



**Legislative Bulletin.....September 20, 2012**

**Contents:**

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

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**H.R. 3409 – Coal Miner Employment and Domestic Energy Infrastructure Protection Act (Johnson, R-OH)**

**Order of Business:** The bill is scheduled to be considered as early as September 20, 2012, under a structured rule, H.Res. 788.<sup>1</sup>

The rule provides for the consideration of H.R. 3409 in the Committee of the Whole House on the state of the Union. The rule provides for 60 minutes of general debate that is equally divided by the chair and ranking minority member. After debate, the legislation shall be considered for amendment under the five minute rule. The rule makes in order only those amendments that are printed in Rules Committee Report 112-32. After amendment debate, the Committee shall rise and report the legislation to the House. At that time, any Member may demand a separate vote on any amendment that was adopted in the Committee of the Whole. The rule also provides for one motion to recommit, with or without instructions.

**Summary:** This legislation contains the text of H.R. 3409, as well as language similar to H.R. 910, H.R. 2401, H.R. 2273, H.R. 2018, which are listed as Titles I – V, respectively. Text similar to Titles II - V has previously passed the House of Representatives this Congress. Much more information is detailed below.

**Title I – Limitation on Authority to Issue Regulations Under the Surface Mining Control and Reclamation Act of 1977**

The legislation prohibits the Secretary of the Interior from, before December 31, 2013, from issuing or approving any newly proposed regulation under the Surface Mining Control and Reclamation Act that would negatively affect the domestic coal mining industry. The legislation sets criteria on what regulations would be prohibited.

**Title II – No Greenhouse Gas Regulation Under the Clean Air Act**

This title would amend the Clean Air Act to prohibit the Environmental Protection Agency (EPA) from regulating greenhouse gases (GHGs) to address climate change. Congress never intended for

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<sup>1</sup> [http://www.rules.house.gov/Media/file/PDF\\_112\\_2/Resolutions/BILLS-112HRes-ORH-Rule-HR3409HJRes118.pdf](http://www.rules.house.gov/Media/file/PDF_112_2/Resolutions/BILLS-112HRes-ORH-Rule-HR3409HJRes118.pdf)

the Clean Air Act to be used to regulate greenhouse gas emissions and explicitly rejected an attempt to add GHG regulations during the 1990 Clean Air Act Amendments. This title preempts EPA from imposing GHG regulations citing the Clean Air Act until Congress authorizes it. Specifically, the bill defines a GHG as water vapor, carbon dioxide, methane, nitrous oxide, sulfur hexafluoride, hydrofluorocarbons, perfluorocarbons, and any other substance subject to, or proposed to be subject to, regulation, action, or consideration under the bill to address climate change. The bill prohibits the EPA Administrator from promulgating regulations to provide for the consideration the emission of a greenhouse gas to address climate change. The bill specifies that an “air pollutant” does not include a greenhouse gas, but the definition may include greenhouse gasses for the purpose of addressing concerns other than climate change.

This title does not prohibit the EPA from implementing emissions standards released last year by the EPA on Model Year 2012-2016 passenger cars and trucks, and proposed by EPA for Model Years 2014-2018 for medium and heavy-duty trucks. The bill also allows for exemptions under the Clean Air Act for the EPA to proceed on the implementation of its renewable fuel standard program. Additionally, the bill allows the Administrator to proceed with authorized research, development, and demonstration programs to address climate change and permits the Administrator to implement Title IV of the CAA, as it relates to stratospheric ozone protection and compliance with an international treaty accord of which the U.S. is a signatory.

The bill repeals twelve EPA regulations or mandates that have been implemented since 2009 including mandatory reporting of Greenhouse Gasses, repeal of the endangerment finding, tailoring rule, among others.

This title does not limit the authority of a state to adopt regulations pertaining to greenhouse gases. However, state implementation plans of Title V operating permit programs that require a limitation or impose a permit requirement for the emission of a greenhouse gas to address climate change are not deemed federal enforceable and therefore prohibited under the bill.

Additionally, the bill amends the Clean Air Act to prevent the EPA Administrator from using waiver authority on 2017 model engines or automobiles (and later) in order to preserve one national standard for auto-emissions from GHG’s. The bill also grants a waiver for state authority.

The text of Title II is similar to H.R. 910, which passed the House on April 7, 2011, by a roll call vote of 255-172.<sup>2</sup> The RSC Legislative Bulletin for H.R. 910 can be [found here](#).

### **Title III – Transparency in Regulatory Analysis of Impacts on Nation**

Title III is intended to require the federal government to evaluate how the cumulative impacts of various regulations proposed or implemented by the Environmental Protection Agency (E.P.A.) would impact the economy. The bill would establish an interagency committee to estimate the cumulative economic impact (jobs, energy prices, and reliability) of regulations developed in the name of “global warming.” Additionally, the bill would delay two proposed EPA rules regarding utility boilers and addressing interstate emissions for at least six months after the report is released.

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<sup>2</sup> <http://clerk.house.gov/evs/2011/roll249.xml>

Specifically, this title would require the President to establish a committee to be known as the Committee for the Cumulative Analysis of Regulations that Impact Energy and Manufacturing in the United States to “analyze and report on the cumulative and incremental impacts of certain rules and actions of the Environmental Protection Agency.” The committee will consist of eleven cabinet level members, including the EPA Administrator, and will be chaired the Secretary of Commerce. The Committee would terminate within 60 days of producing a final report to Congress.

The report would require the Committee to conduct analyses for the years 2016, 2020, and 2030 that evaluates the cumulative impact of covered rules that are promulgated as final regulations on or before January 1, 2013, in combination with covered actions, and rules that have not been promulgated as final regulations on or before January 1, 2013. Additionally, the committee is required to evaluate the incremental impacts of each covered rule not promulgated as a final regulation on or before January 1, 2013 with specific consideration to:

- “the global economic competitiveness of the United States, particularly with respect to energy intensive and trade sensitive industries;
- “other cumulative costs and cumulative benefits, including evaluation through a general equilibrium model approach;
- “any resulting change in national, State, and regional electricity prices;
- “any resulting change in national, State, and regional fuel prices;
- “the impact on national, State, and regional employment during the 5-year period beginning on the date of enactment of this Act, and also in the long term, including secondary impacts associated with increased energy prices and facility closures; and
- “the reliability and adequacy of bulk power supply in the United States.”

The bill also requires a discussion of uncertainties and assumptions associated with each estimate, a sensitivity analysis, and cumulative impact of the covered rules and covered actions on:

- “consumers;
- “small businesses;
- “regional economies;
- “state, local, and tribal governments;
- “local and industry-specific labor markets;
- “agriculture; and
- “key uncertainties associated with each topic.”

The bill defines the “covered rules” implemented by the EPA to be the final published rules:

- Federal Implementation Plans To Reduce Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals’, published at 76 Fed. Reg. 48208 (August 8, 2011).
- National Ambient Air Quality Standards for Ozone’, published at 73 Fed. Reg. 16436 (March 27, 2008).
- National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters’, published at 76 Fed. Reg. 15608 (March 21, 2011).
- National Emission Standards for Hazardous Air Pollutants for Area Sources: Industrial, Commercial, and Institutional Boilers’, published at 76 Fed. Reg. 15554 (March 21, 2011).

- National Emission Standards for Hazardous Air Pollutants from Coal- and Oil-fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units', published at 77 Fed. Reg. 9304 (February 16, 2012).
- Hazardous and Solid Waste Management System; Identification and Listing of Special Wastes; Disposal of Coal Combustion Residuals From Electric Utilities', published at 75 Fed. Reg. 35127 (June 21, 2010).
- Primary National Ambient Air Quality Standard for Sulfur Dioxide', published at 75 Fed. Reg. 35520 (June 22, 2010).
- Primary National Ambient Air Quality Standards for Nitrogen Dioxide', published at 75 Fed. Reg. 6474 (February 9, 2010).
- National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry and Standards of Performance for Portland Cement Plants" published at 75 Fed. Reg. 54970 (September 9, 2010).

The title defines “covered rule” to also include:

- Any rule or guideline promulgated under the Clean Air Act to address climate change
- Any rule or guideline promulgated by the EPA, a state, local government, or a permitting agency as a result of section 169A or 169B of the Clean Air Act.
- Any rule establishing or modifying a national ambient air quality standard under the Clean Air Act.
- Any rule addressing fuels under the Clean Air Act as described in the Unified Agenda of Federal Regulatory and Deregulatory Actions under Regulatory Identification Number 2060-AQ86.

The text of Title III is similar to H.R. 2401, which passed the House on September 23, 2011, by a roll call vote of 249-169.<sup>3</sup> The RSC Legislative Bulletin for H.R. 2401 can be [found here](#).

#### **Title IV – Management and Disposal of Coal Combustion Residuals**

H.R.2273 seeks to prevent the Environmental Protection Agency from effectively designating coal ash residuals as a hazardous waste by creating coal combustion residual (CCR) permit programs at the state-level in order be the primary regulator of the substance.

Specifically, within six months of the bill’s enactment, the bill amends the Waste Disposal Act to allow the Governor of each state to provide written notification to the Administrator of the EPA to adopt and implement a coal combustion residuals permit program. If a state chooses to implement a CCR permit program, within thirty-six months of enactment, the head of the lead state agency responsible for implementing the program is required to submit a certification to the Administrator. The certification application must include the following:

- ◆ a letter identifying the lead state agency responsible for implementing the coal combustion residuals permit program, signed by the head of such agency;

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<sup>3</sup> <http://clerk.house.gov/evs/2011/roll741.xml>

- ◆ identification of any other state agencies involved with the implementation of the coal combustion residuals permit program;
- ◆ a narrative description that provides an explanation of how the state will ensure that the coal combustion residuals permit program meets the requirements of this section; and
- ◆ a legal certification and provide the EPA copies that the state has, at the time of certification, fully effective statutes, regulations, or guidance necessary to implement a coal combustion residuals permit program that meets the specifications described below.

The legislation sets certain criteria for CCR state programs to meet.

The text of Title IV is similar to H.R. 2273, which passed the House on October 14, 2011, by a roll call vote of 267-144.<sup>4</sup> The RSC Legislative Bulletin for H.R. 2273 can be [found here](#).

### **Title V – Preserving State Authority to Make Determinations Relating to Water Quality Standards**

This title seeks to preserve the authority of each state to make determinations relating to the state's water quality standards. The objective of the Federal Water Pollution Control Act, also known as the Clean Water Act (CWA), is to restore and maintain the chemical, physical, and biological integrity of the nation's waters. The bill transfers authority from the Environmental Protection Agency (EPA) to the states to allow the states to make its own determinations to their water quality.

The bill prohibits the EPA from promulgating a revised or new standard for a pollutant in any case in which the state has submitted to the EPA and the EPA has approved a water quality standard for that pollutant, unless the state concurs with the EPA's determination that the revised or new standard is necessary to meet the requirements of this Act.

The bill also prohibits the EPA from superseding any state or interstate agency determination related to water discharge resulting from construction or operation of facilities, if the state or agency determines that the discharge would comply with the Clean Water Act at the point it originates.

The legislation also sets criteria by which the EPA is prohibited from withdrawing approval of a state program under the National Pollution Discharge Elimination System (NPDES), or limiting federal financial assistance for a state NPDES program.

In addition, the bill shortens the period in which the Director of the United States Fish and Wildlife Service must submit comments with respect to a general dredge and fill permit application. Current law allows for 90 days, and this bill will require the Administrator and other agencies to submit comments on an application for a general permit or a permit to discharge into navigable waters at specified disposal sites within 30 days (or 60 days if additional time is requested) after the date of receipt of such application. The legislation further requires a report to Congress from the Administrator of the EPA regarding the increase or decrease in waterborne pathogenic microorganisms, toxic chemicals and metals that are found in waters regulated by a state.

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<sup>4</sup> <http://clerk.house.gov/evs/2011/roll800.xml>

The text of Title V is similar to H.R. 2018, which passed the House on July 13, 2011, by a roll call vote of 239-184.<sup>5</sup> The RSC Legislative Bulletin for H.R. 2018 is [linked here](#).

**Additional Information:** The following additional information pertains to Title I (H.R. 3409 as passed by the Committee), and is according to the House Committee on Natural Resources:<sup>6</sup>

The Obama Administration's Office of Surface Mining Reclamation and Enforcement (OSM) is conducting a sweeping rewrite of a coal mining regulation (the 2008 Stream Buffer Zone Rule). In January 2011, documents prepared by independent contractor, Polu Kai Services, LLC (PKS) to support the Obama Administration's Stream Buffer Zone rule making, became public. 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.

**Outside Groups:** The following groups have expressed support for passage of H.R. 3409:

Freedom Action – scoring as a key vote

Freedom Works – [scoring as a key vote](#)

Heritage Action for America – [scoring as a key vote](#)

**Committee Action:** Title I - H.R. 3409 was introduced on November 14, 2011, and was referred to the House Natural Resources Subcommittee on Energy and Mineral Resources. A full committee markup was held on February 29, 2012, and the legislation was favorably reported by a roll call vote of 26-18.<sup>7</sup>

**Administration Position:** No Statement of Administration Policy is available.

**Cost to Taxpayers:** Overall, on net, based on previous scores the legislation reduces authorized spending, subject to appropriation, by \$291 million over the 2012-2016 period.

CBO estimates that implementing Title I of H.R. 3409 would have at most a minimal impact on the federal budget.<sup>8</sup>

Title II (similar to H.R. 910): CBO estimates that enacting H.R.910 would save \$57 million in 2012 and about \$250 million over the 2012-2016 period, assuming that appropriations in those years were reduced accordingly.<sup>9</sup>

Title III (similar to H.R. 2401): CBO estimates that implementing H.R. 2401 would result in net discretionary savings of \$43 million over the 2012 – 2016 period.<sup>10</sup>

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<sup>5</sup> <http://clerk.house.gov/evs/2011/roll573.xml>

<sup>6</sup> <http://naturalresources.house.gov/news/documentsingle.aspx?DocumentID=308447>

<sup>7</sup> [http://naturalresources.house.gov/uploadedfiles/rc\\_hr3409\\_final.pdf](http://naturalresources.house.gov/uploadedfiles/rc_hr3409_final.pdf)

<sup>8</sup> This CBO score reflects H.R. 3409 as reported by the House Natural Resources Committee on February 29, 2012.

This score does not reflect the addition of Title II – V. <http://www.cbo.gov/publication/43219>

<sup>9</sup> <http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/121xx/doc12122/hr910.pdf>

Title IV (similar to H.R. 2273): CBO estimates that enacting H.R. 2273 would increase authorizations (subject to appropriation) of \$2 million over the 2012 - 2016 period.<sup>11</sup>

Title V (similar to H.R. 2018): CBO estimates that enacting H.R. 2018 would not have a significant impact on EPA's budget to implement the CWA.<sup>12</sup>

**Does the Bill Expand the Size and Scope of the Federal Government?:** No. Many provisions of the bill decrease the size of the federal government.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** Titles I, II, III, and V contain 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.

Title IV (similar to H.R. 2273): CBO states that H.R. 2273 would impose an intergovernmental mandate by requiring states to notify EPA whether they will adopt and implement a CCR permit program.

**Does the Bill Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?:** The legislation does not contain earmarks, limited tax benefits, or limited tariff benefits.

**Constitutional Authority:** Rep. Johnson states: "Congress has the power to enact this legislation pursuant to the following: Article I, section 8, clause 18."<sup>13</sup>

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<sup>10</sup> <http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/123xx/doc12319/hr2401.pdf>

<sup>11</sup> <http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/123xx/doc12365/hr2273.pdf>

<sup>12</sup> <http://www.cbo.gov/sites/default/files/cbofiles/ftpdocs/122xx/doc12280/hr2018.pdf>

<sup>13</sup> <http://www.gpo.gov/fdsys/cas/getdocument.action?billnumber=3409&billtype=hr&congress=112&format=html>