

## **Legislative History**

**Congressional Record May 17, 1977**

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**123 CONG.REC. S7740**

**May 17, 1977**

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AMENDMENTS NOS. 275 THROUGH 278

S7740 (Ordered to be printed and to lie on the table.)

S7740 Mr. JOHNSTON. Mr. President, today I am submitting four proposed amendments to S. 7, the Surface Mining Control and Reclamation Act of 1977. The four amendments seek to correct what I believe to be deficiencies in the bill as reported by the Energy and Natural Resources Committee. The amendments are as follows:

S7740 AMENDMENT NO. 275 - ALLUVIAL VALLEY FLOOR AMENDMENT

S7740 This amendment deletes section 410(b) (5) and proposes substitute language for that paragraph. Paragraph 5 provides for the protection of water resources and certain agricultural lands in alluvial valleys West of the one-hundredth meridian. My problem with the provision in the bill is that it contains such ambiguous terms as "significant to the practice of farming" and "potential farming or ranching operations if such operations are significant and economically feasible." My amendment protects the water resources during and after mining and provides that mining may not be done when the value of the coal to be mined is less than 100 times more valuable than the farming and ranching products which would be produced by the land during the time the acreage is out of production due to the mining activities.

S7740 AMENDMENT NO. 276 - SURFACE OWNER COMPENSATION AMENDMENT

S7740 This amendment deletes section 515 and inserts in lieu thereof a new section 515. Section 515 as reported by the committee allows landowners who own the land which lies over federally owned coal deposits to block production of the Federal coal by withholding their consent to allow the mining operator to enter their land. My amendment would treat the land owner generously, but

would not allow him to block production of the federally owned coal.

S7740 AMENDMENT NO. 277 - EXCLUSIVE STATE JURISDICTION AMENDMENT

S7740 This amendment proposes the addition of a new subsection 429 which will allow a State to retain exclusive State jurisdiction over surface coal mining operations. The amendment allows a State to retain its law or enact a law which meets or exceeds the surface mining standards embodied in section 415 and 416 of the reported bill.

S7740 AMENDMENT NO. 278 - COAL PIPELINE ACT OF 1977

S7740 This amendment adds a new title VI to the bill, which title would be identical to S. 707 which I introduced earlier this year. The amendment would grant the power of eminent domain to coal slurry pipeline companies which have been granted a certificate of convenience and necessity by the Secretary of Interior. The bill does not affect water rights, the jurisdiction over which remains with the individual States or other, governmental units which now have jurisdiction over those rights.

S7740 Mr. President, I ask unanimous consent that these amendments be printed in the RECORD at this point so that my colleagues may study the amendments prior to consideration of S. 7.

S7740 There being no objection, the amendments were ordered to be printed in the RECORD, as follows:

S7740 AMENDMENT NO. 275

S7740 On page 207, strike all of lines 1 through 21 and insert in lieu thereof the following:

S7740 "(5) the proposed surface coal mining operation, if located west of the one hundredth meridian west longitude, would not interrupt, discontinue or prevent farming on alluvial valley floors unless:

S7740 (a) throughout the surface mining operation, upstream and downstream ground and surface water flows in these alluvial valley floors are maintained so as not to impair existing rights of other water users; and

S7740 (b) during and after the reclamation process, the essential hydrologic functions of the area is preserved without materially damaging the quantity and quality of surface and ground water systems that supply these valley floors and

S7740 (c) the total value of the coal mined by the surface mining operation would exceed, by a ratio of 100 to 1, the total value of the farming or ranching products that would be produced from said acreage while out of production as a result of the mining activity.

S7740 (6) Paragraph (5) shall not affect those surface coal mining operations located within or adjacent to alluvial valley floors which in the year preceding the enactment of this Act were engaged in the commercial production of coal, or which had obtained prior to January 4, 1977, specific permit approval by the state regulatory authority to conduct surface coal mining operations within said alluvial valley floors, or for which substantial financial and legal commitment had been made."

S7740 AMENDMENT NO. 276

S7740 On page 303, line 21, strike all of Section 515 and insert in lieu thereof a new Section 515 as follows:

S7740 "SECTION 515. (a) The provisions and procedures specified in this section shall apply where coal owned by the United States under land the surface rights to which are owned by a surface owner as defined in this section is to be mined by methods other than underground mining techniques.

S7740 (b) Any coal deposits subject to this section shall be offered for lease pursuant to section 2(a) of the Mineral Leasing Act of 1920 (30 U.S.C. 201a), except that no award shall be made by any method other than competitive bidding.

S7740 (c) Prior to placing any deposit subject to this section in a leasing tract, the Secretary shall give to any surface owner whose land is to be included in the proposed leasing tract actual written notice of his intention to place such deposits under such land in a leasing tract.

S7740 (d) The Secretary shall not approve any mining plan pursuant to this Act until the appraised value of the surface owner's interest has been tendered in accordance with the provisions of subsection (e). Upon such tender and upon approval of the mining plan, the lessee may enter and commence mining operations whether or not the determination of value of the surface owner's interest is subject to judicial review as provided in this section.

S7740 (e) Tender of the appraised value of the surface owner's interest shall occur when:

S7740 (1) The lessee and the surface owner agree on an amount and method of compensation for the surface owner's interest, whether or not the amount of compensation is fixed in accordance with the provisions of subsection (f), and the surface owner has given the Secretary written consent for the lessee to enter and commence surface mining operations; or

S7740 (2) The lessee has deposited the appraised value of the surface owner's interest in the United States district court for the locality in which the leasing tract is located. At any time after the appraised value of the surface owner's interest is deposited in the court and upon execution by the surface owner and the lessee of a final settlement of their rights under this section, the surface owner shall be entitled to withdraw from the registry of the court the full amount of the deposit.

S7740 (f) For purposes of this section, the term "appraised value of the surface owner's interest" means the value of the surface owner's interest fixed by the Secretary based on appraisals made by three appraisers. One such appraiser shall be appointed by the Secretary, one appointed by the surface owner concerned, and one appointed jointly by the appraisers named by the Secretary and such surface owner. In computing the value of the surface owners interest, the appraisers shall fix and determine:

S7740 (1) the difference between the fair market value of the surface estate, computed without reference to the value of the underlying coal, immediately before mining is to commence, and what said fair market value is reasonably expected to be immediately after mining and associated activities have been completed;

{S7741} (2) the net income the surface owner can be expected to lose as a result of the surface mining operation during the two years immediately following approval of the mining plan; provided, however, that if mining and associated activities are reasonably expected to be completed within a shorter period of time, then said net income shall be computed only for that shorter period of time;

S7741 (3) the cost to the surface owner for relocation or dislocation during the mining and reclamation process; and

S7741 (4) any other damage to the surface caused or reasonably anticipated to be caused by the

surface mining and reclamation operations.

S7741 (g) For the purpose of this section the term "surface owner" means the natural person or persons (or corporation, the majority stock of which is held by a person or persons who meet the other requirements of this section) who:

S7741 (1) hold legal or equitable title to the land surface; and

S7741 (2) have their principal place of residence on the land; or personally conduct farming or ranching operations upon a farm or ranch unit to be affected by surface coal mining operations; or receive directly a significant portion of their income, if any, from such farming or ranching operations.

S7741 (h) The United States district court for the locality in which the leasing tract is located shall have exclusive jurisdiction to review the determination of the value of the surface owner's interest made pursuant to this section.

S7741 (1) This section shall not apply to Indian lands.

S7741 AMENDMENT NO. 277

S7741 On page 284, line 6, insert a new subsection 429 as follows:

S7741 429(a). Notwithstanding any other provision of this Act, any State which has, on the date of enactment of this Act, an existing program regulating surface coal mining operations may elect to retain exclusive State jurisdiction over the regulation of surface coal mining and reclamation operations taking place on lands within the State by incorporating in State law standards which are equal to or more stringent than the Environmental Protection Performance Standards of sections 415 and 416.

S7741 (1) If a State so elects, it shall notify the Secretary within 135 days after enactment of this Act. Pending final determination by the Secretary pursuant to this section (including judicial review), the State shall apply and insure compliance with subsections 402(a), (b) and (c).

S7741 (2) Such environmental performance standards shall be incorporated into State law within 24 months after enactment of the Act.

S7741 (3) The Secretary shall hold a public hearing in the State as soon after such standards if the environmental performance standards if the environmental performance standards are equal to or

more stringent than the standards in sections 415 and 416.

S7741 (4) If the Secretary finds that the State standards are not equal to or more stringent than the standards in sections 415 and 416, he shall recommend to the State what conforming changes are necessary and shall afford such State an appropriate period of time to enact conforming amendments but in no event shall such period exceed adjournment sine die of the next full session of the State legislature to occur after such finding. Such finding shall be reviewable in a trial de novo in a Federal district court in such State.

S7741 (5) If such State fails within the prescribed time to submit acceptable amendments, the Secretary shall impose a program pursuant to section 403 or 404.

S7741 (6) If the Secretary finds that State law is equal to or more stringent than the standards in sections 415 and 416, then the State shall retain exclusive jurisdiction pursuant to State law over all surface coal mining operations in such State except as follows:

S7741 (A) For a period of four years after such determination, the Secretary shall take such actions as he deems appropriate to monitor State regulation. If within this period the Secretary determines after public hearings that the State is failing to effectively enforce state law with regard to the environmental performance standards, he shall impose a program pursuant to section 403 or 404 of this Act. Such determination shall be reviewable in a trial de novo in a Federal District Court in such State.

S7741 (B) Nothing in this section shall be construed to deny such States the effect of sections 505(a) and (c) of this Act, nor the right to fully participate with respect to title III to the same manner as a State with an approved State program.

S7741 (C) States, with cooperative agreements with the Secretary existing on the date of enactment of this Act, which elect pursuant to this section shall be permitted to continue to regulate surface coal mining and reclamation operations on Federal lands within the State pursuant to such agreements provided that the Secretary has made the determination required by subsection (a) (6) and such agreements are modified accordingly.

S7741 Provided further, that such existing agreements are modified to require compliance with the Initial Regulatory Procedures of subsection (a) (1).

S7741 The Secretary shall retain his duties under sections 2(a), (2)(B), and 2(a)(3) of the Federal Mineral Leasing Act, as amended, Nothing in this section shall be construed as authorizing the Secretary to delegate to the States his duty to designate certain Federal lands as unsuitable for coal mining pursuant to section 422 of this Act, or to regulate other activities taking place on Federal lands.

S7741 AMENDMENT NO. 278

S7741 On page 305, after line 25, and in the Table of Contents, and a new Title VI as follows:

S7741 "TITLE VI. COAL PIPELINE ACT OF 1977

S7741 "SHORT-TITLE"

S7741 "Section 601. This Title may be cited as the "Coal Pipeline Act of 1977."

S7741 DEFINITIONS

S7741 SEC. 602. As used in this Act -

S7741 (a) "carrier" means any carrier of coal by coal pipeline that is subject to any of the provisions of this Act;

S7741 (b) "Department" means the Department of the Interior;

S7741 (c) "Secretary" means the Secretary of the Department of the Interior;

S7741 (d) "right-of-way" includes necessary land or other property for the location of pipelines, pumping stations, pressure apparatus, tanks, or other stations, equipments, or appurtenances required for the proper operation of a coal pipeline or pipelines; and

S7741 (e) "control" means the power to exercise control by whatever means: any person who (1) is a director of a carrier or of any other person, or (2) owns in excess of 5 per centum of the voting stock (or any like evidence of participation) of a carrier or of any other person shall be deemed to have the power to exercise control of such carrier or other person, as the case may be.

S7741 RIGHTS-OF-WAY ON FEDERAL LANDS

S7741 SEC. 603. Subsection 28(a) of the Mineral Leasing Act of February 25, 1920, as amended by the Act of November 16, 1973 (87 Stat. 567), is further amended by inserting the word "coal" between "natural gas," and "synthetic".

S7741 EMINENT DOMAIN

S7741 SEC. 604(a) Except as provided in subsection (b), when any carrier cannot acquire by negotiation the right-of-way required to

S7741 construct, operate, and maintain any proposed coal pipeline or pipelines, such carrier may acquire the same by the exercise of the power of eminent domain in the district court of the United States for the district in which such property is located or in the courts of the State in which such property is located.

S7741 (b) The power of eminent domain shall not be exercised to acquire (1) lands owned by the United States or by any State, or (2) lands held on trust by the United States for an Indian or Indian tribe.

S7741 (c) Nothing in this section shall be construed to permit acquisition of any right to use or develop water through the exercise of the right of eminent domain.

S7741 CERTIFICATION OF PUBLIC CONVENIENCE AND NECESSITY

S7741 SEC. 605. (a) The power of eminent domain granted pursuant to this Act may be exercised only by a carrier holding a certificate of public convenience and necessity issued by the Department of the Interior. The Secretary is authorized to issue such a certificate if the Secretary finds, with respect to the particular project of the carrier as to which said power is sought, that the project is in the national interest and provides the capacity necessary to fulfill the requirement of a common carrier of coal, as determined by the Secretary. In addition to other factors customarily considered in determining common carrier status in the case of pipeline common carriers, the Secretary shall consider contracts for the carriage of coal which are in existence or proposed as of the date of the application for certification and may also consider such contracts for such carriage as may reasonably be anticipated, at the time of issuance of the certificate, to be entered into after such date. In determining the size of the pipeline to be certificated, the Secretary shall take into account the resultant cost to ultimate consumers of services or products affected by such transportation.

S7741 (b) In making the findings required in (a) of this section the Secretary shall consider and make independent findings on the extent to which the project -

S7741 (1) would help meet national needs for coal utilization, considering, among other matters, alternate routes or means of transportation of coal and the relative costs of such alternative routes or means;

S7741 (2) may be impeded or delayed unless granted the power of eminent domain;

S7741 (3) involves disruption to the environment, as compared with disruption from other routes or modes of transportation or other methods of utilization of the coal resources involved; and

S7741 (4) considers the balance between the energy needs of the area to be benefited by the project and the water requirements and other impacts on the area from which the coal is to be transported.

S7741 The Secretary's findings as to whether a project is in the national interest shall be based on the record as a whole taking into consideration each of the criteria set forth in this subsection.

S7741 (c) The Secretary shall require as a condition of issuance of a certificate of convenience and necessity under this Act that any pipeline for which such certificate is issued be constructed, operated, and maintained as a common carrier as provided in the Interstate Commerce Act. Any violation of such condition shall be enforced as provided in such Act, and nothing in this paragraph shall be construed to limit, impair, or otherwise affect any provision of such Act.

S7741 (d) (1) No carrier granted the power of eminent domain under this Act shall transport any coal mined by it or under its authority or which it may own in whole or in part, or over which it may have any control, direct or indirect.

S7741 (2) The prohibition contained in subsection

{S7742 } (d) (1) shall not apply to the construction, ownership, and operation of a feeder line for the purpose of gaining access to a coal pipeline by any person who would otherwise be ineligible if -

S7742 (A) the carrier has declined a formal request to construct, own, and operate the feeder line;

S7742 (B) the owner of the feeder line will operate the line as a common carrier for any excess capacity in the feeder line; and

S7742 (C) the Secretary has determined that an exemption from subsection (d) (1) is in the public interest.

S7742 (3) (A) No certificate of public convenience and necessity may be issued to any carrier which controls, is controlled by, or is under common control with any person which uses or will use coal transported by the carrier or which supplies coal to the pipeline and (B) no carrier granted the power of eminent domain under this Act may control, be controlled by, or be under common control with any such person.

S7742 (4) The penalties and enforcement provisions of section 8 shall not apply to this subsection, but whenever, on the basis of any information available to it, the Interstate Commerce Commission finds that any carrier or other person is in violation of paragraph (1) or (3) (B), it shall notify such carrier or other person. If such violation extends beyond the thirtieth day after the date of such notice, the Commission shall, after notice and opportunity for hearing, issue an order requiring such carrier or other person to comply. Failure to obey any such order shall be subject to the same penalty as provided for in section 16(8) of the Interstate Commerce Act (49 U.S.C. 16(8)).

S7742 (e) No certificate of public convenience and necessity may be issued to any person engaged as a common carrier in interstate transportation of coal by any mode unless such person enters into a compact with the Secretary within two years from the date of enactment of this Act providing means whereby rights-of-way across the lines of such person may be acquired by a carrier on terms customarily employed with reference to other types of pipeline. Any Federal court of competent jurisdiction may entertain a suit by an interested party to enforce the provisions of such compact.

S7742 (f) If the Secretary determines, in the course of the consultations and findings required by subsection (b) or the hearings required by section 6 that the project right-of-way may be utilized for additional uses, compatible with operations of the project line, the Secretary may, in his discretion, require as a condition to the grant of a certificate of public convenience and necessity that the particular project right-of-way be subject to such compatible uses.

S7742 (g) The Secretary shall require the additional use described in subsection (e) only if he by rule (1) finds -

S7742 (A) the additional use is a compatible use, and

S7742 (B) conditioning the issuance of the certificate upon the availability of the right-of-way for the additional use is in the public interest, and

S7742 (2) establishes reasonable provisions for the payment of compensation for the additional use to the person otherwise entitled to the exclusive use.

#### S7742 PROCEDURE

S7742 SEC. 606(a). Applications for a certificate of public convenience and necessity under this Act shall be filed with the Department pursuant to such regulations as it may prescribe. Each carrier applying for a certificate shall reimburse the Department for administrative and other costs incurred in processing the application as the Secretary shall prescribe.

S7742 (b) A certificate authorized by section 5 may be issued only after public notice and public hearings in accordance in accordance with this section.

S7742 (c) The carrier shall publish, in accordance with regulations promulgated by the Secretary, a notice that it has filed an application for a certificate of public convenience and necessity under this Act in a newspaper of general circulation in each county in which the project will be located. The notice shall, among other things, specify to the greatest extent practicable the land which would be subject to the power of eminent domain.

S7742 (d) The Secretary shall publish in the Federal Register a notice of the receipt of each application under this Act.

S7742 (e) The Secretary shall hold at least one public hearing in each State in which the project involved will be located. Any interested person may present relevant material at any hearing. After all hearings in each State are concluded, the Secretary shall hold at least one public, formal adjudicatory hearing in accordance with the provisions of section 554 of title 5, United States Code, in the District of Columbia at which the Federal Energy Administration and the Environmental Protection Agency shall, and other Federal, State and local agencies may, participate.

#### S7742 ANTITRUST REVIEW

S7742 SEC. 607(a). The Department shall not issue any certificate pursuant to section 5 of this Act unless it has received the advice of the Attorney General of the United States and the Federal

Trade Commission that such action would not restrain trade, further monopolization, substantially adversely affect competition, or otherwise create or maintain a situation in contravention of the antitrust laws. The issuance of a license under this Act shall not be admissible in any way as a

defense to any civil or criminal action for violation of the antitrust laws of the United States, nor shall it in any way modify or abridge any private right of action under such laws.

S7742 (b) (1) Nothing in this section shall be construed to bar the Attorney General or the Federal Trade Commission from challenging any anticompetitive situation involved in the operation of a coal slurry pipeline.

S7742 (2) Nothing contained in this section shall impair, amend, broaden, or modify any of the antitrust laws.

S7742 (3) As used in this section, the term "antitrust laws" includes, but is not limited to, the Act of July 2, 1890, as amended; the Act of October 15, 1914, as amended; the Federal Trade Commission Act (15 U.S.C. 41 et seq.); and section 73 and 74 of the Act of August 27, 1894, as amended.

#### S7742 ENFORCEMENT AND PENALTIES AND JUDICIAL REVIEW

S7742 SEC. 608(a) At the request of the Secretary the Attorney General may institute a civil action in the district court of the United States for the district in which the affected operation is located for a restraining order or injunction or other appropriate remedy to enforce any provision of this Act or any regulation or order issued under the authority of this Act.

S7742 (b) If any carrier shall fail to comply with any provision of this Act, or any regulation or order issued under the authority of this Act, after notice of such failure and expiration of any period allowed for corrective action, such person shall be liable for a civil penalty of not more than \$5,000 for each and every day of the continuance of such failure. The Secretary may assess and collect and such penalty.

S7742 (c) Any person who knowingly and willfully violates any provision of this Act, or any regulation or order issued under the authority of this Act, or makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or

required to be maintained under this Act shall, upon conviction, be punished by a fine of not more than \$1 0,000, or by imprisonment for not more than six months, or both.

S7742 (d) Whenever a carrier violates any provision of this Act, or any regulation or order issued under the authority of this Act, any director, officer, or agent of such corporation or entity who authorized, ordered, or carried out such violation shall be subject to the same fines or imprisonment as provided for under subsection (c) of this section.

S7742 (e) Petitions for judicial review shall be filed in the court of appeals of the United States for the circuit in which the pipeline's originating point of coal transportation is located.

#### S7742 CONSTRUCTION OF LAW

S7742 SEC. 609. Nothing in this Act shall be construed -

S7742 (1) as affecting in any way any existing law governing appropriation use, or diversion of water, or any Federal, State, or private right to water;

S7742 (2) as expanding or diminishing Federal, or State jurisdiction, responsibility, or interests in water resources development or control;

S7742 (3) as displacing, superseding, limiting, or modifying any interstate compact or the jurisdiction or responsibility of any legally established joint or common agency of two or more States or of two or more States and the Federal Government; or

S7742 (4) as superseding, modifying, or repealing, except as specifically set forth in this Act, existing laws applicable to the various Federal agencies which are authorized to develop or participate in the development of water resources or to exercise licensing or regulatory functions in relation thereto.

#### S7742 REGULATIONS

S7742 SEC. 610. The Secretary is authorized to promulgate such rules and regulations as he deems necessary to carry out the purposes of this Act.

#### S7742 UNDERGROUND CONSTRUCTION

S7742 SEC. 611. All coal pilelines subject to this Act shall, to the maximum extent practicable, consistent with environmental protection, safety, and good engineering and technological practices, be buried underground.

S7742 RELATIONSHIP TO INTERSTATE COMMERCE ACT

S7742 SEC. 912. Except where otherwise provided by this Act, the provisions of part I of the Interstate Commerce Act (24 Stat. 379) as amended (49 U.S.C. 1-40) shall be applicable to coal pipelines subject to this Act.

S7742 SEC. 613. Subsequent to the passage of this Act, no person shall engage in the transportation of coal by slurry pipeline without first obtaining a certificate of public convenience and necessity under sections 5 and 6 of this Act unless such person enters into a compact with the Secretary within two years from the date of enactment of this Act providing means whereby rights-of-way across the lines of such person may be acquired by a carrier on terms customarily employed with reference to other types of pipeline. Any Federal court of competent jurisdiction may entertain a suit by an interested party to enforce the provisions of such compact.

S7742 AMENDMENT NO. 279

S7742 (Ordered to be printed and to lie on the table.)

S7742 Mr. ABOUREZK. Mr. President, I am submitting today an amendment to S. 7, the Surface Mining Control and Reclamation Act, which would establish procedures for the regulation of surface mining on Indian lands. This amendment would provide Indian tribes with three options regarding such regulation: First, they could prepare their own program, which would be submitted to the Secretary of the Interior and would be subject to the same provisions and restrictions as programs submitted by the States; second, they could allow the Secretary to administer a Federal program on their lands; or third, they could elect to participate in the Indian lands study, authorized by another section of S. 7, and designed to provide guidance on how Indian lands should be handled under this legislation.

{S7743} If a tribe chooses the first option, they will receive Federal funds to help pay for administrative costs, in the same way States will receive such funds. Nothing in this amendment, however, would allow a tribe to impose or enforce standards any less strict or effective than those required by the provisions of S. 7. In effect, the first option allows the tribes to choose to act as States as far as this bill is concerned. Similarly, nothing in this amendment would allow through the choice of the third option, a delay in the imposition of Federal standards for Indian lands. Tribes

choosing the third option would still be subject to Federal regulations during the period in which the study is completed and recommendations are made and acted on.

S7743 The purpose of this amendment is to provide maximum flexibility for the tribes in responding to this new Federal legislation. It recognizes that tribes vary tremendously in size and administrative capacity. It also assures that the standards of the bill will not be diluted. Finally, it allows those tribes who can administer the program a chance to exercise a degree of autonomy. The amendment has the support of the major tribes involved in this issue, and I hope the Senate will accept it.