to continue to do its job and ensure that our mining operations are safe and that we protect our workers, public health and American taxpayers.

EDWARD J. MARKEY, *Ranking
Member, Committee on
Natural Resources.*

RAÚL M. GRIJALVA.

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GRACE F. NAPOLITANO.

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PAUL TONKO.

DALE E. KILDEE.

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