



CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

October 7, 2010

H.R. 5663 **Robert C. Byrd Miner Safety and Health Act of 2010**

As reported by the House Committee on Education and Labor on July 29, 2010

SUMMARY

H.R. 5663 would require operators of underground coal mines and other underground mines which contain specified concentrations of flammable gasses to improve employee safety measures and to comply with new standards regarding employee rights. The bill also would enhance whistleblower protections and victims' rights under the Occupational Safety and Health Act of 1970 (OSHA) and increase civil and criminal penalties assessed on employers who violate certain occupational safety and health requirements.

CBO estimates that implementing H.R. 5663 would have discretionary costs of \$6 million in 2011 and \$68 million over the 2011-2015 period, assuming appropriation of the necessary amounts. CBO estimates that penalties collected under H.R. 5663 would generate \$200 million in revenues over the 2011-2020 period. Pay-as-you-go procedures apply because enacting the legislation would affect revenues. Enacting this legislation would not affect direct spending over the 2011-2020 period.

CBO has determined that H.R. 5663 contains several private-sector mandates and one intergovernmental mandate as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates that the cost of those mandates would fall below the annual thresholds established in UMRA for intergovernmental and private-sector mandates (\$70 million and \$141 million in 2010, respectively, adjusted annually for inflation).

ESTIMATED COST TO THE FEDERAL GOVERNMENT

The estimated budgetary impact of H.R. 5663 is shown in the following table. The costs of this legislation fall within budget function 550 (health).

	By Fiscal Year, in Millions of Dollars					2011- 2015
	2011	2012	2013	2014	2015	
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Mine Safety and Health Administration (MSHA)						
Fees and Related Spending						
Collection of New Fees						
Estimated Authorization Level	-1	-4	-4	-4	-4	-17
Estimated Outlays	-1	-4	-4	-4	-4	-17
Spending of New Fees						
Estimated Authorization Level	1	4	4	4	4	17
Estimated Outlays	1	4	4	4	4	17
Net Changes from Fee Authority						
Estimated Authorization Level	0	0	0	0	0	0
Estimated Outlays	0	0	0	0	0	0
New MSHA Activities Not Supported by Fees						
Estimated Authorization Level	12	12	10	10	10	54
Estimated Outlays	2	8	14	10	10	44
Centers for Disease Control and Prevention						
Estimated Authorization Level	1	1	1	1	1	5
Estimated Outlays	1	1	1	1	1	5
Occupational Safety and Health Administration Activities						
Estimated Authorization Level	4	4	4	4	4	20
Estimated Outlays	3	4	4	4	4	19
Total Changes						
Estimated Authorization Level	17	17	15	15	15	79
Estimated Outlays	6	13	19	15	15	68
CHANGES IN REVENUES^a						
Estimated Revenues	20	20	20	20	20	100

Note: Components may not sum to totals due to rounding.

a. CBO estimates that enacting the bill would increase revenues by \$200 million over the 2011-2020 period

BASIS OF ESTIMATE

For this estimate, CBO assumes that H.R. 5663 will be enacted near the start of fiscal year 2011, that appropriation actions necessary to implement the bill will occur for each year beginning with 2011 to fund the activities authorized under the bill, and that outlays will follow historical patterns for similar activities.

Major Provisions

H.R. 5663 would amend and modify several sections of the Federal Mine Safety and Health Act of 1977 (FMSHA) by:

- Directing the Secretary of Health and Human Services (HHS) to create an independent panel to investigate certain mine accidents;
- Directing the Mine Safety and Health Administration (MSHA) to conduct additional inspections of certain mines that have a pattern of safety and health violations;
- Increasing civil and criminal penalties assessed on certain mine operators that have a pattern of safety and health violations;
- Increasing the education and other resources available to miners related to mine safety and their statutory rights and responsibilities;
- Directing the Secretary of the Department of Labor to establish mandatory certification standards for certain mine personnel including time limits for certifications and procedures for revoking certifications; and
- Authorizing the Secretary of Labor to collect fees for additional mine inspections and personnel certifications.

H.R. 5663 would also amend OSHA to increase civil and criminal penalties assessed on employers that have a pattern of safety and health violations. Additionally, the bill would enhance whistleblower protections through prohibitions against retaliation and create a process for investigating and resolving complaints filed by employees.

Spending Subject to Appropriation

CBO estimates that implementing H.R. 5663 would increase spending subject to appropriation, on net, by \$68 million over the 2011-2015 period, assuming appropriation actions consistent with the bill.

The gross spending to administer the new regulatory activities authorized under the legislation—about \$85 million over the 2011-2015 period—would be partially offset by fees assessed by MSHA on certain mine operators. In fiscal year 2010, MSHA received \$357 million in funding.

Collection of New Fees. H.R. 5663 would amend and modify FMSHA to collect fees to help defray some of the costs associated with carrying out required mine safety and health activities. The bill would create two new fees assessed by MSHA on mine operators:

- A mine inspection fee to cover the cost of additional inspections of mines that violate certain mine safety and health standards; and
- A certification fee to cover the cost of certifying certain mine personnel.

Fees authorized by the bill would be collected and made available for obligation only to the extent and in the amounts provided in advance in appropriation acts. As a result, those collections would be credited as an offset to discretionary spending.

Spending of Fees. Spending of the new fees assessed by MSHA on mine operators would be subject to appropriation action. Fees collected would only be available to cover the cost of additional inspections and of any personnel certifications that MSHA would conduct.

Based on information from MSHA and assuming annual appropriation actions consistent with the bill, CBO estimates that fees needed to cover new inspections would yield about \$5 million in collections over the 2011-2015 period and fees to cover new certifications would yield about \$12 million over the 2011-2015 period. CBO expects the highest number of certifications to occur in 2012; therefore, the amount of fees collected in 2012 would be slightly higher than in subsequent years. CBO estimates that the \$17 million in fees collected over the 2011-2015 period would be spent on the specified activities, resulting in no net budgetary impact over the period.

MSHA Activities Not Supported by Fees. CBO estimates that the fees collected would not offset all of the costs of implementing H.R. 5663. The bill would authorize an additional \$10 million in spending per year for MSHA to issue grants to states for costs associated with developing and implementing new personnel certification standards required under H.R. 5663. CBO estimates that MSHA's state grant program would not generate any expenditures in 2011, but would cost \$40 million over the 2012-2015 period.

The bill also would strengthen miner rights and increase the amount of education and outreach provided to miners. CBO assumes these provisions would increase the number of cases filed with MSHA by miners who felt they were discriminated against by mine operators. Using information provided by MSHA, CBO estimates that the number of cases would increase by nearly one-third in the first year that outreach activities occur since all miners would receive training on their statutory rights. CBO assumes that MSHA's caseload would decrease over subsequent years as miners become familiar with their rights. In addition, the bill would require MSHA to issue new regulations on a variety of issues, including mine safety and health standards, systems for communicating mine conditions, atmospheric monitoring systems, and respirable dust standards. CBO estimates that MSHA's regulatory and educational activities would cost \$2 million in 2011 and \$4 million over the 2011-2015 period.

Assuming the appropriation of necessary amounts, CBO estimates that the total additional cost to MSHA not supported by fees would be \$2 million in 2011 and \$44 million over the 2011-2015 period.

Other Federal Programs. H.R. 5663 would direct the Secretary of HHS to create an independent panel to investigate mine accidents involving three or more deaths and other mine accidents, as determined appropriate by the Secretary. The panel would be chaired by a representative from the Office of Mine Safety and Health Research within the Centers for Disease Control and Prevention's National Institute for Occupational Safety and Health (NIOSH). The panel, supported by NIOSH staff, would be responsible for assessing and identifying factors that caused or contributed to the accident, reviewing the Secretary's determinations and recommendations, and preparing and publishing a report of its findings and recommendations. H.R. 5663 would provide the panel with the authority to conduct public hearings or meetings, as deemed necessary, to inform the investigations.

H.R. 5663 would also direct NIOSH, in consultation with technical working groups, to issue recommendations pertaining to the use of atmospheric monitoring systems, the

implementation of redundant systems, and the availability of other technologies that conduct continuous atmospheric monitoring to maximize the safety and health of underground coal miners.

Assuming the appropriation of necessary amounts, CBO estimates that implementing those provisions would cost \$1 million in fiscal year 2011 and \$5 million over the 2011-2015 period.

H.R. 5663 would also amend the responsibilities of the Occupational Safety and Health Administration with respect to worker protections. The bill would establish enhanced protection from employer retaliation for workers who chose not to perform their duties due to a reasonable apprehension that performing such duties would put their health and safety, or the health and safety of other employees, at risk. Under this bill, the Secretary would investigate complaints of retaliation and issue an order granting or denying relief. The complainant or respondent would then be entitled to request a hearing in front of an administrative law judge and to appeal the judge's decision to a review board designated by the Secretary.

Assuming the appropriation of necessary amounts, CBO estimates that implementing those provisions would cost \$3 million in fiscal year 2011 and \$19 million over the 2011-2015 period.

Revenues

Under current law, mine operators may contest civil penalties imposed under FMSHA. If contested, a civil penalty is subject to review by the Federal Mine Safety and Health Review Commission, who may reduce or waive the penalty. H.R. 5663 would prevent the commission from reducing those penalties, barring extraordinary circumstances. Additionally, H.R. 5663 would increase certain civil penalties under FMSHA. Civil penalties are recorded in the federal budget as revenues net of offsetting effects on income and payroll tax receipts. Based on information provided by FMSHA on past violations, CBO estimates that enacting these changes would increase federal revenues by \$12 million in 2011, by \$60 million over the 2011-2015 period, and by \$120 million over the 2011-2020 period.

H.R. 5663 would also increase civil penalties for violations under OSHA. Based on data provided by the Occupational Safety and Health Administration on historical collections, CBO estimates that these changes would increase federal revenues by \$8 million in 2011, by \$40 million over the 2011-2015 period, and by \$80 million over the 2011-2020 period.

PAY-AS-YOU-GO CONSIDERATIONS

The Statutory Pay-As-You-Go Act of 2010 establishes budget reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in revenues and their effects on the deficit that are subject to those pay-as-you-go procedures are shown in the following table.

CBO Estimate of Pay-As-You-Go Effects for H.R. 5663, the Robert C. Byrd Miner Safety and Health Act of 2010, as reported by the House Committee on Education and Labor on July 29, 2010

	By Fiscal Year, in Millions of Dollars											2011-	2011-	
	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2015	2020		
NET INCREASE OR DECREASE (-) IN THE DEFICIT														
Statutory Pay-As-You-Go Impact	-20	-20	-20	-20	-20	-20	-20	-20	-20	-20	-20	-100	-200	

ESTIMATED INTERGOVERNMENTAL AND PRIVATE-SECTOR IMPACT

CBO has determined that H.R. 5663 contains several private-sector mandates and one intergovernmental mandate as defined in UMRA. CBO estimates that the cost of those mandates would fall below the annual thresholds established in UMRA for intergovernmental and private-sector mandates (\$70 million and \$141 million in 2010, respectively, adjusted annually for inflation).

Mandates that Apply to Both Public and Private Entities

The bill would provide additional authority to the Secretary of Labor to issue subpoenas. Public and private entities, if subpoenaed, would have to provide information or materials. CBO expects that the cost of complying with such subpoenas would not be significant.

Mandates that Apply to Private Entities Only

The bill would impose several private-sector mandates on operators of underground mines by requiring them to comply with new standards for health, safety, and worker protection. The bill also would require employers covered under OSHA to comply with additional protections for their employees.

Standards for Health and Safety. The bill would require operators of underground mines to take actions to protect workers from health and safety hazards. Those requirements include:

- Installing systems to monitor atmospheric conditions;
- Increasing the concentrations of incombustible dust to reduce the likelihood of explosions;
- Providing miners with adequate protection from dust;
- Implementing a program to brief workers before their shift about mine conditions;
- Providing additional training for employees; and
- Complying with new standards and fees for the certification of personnel.

Based on information from MSHA and industry experts, CBO estimates that the cost of complying with those requirements would amount to several tens of millions of dollars annually.

Standards for Worker Protection. The bill would prohibit operators of underground mines from terminating or otherwise discriminating against an employee because that employee reported an alleged violation of health or safety regulations. The bill also would prohibit any person or employer from terminating or otherwise discriminating against an employee because that employee refused to perform their duties based on a belief that such action would pose a hazard to the health or safety of the employee. In addition, the bill would extend those protections to all workers covered under OSHA. CBO estimates that private entities would incur minimal costs to comply with such protections for their employees.

Other Mandates. The bill would impose several reporting requirements on operators of underground mines and prohibit attorneys for such operators from representing both the operator and any other individual unless the individual waives all conflicts of interest. CBO estimates the cost of complying with those requirements would be small.

PREVIOUS CBO ESTIMATE

On July 26, 2010, CBO transmitted an estimate of the revenue and direct spending effects of H.R. 5663 as ordered reported by the House Committee on Education and Labor on July 21, 2010. The estimated pay-as-you-go effects of H.R. 5663—\$200 million in increased revenues and no change in direct spending—remains unchanged. That previous CBO estimate, however, did not include an estimate of bill’s impact on discretionary spending.

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