

Calendar No. 763

69TH CONGRESS }
1st Session }

SENATE

{ REPORT
No 812

REGULATE INTERSTATE AND FOREIGN COMMERCE IN COAL

MAY 10 (calendar day, MAY 12), 1926.—Ordered to be printed

Mr. COPELAND, from the Committee on Education and Labor,
submitted the following

REPORT

[To accompany S. 4177]

The Committee on Education and Labor, to whom was referred the bill (S. 4177) to regulate interstate and foreign commerce in coal and to promote the general welfare dependent on the use of coal, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that, as amended, the bill do pass.

For a generation at least there has been much private and public discussion of the fuel question. As the needs for coal increase, it becomes more and more important to make sure that there should never be a serious interruption in its supply. Several times in recent years the public has been sadly inconvenienced by fuel shortage. During the winter of 1925-26 the situation became desperate. The deprivation of coal then produced acute suffering in many sections of the country.

The Congress has not failed to note with great concern a state of affairs which might lead to national disaster. The President has called attention to the coal situation, as his predecessors did. A coal commission was appointed; it held protracted hearings and reported its findings to the President and the Congress. In both his messages to the Congress, President Coolidge pointed out the potential menace in the coal industry and urged congressional action. Members of the Senate have also presented bills dealing with the subject.

The Committee on Education and Labor appointed a subcommittee to consider all the material on file, with instructions to make early report to the full committee. On the receipt of this report the full committee discussed in detail what should be presented to the Senate. The result of the deliberations of the Committee on Education and Labor is a recommendation that the accompanying bill, with one amendment, be enacted into law.

THE PRESIDENT'S VIEWS

Before explaining the bill, it may not be amiss to remind the Senate of what the President said in his message regarding coal. In 1923 he spoke as follows:

COAL

The cost of coal has become unbearably high. It places a great burden on our industrial and domestic life. The public welfare requires a reduction in the price of fuel. With the enormous deposits in existence, failure of supply ought not to be tolerated. Those responsible for the conditions in this industry should undertake its reform and free it from any charge of profiteering.

The report of the Coal Commission will be before the Congress. It comprises all the facts. It represents the mature deliberations and conclusions of the best talent and experience that ever made a national survey of the production and distribution of fuel. I do not favor Government ownership or operation of coal mines. The need is for action under private ownership that will secure greater continuity of production and greater public protection. The Federal Government probably has no peace-time authority to regulate wages, prices, or profits in coal at the mines or among dealers, but by ascertaining and publishing facts it can exercise great influence.

The source of the difficulty in the bituminous coal fields is the intermittence of operation which causes great waste of both capital and labor. That part of the report dealing with this problem has much significance, and is suggestive of necessary remedies. By amending the car rules, by encouraging greater unity of ownership, and possibly by permitting common selling agents for limited districts on condition that they accept adequate regulations and guarantee that competition between districts be unlimited, distribution, storage, and continuity ought to be improved.

The supply of coal must be constant. In case of its prospective interruption, the President should have authority to appoint a commission empowered to deal with whatever emergency situation might arise, to aid conciliation and voluntary arbitration, to adjust any existing or threatened controversy between the employer and the employee when collective bargaining fails, and by controlling distribution to prevent profiteering in this vital necessity. This legislation is exceedingly urgent, and essential to the exercise of national authority for the protection of the people. Those who undertake the responsibility of management or employment in this industry do so with the full knowledge that the public interest is paramount, and that to fail through any motive of selfishness in its service is such a betrayal of duty as warrants uncompromising action by the Government.

In 1925, with even greater emphasis, the President pointed out the need for action. He said:

COAL

The perennial conflict in the coal industry is still going on to the great detriment of the wage earners, the owners, and especially to the public. With deposits of coal in this country capable of supplying its needs for hundreds of years, inability to manage and control this great resource for the benefit of all concerned is very close to a national economic failure. It has been the subject of repeated investigation and reiterated recommendation. Yet the industry seems never to have accepted modern methods of adjusting differences between employers and employees. The industry could serve the public much better and become subject to a much more effective method of control if regional consolidations and more freedom in the formation of marketing associations, under the supervision of the Department of Commerce, were permitted.

At the present time the National Government has little or no authority to deal with this vital necessity of the life of the country. It has permitted itself to remain so powerless that its only attitude must be humble supplication. Authority should be lodged with the President and the Departments of Commerce and Labor, giving them power to deal with an emergency. They should be able to appoint temporary boards with authority to call for witnesses and documents, conciliate differences, encourage arbitration, and in case of threatened scarcity exercise control over distribution. Making the facts public under these circumstances through a statement from an authoritative source would be of great public benefit. The report of the last coal commission should be brought forward, reconsidered, and acted upon.

THE COAL COMMISSION'S RECOMMENDATIONS

The Coal Commission, headed by John H. Hammond, made definite suggestions, quoted in part as follows:

FINAL REPORT OF THE UNITED STATES COAL COMMISSION WITH RECOMMENDATIONS FOR LEGISLATION

SEPTEMBER 22, 1923.

To the President and the Congress of the United States:

The United States Coal Commission, in rendering its final report, reiterates the premises stated in its earlier reports: The coal-mining industry is not only one of the largest in our country but its uninterrupted service is essential to the well-being of the whole people; the condition of this key industry affects directly and in large measure the prosperity of all American industry; the large public interest in coal raises fundamental questions touching the relation of private right to public welfare; but underlying these questions in economics and law are the issues of peace in the industry and justice to the individual—issues that strike deep into the heart of American institutions.

An unfailing supply of coal at the lowest prices consistent with just returns to mine workers and mine owners is what the public needs and can rightfully demand of the coal industry. It was to find the major facts throwing light upon this complex problem that this commission was created. At the end of its investigations, extensive in scope but limited in time, the commission has presented its findings in a series of chapters or reports dealing with the several topics outlined by Congress in the act creating the commission. There remains the task of stating briefly the underlying purpose of the inquiry and of summarizing the specific recommendations based upon the results of the inquiry.

COAL MINING AN INDISPENSABLE PUBLIC SERVICE

Food and water alone outrank coal among the necessities of life. An uninterrupted supply of these three is a requirement of urban life as we know it to-day. Though anthracite ministers to health and comfort in several million homes, bituminous coal is the real foundation of that great industrial and transportation structure which enables more than a hundred million people to live in America and be so well supplied with all those things that are necessary for their health, comfort, and convenience. Bituminous coal also furnishes domestic fuel for half of the homes of the land. Therefore the mining of coal in 29 States, its interstate transportation, and its country-wide distribution together make up a service indispensable to the general public. Shut down the coal mines and the whole country would soon be not only cold but idle and hungry.

Examine the long list of commodities whose current prices are used in computing the official index of the cost of living: Of the 43 articles of food, from meat to fruit, the only ones into the production of which coal does not directly enter are "strictly fresh" eggs and fresh milk, and even those reach the market behind the steam-driven locomotive. The western and southern fruit that appears on the eastern breakfast table costs its weight in coal in the form of ice or locomotive fuel. Next in the list come articles of clothing, furniture, and household utensils, every one of which was manufactured by the use of coal-generated power. Under the heading of fuel and light only wood and kerosene, which enter into few family budgets of to-day, are free from a content of coal. Even the large item of rent, which next follows, represents expenditure of coal in the past, for from the moment the steam shovel starts the excavation until the last coat of paint is applied coal is an essential component in the construction of a modern building, each structural material, whether steel or brick, cement or glass, being largely the product of coal burned at furnace, kiln, or factory; the brick and cement on which rent is paid represent one-quarter to one-half their weight in coal, and every ton of metal has cost 2, 3, or even 5 tons of coal. Although appearing but once in this long list of the necessities and luxuries of life coal is thus an ever-present element in the cost of living.

Or, if you will, review the everyday experiences of the average city dweller: His day may begin with the pressing of a button, when coal acting through the electric light leaps to his service; or it may be coal in the form of gas that furnishes the light as well as cooks his breakfast. Coal next serves him in the power supplied for his ride to his place of work, where a power-driven machine is his helper throughout the day; or if his work is at a desk he is taken to his floor in the office building by an elevator—a transportation service that in New York

City alone consumes a quarter of a million tons of coal a year. Whatever the nature of his day's task, it is difficult to imagine the city worker who is not served every hour by coal manifest as light, heat, or power. In the home equipped with modern conveniences the continuous and silent service rendered by coal in the form of gas and electric current is so great that in a year it may involve the burning of as many tons of bituminous coal at the distant gas plant and power station as of anthracite in the home itself. It is this unseen coal whose indispensable service is so little appreciated, if not wholly overlooked.

On the farm also the contribution of coal to daily life is great. The story of wheat is a story of coal. Every article of farm machinery, which makes farm labor so effective, represents the expenditure of coal at steel plant and factory; coal also in the form of nitrogen fertilizer from the coke ovens now reaches the farm to the amount of hundreds of thousands of tons a year; and the coal supply required at harvest time to drive the threshing machinery in the great wheat region is so large as to warrant a strong claim for priority in times of coal shortage. The movement of this country's crops to market is on a scale so large that it could be accomplished by no other conceivable form of transportation than coal-driven railroads. At the flour mill coal continues the work of preparing the wheat for use, and when the flour is brought to the city baking plant more than a third as much coal as flour is required to make bread.

Yet the 40,000 tons or more of bituminous coal that invisibly reaches our tables every day is of little moment compared with the coal that makes up the staff of life of our industries. The distribution of the year's output of the bituminous mines tells the story: Out of an annual production of 500,000,000 tons, 28 per cent goes to the railroads, 25 per cent to the boiler houses of factories and mills of all kinds, 15 per cent to the coke ovens and gas plants, 10 per cent to the homes, 7 per cent to steel plants, 7 per cent to power plants and street railways, 4 per cent is exported to Canada or overseas, 2 per cent is used at the coal mines for necessary power, and the remaining 2 per cent goes to the seaboard for steamship fuel. In those proportions bituminous coal is the driving force of modern industrial and commercial activity.

This dependence upon coal is not only country-wide but all-embracing. Every man, woman, and child in the United States is the beneficiary of coal. So it is that absolute public necessity is back of the demand for continuous service from the coal mine and from every agency responsible for the transfer of coal from mine to place of use. As the direct source of the energy that turns most of the wheels of an industrial nation, coal affects the community at large to a degree that is not generally realized until the continuity of this service is threatened. Twice within four years both transportation and industry have been threatened with partial paralysis due to wage disputes in the coal industry. The dependence of our whole industrial structure upon the continuous production of coal has been too obviously demonstrated in these two instances to leave room for any further debate on the relation of coal to the public interest.

Bituminous coal enters into interstate commerce on a scale approached by no other commodity. More than three-fourths of the coal mined in the United States enters interstate commerce either as railroad freight or locomotive fuel. Every one of the 45 major coal-producing districts in the United States, except the Michigan and Texas districts, ship coal outside the State in which it is mined, and Indiana ships coal to 17 States, although it receives coal itself from 17 mining districts in 7 other States. Three hundred miles of cars loaded high with coal is the measure of the daily output of the bituminous mines of the United States, and with that volume of traffic it is obvious that the uninterrupted flow of coal from mine to boiler room is a prime requisite to the general welfare. With storage at the mine necessarily exceptional and at best limited in quantity, it is commonly true that without its daily supply of railroad cars the mine does not start—thus closely is interstate commerce linked with coal mining. The daily rate of consumption is the proper unit of measure of bituminous coal, and so large is this daily requirement of the railroads and different industries that in general it is impossible to accumulate stocks of coal sufficient to last as long as the stocks commonly carried of other raw materials. The two and three months' supplies of coal which the electric power stations and gas plants of the country now have on hand are exceptionally large and perhaps approach the practicable limit of stocks to be held in reserve simply as insurance against interruption of supply. Unfortunately, however, such stocks of coal are never evenly distributed among users, so that in fact a stoppage of either the mining or the carrying of coal would within a few weeks threaten large cities in every State with industrial disaster, and even a temporary interruption may cause serious embarrassment.

The present extensive and unrestrained interstate exchange of foodstuffs and other commodities, which has so lessened the danger of either local shortage or local

monopoly, is itself conditioned upon an unfailing supply of coal, the very life-blood of interstate commerce. The common carrier soon becomes unable to perform its full public service if its supply of fuel is even reduced, and a railroad without coal would at once cease to function, whatever its legal duty under a public grant. Continuity of operation of more than a quarter of the soft-coal mines of the country is demanded to keep the railroads themselves in operation; and the requirements of the public utilities would increase this quota to over a third. To that extent are coal mines directly essential to the operation of businesses that are universally recognized as clothed with a public interest. If these businesses can not be conducted without an ample and continuous supply of coal, obviously coal is affected with a public interest, arising from the clear and direct obligation to the public of continuous service not alone in the transportation of coal but in its production also, as there can be no transportation of coal without production of fuel. These two functions are inextricably bound together and constitute one agency of public service, for the coal is not mined until the railroad car for its transportation is set at the mine.

The public-welfare element in coal, then, is seen in the dependence of public health and safety on an unfailing supply of fuel, in the close connection between the prosperity of most industries and the uninterrupted operation of the coal mines, and in the obvious fact that without coal the great network of railroads which binds together this great country would be an idle, useless thing. It happens, too, that the railroads and the public utilities, themselves so clearly obligated to render whatever public service is demanded of them that the constitutionality of their public regulation is unquestioned, are of all industries most dependent upon coal. Coal makes up over 35 per cent of the operating cost at the gas plant and over 25 per cent at the electric-power station, and in the operating expenses of a railroad the cost of coal is the largest single item, next to labor. A failure of the gas and electric plants of a great city to function would result in a public catastrophe of almost inconceivable extent. This is one of the reasons why these utilities have been put under public control, and the practical logic that half a century ago clothed with a public interest the steam locomotive and in later years the electric-power station must recognize a large element of public service in the coal mine that furnishes the necessary energy to both locomotive and power plant. It is this indispensable service which the coal mine performs that gives the large social value both to the property and to its product, and in turn this social value in effect grants to the public an interest in that use and creates a compelling reason for public control.

The commission is passing here upon an economic fact and not upon the law.

A NATIONAL COAL POLICY PROPOSED

THE FUNCTION OF PUBLICITY

The first step toward protection of the public interest in the mining and marketing of coal as a continuous and efficient service is a better public understanding of the coal business. Guided by facts rather than rumors, by information rather than prejudice, the people will be able to exercise wisely the powers of the Government over this type of private business to which society has given a larger value and special opportunity.

* * * * *

The Government and the leaders of the coal industry both are blamable if the public has no proper conception of what coal means to the country, what conditions and handicaps have to be met in the mining and distribution of coal, what economies can be effected, what advance is needed, and what can be done in bettering working and living conditions. On all these subjects the public needs information and the industry needs publicity. Those in the industry who have expressed their purpose to take the American people into their confidence in the future by freely furnishing all the current information bearing on the relation of their business to the public interest surely can offer no objection to legislation providing specifically for that kind of publicity.

USE OF FEDERAL POWERS

Both to protect the public and to promote the normal development of this great basic industry, the commission recommends the use of the powers of the Federal Government over interstate commerce, recognizing the fact that under our constitutional system a substantial part of the responsibility rests on the

State and local governments and should remain there, and that an even larger part rests on the industry itself and the public which it serves. "The public" includes investors in coal lands and properties, coal operators and miners, selling agents, and retail dealers, as well as industrial and domestic consumers; and it is the aim of the commission, in view of the facts presented in its reports, not only to protect the legitimate interests of the industry but to utilize to the fullest extent the good will and resources of the industry itself in putting to an end the disgraceful evils which have developed and which the commission has described.

* * * * *

ADMINISTRATIVE AGENCY RECOMMENDED

A coal division in the Interstate Commerce Commission.—The Government can act only through administrative agencies, and it is clear that if anything is to be done at all commensurate with the gravity of the problem, an effective agency, with sufficient funds, experience and powers at its disposal, must be charged with the direct responsibility for such regulation and supervision as is necessary. Honest and efficient coal operators and dealers have nothing to fear from this. On the contrary they have reason to welcome it.

The commission is equally averse on the one hand to the unnecessary establishment of any new and unattached governmental agency and on the other to leaving this necessary governmental responsibility to a haphazard collaboration of existing bureaus whether in any one department or in several departments. We believe that the logical and appropriate agency to exercise the necessary administrative and quasi-judicial functions required for the coal industry already exists in the Interstate Commerce Commission. We recommend the creation for this purpose of a special division in that commission.

Control of distribution in emergencies.—In times of prolonged suspension of mining, as in 1922, involving serious shortage of coal, the necessity of the most economical use of such coal as is available, and the equitable and efficient distribution of the coal mined after operations are resumed, authoritative information will be of incalculable value in performing the functions which the Federal and State fuel distributors have been attempting to perform, with inadequate authority and facilities. In an emergency the proposed division of the Interstate Commerce Commission would be ready to act as Federal fuel distributor and subject to the direction of the President of the United States, as the agency to deal with transportation and distribution in such a way as the emergency may require.

PROVISIONS FOR FACT FINDING

Constitutional basis.—The Congress of the United States is by the Constitution authorized to "regulate commerce among the several States." The railroads have already been declared to be interstate common carriers and to be within the regulatory power of the Congress exercised through lawful decrees of the Interstate Commerce Commission. The power to regulate involves the power to require the use of this means of transportation in the way that will best serve the interest of the several States of the Union. The regulation of commerce in coal among the several States involves the right to know the cost of its production, whether the investment on which a return is claimed is fairly estimated or inflated, what profits are made by owner, operator, and dealer, and what are the earnings and working conditions of the miners.

* * * * *

The public's right to the facts.—All these facts change from season to season, and vary from district to district, and from mine to mine; and the public is entitled to know them. This commission does not advocate publicity about private affairs, but it holds that the transportation of coal in interstate commerce is so affected with a public use and that coal enters so intimately into all the necessities and conveniences of modern life that there is no longer any private right to secrecy as to such matters as costs, profits, wage rates, and working and living conditions.

DECISION OF THE COMMITTEE

After study of these official recommendations and all other material submitted to the committee, it seemed wise to recommend the

accompanying bill as amended. It will be found that the proposed act is divided into three parts, or titles.

TITLE I

FACT FINDING

The first title relates to fact finding. All who have written or spoken on the subject agree that solution of the coal problem is impossible without knowledge of all the essential facts relating to production, distribution, and sale of the product.

After considering the establishment of an independent bureau, placing the work in the Interstate Commerce Commission, or making it a duty of the Department of Labor, the committee determined that the best place for the fact-finding machinery is in the Bureau of Mines, Department of Commerce. The bill provides for this location and makes provision for employees and appropriation.

TITLE II

LABOR RELATIONS

The production of coal depends primarily on the workers in the mines. If they do not work, there can be no fuel.

Naturally, it was the anxious desire of the committee to find the best means of promoting harmonious labor relations. It took a leaf from the railroad labor bill as it passed the House, and, so far as such a law can do so, made it the duty of all employers and employees engaged in the coal industry to exert every reasonable effort to make and maintain agreements concerning wages and working conditions and to settle their own disputes. All members of the committee agreed that so far as possible Government should refrain from interference in the industry.

Should this machinery fail and the dispute grow too serious for settlement by mutual agreement, the President is given further power. At this stage he is authorized, in his discretion, to employ officers or existing agencies of conciliation to mediate in the dispute and attempt to induce the disputants to submit to voluntary arbitration.

EMERGENCY COAL BOARD

Should these friendly offices come to naught, the President is empowered to create an emergency coal board. Within 30 days after its appointment this board must report to the President whether or not the public is likely to be deprived of an adequate supply of coal, or interstate commerce is to be seriously interrupted.

TITLE III

EMERGENCY DISTRIBUTION

Should the emergency coal board decide there is imminent danger of a coal famine and restraint of interstate commerce, and so reports to the President, he is given additional powers. He may proclaim that an emergency exists, threatening to impair the health, safety, and

welfare of the people of the United States, and to interfere with commerce between the several States.

Having done this, the President is authorized to revive the law of September 22, 1922, "An act to declare a national emergency to exist in the production, transportation, and distribution of coal and other fuel, granting additional powers to the Interstate Commerce Commission, providing for the appointment of a Federal fuel distributor, providing for the declaration of car-service priorities during the present emergency, and to prevent the sale of fuel at unjust and unreasonably high prices."

These powers to deal with the coal problem are to continue and remain within the discretion of the President, unless Congress shall provide otherwise.

SEIZURE OF THE MINES

The accompanying bill contained one proposal which the majority of the committee considered unwise. This was a provision permitting the President to take over any and all coal properties and operate them during the emergency, if in his discretion he considered it needful or desirable to do so. The aim of the proposal was to make provision for an adequate supply of fuel at reasonable prices and to get it by this unusual method if it could be had in no other way.

It need not be pointed out that grave constitutional questions are involved in this suggestion. No one can doubt that in extreme emergency it might become necessary to face the legal issues involved in such an act. It was the opinion of the majority of the committee, however, that no good end could be served by forcing such issues in the absence of immediate necessity.

In all human probability if the people of the United States should have forced upon the country a condition so critical as the menace of a coal famine, the Congress would be convened. In the face of dire necessity it would not take long to pass the laws essential to seizure of the mines for operation during the emergency. On this account, there seems no present reason to precipitate a debate on a measure so advanced as this.

No member of the committee expressed a desire for nationalization of the coal mines or for any measure involving public ownership or continued public operation. There was a desire on the part of the minority to present a bill as complete as possible, having in it provision for every eventuality. The majority prevailed, of course, and all members of the committee feel that the bill as recommended provides the machinery to deal with the coal problem in every phase which is likely to be presented.

AMENDMENT

The committee recommends that lines 21 to 26, inclusive, on page 6, and lines 1 to 11, inclusive, on page 7, be stricken from the bill.

RECOMMENDATION

With the suggested amendment, the Committee on Education and Labor recommends the passage of the bill. It does so believing such legislation will do much to reduce friction in the mines and to guard the public against the abuses it has suffered in the past.