

COMMUNITY RECLAMATION PARTNERSHIPS ACT

APRIL 5, 2024.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. WESTERMAN, from the Committee on Natural Resources,
submitted the following

R E P O R T

[To accompany H.R. 6233]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 6233) to amend the Surface Mining Control and Reclamation Act of 1977 to authorize partnerships between States and nongovernmental entities for the purpose of reclaiming and restoring land and water resources adversely affected by coal mining activities before August 3, 1977, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE LEGISLATION

The purpose of H.R. 6233 is to amend the Surface Mining Control and Reclamation Act of 1977 to authorize partnerships between States and nongovernmental entities for the purpose of reclaiming and restoring land and water resources adversely affected by coal mining activities before August 3, 1977, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

Thousands of inactive coal mines, abandoned before the era of modern regulation, exist across the country.¹ Many of these sites pose health and safety risks or environmental hazards, burdening landowners and inhibiting opportunities for economic development. The states are responsible for reclaiming abandoned mine sites and state abandoned mine land (AML) programs undertake numerous

¹U.S. Department of the Interior. Office of Surface Mining Reclamation and Enforcement. Abandoned Mine Land Inventory System. <https://www.osmre.gov/programs/e-amlis>

cleanup projects yearly. These projects are funded by annual state grants from the AML Fund, overseen by the Office of Surface Mining, Reclamation and Enforcement.² The revenue stream for these grants comes from a fee assessed on current coal production. Additionally, \$11.3 billion was provided to assist in AML remediation through the Infrastructure Investment and Jobs Act.³

However, given the significant inventory of unreclaimed sites, there is a need to identify new routes to reclamation without additional burdens on coal operators or the taxpayer. This need has encouraged third-party non-governmental organizations (NGOs) to participate in cleanup projects. Pennsylvania, for example, has a so-called “Good Samaritan” law allowing NGOs to participate in cleanup without fear of becoming liable for abandoned sites they reclaim, should conditions deteriorate through no fault of their own.⁴ However, currently there is no such federal liability protection.

The “*Community Reclamation Partnerships Act*” would grant this liability protection to NGOs that wish to contribute their resources to the reclamation of abandoned mine lands and reduce the burden on the taxpayers and the states.

COMMITTEE ACTION

H.R. 6233 was introduced on November 6, 2023, by Rep. Darin LaHood (R–IL). The bill was referred to the Committee on Natural Resources. On June 14, 2023, the Subcommittee on Energy and Mineral Resources held a hearing on the discussion draft of this bill. On December 6, 2023, the Committee on Natural Resources met to consider the bill. H.R. 6233 was ordered favorably reported to the House of Representatives by unanimous consent.

HEARINGS

For the purposes of clause 3(c)(6) of House rule XIII, the following hearing was used to develop or consider this measure: hearing by the Subcommittee on Energy and Mineral Resources held on June 14, 2023.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Section 1 establishes the short title of the bill as the “Community Reclamation Partnerships Act.”

Section 2. Reference

Section 2 specifies that Act shall refer to the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 et seq.), unless otherwise noted.

² U.S. Department of the Interior. Office of Surface Mining Reclamation and Enforcement. Reclaiming Abandoned Mine Lands. <https://www.osmre.gov/programs/reclaiming-abandoned-mine-lands>

³ Public Law 117–58.

⁴ Pennsylvania Department of Environmental Protection. Environmental Good Samaritan Act. <https://www.dep.pa.gov/Business/Land/Mining/BureauofMiningPrograms/Pages/GoodSamaritanAct.aspx>

Section 3. State memoranda of understanding for certain remediation

Section 3 authorizes a memorandum of understanding (MOU) between states with approved state programs under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and federal agencies for the remediation of acid mine drainage and abandoned mine sites. State MOUs must be approved by the Secretary of the Interior and the Administrator of the Environmental Protection Agency and are subject to public review and comment.

It also authorizes eligible “Community Reclaimers” to participate in abandoned mine land cleanup projects for states that have an approved MOU. Under this program, Community Reclaimers are shielded from liability by enabling the states to formally assume liability and compliance responsibility on their behalf. This subsection also details requirements for Community Reclaimer qualifications, projects applications, and Secretarial approval.

Section 3 also defines a “Community Reclaimer” as any person who: voluntarily assists a state in a reclamation project; did not create the conditions that now require reclamation or mine drainage abatement; is not a current owner or operator of any site with ongoing reclamation obligations; and is not subject to outstanding violations under SMCRA.

This section requires states to include a list of proposed Community Reclaimer Partnership projects in their annual applications to the Secretary of the Interior requesting support for their respective State Reclamation Programs.

Section 3 also specifies that a community reclaimer may reprocess materials recovered during the implementation of a remediation plan if the applicable land management agency has approved reprocessing as a part of the approved abandoned mine reclamation plan; the proceeds from the sale or use of the materials are used to defray the cost of remediation or to reimburse the agency for purposes of carrying out this Act; and the materials only include historic mine residue.

Section 4. Clarifying State liability for mine drainage projects

Section 4 clarifies that any control or treatment for acid mine drainage must comply with the Clean Water Act, unless an approved MOU exists. This only applies where projects address mine drainage from AML sites.

Section 5. Conforming amendments

Section 5 executes conforming amendments.

Section 6. Sunset provision

Section 6 provides that the Act shall be in effect until September 30, 2030.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources’ oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII AND CONGRESSIONAL
BUDGET ACT

1. *Cost of Legislation and the Congressional Budget Act.* With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for the bill from the Director of the Congressional Budget Office:

H.R. 6233, Community Reclamation Partnerships Act			
As ordered reported by the House Committee on Natural Resources on December 6, 2023			
By Fiscal Year, Millions of Dollars	2024	2024-2029	2024-2034
Direct Spending (Outlays)	*	*	*
Revenues	<u>0</u>	<u>0</u>	<u>0</u>
Increase or Decrease (-) in the Deficit	*	*	*
Spending Subject to Appropriation (Outlays)	*	2	not estimated
Increases <i>net direct spending</i> in any of the four consecutive 10-year periods beginning in 2035?	No	Statutory pay-as-you-go procedures apply? Yes	
		Mandate Effects	
Increases <i>on-budget deficits</i> in any of the four consecutive 10-year periods beginning in 2035?	No	Contains intergovernmental mandate? No	
		Contains private-sector mandate? No	
* = between -\$500,000 and \$500,000.			

H.R. 6233 would authorize states with abandoned mine reclamation plans approved by the Office of Surface Mining Reclamation and Enforcement to enter into agreements with the federal government to reduce water pollution caused by abandoned mines through 2030. The bill also would allow individuals or groups to participate in abandoned mine cleanup projects if states assume liability on behalf of those entities. Under the bill, states and other parties conducting water treatments under those agreements would not be required to meet water quality standards under the Clean Water Act.

Additionally, H.R. 6233 would authorize individuals or groups participating in mine cleanup to sell reprocessed materials recovered during remediation work. Any reprocessing would need to be approved in the applicable abandoned mine reclamation plan and the proceeds would need to be used to pay for the costs of activities under the bill.

Spending subject to appropriations: For this estimate, CBO assumes that the legislation will be enacted during fiscal year 2024. Based on the costs of similar activities, CBO expects that the federal government would need two additional employees at an average annual cost of \$150,000 each to manage the agreements and approve projects. On that basis, CBO estimates that implementing H.R. 6233 would cost about \$2 million over the 2024–2029 period; any related spending would be subject to the availability of appropriated funds.

Direct spending: H.R. 6233 would allow the federal government to be reimbursed for its administrative costs from the proceeds of

any sales of reprocessed materials from abandoned mine reclamation projects. Such reimbursements are recorded in the budget as offsetting receipts (or reductions in direct spending); under current law, those reimbursements would be available to spend without further appropriation. Thus, CBO estimates that enacting H.R. 6233 would have a negligible effect on net direct spending over the 2024–2034 period.

The CBO staff contact for this estimate is Lilia Ledezma. The estimate was reviewed by H. Samuel Papenfuss, Deputy Director of Budget Analysis.

PHILLIP L. SWAGEL,
Director, Congressional Budget Office.

2. *General Performance Goals and Objectives.* As required by clause 3(c)(4) of rule XIII, the general performance goal or objective of this bill is to amend the Surface Mining Control and Reclamation Act of 1977 to authorize partnerships between States and non-governmental entities for the purpose of reclaiming and restoring land and water resources adversely affected by coal mining activities before August 3, 1977, and for other purposes.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clauses 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

UNFUNDED MANDATES REFORM ACT STATEMENT

According to the Congressional Budget Office, H.R. 6233 contains no unfunded mandates as defined in the Unfunded Mandates Reform Act.

EXISTING PROGRAMS

Directed Rule Making. This bill does not contain any directed rule makings.

Duplication of Existing Programs. This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program. Such program was not included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139 or identified in the most recent Catalog of Federal Domestic Assistance published pursuant to the Federal Program Information Act (Public Law 95–220, as amended by Public Law 98–169) as relating to other programs.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

PREEMPTION OF STATE, LOCAL OR TRIBAL LAW

Any preemptive effect of this bill over state, local, or tribal law is intended to be consistent with the bill's purposes and text and the Supremacy Clause of Article VI of the U.S. Constitution.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

**SURFACE MINING CONTROL AND RECLAMATION ACT
OF 1977**

* * * * *

TITLE IV—ABANDONED MINE RECLAMATION

* * * * *

STATE RECLAMATION PROGRAMS

SEC. 405. (a) Not later than the end of the one hundred and eighty-day period immediately following the date of enactment of this Act, the Secretary shall promulgate and publish in the Federal Register regulations covering implementation of an abandoned mine reclamation program incorporating the provisions of title IV and establishing procedures and requirements for preparation, submission, and approval of State programs consisting of the plan and annual submissions of projects.

(b) Each State having within its borders coal mined lands eligible for reclamation under this title, may submit to the Secretary a State Reclamation Plan and annual projects to carry out the purposes of this title.

(c) The Secretary shall not approve, fund, or continue to fund a State abandoned mine reclamation program unless that State has an approved State regulatory program pursuant to section 503 of this Act.

(d) If the Secretary determines that State has developed and submitted a program for reclamation of abandoned mines and has the ability and necessary State legislation to implement the provisions of this title, sections 402 and 410 excepted, the Secretary shall approve such State program and shall grant to the State exclusive responsibility and authority to implement the provisions of the approved program: *Provided*, That the Secretary shall withdraw such approval and authorization if he determines upon the basis of information provided under this section that the State program is not in compliance with the procedures, guidelines, and requirements established under subsection 405(a).

(e) Each State Reclamation Plan shall generally identify the areas to be reclaimed, the purposes for which the reclamation is proposed, the relationship of the lands to be reclaimed and the proposed reclamation to surrounding areas, the specific criteria for ranking and identifying projects to be funded, and the legal author-

ity and programmatic capability to perform such work in conformance with the provisions of this title.

(f) On an annual basis, each State having an approved State Reclamation Plan may submit to the Secretary an application for the support of the State program and implementation of specific reclamation projects. Such annual requests shall include such information as may be requested by the Secretary including:

- (1) a general description of each proposed project;
- (2) a priority evaluation of each proposed project;
- (3) a statement of the estimated benefits in such terms as: number of acres restored, miles of stream improved, acres of surface lands protected from subsidence, population protected from subsidence, air pollution, hazards of mine and coal refuse disposal area fires;
- (4) an estimate of the cost for each proposed project;
- (5) in the case of proposed research and demonstration projects, a description of the specific techniques to be evaluated or objective to be attained;
- (6) an identification of lands or interest therein to be acquired and the estimated cost; **[and]**
- (7) in each year after the first in which a plan is filed under this title, an inventory of each project funded under the previous year's grant: which inventory shall include details of financial expenditures on such project together with a brief description of each such project, including project locations, landowner's name, acreage, type of reclamation performed**[.]; and**
- (8) *a list of projects proposed under subsection (n).*

(g) The costs for each proposed project under this section shall include; actual construction costs, actual operation and maintenance costs of permanent facilities, planning and engineering costs, construction inspection costs, and other necessary administrative expenses.

(h) Upon approval of State Reclamation Plan by the Secretary and of the surface mine regulatory program pursuant to section 503, the Secretary shall grant, on an annual basis, funds to be expended in such State pursuant to subsection 402(g) and which are necessary to implement the State reclamation program as approved by the Secretary.

(i) The Secretary, through his designated agents, will monitor the progress and quality of the program. The States shall not be required at the start of any project to submit complete copies of plans and specifications.

(j) The Secretary shall require annual and other reports as may be necessary to be submitted by each State administering the approved State reclamation program with funds provided under this title. Such reports shall include that information which the Secretary deems necessary to fulfill his responsibilities under this title.

(k) Indian tribes having within their jurisdiction eligible lands pursuant to section 404 or from which coal is produced, shall be considered as a "State" for the purposes of this title except for purposes of subsection (c) of this section with respect to the Navajo, Hopi and Crow Indian Tribes

(l) No State shall be liable under any provision of Federal law for any costs or damages as a result of action taken or omitted in

the course of carrying out a State abandoned mine reclamation plan approved under this section. This subsection shall not preclude liability for cost or damages as a result of gross negligence or intentional misconduct by the State. For purposes of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence.

(m) STATE MEMORANDA OF UNDERSTANDING FOR REMEDIATION OF MINE DRAINAGE.—

(1) IN GENERAL.—A State with a State program approved under subsection (d) may enter into a memorandum of understanding with relevant Federal or State agencies (or both) to remediate mine drainage on abandoned mine land and water impacted by abandoned mines within the State. The memorandum may be updated as necessary and resubmitted for approval under this subsection.

(2) MEMORANDA REQUIREMENTS.—Such memorandum shall establish a strategy satisfactory to the State and Federal agencies that are parties to the memorandum, to address water pollution resulting from mine drainage at sites eligible for reclamation and mine drainage abatement expenditures under section 404, including specific procedures for—

(A) ensuring that activities carried out to address mine drainage will result in improved water quality;

(B) monitoring, sampling, and the reporting of collected information as necessary to achieve the condition required under subparagraph (A);

(C) operation and maintenance of treatment systems as necessary to achieve the condition required under subparagraph (A); and

(D) other purposes, as considered necessary by the State or Federal agencies, to achieve the condition required under subparagraph (A).

(3) PUBLIC REVIEW AND COMMENT.—

(A) IN GENERAL.—Before submitting a memorandum to the Secretary and the Administrator for approval, a State shall—

(i) invite interested members of the public to comment on the memorandum; and

(ii) hold at least one public meeting concerning the memorandum in a location or locations reasonably accessible to persons who may be affected by implementation of the memorandum.

(B) NOTICE OF MEETING.—The State shall publish notice of each meeting not less than 15 days before the date of the meeting, in local newspapers of general circulation, on the Internet, and by any other means considered necessary or desirable by the Secretary and the Administrator.

(C) RESPONSE TO PUBLIC COMMENT.—The memorandum shall include responses to substantive concerns raised by the public in comments and during public meetings if received within 30 days of such meetings and opportunity to comment.

(4) SUBMISSION AND APPROVAL.—The State shall submit the memorandum to the Secretary and the Administrator of the Environmental Protection Agency for approval. The Secretary and

the Administrator shall approve or disapprove the memorandum within 120 days after the date of its submission if the Secretary and Administrator find that the memorandum will facilitate additional activities under the State Reclamation Plan under subsection (e) that improve water quality.

(5) TREATMENT AS PART OF STATE PLAN.—A memorandum of a State that is approved by the Secretary and the Administrator under this subsection shall be considered part of the approved abandoned mine reclamation plan of the State.

(n) COMMUNITY RECLAIMER PARTNERSHIPS.—

(1) PROJECT APPROVAL.—Within 120 days after receiving such a submission, the Secretary shall approve a Community Reclaimer project to remediate abandoned mine lands if the Secretary finds that—

(A) the proposed project will be conducted by a Community Reclaimer as defined in this subsection or approved subcontractors of the Community Reclaimer;

(B) for any proposed project that remediates mine drainage, the proposed project is consistent with an approved State memorandum of understanding under subsection (m);

(C) the proposed project will be conducted on a site or sites inventoried under section 403(c);

(D) the proposed project meets all submission criteria under paragraph (2);

(E) the relevant State has entered into an agreement with the Community Reclaimer under which the State shall assume all responsibility with respect to the project for any costs or damages resulting from any action or inaction on the part of the Community Reclaimer in carrying out the project, except for costs or damages resulting from gross negligence or intentional misconduct by the Community Reclaimer, on behalf of—

(i) the Community Reclaimer; and

(ii) the owner of the proposed project site, if such Community Reclaimer or owner, respectively, did not participate in any way in the creation of site conditions at the proposed project site or activities that caused any lands or waters to become eligible for reclamation or drainage abatement expenditures under section 404;

(F) the State has the necessary legal authority to conduct the project and will obtain all legally required authorizations, permits, licenses, and other approvals to ensure completion of the project;

(G) the State has sufficient financial resources to ensure completion of the project, including any necessary operation and maintenance costs (including costs associated with emergency actions covered by a contingency plan under paragraph (2)(K)); and

(H) the proposed project is not in a category of projects that would require a permit under title V.

(2) PROJECT SUBMISSION.—The State shall submit a request for approval to the Secretary that shall include—

(A) a description of the proposed project, including any engineering plans that must bear the seal of a professional engineer;

(B) a description of the proposed project site or sites, including, if relevant, the nature and extent of pollution resulting from mine drainage;

(C) identification of the past and current owners and operators of the proposed project site;

(D) the agreement or contract between the relevant State and the Community Reclaimer to carry out the project;

(E) a determination that the project will facilitate the activities of the State reclamation plan under subsection (e);

(F) sufficient information to determine whether the Community Reclaimer has the technical capability and expertise to successfully conduct the proposed project;

(G) a cost estimate for the project and evidence that the Community Reclaimer has sufficient financial resources to ensure the successful completion of the proposed project (including any operation or maintenance costs);

(H) a schedule for completion of the project;

(I) an agreement between the Community Reclaimer and the current owner of the site governing access to the site;

(J) sufficient information to ensure that the Community Reclaimer meets the definition under paragraph (3);

(K) a contingency plan designed to be used in response to unplanned adverse events that includes emergency actions, response, and notifications;

(L) detailed plans for any proposed recycling or reprocessing of historic mine residue to be conducted by the Community Reclaimer (including a description of how all proposed recycling or reprocessing activities contribute to the remediation of the abandoned mine site); and

(M) a requirement that the State provide notice to adjacent and downstream landowners and the public and hold a public meeting near the proposed project site before the project is initiated.

(3) *REPROCESSING OF MATERIALS.*—A Community Reclaimer may reprocess materials recovered during the implementation of a remediation plan only if—

(A) the applicable land management agency has signed a decision document approving reprocessing as part of the approved abandoned mine reclamation plan of the State;

(B) the proceeds from the sale or use of the materials are used—

(i) to defray the costs of the remediation; and

(ii) to reimburse the Administrator or the head of a Federal land management agency for the purpose of carrying out this Act; and

(C) the materials only include historic mine residue.

(4) *COMMUNITY RECLAIMER DEFINED.*—For purposes of this section, the term “Community Reclaimer” means any person who—

(A) seeks to voluntarily assist a State with a reclamation project under this section, which may include companies that currently hold reclamation liability elsewhere from the proposed site or active mine sites that require a performance bond;

(B) did not participate in any way in the creation of site conditions at the proposed project site or activities that caused any lands or waters at the proposed project site to become eligible for reclamation or drainage abatement expenditures under section 404; and

(C) is not subject to outstanding violations listed pursuant to section 510(c).

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MISCELLANEOUS POWERS

SEC. 413. (a) The Secretary or the State pursuant to an approved State program, shall have the power and authority, if not granted it otherwise, to engage in any work and to do all things necessary or expedient, including promulgation of rules and regulations, to implement and administer the provisions of this title.

(b) The Secretary or the State pursuant to an approved State program, shall have the power and authority to engage in cooperative projects under this title with any other agency of the United States of America, any State and their governmental agencies.

(c) The Secretary or the State pursuant to an approved State program, may request the Attorney General, who is hereby authorized to initiate, in addition to any other remedies provided for in this title, in any court of competent jurisdiction, an action in equity for an injunction to restrain any interference with the exercise of the right to enter or to conduct any work provided in this title.

(d) The Secretary or the State pursuant to an approved State program, shall have the power and authority to construct and operate a plant or plants for the control and treatment of water pollution resulting from mine drainage. The extent of this control and treatment may be dependent upon the ultimate use of the water: *Provided*, That the above provisions of this paragraph shall not be deemed in any way to repeal or supersede any portion of the Federal Water Pollution Control Act (33 U.S.C.A. 1151, et seq. as amended) and no control or treatment under this subsection shall in any way be less than that required under the Federal Water Pollution Control Act *unless such control or treatment will be conducted in accordance with a State memorandum of understanding approved under section 405(m) of this Act*. The construction of a plant or plants may include major interceptors and other facilities appurtenant to the plant.

(e) The Secretary may transfer funds to other appropriate Federal agencies, in order to carry out the reclamation activities authorized by this title.

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