



**CONGRESSIONAL BUDGET OFFICE
PAY-AS-YOU-GO ESTIMATE**

October 21, 1998

S. 2500

**An act to protect the sanctity of contracts and leases entered into by
surface patent holders with respect to coalbed methane gas**

As cleared by the Congress on October 15, 1998

CBO estimates that enacting S. 2500 would have no significant impact on the federal budget in the next five years, although it is possible that the legislation could result in a loss of offsetting receipts.

In many parts of the west, ownership of the subsurface estate is split: the coal estate, oil and gas estate, and hardrock mineral estate may all be separately owned. Until recently, current law has been interpreted to associate coalbed methane (CBM) with the oil and gas estate. Thus, royalties from CBM production are paid to the owner of the oil and gas estate.

On July 20, 1998, the 10th U.S. Circuit Court of Appeals ruled that CBM is associated with the coal estate rather than the oil and gas estate. If upheld, this ruling would mean that where the coal estate and the oil and gas estate are owned by different parties, CBM royalties now being paid to the owner of the oil and gas estate would instead be due to the owner of the coal estate. Where the federal government owns the coal estate but not the oil and gas estate, the federal government could begin collecting CBM royalties; where the government owns the oil and gas estate but not the coal estate, the government might have to cease collecting CBM royalties. According to the Department of the Interior (DOI), the former of these two cases would be common and the latter case would be rare. But because the ruling by the 10th Circuit Court could be appealed to the U.S. Supreme Court or could be contradicted by a ruling in a different circuit court of appeals, DOI will not consider collecting such CBM royalties until the interpretation of current law is clear.

S. 2500 would provide that, for any lease in effect on or before enactment of this legislation that allows for CBM production and where the federal government retains ownership of the coal estate, existing lessees would continue to pay CBM royalties to nonfederal owners of the oil and gas estate.

For purposes of this estimate, CBO assumes that, in the absence of S. 2500, the current situation will continue for the foreseeable future—that is, the federal government will not collect CBM royalties on existing leases when it owns only the coal estate. Therefore, we estimate that enacting S. 2500 would not affect offsetting receipts from mineral production and any associated payments to states over the next five years. Another outcome is possible, however. If the ruling of the 10th U.S. Circuit Court of Appeals is subsequently upheld, enacting the legislation could result in a loss of offsetting receipts that the federal government would otherwise collect for certain CBM production. CBO has little information about the size of the potential losses, but they could be less than \$1 million or as much as several million dollars a year.

The CBO staff contact is Victoria V. Heid. This estimate was approved by Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.