

DOCUMENT, FEBRUARY 6, 1975
Legislative History
February 6, 1975 Document

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DOCUMENT

PROPOSING LEGISLATION TO PROVIDE FOR COOPERATION BETWEEN THE SECRETARY OF THE INTERIOR AND THE STATES WITH RESPECT TO THE REGULATION OF SURFACE COAL MINING OPERATIONS

House Document No. 94-44, 94TH CONGRESS, 1ST SESSION
FEBRUARY 6, 1975.
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{1} THE WHITE HOUSE, Washington, February 5, 1975,

The Honorable the Speaker, U.S. HOUSE OF REPRESENTATIVES, Washington, D.C.

DEAR MR. SPEAKER: Our Nation is faced with the need to find the right balance among a number of very desirable national objectives. We must find the right balance because we simply cannot achieve all desirable objectives at once.

In the case of legislation governing surface coal mining activities, we must strike a balance between our desire for environmental protection and our need to increase domestic coal production. This consideration has taken on added significance over the past few months. It has become clear that our abundant domestic reserves of coal must become a growing part of our Nation's drive for energy independence.

Last December, I concluded that it would not be in the Nation's best interests for me to approve the surface coal mining bill which passed the 93rd Congress as S. 425. That bill would have:

- Caused excessive coal production losses, including losses that are not necessary to achieve reasonable environmental protection and reclamation requirements. The Federal Energy Administration estimated that the bill, during its first full year of operation would reduce coal production between 48 and 141 million tons, or approximately 6 to 18 percent of the expected production. Additional losses could result which cannot be quantified because of ambiguities in the bill. Losses of coal production are particularly important because each lost ton of coal can mean importing four additional barrels of foreign oil.

- Caused inflationary impacts because of increased coal costs and Federal expenditures for activities which, however desirable, are not necessary at this time.

- Failed to correct other deficiencies that had been pointed out in executive branch communications concerning the bill.

The energy program that I outlined in my State of the Union Message contemplates the doubling of our Nation's coal production by 1985. Within the next ten years, my program envisions opening 250 [*] new coal mines, the majority of which must be surface mines, and the construction of approximately 150 new coal fired electric generating plants. I believe that we can achieve these goals and still meet reasonable environmental protection standards.

I have again reviewed S. 425 as it passed the 93rd Congress (which has been reintroduced in the 94th Congress as S. 7 and H.R. 25) to identify those provisions of the bill where changes are critical to overcome the objections which led to my disapproval last December. I have also identified a number of provisions of the bill where changes are needed to reduce further the potential for unnecessary production impact and to make the legislation more workable and effective. These few but important changes will go a long way toward achieving precise and balanced legislation. The changes are summarized in the first enclosure to this letter and are incorporated in the enclosed draft bill.

{2} With the exception of the changes described in the first enclosure, the bill follows S. 425.

I believe that surface mining legislation must be reconsidered in the context of our current national needs. I urge the Congress to consider the enclosed bill carefully and pass it promptly.

Sincerely,

GERALD R. FORD.

{3} SUMMARY OF PRINCIPAL CHANGES FROM S. 425 (S. 7 AND H.R. 25)
INCORPORATED IN THE ADMINISTRATION'S SURFACE MINING BILL

The Administration bill follows the basic framework of S. 425 in establishing Federal standards for the environmental protection and reclamation of surface coal mining operations. Briefly, the Administration bill, like S. 425:

- covers all coal surface mining operations and surface effects of underground coal mining;

- establishes minimum nationwide reclamation standards;
- places primary regulatory responsibility with the States with Federal backup in cases where the States fail to act;
- creates a reclamation program for previously mined lands abandoned without reclamation;
- establishes reclamation standards on Federal lands.

Changes from S. 425 which have been incorporated in the Administration bill are summarized below.

CRITICAL CHANGES

1. Citizen suits. - S. 425 would allow citizen suits against any person for a "violation of the provisions of this Act." This could undermine the integrity of the bill's permit mechanism and could lead to mine-by-mine litigation of virtually every ambiguous aspect of the bill even if an operation is in full compliance with existing regulations, standards and permits. This is unnecessary and could lead to production delays or curtailments. Citizen suits are retained in the Administration bill, but are modified (consistent with other environmental legislation) to provide for suits against (1) the regulatory agency to enforce the act, and (2) mine operators where violations of regulations or permits are alleged.

2. Stream siltation. - S. 425 would prohibit increased stream siltation - a requirement which would be extremely difficult or impossible to meet and thus could preclude mining activities. In the Administration's bill, this prohibition is modified to require the maximum practicable limitation on siltation.

3. Hydrologic disturbances. - S. 425 would establish absolute requirements to preserve the hydrologic integrity of alluvial valley floors - and prevent offsite hydrologic disturbances. Both requirements would be impossible to meet, are unnecessary for reasonable environmental protection and could preclude most mining activities. In the Administration's bill, this provision is modified to require that any such disturbances be prevented to the maximum extent practicable so that there will be a balance between environmental protection and the need for coal production.

4. Ambiguous terms. - In the case of S. 425, there is great potential for court interpretations of

ambiguous provisions which could lead to unnecessary or unanticipated adverse production impact. The Administration's bill provides explicit authority for the Secretary to define ambiguous terms so as to clarify the regulatory process and minimize delays due to litigation.

{4} 5. Abandoned land reclamation fund. - S. 425 would establish a tax of 35¢ per ton for underground mined coal and 25¢ per ton for surface mined coal to create a fund for reclaiming previously mined lands that have been abandoned without being reclaimed, and for other purposes. This tax is unnecessarily high to finance needed reclamation. The Administration bill would set the tax at 10¢ per ton for all coal, providing over \$1 billion over ten years which should be ample to reclaim that abandoned coal mined land in need of reclamation.

Under S. 425 funds accrued from the tax on coal could be used by the Federal government (1) for financing construction of roads, utilities, and public buildings on reclaimed mined lands, and (2) for distribution to States to finance roads, utilities and public buildings in any area where coal mining activity is expanding. This provision needlessly duplicates other Federal, State and local programs, and establishes eligibility for Federal grant funding in a situation where facilities are normally financed by local or State borrowing. The need for such funding, including the new grant program, has not been established. The Administration bill does not provide authority for funding facilities.

6. Impoundments. - S. 425 could prohibit or unduly restrict the use of most new or existing impoundments, even though constructed to adequate safety standards. In the Administration's bill, the provisions on location of impoundments have been modified to permit their use where safety standards are met.

7. National forests. - S. 425 would prohibit mining in the national forests - a prohibition which is inconsistent with multiple use principles and which could unnecessarily lock up 7 billion tons of coal reserves (approximately 30% of the uncommitted Federal surfaceminable coal in the contiguous States). In the Administration bill, this provision is modified to permit the Agriculture Secretary to waive the restriction in specific areas when multiple resource analysis indicates that such mining would be in the public interest.

8. Special unemployment provisions. - The unemployment provision of S. 425(1) would cause unfair discrimination among classes of unemployed persons, (2) would be difficult to administer,

and (3) would set unacceptable precedents including unlimited benefit terms, and weak labor force attachment requirements. This provision of S. 425 is inconsistent with P.L. 93-567 and P.L. 93-572 which were signed into law on December 31, 1974, and which significantly broaden and lengthen general unemployment assistance. The Administration's bill does not include a special unemployment provision.

Other important changes: In addition to the critical changes from S. 425, listed above, there are a number of provisions which should be modified to reduce adverse production impact, establish a more workable reclamation and enforcement program, eliminate uncertainties, avoid unnecessary Federal expenditures and Federal displacement of State enforcement activity, and solve selected other problems.

1. Antidegradation. - S. 425 contains a provision which, if literally interpreted by the courts, could lead to a nondegradation standard (similar to that experienced with the Clean Air Act) far beyond the environmental and reclamation requirements of the bill. This could lead to production delays and disruption. Changes are included in the Administration bill to overcome this problem.

{5} 2. Reclamation fund. - S. 425 would authorize the use of funds to assist private landowners in reclaiming their lands mined in past years. Such a program would result in windfall gains to the private landowners who would maintain title to their lands while having them reclaimed at Federal expense. The Administration bill deletes this provision.

3. Interim program timing. - Under S. 425, mining operations could be forced to close down simply because the regulatory authority had not completed action on a mining permit, through no fault of the operator. The Administration bill modifies the timing requirements of the interim program to minimize unnecessary delays and production losses.

4. Federal preemption. - The Federal interim program role provided in S. 425 could (1) lead to unnecessary Federal preemption, displacement or duplication of State regulatory activities, and (2) discourage States from assuming an active permanent regulatory role, thus leaving such functions to the Federal government. During the past few years, nearly all major coal mining States have improved their surface mining laws, regulations and enforcement activities. In the Administration bill, this requirement is revised to limit the Federal enforcement role during the interim program to

situations where a violation creates an imminent danger to public health and safety or significant environmental harm.

5. Surface owner consent. - The requirement in S. 425 for surface owner's consent would substantially modify existing law by transferring to the surface owner coal rights that presently reside with the Federal government. S. 425 would give the surface owner the right to "veto" the mining of Federally owned coal or possibly enable him to realize a substantial windfall. In addition, S. 425 leaves unclear the rights of prospectors under existing law. The Administration is opposed to any provision which could (1) result in a lockup of coal reserves through surface owner veto or (2) lead to windfalls. In the Administration's bill surface owner and prospector rights would continue as provided in existing law.

6. Federal lands. - S. 425 would set an undesirable precedent by providing for State control over mining of Federally owned coal on Federal lands. In the Administration's bill, Federal regulations governing such activities would not be preempted by State regulations.

7. Research centers. - S. 425 would provide additional funding authorization for mining research centers through a formula grant program for existing schools of mining. This provision establishes an unnecessary new spending program, duplicates existing authorities for conduct of research, and could fragment existing research efforts already supported by the Federal government. The provision is deleted in the Administration bill.

8. Prohibition on mining in alluvial valley floors. - S. 425 would extend the prohibition on surface mining involving alluvial valley floors to areas that have the potential for farming or ranching. This is an unnecessary prohibition which could close some existing mines and which would lock up significant coal reserves. In the Administration's bill reclamation of such areas would be required, making the prohibition unnecessary.

{6} 9. Potential moratorium on issuing mining permits. - S. 425 provides for (1) a ban on the mining of lands under study for designation as unsuitable for coal mining, and (2) an automatic ban whenever such a study is requested by anyone. The Administration's bill modifies these provisions to insure expeditious consideration of proposals for designating lands unsuitable for surface coal mining and to insure that the requirement for review of Federal lands will not trigger such a ban.

10. Hydrologic data. - Under S. 425, an applicant would have to provide hydrologic data even where the data are already available - a potentially serious and unnecessary workload for small miners. The Administration's bill authorizes the regulatory authority to waive the requirement, in whole or in part, when the data are already available.

11. Variances. - S. 425 would not give the regulatory authority adequate flexibility to grant variances from the lengthy and detailed performance specifications. The Administration's bill would allow limited variances - with strict environmental safeguards - to achieve specific post-mining land uses and to accommodate equipment shortages during the interim program.

12. Permit fee. - The requirement in S. 425 for payment of the mining fee before operations begin could impose a large "front end" cost which could unnecessarily prevent some mine openings or force some operators out of business. In the Administration's bill, the regulatory authority would have the authority to extend the fee over several years.

13. Preferential contracting. - S. 425 would require that special preference be given in reclamation contracts to operators who lose their jobs because of the bill. Such hiring should be based solely on an operators reclamation capability. The provision does not appear in the Administration's bill.

14. Any class of buyer. - S. 425 would require that lessees of Federal coal not refuse to sell coal to any class of buyer. This could interfere unnecessarily with both planned and existing coal mining operations, particularly in integrated facilities. This provision is not included in the Administration's bill.

15. Contract authority. - S. 425 would provide contract authority rather than authorizing appropriations for Federal costs in administering the legislation. This is unnecessary and inconsistent with the thrust of the Congressional Budget Reform and Impoundment Control Act. In the Administration's bill, such costs would be financed through appropriations.

16. Indian lands. - S. 425 could be construed to require the Secretary of the Interior to regulate coal mining on non-Federal Indian lands. In the Administration bill, the definition of Indian lands is modified to eliminate this possibility.

17. Interest charge. - S. 425 would not provide a reasonable leved of interest charged on unpaid

penalties. The Administration's bill provides for an interest charge based on Treasury rates so as to assure a sufficient incentive for prompt payment of penalties.

{7} 18. Prohibition on mining within 500 feet of an active mine. - This prohibition in S. 425 would unnecessarily restrict recovery of substantial coal resources even when mining of the areas would be the best possible use of the areas involved. Under the Administration's bill, mining would be allowed in such areas as long as it can be done safely.

19. Haul roads. - Requirements of S. 425 could preclude some mine operators from moving their coal to market by preventing the connection of haul roads to public roads. The Administration's bill would modify this provision.

The attached listing shows the sections of S. 425 (or S. 7 and H.R. 25) which are affected by the above changes.

F PRINCIPAL PROVISIONS IN
S. 425 (S. 7 AND H.R. 25)
THAT ARE CHANGED IN THE
ADMINISTRATION'S *3*BILL

Subject	Title or section, S. 425, S. 7, H.R. 25	Administration bill
Critical changes:		
1. Clarify and the scope of citizens' suits	520	420.
2. Modify prohibition against stream siltation	515 (b) (10) (B), 516 (b) (9) (B).	415 (b) (10) (B), 416 (b) (9) (B)
3. Modify prohibition against hydrological disturbances	510 (b) (3), 515 (b) (10) (E).	410 (b) (3), 415 (b) (10) (E).
4. Provide express authority to define ambiguous terms in the act	None	601 (b).
5. Reduce the tax on coal to conform more nearly with reclamation needs and eliminate funding for facilities.	401 (d)	301 (d).
6. Modify the provisions on impoundments	515 (b) (13), 516 (b) (5).	415 (b) (13), 416 (b) (5).
7. Modify the prohibition against mining in national forests	522 (e) (2)	422 (e) (2).
8. Delete special unemployment provisions	708	None.
Other important changes		
1. Delete or clarify language which could lead		

to unintended "antidegradation" interpretations.	102(a) and (d)	102(a) and (c).
2. Modify the abandoned land reclamation program to (1) provide both Federal and State acquisition and reclamation with 50/50 cost sharing, and (2) eliminate cost sharing for private land owners.	Title IV	Title III.
3. Revise fining requirements for interim program to minimize unanticipated delays.	502(a) through (c), 506(a).	402(a) and (b), 406(a).
4. Reduce Federal preemption of State role during interim program	502(i), 521(a)(4)	402(c), 421(a)(4).
5. Eliminate surface owner consent requirement; continue existing surface and mineral rights.	716	613.
6. Eliminate requirement that Federal lands adhere to requirements of State programs.	523(a)	423(a).
7. Delete funding for research centers	Title III	None.
8. Revise the prohibition on mining in alluvial valley floors	510(b)(5)	410(b)(5).
9. Eliminate possible delays relating to designations as unsuitable for mining.	510(b)(4), 522(c)	410(b)(4), 422(c).
10. Provide authority to waive hydrologic data requirements when data already available.	507(b)(11).	407(b)(11).
11. Modify variance provisions for certain post-mining uses and equipment shortages.	515(c)	402(d), 415(c).
12. Clarify that payment of permit fee can be spread over time	507(a)	407(a).
13. Delete preferential contracting on orphaned land reclamation.	707	None.
14. Delete requirement on sales of coal by Federal lessees	523(e)	None.
15. Provide authority for appropriations rather than contracting authority for		

Administrative costs.	714	612.
16. Clarify definition of Indian lands to assure that the Secretary of the Interior does not control non-Federal Indian lands.	701(9)	601(a)(9).
17. Establish an adequate interest charge on unpaid penalties to minimize incentive to delay payments.	518(d)	418(d).
18. Permit mining within 500 ft of an active mine where this can be done safely.	515(b)(12)	415(b)(12).
19. Clarify the restriction on haul roads from mines connecting with public roads.	522(e)(4)	422(e)(4).