

**EMERGENCY POWER BILL,  
HEARINGS BEFORE THE COMMITTEE  
ON COMMERCE UNITED STATES  
SENATE, 65TH CONGRESS, 2ND  
SESSION ON H.R. 12776**

Published @ 2017 Trieste Publishing Pty Ltd

ISBN 9780649513451

Emergency Power Bill, Hearings before the Committee on Commerce United States Senate, 65th Congress, 2nd Session on H.R. 12776 by Various

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~~CONFIDENTIAL~~

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# EMERGENCY POWER BILL

## HEARINGS

BEFORE THE

COMMITTEE ON COMMERCE  
UNITED STATES SENATE

SIXTY-FIFTH CONGRESS

SECOND SESSION

ON

### H. R. 12776

A BILL TO PROVIDE FURTHER FOR THE NATIONAL SECURITY  
AND DEFENSE AND FOR THE MORE EFFECTIVE PROSECUTION  
OF THE WAR BY FURNISHING MEANS FOR THE BETTER UTIL-  
IZATION OF THE EXISTING SOURCES OF ELECTRICAL AND  
MECHANICAL POWER AND FOR THE DEVELOPMENT OF NEW  
SOURCES OF SUCH POWER, AND FOR OTHER PURPOSES

Printed for the use of the Committee on Commerce



WASHINGTON  
GOVERNMENT PRINTING OFFICE  
1918

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## EMERGENCY POWER BILL.

FRIDAY, OCTOBER 11, 1918.

UNITED STATES SENATE,  
COMMITTEE ON COMMERCE,  
Washington, D. C.

The committee met, in executive session, pursuant to adjournment, at 10 o'clock a. m., in the committee room, Capitol, Senator Duncan U. Fletcher presiding.

Present: Senators Fletcher (chairman), Vardaman, Shields, Martin, Bankhead, Kirby, Nelson, Harding, and Lenroot.

Present also: Mr. Bernard M. Baruch, chairman War Industries Board; Mr. Frederick Darlington, chief of the Power Section, War Industries Board; Capt. W. W. Stanley, executive assistant to Mr. Darlington; Mr. Clarence Dillon, War Industries Board; Maj. Malcolm MacLaren, Corps of Engineers, United States Army; Maj. H. Leyden, Corps of Engineers, United States Army; Maj. C. F. Lacombe, Corps of Engineers, United States Army; Capt. A. M. Tinsley, Corps of Engineers, United States Army, all assigned to the War Industries Board; and Mr. Morris L. Cooke, Washington representative of the Emergency Fleet Corporation and executive assistant to the chairman of the Shipping Board.

The committee thereupon proceeded to the consideration of H. R. 12776, which is here printed in full, as follows:

[H. R. 12776, 65th Cong., 2d sess.]

AN ACT To provide further for the national security and defense and for the more effective prosecution of the war by furnishing means for the better utilization of the existing sources of electrical and mechanical power and for the development of new sources of such power, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That when used in this Act, unless the context shall require a different interpretation—

(a) The term "power plant" means a plant equipped for, and employed or intended to be employed in, generating, developing, transmitting, or distributing electrical or mechanical power, and includes all machinery and appliances therein contained, together with all lines transmitting or distributing power in connection therewith, and all other property the ownership, use, or occupancy of which may be appropriate to or useful in connection with the maintenance and operation thereof.

(b) The term "private power plant" means a power plant owned or operated by any person, association, corporation, or body politic, other than the United States, for the purpose of generating, developing, transmitting, or distributing such power, either for sale or for the use of the owner or operator thereof or of some other person.

(c) The word "person" includes natural persons, copartnerships, joint-stock companies, voluntary associations and corporations, and the receivers and other custodians of the property of any of them.

(d) The word "operator" means the owner, lessee, or other person in general control or operation of any power plant, factory, or enterprise.

(e) The term "property" includes real and personal property of every nature and description, together with any right, interest, or easement therein or appurtenant thereto.

(f) The term "war material" means any material or commodity which, in the opinion of the President, it may be necessary or important to produce for the purpose of prosecuting the war.

(g) The term "within the boundaries of the United States" means all lands and waters subject for any purposes to the jurisdiction of the United States of America.

(h) The term "war period" means the time to elapse until six months after the proclamation by the President of the exchange of ratifications of the treaty of peace.

Whenever, by this act, any duty is imposed upon any person it shall be deemed to be imposed as well upon all agents, servants, or officers of such person in so far as it shall be within the scope of their respective functions.

SEC. 2. That the President is hereby authorized and empowered, within the limits of the amounts herein authorized, or that may hereafter be authorized: *Provided*, That no part of said amounts shall be expended under the cost-plus system—

(1) To construct during the war period at any place or places within the boundaries of the United States such power plant or power plants as he may deem necessary for the purpose of increasing production of war material or meeting emergencies arising from war conditions, and in connection therewith to construct within such boundaries plants for the production of gas, coke, toluol, benzol, coal-tar products, and any other useful products that may be produced through or in connection with the coking of coal or carbonizing of lignite, or through or in connection with the combustion of any fuel.

(2) For the purpose of increasing the capacity or productivity of any private power plant or plants in connection therewith for the production of gas, coke, toluol, benzol, coal-tar products, and any other useful products that may be produced through or in connection with the coking of coal or carbonizing of lignite, or through or in connection with the combustion of any fuel, within the boundaries of the United States to install in any such plant any structure, machinery, or appliances that he may deem useful to that end, either through agents or contractors employed by him, or by advancing to the operator of such plant funds to be applied to that purpose upon such security and such terms of payment of principal and interest as he may prescribe; to lease the machinery, appliances, and structures thus installed or any parts thereof to the operator of such plant for the war period or for such period thereafter not exceeding five years, or for any shorter period, as he may deem expedient in the interest of the United States, upon such terms as he may deem reasonable; and to enter into contracts requiring or permitting the lessee to purchase such appliances, machinery, and structures, or parts thereof, at or before the termination of such lease for such amount and upon such other terms as he may deem equitable for the protection of the interests of the United States and of the community served by such lessee. Whenever any such structures, machinery, or appliances shall have been installed and until the sale or other disposition thereof, the title thereto shall remain in the United States and shall be free and exempt from any liens, mortgages, judgments, or other encumbrances, whether created by act of the operator of such plant or by operation of law: *Provided*, That a declaration shall be made by the United States through its officer making the installation, and recorded in the office where a mortgage of such property would be recorded, declaring the intention to retain the title, describing the property and the place of its location. And upon and during any default in any payment of any sums due the United States under such lease or contract the President shall be empowered at all times to enter upon the premises upon which such machinery, structures, or appliances shall be installed and there to maintain and to operate them or any of them for the use of the United States free from any rent or other charge, or to take possession of and remove them or any of them from the premises.

(3) To aid in equipping any private power plant or in expanding any such plant to such extent as he may direct, by making advances upon such terms as he may deem proper to the operator of such plant. In order that the United States may assume the difference between the cost, such equipment or expansion at the time of installation and the value thereof to the operator at



the end of the contract period, such terms may include an agreement that, if at a time provided for therein, which shall not be later than five years after the expiration of the war period, it shall appear that the actual reasonable cost of equipping or of expanding such plant exceeded a sum fixed in or to be ascertained by a method prescribed in such agreement, and if the machinery, structures, or appliances constituting such extension, expansion, or their equivalent shall have been maintained and operated in accordance with his direction, repayment of the whole or any part of such excess will be waived. Such agreement may provide further for determining the amount of such excess by arbitration or otherwise: *Provided*, That the powers conferred by this subdivision shall be exercised only if the President shall deem that the emergency is such as to render it impracticable or undesirable to act with respect to such plant under any of the other powers conferred by this act.

(4) To acquire by any known method of procurement any private power plant within the boundaries of the United States that the President may deem necessary for the prosecution of the war: *Provided*, That no plant owned or operated by a body politic shall be acquired without the consent of such body politic.

(5) To construct any pipe or other transmission lines, or other structures, facilities, or appliances that he may deem necessary or useful for the purpose of better utilizing or of increasing the facilities of any power plant, or of combining the facilities or power of two or more such plants, or of better utilizing the gas, power, or products generated by them.

(6) To maintain, operate, and extend any plant, pipe, or other transmission line, or other structure, facility, or appliance which he shall have constructed or acquired pursuant to the provisions of this act, and to deliver the power generated and the products produced in any such plant to such persons or body politic and in such proportions and at such times and at such rates as he may deem proper.

(7) To require the operator of any private power plant within the boundaries of the United States to place at the disposal of the United States or to acquire from such operator, during the war period, the whole or any part of the power generated by such plant; and during such period to transmit or distribute, or to require such operator to transmit or distribute, such power to any other power plant or to any other persons for such periods, in such manner and quantities, and upon such terms as he may direct.

(8) To lease for the war period or for such period thereafter not exceeding one year or for any shorter period and upon such terms as he may deem reasonable, to any person or body politic for use or operation by such person or body politic, any plant, transmission line, or other property or part thereof, constructed or acquired pursuant to the provisions of this act.

(9) In furtherance of any of the foregoing purposes, to modify, cancel, or suspend any existing or future contracts for the delivery of power to any person not engaged in the production of war material or to the extent to which he shall deem the power contracted for to be in excess of the requirements for the manufacture of war material by such persons or to which, in his opinion, it shall prevent the delivery of power which he shall deem necessary for the production of war material of greater or more immediate utility.

(10) In furtherance of any of the foregoing purposes of this act, to acquire any property which he may deem necessary or useful for the construction, development, expansion, or operation of any such plant or transmission lines.

(11) To sell or exchange any plants or structures constructed by him and any property to which he shall have taken title, and any rights acquired by him, whenever in his opinion the interests of the United States will be furthered by such sale or exchange: *Provided*, That no public right acquired by him shall be alienated for any term in excess of five years after the war period, upon any terms or conditions other than those prescribed by the sovereignty from which such public rights shall have been acquired: *Provided further*, That whenever in the opinion of the President, any structure or appliance which he shall have installed in any private power plant or any structure or appliance in any such plant to which he shall have taken title, or any property or right which he shall have acquired from the owner of such plant, shall constitute an integral portion of such private plant, or shall be of such character that it would be uneconomical to separate it therefrom, the owner of such private power plant shall be accorded an option to purchase the same at an amount to be ascertained either by the agreement or by an arbitration wherein the President shall select one arbitrator, the operator a second, and

the two thus selected a third, before the same shall be otherwise offered for sale or exchange.

(12) To employ in the District of Columbia and elsewhere and fix the compensation of such attorneys, engineers, draftsmen, accountants, clerks and other employees as he may deem necessary for the execution of the powers herein conferred: *Provided*, That such draftsmen, accountants, clerks, and other employees shall be appointed from lists of eligibles to be supplied by the Civil Service Commission and in accordance with the civil-service law.

Sec. 3. That the President, subject to the limitation set forth in subsection twelve of section two, may exercise the power and authority hereby vested in him and expend the moneys herein and hereafter appropriated, through such officers, agents, or agencies as he shall create or designate from time to time, and may require any such officers, agents, or agencies to perform the duties which he shall impose upon them, and fix the reasonable compensation for the performance of such services. But no official or employee of the United States shall receive any additional compensation for such services except as is now permitted by law.

Sec. 4. That whenever any act done pursuant to the provisions of this act shall constitute a taking of private property within the meaning of the Constitution and the laws of the several States, just compensation shall be made therefor in an amount and in the manner to be determined by the President; and if the amount so determined by the President is unsatisfactory to the person entitled to receive the same, such person shall be paid seventy-five per centum of the amount so determined by the President and shall be entitled to sue the United States to recover such further sum as, added to said seventy-five per centum, will make up such amount as will be just compensation therefor, in the manner provided for by section twenty-four, paragraph twenty, and section one hundred and forty-five of the Judicial Code.

Sec. 5. That the provisions of section three hundred and fifty-five of the Revised Statutes shall be inapplicable to the acquisition of real property under the provisions of this Act. Within three months after such acquisition a description of the property acquired and of the extent of the interest acquired therein shall be filed with the War Department and in the office in which, by the laws of the State, Territory, District, or possession wherein the property is situated, it is provided that instruments affecting the title to real property shall or may be recorded.

Sec. 6. That no structure affecting the navigable capacity of any navigable waters of the United States shall be constructed or installed under the provisions of this Act until the plans therefor have been approved by the Chief of Engineers and the Secretary of War, or such other body as may be authorized by Congress.

Sec. 7. That any person who shall knowingly neglect or refuse to comply with any order or requisition authorized by the provisions of this Act and made by the President or by any officer, agent, or agency whom he shall have designated or created pursuant to the provisions of section three hereof, or who shall knowingly obstruct or attempt to obstruct the enforcement of or the compliance with any such requisition or order, or who, by means of any false statement or fraudulent representation shall induce or attempt to induce the President or any such officer, agent, or agency to lend, advance, or provide any moneys, or to provide or install any property, or to enter into any contract or to perform any other act authorized by the provisions of this Act shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than two years, or by both such fine and imprisonment.

Sec. 8. That the President may retain any property and operate any plants, transmission lines, structures, facilities, or appliances constructed by the United States under the provisions of this Act for such time as he may deem necessary or advisable for the purpose of selling or otherwise disposing thereof.

The contract for the installation of any structure, facilities, or appliances by the United States may provide that if, at the termination of the period provided by the contract relating thereto, or of such extension of the time of payment therein provided for as in furtherance of the interests of the United States, the President may deem it expedient to grant, the owner of any plant or transmission line in or upon which any machinery, appliances, or structures shall have been installed pursuant to the provisions of subdivisions two and three of section two hereof, shall have failed to pay to the United States the value of such installations and all rentals or other return due for the use

thereof, or shall have failed to provide for the payment thereof upon terms satisfactory to him, or shall thereafter default in such payments, the President may acquire title to such power plant and may thereafter sell it or maintain and operate it for such time as he may deem necessary for the purpose of protecting the interests of the United States.

No power plant, equipment, structures, machinery or appliances shall be constructed, acquired, increased in productivity, equipped, or expanded, nor shall funds be provided or advances made for these purposes except during the actual continuance of the war and for the purpose of carrying on the war.

Except as is herein otherwise provided all other authority granted to the President by the provisions of this act shall cease at the termination of the war period, but the termination of such authority shall not affect any contract executed, act done, or any right or obligation accruing or accrued, or any suit or proceeding had or commenced under the terms of this act prior to such termination; and any offense committed or liability incurred prior thereto may be prosecuted in the same manner and with the same effect and shall be subject to the same penalties as if such authority had not terminated. Nor shall the termination of such authority prevent the collection of any moneys due the United States, or the sale or other disposition of any property which it shall have constructed or acquired pursuant to the provisions of this act.

SEC. 9. That all administrative expenses incurred in the exercise of the powers herein conferred shall be allowed and paid on the presentation of itemized vouchers therefor; and in order to defray such expenses there is hereby authorized to be appropriated the sum of \$150,000, to be paid out upon warrants drawn on the Secretary of the Treasury by the President or by any officer, agent, or agency whom he shall have designated or created for that purpose pursuant to the provisions of section three hereof.

For the purpose of construction, acquisition, maintenance, and operation of plants, transmission lines, and other material and property which the President is hereby empowered by the provisions of this act to construct or acquire and of providing funds pursuant to the provisions of subdivisions two and three of section two hereof, there is hereby authorized to be appropriated the sum of \$175,000,000.

All revenues derived from the sale of any product of any plant or property which shall have been constructed or acquired pursuant to the provisions of this act, or from the lease or operation of any such plant, property, or transmission line, shall be available for the maintenance and operation of such plant, property, or transmission line; and all revenue in excess of the expense of such maintenance and operation and all sums received upon the sale of any property constructed or acquired pursuant to the provisions of this act or in repayment of any funds expended or provided pursuant to the provisions of subdivisions two and three of section two hereof shall be deposited and covered into the Treasury.

SEC. 10. That not later than the first Monday in December in each year the President shall cause to be submitted to the Congress a detailed report of all property constructed, acquired, or installed, of all moneys loaned or advanced, a list of all persons employed under the authority of this act, and all receipts and expenditures made pursuant to the powers conferred by this act.

SEC. 11. That this act shall be known as the "emergency power act."

SEC. 12. That if any section or provision of this act shall be invalid for any reason whatsoever, the invalidity of such section or provision shall not be construed to affect the validity of any other section or provision thereof.

Passed the House of Representatives October 3, 1918.

Attest:

SOUTH TRIMBLE, Clerk.  
By J. C. SOUTH, Chief Clerk.

The CHAIRMAN. Yesterday the committee took up the bill and considered it some time and discussed it quite a good deal, and finally, on motion, asked Mr. Baruch to appear this morning to go over the matter somewhat more in detail, and especially with a view to specifying the different possibilities of developing power and locating the requirements as far as possible and giving in each instance the amount that was estimated should be furnished.

We have before us, of course, the report on this bill, and at pages 10, 11, 12 and 13 appears a statement which perhaps was intended