

111TH CONGRESS  
2D SESSION

# S. 3933

To protect electricity reliability by prohibiting the use of funds for carrying out certain policies and procedures that adversely affect domestic coal mining operations, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 29, 2010

Mr. BUNNING introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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## A BILL

To protect electricity reliability by prohibiting the use of funds for carrying out certain policies and procedures that adversely affect domestic coal mining operations, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Electricity Reliability  
5       Protection Act of 2010”.

6       **SEC. 2. FINDINGS.**

7       Congress finds the following:

1           (1) The United States consumes over 1 billion  
2           tons of coal annually. Most of this coal is used to  
3           meet nearly one-half of the Nation's electricity  
4           needs. The remaining amount of coal is used to  
5           produce, among other things, steel, plastics, syn-  
6           thetic fibers, medicines, and coke.

7           (2) On June 11, 2009, the Environmental Pro-  
8           tection Agency and the Department of the Army  
9           issued a Memorandum on "Enhanced Surface Coal  
10          Mining Pending Permit Coordination Procedures".

11          (3) As of March 2010, under these new proce-  
12          dures, the Environmental Protection Agency has un-  
13          lawfully delayed Clean Water Act permits for 190  
14          coal mining operations.

15          (4) These 190 coal mining operations are ex-  
16          pected to produce over 2 billion tons of coal  
17          (throughout the life of operations) and support  
18          roughly 17,806 new and existing jobs as well as 81  
19          small businesses.

20          (5) Due to the actions of the Environmental  
21          Protection Agency, roughly 1 in every 4 coal mining  
22          jobs in the Appalachian region is at risk of elimi-  
23          nation, 81 small businesses will lose significant in-  
24          come and will be at risk of bankruptcy, and more

1       than 2 years of the Nation’s coal supply is in jeop-  
2       ardy.

3           (6) By preventing the production and use of a  
4       2-year supply of coal, the Environmental Protection  
5       Agency is putting electricity reliability for consumers  
6       at risk.

7           (7) On April 1, 2010, Peter S. Silva, Assistant  
8       Administrator for the Office of Water, and Cynthia  
9       Giles, Assistant Administrator for the Office of En-  
10      forcement and Compliance Assistance, took further  
11      action to threaten jobs, harm small businesses, re-  
12      duce electricity reliability, harm national security,  
13      and drive up energy prices by releasing detailed  
14      guidance on “Improving EPA Review of Appa-  
15      lachian Surface Coal Mining Operations under the  
16      Clean Water Act, National Environmental Policy  
17      Act, and the Environmental Justice Executive  
18      Order”.

19          (8) This guidance goes far beyond clarification  
20      and coordination and arrogates to the Environ-  
21      mental Protection Agency wholly new powers to su-  
22      persede the authority of States under the Clean  
23      Water Act and the Surface Mining Control and Rec-  
24      lamation Act of 1977 (SMCRA), the authority of the  
25      Corps of Engineers (Corps) under the Clean Water

1 Act, the authority of the Office of Surface Mining  
2 Reclamation and Enforcement of the Department of  
3 the Interior (OSM) under SMCRA, and the author-  
4 ity of both the Corps and OSM under the National  
5 Environmental Policy Act of 1969.

6 (9) The June 2009 memorandum and the April  
7 2010 guidance meet the definition of a rulemaking  
8 under the Administrative Procedure Act because  
9 each is an “agency statement of general or par-  
10 ticular applicability and future effect designed to im-  
11 plement, interpret, or prescribe law or policy” under  
12 section 551(4) of title 5, United States Code.

13 (10) The Environmental Protection Agency has  
14 not gone through notice and comment rulemaking to  
15 prescribe the new policies set forth in the June 2009  
16 memorandum or the April 2010 guidance in viola-  
17 tion of the Administrative Procedure Act.

18 (11) Any use of the June 2009 memorandum  
19 or the April 2010 guidance to review, delay, and  
20 veto Clean Water Act permits is unlawful.

21 (12) The actions of the Environmental Protec-  
22 tion Agency could cause drastic increases in the Na-  
23 tion’s energy prices due to decreases in coal supply.

24 (13) By preventing the United States from re-  
25 ducing our reliance on foreign sources of energy and

1 by reducing our ability to produce energy domesti-  
2 cally, the Environmental Protection Agency is harm-  
3 ing national security.

4 **SEC. 3. LIMITATION ON USE OF FUNDS.**

5 None of the funds made available to the Environ-  
6 mental Protection Agency, the Corps of Engineers, or the  
7 Office of Surface Mining Reclamation and Enforcement  
8 for fiscal year 2010 or any fiscal year thereafter may be  
9 used to carry out, implement, administer, or enforce any  
10 policy or procedure set forth in—

11 (1) the memorandum issued by the Environ-  
12 mental Protection Agency and Department of the  
13 Army entitled “Enhanced Surface Coal Mining  
14 Pending Permit Coordination Procedures”, dated  
15 June 11, 2009, or

16 (2) the guidance issued by the Environmental  
17 Protection Agency entitled “Improving EPA Review  
18 of Appalachian Surface Coal Mining Operations  
19 under the Clean Water Act, National Environmental  
20 Policy Act, and the Environmental Justice Executive  
21 Order”, dated April 1, 2010,

22 until the Environmental Protection Agency, the Corps of  
23 Engineers, or the Office of Surface Mining Reclamation  
24 and Enforcement of the Department of the Interior, as  
25 appropriate under their existing statutory authorities, pro-

1   mulgates regulations for the implementation of such policy  
2   or procedure after providing notice and an opportunity for  
3   comment in accordance with subchapter II of chapter 5  
4   of title 5, United States Code, popularly known as the Ad-  
5   ministrative Procedure Act.

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