Calendar No. 755

106TH CONGRESS, *2d Session* | SENATE | REPORT 106–378

COAL MARKET COMPETITION ACT OF 2000

AUGUST 25, 2000.—Ordered to be printed

Filed under authority of the order of the Senate of July 26, 2000

Mr. MURKOWSKI, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 2300]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 2300) to amend the Mineral Leasing Act to increase the maximum acreage of Federal leases for coal that may be held by an entity in any 1 State, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE MEASURE

The purpose of S. 2300 is to amend the Mineral Leasing Act (MLA) to increase the maximum acreage of Federal leases for coal any one company can hold within a specific state and nationwide.

BACKGROUND AND NEED

Section 27(a) of the Mineral Leasing Act of 1920 (30 U.S.C. 184(a)) limits the number of acres a person, association, corporation or any of their affiliates or subsidiaries may hold under a Federal coal lease or permit. The current limitation is 46,080 acres that may be held in a single State, and an aggregate of 100,000 acres nationwide. S. 2300 raises these limits to 75,000 acres in a single State, and 150,000 acres nationwide.

The original Mineral Leasing Act limited the acreage that could be held in any one State to 2,560 acres. This limitation was raised in 1948, in 1958 and again in 1964. The House Report accompanying the 1964 amendments stated that increases in the acreage limitations were necessary to accommodate technological advances and increases in power demands. The large amount of Federal coal

acreage available and the diversification of interest and competition within the industry provided the necessary check against threats of monopoly in the coal industry, the reason behind the acreage limitations in the original 1920 Act. (H.R. No. 1714 at 2, 4 (1964), to accompany H.R. 8960.)

The 1976 amendments to the Mineral Leasing Act added the national limitation of 100,000 acres as a means of preventing excessive control of Federal coal by a few large companies. The 1976 amendments also provided language to strengthen safeguards against holding Federal coal lands for speculation, and against anti-competitive practices. The law requires that the Department of Justice review leases, or readjustment of leases, to assure that a situation will not be created that is inconsistent with the antitrust laws of the United States. Lessees must also meet due diligence requirements, such that they must produce commercial quantities of coal within 10 years after least issuance as a condition for retaining the lease beyond that period.

The Department of the Interior testified at the June 7, 2000 hearing on S. 2300 that the due diligence and antitrust provisions in current law provide sufficient safeguards to ensure that an increase in the acreage limitation will not encourage speculation or create a monopoly in the domestic coal industry.

Raising the State and nationwide acreage limitations is necessary to provide for more efficient capital investments by coal operators. It will also remove unintended incentives for coal companies to bypass Federal coal. The permitting process requires coal companies to retain control of reclaimed acreage for 10 years for lands west of the 100th meridian, to ensure reclamation success. While the coal resources have been fully extracted from these areas, the reclaimed acreage counts toward the lease acreage limitations. As companies approach the maximum acreage limitations, coal operators may be forced to bypass Federal coal that could otherwise be extracted in an economic and environmentally sound manner.

Statutory acreage limitations for other Mineral Leasing Act minerals have also been recently raised. Potassium acreage limitations were raised by regulation, effective December 1999, and this year Congress raised the sodium State acreage limit from 15,360 acres to 30,720 acres in Pub. L. 106–191.

LEGISLATIVE HISTORY

S. 2300 was introduced on March 28, 2000, by Senator Thomas. The Subcommittee on Forests and Public Land Management held a hearing on S. 2300 on June 7, 2000. At the business meeting on July 13, 2000, the Committee on Energy and Natural Resources ordered S. 2300 reported favorably without amendment.

COMMITTEE RECOMMENDATION

The Senate Committee on Energy and Natural Resources, in open business session on July 13, 2000, by a voice vote of a quorum present recommends that the Senate pass S. 2300.

SECTION-BY-SECTION ANALYSIS

Section 1 cites the short title as the "Coal Market Competition Act of 2000".

Section 2 describes the finds of the Congress.

Section 3 amends the Mineral Leasing Act (the Act of February 25, 1920 (30 U.S.C. 184(a)) by increasing the coal per-state limitation from 46,080 acres to 75,000 acres, and the 100,000 acre nation-wide limit to 150,000 acres.

COST AND BUDGETARY CONSIDERATIONS

The Congressional Budget Office (CBO) estimate of the costs of this measure follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 24, 2000.

Hon. FRANK H. MURKOWSKI,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2300, the Coal Market Competition Act of 2000.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Megan Carroll.

Sincerely,

STEVEN M. LIEBERMAN
(For Dan L. Crippen, Director).

Enclosure.

S. 2300—Coal Market Competition Act of 2000

CBO estimates that implementing S. 2300 would not affect federal spending. Because S. 2300 could affect direct spending, pay-as-you-go procedures would apply. CBO expects, however, that any change in direct spending would not be significant. S. 2300 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would have no significant impact on the budgets of state, local, or tribal governments.

S. 2300 would increase the maximum acreage of federal coal leases any single producer may hold by about 60 percent within any one state and by 50 percent nationally. According to the Bureau of Land Management, enacting S. 2300 would allow individual mining companies more flexibility to merge with other companies holding coal leases, but is unlikely to affect the overall amount of federal acreage leased for coal mining. Such mergers could effect companies' bids for coal leases, and thus could change the government's offsetting receipts (a credit against direct spending). CBO estimates, however, that enacting S. 2300 would not have any significant impact on federal receipts from coal leaseholders or subsequent payments to states that share those receipts.

The CBO staff contact is Megan Carroll. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 2300.

The bill is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 2300, as ordered reported.

EXECUTIVE COMMUNICATIONS

On July 13, 2000 the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior and the Office of Management and Budget setting forth Executive agency recommendations on S. 2300. These reports had not been received at the time the report on S. 2300 was filed. When the reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate. The testimony provided by the Bureau of Land Management at the Subcommittee hearing follows:

STATEMENT OF PETE CULP, ASSISTANT DIRECTOR, MINERALS AND REALTY, BUREAU OF LAND MANAGEMENT

Mr. Chairman and members of the subcommittee, I appreciate the opportunity to appear before you today to testify on S. 2300 Coal Market Competition Act. S. 2300 amends the Mineral Leasing Act to increase the maximum aggregate acreage of Federal coal leases an entity may hold in any one State and the maximum aggregate acreage of Federal coal leases an entity may hold within the United States altogether.

S. 2300 COAL MARKET COMPETITION ACT

The "Coal Market Competition Act of 2000," would increase the amount of Federal acreage that can be held by a coal lessee in a single state from 46,080 acres to 75,000 acres and would raise the national acreage limit from 100,000 to 150,000 acres.

The Administration supports S. 2300. We believe the current law provides sufficient anti-speculation and antitrust safeguards such that an increase in the acreage limitation will not encourage speculation or crease a monopoly in the domestic coal industry. Further, passage of this legislation will remove unintended incentives for coal companies to bypass Federal coal.

The BLM is responsible for management of the mineral estate on about 570 million acres of BLM, national forest, and other federal lands, as well as private lands where the minerals rights have been retained by the Federal Government. Authorization to develop the coal resources within

the Federal mineral estate is provided by the MLA. Oil, gas, phosphate, potassium, sodium, and sulphur minerals are also leased under the MLA.

Production from Federal coal leases in Fiscal Year 1999 was 389 million tons with a value of about $2.9 billion. This production generated $305 million in Federal royalties. About a third of the nations' 1.1 billion tons of annual coal production comes from Federal coal leases. At the end of Fiscal Year 1999 there were 349 Federal coal leases in effect, of which 128 (about one third) produced coal during the fiscal year.

Due in part to the energy crises of the 1970's and the perception that Federal coal leases were being held speculatively, the FCLAA was enacted to amend the MLA to provide additional anti-speculative safeguards. Prior to FCLAA, the MLA's anti-speculative controls were limited to the maximum of 46,080 acres that a lessee or operator could hold within a state. The 46,080 acre limitation was established in 1964 (P.L. 88–526) [not 1976 as incorrectly stated in Section 2, Findings 5(A) of S. 2300] and was not changed with the passage of FCLAA. The requirements of FCLAA include:

- An antitrust review by the Department of Justice prior to issuance or readjustment of a new Federal coal lease;
- Diligent development of the Federal coal lease by requiring production of commercial quantities of coal within 10 years after the lease is issued; and
- Continued production of commercial quantities of coal from a Federal coal lease after it has achieved diligent development.

FCLAA amended the MLA to require that a Federal coal lease cannot be issued or readjusted without prior consultation with the United States Attorney General to assure that the lease will not create or maintain a situation that is inconsistent with the antitrust laws of the United States. If the Attorney General recommends a lease not be issued or readjusted, BLM can only issue or readjust the lease after public hearings and making a determination; that issuance or readjustment of the lease is necessary to effectuate the purposes of MLA, that it is in the public interest, and that there are no reasonable alternatives that are consistent with the MLA, the antitrust laws, and the public interest. S. 2300 would not affect this part of the law.

The amount of acreage that any lessee or operator controls will have no effect on the MLA requirement to produce commercial quantities of coal within 10 years of lease issuance. The statutory penalty for not having met this requirement is cancellation of the lease (30 U.S.C. 184(h)(1)).

If a lessee or operator obtains a lease with a speculative intent and somehow manages to comply with the 10-year production requirement, the MLA further requires that the lessee or operator continue to annually produce commer-

cial quantities of coal. Large investments of capital for mining machinery and transportation infrastructure are required to even minimally comply with this requirement. A speculator, seeking maximum return for minimum time and capital, would be frustrated by the requirement of continued production of commercial quantities. Again, S. 2300 does not affect this requirement.

The Surface Mining Control and Reclamation Act of 1976 (SMCRA) was enacted 12 years after the current state acreage limitation was established. The Office of Surface Mining Reclamation and Enforcement (OSM), also part of the Department of the Interior, administers SMCRA. OSM regulations require coal companies to retain control of reclaimed acreage for 10 years, for lands west of the 100th meridian, to ensure reclamation success. While the coal resources have been fully extracted from these areas, BLM requires the acreage under reclamation to remain under lease, counting towards the acreage limitation, to assure access in case additional mitigation measures are required. We expect, in the future, more acreage to be held in reclamation status, causing lessees/operators to begin to be constrained by the acreage limits.

Like other segments of the economy, the coal industry has experienced increased consolidation of companies, which has meant a similar consolidation of leased acreage holdings. In some cases, the consolidated acreage comes close to exceeding the current state acreage limits. Ongoing coal industry consolidation within the Powder River Basin of Wyoming and Montana is reflected by the fact that three major coal companies, Peabody, Arch, and Kennecott, produce 70 to 80 percent of the Basin's 300 million plus tons of coal production. These consolidations have provided the companies economies of scale that have been directly reflected in the pricing of their product. The average sales value for Federal coal has fallen by more than half from a historic high in 1987 of $15.57 per ton to $7.52 per ton in 1999. During the same period, production of Federal coal has more than doubled from 168 million tons per year in 1987 to 389 million tons per year in 1999. Prices for spot market coal sales have recently been as low as $3.50 per ton. All reliable forecasts of coal sales and value do not foresee any change in the downward pressure of coal prices. Therefore, industry consolidation to date does not appear to have had an adverse or anti-competitive effect on the price or supply of Federal coal. Given significant other market parameters, such as compliance with the Clean Air Act and deregulation of electric generation, we do not expect an increase in the average limitation to effect the market for coal.

Our leasable mineral acreage limits have recently been raised. Statutory acreage limits in any one state range from 1,920 acres for sulphur through 246,080 acres for oil and gas. Potassium acreage limits, set by regulation, were recently increased to 96,000 acres (effective November 1999). Congress raised the sodium state acreage limit in

P.L. 106–191 (H.R. 3063/S. 1722) from 15,360 to 30,720 acres. S. 2300 is similar to these prior actions.

The BLM has adopted as a strategic goal to provide opportunities for environmentally responsible commercial activities. We do this through the NEPA planning and the MLA permitting processes. To achieve this goal, BLM attempts to obtain the maximum economic recovery of the coal resource from the area that is determined to be environmentally responsible to mine. If the acreage limitations are left unchanged, there is the potential for coal operators to bypass some Federal coal that otherwise would not be extracted.

In conclusion, we believe the current law provides sufficient safeguards to protect the public interest. Current statistics do not indicate any adverse impacts from industry consolidation to date. Further, this legislation is consistent with the other goals of the MLA and serves to protect the competitive nature of Federal coal resources. We support passage of S.2300.

That concludes my testimony. I would be happy to respond to any questions.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate changes in existing law made by the bill S. 2300, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

THE ACT OF FEBRUARY 25, 1920 (MINERAL LEASING ACT)

* * * * * * *

LIMITATIONS ON LEASES

SEC. 27. [(a) Coal leases or permits, acreage; regulations

(1) No person,] *(a) COAL LEASES.—No person,* association, or corporation, or any subsidiary, affiliate, or persons controlled by or under common control with such person, association, or corporation shall take, hold, own or control at one time, whether acquired directly from the Secretary under this chapter or otherwise, coal leases, or permits on an aggregate of more than [forty-six thousand and eighty acres] *75,000 acres* in any one State and in no case greater than an aggregate of [one hundred thousand acres] *150,000 acres* in the United States: Provided, That any person, association, or corporation currently holding, owning, or controlling more than an aggregate of [one hundred thousand acres] *150,000 acres* in the United States on the date of enactment of this section shall not be required on account of this section to relinquish said leases or permits: Provided, further, That in no case shall such person, association, or corporation be permitted to take, hold, own, or control any further Federal coal leases or permits until such time as their holdings, ownership, or control of Federal leases or permits

has been reduced below an aggregate of [one hundred thousand acres] *150,000 acres* within the United States.

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