

Calendar No. 639

105TH CONGRESS }
2d Session }

SENATE

{ REPORT
105-408

COALBED METHANE GAS

OCTOBER 10 (legislative day, OCTOBER 2), 1998.—Ordered to be printed

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

REPORT

[To accompany S. 2500]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 2500) to protect the sanctity of contracts and leases entered into by surface patent holders with respect to coalbed methane gas, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

On page 4, line 4, after the word “lease” add “on or”.

PURPOSE OF THE MEASURE

The purpose of S. 2500, as ordered reported, is to assert that the United States will not claim ownership rights to coalbed methane currently being produced, or under contract or lease to be produced, by landowners or their lessees or contractors, on certain lands conveyed by the United States under the Act entitled “An Act for the protection of surface rights of entrymen”, approved March 3, 1909 (30 U.S.C. 81) or the Act entitled “An Act to provide for agricultural entries on coal lands”, approved on June 22, 1910 (30 U.S.C. 83 *et seq.*), commonly referred to as the Coal Lands Acts of 1909 and 1910.

The Committee does not intend for any provision in the legislation to be construed to prejudice the right of any person to petition the Supreme Court of the United States for a writ of certiorari in the *Southern Ute* case discussed below.

BACKGROUND AND NEED

The Act of March 3, 1909 (30 U.S.C. 81) and the Act of June 22, 1910 (30 U.S.C. 83) allowed persons to homestead, or otherwise locate, select or enter under the nonmineral land laws of the United States, lands classified as valuable for coal, subject to a reservation to the United States of the coal in those lands. The Acts neither define coal, nor mention coalbed methane. The Solicitor of the Department of the Interior, the agency charged with administering the two states, has taken the position that the reservation does not include coalbed methane. Owners of the surface estate in lands subject to these Acts have entered into commercial transactions based upon the interpretation.

On July 29, 1998, the United States Court of Appeals for the 10th Circuit rejected the Solicitor's interpretation and held that the Federal Government's reservation does include coalbed methane. The Court's decision in *Southern Ute Indian Reservation v. Amoco Production Company*, 151 F.3d 1251 (10th Cir. 1998) (*en banc*), overturns settled legal and commercial expectations of many parties, resulting in financial disruption and hardship.

SUMMARY OF MAJOR PROVISIONS

S. 2500 declares that the United States shall recognize as not infringing upon any ownership rights of the United States to coalbed methane any valid contract or lease covering land conveyed by the United States pursuant to the Act of 1909 and 1910 that were in effect on the date of enactment, and which convey rights to explore for, extract, and sell coalbed methane from such lands.

The legislation does not otherwise change the terms or conditions of, or affect the rights or obligations of any person under contracts or leases in effect on the date of enactment. It applies only to lands with respect to which the United States is the owner of coal reserved to the United States in patents issued under the Coal Lands Acts of 1909 and 1910 and to which the position of the United States has not passed to a third party by deed, patent or other conveyance by the United States.

The legislation does not apply to any interest in coal or land conveyed, restored, or transferred by the United States to a federally recognized Indian tribe, including any conveyance, restoration, or transfer made pursuant to the Indian Reorganization Act of 1934.

LEGISLATIVE HISTORY

Senator Mike Enzi of Wyoming introduced S. 2500 on September 18, 1998, for himself, Senator Thomas, and Senator Bingaman.

COMMITTEE RECOMMENDATIONS AND TABULATION OF VOTE

The Senate Committee on Energy and Natural Resources, in open business session on Wednesday, September 23, 1998, by a unanimous voice vote of a quorum present, recommended that the Senate pass S. 2500 as amended.

SECTION-BY-SECTION ANALYSIS

Subsection (a) provides that the United States will recognize that neither existing contracts or leases for coalbed methane production

entered into by landowners who derive their title to the land from the 1909 and 1910 Acts, nor production being conducted by the landowner himself or herself, will infringe upon any ownership rights of the United States to coalbed methane in those lands.

Subsection (b)(1) through (b)(3) are self explanatory.

Subsection (b)(4) provides that the waiver of Federal claim to ownership contained in subsection (a) will not apply to any interest in coal or land which the United States has conveyed, restored or transferred to an Indian tribe.

Subsection (b)(5) is self explanatory.

Subsection (b)(6) is intended to ensure that the legislation does not itself create any new liability by lessees of Federal coal to parties covered in subsection (a), and that lessees of Federal coal may continue to mine and remove the leased Federal coal, and to release coalbed methane incident to that mining and removal, without liability to parties covered in subsection (a) for royalties, or any other obligation not already provided by law.

COST AND REGULATORY CONSIDERATIONS

The Congressional Budget Office estimate of the costs of this measure has been requested but was not received at the time the report was filed. When the report is available, the Chairman will request it to be printed in the Congressional Record for the advice of the Senate.

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 implementing S. 2500.

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. 2500.

EXECUTIVE COMMUNICATIONS

The Committee has requested legislative reports from the Department of the Interior and the Office of Management and Budget setting forth executive views on S. 2500. These reports had not been received at the time the report on S. 2500 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.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXXVI of the Standing Rules of the Senate, the Committee notes that no changes in existing law are made by S. 2500 as reported.