

CERTAINTY FOR STATES AND TRIBES ACT

NOVEMBER 22, 2016.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BISHOP of Utah, from the Committee on Natural Resources, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 5259]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 5259) to direct the Secretary of the Interior to reestablish the Royalty Policy Committee in order to further a more consultative process with key Federal, State, tribal, environmental, and energy stakeholders, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Certainty for States and Tribes Act”.

SEC. 2. RECONSTITUTION OF THE ROYALTY POLICY COMMITTEE.

(a) **IN GENERAL.**—The Secretary of the Interior shall, by not later than 90 days after the date of the enactment of this Act, reconstitute the Royalty Policy Committee as last chartered on March 26, 2010, except as otherwise provided in this Act.

(b) **CORRECTIONS AND UPDATES.**—In reconstituting the Committee, the Secretary shall make appropriate technical corrections and updates to the charter of the Committee, including the following:

(1) Revision of all references to the Minerals Management Service or Minerals Revenue Management so as to refer to the Office of Natural Resources Revenue.

(2) Revision of the estimated number and frequency of meetings of the Committee to not less than once each year.

(3) Revision of the non-Federal members of the Committee to include—

(A) not fewer than 5 members representing Governors of States that each receive more than \$10,000,000 annually in royalty revenues from Federal leases; and

(B) not more than 5 members representing Indian tribes that are mineral-producing Indian tribes under—

(i) the Act of May 11, 1938 (commonly known as the “Indian Mineral Leasing Act of 1938”) (25 U.S.C. 396a et seq.);

(ii) title XXVI of the Energy Policy Act of 1992 (25 U.S.C. 3501 et seq.);

(iii) the Indian Mineral Development Act of 1982 (25 U.S.C. 2101 et seq.); or

(iv) any other law relating to mineral development that is specific to one or more Indian tribes.

(4) Creation of a subcommittee of the Committee to be known as the State and Tribal Resources Board, comprised of designees of States’ Governors and tribes participating as non-Federal members of the reconstituted Committee.

SEC. 3. REVIEW OF REGULATIONS AND POLICIES THE ROYALTY POLICY COMMITTEE ADVISORY ACTIVITIES SHOULD INCLUDE.

(a) CONSULTATION AND REPORT.—Not later than 180 days after the date of the issuance by the Department of the Interior of any proposed regulation or policy related to mineral leasing policy for Federal or Indian land for exploration, development, or production of oil, gas, or coal (including valuation methodologies and royalty and lease rates for oil, gas, or coal), and not later than 180 days after the date of the enactment of this Act with respect to any proposed regulation of such Department relating to such policy that is pending as of the date of the enactment of this Act, the Committee shall—

(1) assess the proposed regulation or policy; and

(2) issue a report that describes the potential impact of the proposed regulation or policy, including any State and tribal economic impacts described in subsection (b).

(b) STATE AND TRIBAL IMPACT DETERMINATION.—

(1) IN GENERAL.—Before the date on which any proposed regulation related to mineral leasing policy on Federal or Indian land (including valuation methodologies and royalty and lease rates for oil, gas, or coal) may be issued as a final rule, the State and Tribal Resources Board shall publish a determination of the impact of the regulation on school funding, public safety, and other essential State or Indian tribal government services.

(2) DELAY REQUEST.—If the State and Tribal Resources Board determines that a regulation described in paragraph (1) will have a negative State or tribal budgetary impact, the Secretary shall, upon request by the Board, grant a delay of 180 days in the finalization of the regulation for the purposes of further—

(A) stakeholder consultation;

(B) budgetary review; and

(C) development of a proposal to mitigate the negative economic impact.

(c) REVISION OF PROPOSED REGULATION.—

(1) IN GENERAL.—Before the date on which any proposed regulation related to mineral leasing policy on Federal or Indian land (including valuation methodologies and royalty and lease rates for oil, gas, or coal) is issued as a final rule, the Secretary shall publish in the Federal Register, in the same docket as such proposed regulation, a description of the impacts determined by the Board in the report issued under subsection (a)(2), the recommendations made by the Board (if any) for mitigation of negative impacts determined by the Board under subsection (b)(2), and a clear explanation of why such recommendations of the Board were or were not incorporated in the final regulation.

(2) FINAL RULE.—Any final regulation subject to paragraph (1) must include—

(A) a summary of the report required under subsection (a)(2); and

(B) a clear explanation of why the recommendations of that report (including the State and tribal determination) were or were not taken into account in the finalization of the regulation.

SEC. 4. SPECIAL REVIEW OF PROGRAMMATIC ENVIRONMENTAL IMPACT STATEMENT.

(a) PARTICIPANTS IN PROGRAMMATIC REVIEW.—

(1) IN GENERAL.—In carrying out the programmatic review of coal leasing as described in section 4 of the order of the Secretary of the Interior entitled “Discretionary Programmatic Environmental Impact Statement to Modernize the Federal Coal Program”, numbered 3338 and dated January 15, 2016, the Secretary shall confer with, and take into consideration the views of, representatives appointed to the review board described in paragraph (2).

(2) **REVIEW BOARD.**—The Governor of each State in which more than \$10,000,000 in revenue is collected annually by the United States as bonus bids, royalties, and rentals, and fees for production of coal under leases of Federal land or Indian land may each appoint not more than 3 representatives to a review board for purposes of paragraph (1), at least one of whom shall be a member of the State and Tribal Resources Board.

(3) **DEADLINE.**—

(A) **IN GENERAL.**—The Secretary shall complete the programmatic review referred to in paragraph (1) not later than January 15, 2019.

(B) **FAILURE TO MEET DEADLINE.**—If the programmatic review is not completed by the deadline described in subparagraph (A), the programmatic review shall be considered to be complete as of that deadline.

(b) **TERMINATION OF OTHER PROGRAMMATIC REVIEW.**—No Federal funds may be used to carry out the programmatic review of coal leasing as described in subsection (a)(1) after January 15, 2019.

(c) **NO IMPLEMENTATION REQUIREMENT.**—Nothing in this section requires the Secretary to conduct or complete the programmatic review of coal leasing as described in subsection (a)(1) after January 20, 2017.

(d) **TERMINATION OF MORATORIUM.**—Effective January 16, 2019—

(1) the pause or moratorium on the issuance of new Federal coal leases under the Secretarial order referred to in subsection (a)(1) is terminated; and

(2) that Secretarial order shall have no force or effect.

SEC. 5. GRANDFATHERING OF COAL LEASES ON APPLICATION AND COAL LEASE MODIFICATIONS.

Nothing in the order of the Secretary of the Interior entitled “Discretionary Programmatic Environmental Impact Statement to Modernize the Federal Coal Program”, numbered 3338 and dated January 15, 2016, shall be considered to prohibit or restrict any issuance of a coal lease on application or coal lease modification, pursuant to section 3432 of title 43, Code of Federal Regulations, for which the Bureau of Land Management has begun its review under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) as of January 15, 2016.

SEC. 6. DEADLINE FOR COAL LEASE SALES AND MODIFICATIONS.

Not later than 1 year after the date on which the Secretary completes the analysis required under section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) for an application for a coal lease, or an application for a modification to a coal lease pursuant to subpart 3432 of part 3430 of title 43, Code of Federal Regulations (or successor regulations), accepted by the Secretary, the Secretary shall conduct the lease sale and issue the lease, or approve the modification, unless the applicant indicates in writing that the applicant no longer seeks the lease or modification to the lease.

PURPOSE OF THE BILL

The purpose of H.R. 5259 is to direct the Secretary of the Interior to reestablish the Royalty Policy Committee in order to further a more consultative process with key Federal, State, tribal, environmental, and energy stakeholders.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 5259, the Certainty for States and Tribes Act, would reconstitute the Department of the Interior’s currently defunct Royalty Policy Committee, which was established in 1995 to advise the Secretary on royalty management issues, as well as other mineral-related policies. As part of this new version of the Royalty Policy Committee, the bill would create a “State and Tribal Resources Board” to assess the economic impact of proposed policies and regulatory changes on state and tribal budgets and governmental services, which are often supported by revenues from mineral production. The bill is intended to create an open and transparent process to ensure a fair return to the American taxpayer and to ensure that states relying on mineral proceeds from federal land are treated fairly.

The need for this legislation stems from an increased demand for a cooperative and transparent process when creating regulations that affect critical funding sources of states and tribes. States and tribes can provide valuable information and expertise when it comes to developing rules that affect mineral production, and the status quo procedures for incorporating this input are insufficient. States and tribes also merit an increased role in this decision making process because they are particularly affected by rules impacting federal land. Education, infrastructure, and other essential government services in certain states are funded by revenues from federal land. The heightened impact of federal regulations to states with large amounts of federal land requires that those states be included in the policy discussions that form the basis for new rules.

The bill would also create a two-year period in which the Secretary of the Interior must complete the Programmatic Environmental Impact Statement under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) on the Federal Coal Program.

COMMITTEE ACTION

H.R. 5259 was introduced on May 17, 2016, by Congressman Ryan K. Zinke (R-MT). The bill was referred to the Committee on Natural Resources, and within the Committee to the Subcommittee on Energy and Mineral Resources and the Subcommittee on Indian, Insular and Alaska Native Affairs. On June 14, 2016, the Subcommittee on Energy and Mineral Resources held a hearing on the bill. On September 7, 2016, the Natural Resources Committee met to consider the bill. The Subcommittees were discharged by unanimous consent. Congressman Ryan K. Zinke offered an amendment designated #1; it was adopted by voice vote. Congressman Alan S. Lowenthal (D-CA) offered an amendment designated 001; it was not adopted by a roll call vote of 13 ayes to 22 nays, as follows:

Committee on Natural Resources

U.S. House of Representatives

114th Congress

Date: 09.08.16

Recorded Vote: #4

FC Mark Up on 4 bills: **Lowenthal_001 Amendment to H.R. 5259 (Rep. Ryan Zinke)**, To direct the Secretary of the Interior to reestablish the Royalty Policy Committee in order to further a more consultative process with key Federal, State, tribal, environmental, and energy stakeholders, and for other purposes. "*Certainty for States and Tribes Act*"

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
Mr. Bishop, UT, Chairman		X		Mr. LaMalfa, CA		X	
<i>Mr. Grijalva, AZ, Ranking Member</i>	X			<i>Mrs. Dingell, MI</i>			
Mr. Young, AK				Mr. Denham, CA		X	
<i>Mrs. Napolitano, CA</i>	X			<i>Mr. Gallego, AZ</i>			
Mr. Gohmert, TX		X		Mr. Cook, CA		X	
<i>Mrs. Bordallo, Guam</i>	X			<i>Mrs. Capps, CA</i>	X		
Mr. Lamborn, CO		X		Mr. Westerman, AR		X	
<i>Mr. Costa, CA</i>	X			<i>Mr. Polis, CO</i>	X		
Mr. Wittman, VA		X		Mr. Graves, LA			
<i>Mr. Sablan, CNMI</i>				<i>Mr. Clay, MO</i>	X		
Mr. Fleming, LA		X		Mr. Newhouse, WA		X	
<i>Mrs. Tsongas, MA</i>	X			Mr. Zinke, MT		X	
Mr. McClintock, CA		X		Mr. Hice, GA		X	
<i>Mr. Pierluisi, Puerto Rico</i>				Mrs. Radewagen, AS		X	
Mr. Thompson, PA		X		Mr. MacArthur, NJ		X	
<i>Mr. Huffman, CA</i>	X			Mr. Mooney, WV		X	
Mrs. Lummis, WY		X		Mr. Hardy, NV		X	
<i>Mr. Ruiz, CA</i>	X			Mr. LaHood, IL			
Mr. Benishek, MI		X					
<i>Mr. Lowenthal, CA</i>	X						
Mr. Duncan, SC		X					
<i>Mr. Cartwright, PA</i>							
Mr. Gosar, AZ		X					
<i>Mr. Beyer, VA</i>	X						
Mr. Labrador, ID							
<i>Mrs. Torres, CA</i>	X			TOTALS	13	22	

No additional amendments were offered and the bill, as amended, was ordered favorably reported to the House of Representatives by a roll call vote of 22 ayes to 13 nays on September 8, 2016, as follows:

Committee on Natural Resources

U.S. House of Representatives

114th Congress

Date: 09.08.16

Recorded Vote: #5

FC Mark Up on 4 bills: **On Favorably Reporting H.R. 5259 (Rep. Ryan Zinke)**, To direct the Secretary of the Interior to reestablish the Royalty Policy Committee in order to further a more consultative process with key Federal, State, tribal, environmental, and energy stakeholders, and for other purposes. "*Certainty for States and Tribes Act*"

MEMBERS	Yes	No	Pres	MEMBERS	Yes	No	Pres
Mr. Bishop, UT, Chairman	X			Mr. LaMalfa, CA	X		
<i>Mr. Grijalva, AZ, Ranking Member</i>		X		<i>Mrs. Dingell, MI</i>			
Mr. Young, AK				Mr. Denham, CA	X		
<i>Mrs. Napolitano, CA</i>		X		<i>Mr. Gallego, AZ</i>			
Mr. Gohmert, TX	X			Mr. Cook, CA	X		
<i>Mrs. Bordallo, Guam</i>		X		<i>Mrs. Capps, CA</i>		X	
Mr. Lamborn, CO	X			Mr. Westerman, AR	X		
<i>Mr. Costa, CA</i>		X		<i>Mr. Polis, CO</i>		X	
Mr. Wittman, VA	X			Mr. Graves, LA			
<i>Mr. Sablan, CNMI</i>				<i>Mr. Clay, MO</i>		X	
Mr. Fleming, LA	X			Mr. Newhouse, WA	X		
<i>Mrs. Tsongas, MA</i>		X		Mr. Zinke, MT	X		
Mr. McClintock, CA	X			Mr. Hice, GA	X		
<i>Mr. Pierluisi, Puerto Rico</i>				Mrs. Radewagen, AS	X		
Mr. Thompson, PA	X			Mr. MacArthur, NJ	X		
<i>Mr. Huffman, CA</i>		X		Mr. Mooney, WV	X		
Mrs. Lummis, WY	X			Mr. Hardy, NV	X		
<i>Mr. Ruiz, CA</i>		X		Mr. LaHood, IL			
Mr. Benishek, MI	X						
<i>Mr. Lowenthal, CA</i>		X					
Mr. Duncan, SC	X						
<i>Mr. Cartwright, PA</i>							
Mr. Gosar, AZ	X						
<i>Mr. Beyer, VA</i>		X					
Mr. Labrador, ID							
<i>Mrs. Torres, CA</i>		X		TOTALS	22	13	

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 and the Congressional Budget Act of 1974. With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the enclosed cost estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 18, 2016.

Hon. ROB BISHOP,
*Chairman, Committee on Natural Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5259, the Certainty for States and Tribes Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Jeff LaFave.

Sincerely,

KEITH HALL.

Enclosure.

H.R. 5259—Certainty for States and Tribes Act

Based on information provided by the Department of the Interior (DOI), CBO estimates that implementing H.R. 5259 would cost \$1 million over the 2017–2021 period; such spending would be subject to the availability of appropriated funds. Enacting the bill would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting the legislation would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2027.

H.R. 5259 would re-establish the Royalty Policy Committee, a committee composed of federal and nonfederal stakeholders who advise the Secretary on matters relating to coal leasing on federal lands. That committee was established in 2010 and terminated in 2014. Based on information from DOT regarding the costs associated with providing administrative and logistical support to the committee, CBO estimates that implementing the legislation would cost \$1 million over the 2017–2021 period.

Under the bill, the Royalty Policy Committee would have the authority to delay the implementation of future regulations related to coal leasing by up to 180 days; however, CBO has no basis for determining what, if any, budgetary effects those regulations and any subsequent delay would have.

The legislation also contains several provisions related to the administration of coal leasing on federal lands. In 2016, the Secretary

issued an order to conduct a programmatic environmental impact statement (PETS) related to coal leasing on federal lands and to pause certain leasing activities until that analysis is completed. H.R. 5259 would require the department to complete the analysis by 2019. Based on information regarding the time required to complete similar PEIS analyses, CBO expects that enacting the bill would not affect when the analysis would be completed.

In addition, H.R. 5259 would allow DOT to approve coal lease applications submitted by firms prior to the Secretary's order to pause certain leasing activities. Because the order does not affect the department's ability to use its discretion in administering the leasing of coal resources on federal lands, enacting the provision would not change current law and would not affect the federal budget.

Finally, the bill would require DOI to issue coal leases within one year of completing the required environmental analyses. Based on an analysis of information provided by the department and firms operating in the coal industry, CBO expects that establishing that deadline would have no significant effect on the timing of federal lease sales and would not affect the federal budget.

H.R. 5259 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 H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

2. 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 direct the Secretary of the Interior to reestablish the Royalty Policy Committee in order to further a more consultative process with key Federal, State, tribal, environmental, and energy stakeholders.

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.

FEDERAL ADVISORY COMMITTEE STATEMENT

The functions of the previously authorized advisory committee being reconstituted by the bill are not currently being nor could they be performed by one or more agencies, a different advisory committee already in existence or by enlarging the mandate of an existing advisory committee.

COMPLIANCE WITH H. RES. 5

Directed Rule Making. The Chairman does not believe that this bill directs any executive branch official to conduct any specific rule-making proceedings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95-220, as amended by Public Law 98-169) as relating to other programs.

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

We oppose H.R. 5259 because of the provisions in the bill that would handcuff the Department of the Interior (DOI) during its ongoing review of the federal coal leasing program. Over the past three years, reports from the Government Accountability Office, the Department of the Interior's Office of Inspector General, the White House Council of Economic Advisors, and independent policy analysts¹ have concluded that the federal coal program is broken and in desperate need of reform, and that taxpayers are not receiving a fair return from the sale of this public resource.

In response, in January 2016 the Secretary of the Interior announced that the Department would place a pause on issuing new coal leases while conducting a comprehensive federal coal program review, with the goals of accounting for the environmental and health impacts of the coal program and ensuring that American taxpayers receive a fair return. Similar reviews with associated pauses in leasing were undertaken by Presidents Nixon and Reagan. And with over 20 years' worth of federal coal currently under lease and waiting to be mined, it is clear that new federal leases are not needed in the immediate future to meet national coal needs.

Unfortunately, H.R. 5259 attempts to preemptively limit the impact of DOI's coal program review by setting a hard end date of January 15, 2019, lifting the leasing pause for lease applications where any environmental work has been started, setting hard deadlines for the Secretary to approve lease applications, and requiring a special analysis of the review by a new State and Tribal Resources Board. While we share an interest in having the coal program review completed as quickly as possible, similar previous efforts have taken longer than three years, and an arbitrary deadline simply increases the chance that the review will be incomplete or insufficient, effectively wasting three years of time and funding.

The reconstitution of the Royalty Policy Committee (RPC) is a welcome component of the bill, since the RPC has in the past provided valuable advice and recommendations regarding federal mineral revenue collections, oversight, and enforcement. However, requiring the RPC to review all regulations and policies related to mineral leasing and giving it the power to demand a delay of 180 days before a regulation is finalized is a step too far, significantly limiting the Secretary's ability to issue necessary rules and regulations and potentially creating unnecessary and costly delays. While the sponsor's amendment in markup removed a constitutional problem present in the introduced version, we continue to have serious

¹For example, "Reconsidering Coal's Fair Market Value," New York University School of Law Institute for Policy Integrity, October 2015; and "The Impact of Federal Coal Royalty Reform on Prices, Production, and State Revenue," Headwaters Economics, May 2015.

concerns about the makeup and powers of the RPC under this legislation.

Energy and Mineral Resources Subcommittee Ranking Member Alan Lowenthal attempted to provide some protection to taxpayers against the negative revenue implications of this bill by requiring any coal lease issued because of the bill's grandfathering provision to pay a royalty rate of 18.75 percent instead of the 12.5 percent currently paid by federal coal leases under the Mineral Leasing Act of 1920. The Majority rejected this amendment along a party-line vote.

For these reasons, we oppose H.R. 5259.

RAÚL M. GRIJALVA,
*Ranking Member, Committee
on Natural Resources.*

GRACE F. NAPOLITANO.

ALAN LOWENTHAL.

NIKI TSONGAS.

JARED HUFFMAN.

JARED POLIS.

