

**BILL C-15: DONKIN COAL BLOCK
DEVELOPMENT OPPORTUNITY ACT**

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LEGISLATIVE HISTORY OF BILL C-15

HOUSE OF COMMONS

Bill Stage	Date
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First Reading:	29 October 2007
Second Reading:	20 November 2007
Committee Report:	20 November 2007
Report Stage:	20 November 2007
Third Reading:	20 November 2007

SENATE

Bill Stage	Date
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First Reading:	21 November 2007
Second Reading:	29 November 2007
Committee Report:	
Report Stage:	13 December 2007
Third Reading:	13 December 2007

Royal Assent: 14 December 2007

Statutes of Canada 2007, c. 33

N.B. Any substantive changes in this Legislative Summary that have been made since the preceding issue are indicated in **bold print**.

Legislative history by Michel Bédard

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**BILL C-15: DONKIN COAL BLOCK
DEVELOPMENT OPPORTUNITY ACT***

Bill C-15, An Act respecting the exploitation of the Donkin coal block and employment in or in connection with the operation of a mine that is wholly or partly at the Donkin coal block, and to make a consequential amendment to the Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act, was introduced in the House of Commons by the Minister of Natural Resources, the Honourable Gary Lunn, on 29 October 2007. By unanimous consent, on 20 November 2007 it was deemed to have been read a second time and referred to a Committee of the Whole, deemed considered in the Committee of the Whole, deemed reported without amendment, deemed concurred in at the report stage and deemed read a third time and passed. It received first reading in the Senate on 21 November 2007.

This bill provides a legal framework to facilitate the exploitation of the Donkin coal block and to regulate employment in connection with the operation of any mine within that specific area. It gives the Governor in Council the authority to incorporate Nova Scotia laws, in areas such as labour and safety, into federal law by regulation, and gives Nova Scotia the power to enforce those laws. It also deals with royalties from the exploitation of the portion of the Donkin coal block in frontier lands, such that the royalties are to be sent to the federal treasury and then paid to the province.

BACKGROUND

In the 1980s, the federal government financed the development of two exploratory tunnels from what is commonly referred to as the Donkin mine site into a thick coal seam that runs under the ocean floor off eastern Cape Breton, Nova Scotia. During this period over \$80 million was spent driving these tunnels and conducting other exploratory work related to this coal reserve. Although the reserves are estimated to contain up to 300 million tonnes of recoverable coal, production was shut down in 1992 when the price of coal fell. No coal was ever extracted, and the tunnels were sealed and allowed to flood.

* Notice: For clarity of exposition, the legislative proposals set out in the bill described in this Legislative Summary are stated as if they had already been adopted or were in force. It is important to note, however, that bills may be amended during their consideration by the House of Commons and Senate, and have no force or effect unless and until they are passed by both houses of Parliament, receive Royal Assent, and come into force.

Higher prices of oil and natural gas have made coal a more attractive source of energy, and there is now considerable interest in the Donkin reserves. A privately funded consortium has spent several months and many millions of dollars pumping water from the flooded tunnels as part of a feasibility study to determine if the mine can be operated profitably.⁽¹⁾

The mine entrance is situated on land near Sydney, Nova Scotia, but the coal seam extends out under the ocean. As a result, both the federal government and Nova Scotia claim jurisdiction over the Donkin coal block. A possible jurisdictional solution is found in this bill, in which Nova Scotia labour and safety regulations will apply to the project although they will be incorporated into federal regulations. The effect of this is that the project will proceed as if it were under provincial jurisdiction.

This particular regime requires that both the province of Nova Scotia and the federal government enact legislation enabling this regulation. In April 2007 Nova Scotia passed the Undersea Coal Mines Regulation Act⁽²⁾ providing for the proposed federal–provincial regulatory framework. This bill is the necessary federal counterpart.

DESCRIPTION AND ANALYSIS

A. Clause 1 – Short Title

The short title of the Act, the Donkin Coal Block Development Opportunity Act, is set out in clause 1.

B. Clause 2 – Interpretation

Clause 2 introduces and defines various terms. The term “Donkin coal block” is defined as the coal and coal-bed methane deposits located in an area that is set out in a Schedule to the Act. “Exploitation” includes the exploration, development and reclamation of a coal block, as well as the operation of a mine that is wholly or partly at the coal block.

(1) S. Maher, “Feds table bill that might allow Donkin mine to reopen,” *The Chronicle-Herald* (Halifax), 30 October 2007, B7.

(2) The Act is available at http://www.gov.ns.ca/legislature/legc/bills/60th_1st/3rd_read/b166.htm.

“Frontier lands” means lands that belong to Her Majesty in right of Canada, or in respect of which Her Majesty in right of Canada has the right to dispose of or exploit the natural resources, and that are situated in (a) the Northwest Territories, Nunavut or Sable Island; or (b) submarine areas, not within a province, in the internal waters of Canada, the territorial sea of Canada or the continental shelf of Canada. This designation does not include the adjoining area, as defined in section 2 of the Yukon Act.

“Minister” means the Minister of Natural Resources; “operation” is defined as including the development, construction and abandonment of a mine, as well as exploration for a mine; and “Province” means the province of Nova Scotia.

C. Clause 4 – Purpose

The purpose of the Act, as set out in clause 4, is to provide a legal regime within a cooperative framework to facilitate the exploitation of the Donkin coal block and to regulate employment in or in connection with the operation of a mine that is wholly or partly at the Donkin coal block. The Act is binding on her Majesty in right of Canada and of the Province (clause 5).

Clause 7 states that except as otherwise provided in the regulations, the *Canada Oil and Gas Operations Act*, the *Canada Petroleum Resources Act* and the *Federal Real Property and Federal Immovables Act*, and all regulations made under those Acts, do not apply to the Donkin coal block.

The Minister may delegate to any person any power, function or duty that the Minister considers necessary for the administration of the Donkin coal block (clause 8). This is subject to clause 15, which gives the province the power to administer and enforce those regulations that incorporate or adapt provincial Acts or instruments.

D. Clauses 9-4 – Royalties, Agreement and Regulations

Clauses 9, 10 and 11 address the royalties from the exploitation of the portion of the Donkin coal block in frontier lands. These royalties are to be sent to the federal Receiver General and then paid to the province. Clause 12 provides for the establishment of an agreement between the federal government and the province for this purpose.

Clauses 13 and 14 concern regulations that may be established by the Governor in Council upon the recommendation of the Nova Scotia Minister of Labour.

These clauses allow the Governor in Council to make regulations incorporating by reference any Nova Scotia labour and safety legislation in relation to employment in connection with the operation of a mine in the Donkin coal block. This includes regulations governing industrial relations, occupational health and safety and labour standards (clause 13(1)(b)), as well as all other matters relating to the exploitation of the Donkin coal block (clause 13(2)).

It also includes the application, in whole or in part, of the *Canada Oil and Gas Operations Act*, the *Canada Petroleum Resources Act* and the *Federal Real Property and Federal Immovables Act*, and regulations made under those Acts. As well, this clause permits the making of regulations respecting royalties referred to in clause 9.

Clause 13(3) further allows that the regulations may incorporate by reference in whole or in part any Act of the province or any instrument made under such an Act, with any adaptations that the Governor in Council considers necessary.

It should be noted that any regulations made by the Governor in Council pursuant to these clauses are to be made on the recommendation of the Minister of Labour.

E. Clause 15 – Administration, Enforcement and Prosecution of Offences

Clause 15 addresses the administration, enforcement and prosecution of offences under this Act. The province is given the power to administer and enforce those regulations that incorporate or adapt provincial Acts or instruments (clause 15(1)).

Clause 15(3) states that any person who contravenes a regulation by contravening a provision that is incorporated – and, as necessary, adapted – by the regulation is guilty of an offence against this Act and liable to the same punishment as is imposed by or under an Act of the Province for the contravention of that provision. The provincial Attorney General is responsible for the prosecution of offences under this Act.

F. Clause 16 – Consequential Amendment

Clause 16 makes a consequential amendment to the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation Act*. It amends the definition of the term “gas,” adding to the general definition the following text: “but does not include coal-bed methane associated with the development or operation of a coal mine.”

According to Natural Resources Canada officials, this amendment is intended to distinguish between the extraction of two different resources: coal, with which coal-bed methane is always associated; and natural gas. The Donkin coal block development agreement between the federal government and the province of Nova Scotia is restricted to the extraction of coal.

COMMENTARY

The reopening of the Donkin mine would have a significant impact on the Nova Scotia and, specifically, the Cape Breton economy. At one time Nova Scotia had a thriving coal mining industry; however, while a few small surface mines remain, there has been no underground coal mining in the province since 2001. It has been suggested that the Donkin project is a “potential saviour of the province’s once-flourishing coal industry.”⁽³⁾

The project could create up to 400 direct and spin-off jobs.

The project’s primary customer would likely be Nova Scotia’s privately-owned electric utility, Nova Scotia Power, which currently imports much of the coal it burns at its generating stations.

This bill has attracted some local media attention in Nova Scotia, with most coverage focusing on the costs of the project and the potential for employment.⁽⁴⁾

Should the Donkin mine open, it would be the first underground mine to open in the province since 1992, when 26 miners were killed in a methane explosion at the Westray mine in Plymouth, Nova Scotia.⁽⁵⁾ The subsequent Westray Mine Public Inquiry⁽⁶⁾ in 1997 recommended significant changes to health and safety legislation; many of those recommendations are now included in the new underground mining regulations that constitute the provincial aspect of the federal–provincial regulatory framework proposed in Bill C-15.

(3) Canadian Press, “N.S. plans to resume underground coal mining,” 9 December 2004.

(4) See, for example, N. King, “Legislation to reopen Donkin mine tabled in Ottawa,” *Cape Breton Post* (Sydney), 1 November 2007, A5; S. Proctor, “Drilling for coal to begin this fall at Donkin mine; Pre-assessment report positive, venture partner says,” *The Chronicle-Herald* (Halifax), 17 August 2007, C3; and K. Chernin, “Donkin coal could create over 400 jobs,” *The Chronicle-Herald* (Halifax), 22 September 2007, C5.

(5) N. King, “Parent pleased with Donkin legislation,” *Cape Breton Post* (Sydney), 5 November 2007, A3.

(6) Justice K. Peter Richard, *The Westray Story: A Predictable Path to Disaster*. Report of the Westray Mine Public Inquiry, Halifax, Province of Nova Scotia, 1997, <http://www.gov.ns.ca/enla/pubs/westray/>.