

117TH CONGRESS
1ST SESSION

S. 1600

To amend the Surface Mining Control and Reclamation Act of 1977 to make modifications to the Abandoned Mine Reclamation Fund, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 12, 2021

Mr. BARRASSO (for himself and Ms. LUMMIS) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To amend the Surface Mining Control and Reclamation Act of 1977 to make modifications to the Abandoned Mine Reclamation Fund, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Abandoned Mine Land
5 Reclamation Fee Reauthorization Act of 2021”.

6 **SEC. 2. RECLAMATION FEE.**

7 (a) AMOUNT.—Section 402(a) of the Surface Mining
8 Control and Reclamation Act of 1977 (30 U.S.C. 1232(a))
9 is amended—

1 (1) by striking “28 cents” and inserting “16.8
2 cents”;

3 (2) by striking “12 cents” and inserting “7.2
4 cents”; and

5 (3) by striking “8 cents” and inserting “4.8
6 cents”.

7 (b) DURATION.—Section 402(b) of the Surface Min-
8 ing Control and Reclamation Act of 1977 (30 U.S.C.
9 1232(b)) is amended by striking “September 30, 2021”
10 and inserting “September 30, 2028”.

11 **SEC. 3. INCREASED REVENUE SHARING WITH COAL-PRO-**
12 **DUCING STATES.**

13 Section 35(a) of the Mineral Leasing Act (30 U.S.C.
14 191(a)) is amended, in the first sentence, by striking “50
15 per centum thereof” and inserting “50 percent of the
16 amount received, or in the case of any amount received
17 from coal leases, 60 percent of the amount received,”.

18 **SEC. 4. SEQUESTRATION PROVISIONS.**

19 (a) EXEMPTION OF PAYMENTS TO STATES AND IN-
20 DIAN TRIBES FROM THE ABANDONED MINE RECLAMA-
21 TION FUND FROM SEQUESTRATION.—

22 (1) IN GENERAL.—Section 255(g)(1)(A) of the
23 Balanced Budget and Emergency Deficit Control
24 Act of 1985 (2 U.S.C. 905(g)(1)(A)) is amended by

1 inserting after “Payments to Social Security Trust
2 Funds (28–0404–0–1–651).” the following:

3 “(1) Payments to States and Indian Tribes
4 from the Abandoned Mine Reclamation Fund and
5 payments to States and Indian Tribes under section
6 402(i)(2) of the Surface Mining Control and Rec-
7 lamation Act of 1977 (30 U.S.C. 1232(i)(2)) (12–
8 50q5–0–2–999).”.

9 (2) APPLICABILITY.—The amendment made by
10 paragraph (1) shall apply to any sequestration order
11 issued under the Balanced Budget and Emergency
12 Deficit Control Act of 1985 (2 U.S.C. 900 et seq.)
13 on or after the date of enactment of this Act.

14 (b) PAYMENT FROM WITHHELD AMOUNTS.—

15 (1) IN GENERAL.—From amounts withheld pur-
16 suant to section 251A of the Balanced Budget and
17 Emergency Deficit Control Act of 1985 (2 U.S.C.
18 901a) from payments to States and Indian tribes
19 under section 402(g) of the Surface Mining Control
20 and Reclamation Act of 1977 (30 U.S.C. 1232(g))
21 during fiscal years 2013 through 2021, the Sec-
22 retary of the Interior (referred to in this Act as the
23 “Secretary”) shall distribute for fiscal year 2022 to
24 each State and each Indian tribe from which the

1 amounts were withheld an amount equal to the total
 2 amount so withheld from the State or Indian tribe.

3 (2) USE.—Amounts distributed under para-
 4 graph (1) may be used by a State or Indian tribe
 5 only for the purposes authorized by section 402(g)
 6 of the Surface Mining Control and Reclamation Act
 7 of 1977 (30 U.S.C. 1232(g)).

8 **SEC. 5. AMOUNTS DISTRIBUTED FROM ABANDONED MINE**
 9 **RECLAMATION FUND.**

10 Section 401(f)(2) of the Surface Mining Control and
 11 Reclamation Act of 1977 (30 U.S.C. 1231(f)(2)) is
 12 amended—

13 (1) in subparagraph (A)—

14 (A) in the subparagraph heading, by strik-
 15 ing “2022” and inserting “2037”; and

16 (B) in the matter preceding clause (i), by
 17 striking “2022” and inserting “2037”; and

18 (2) in subparagraph (B)—

19 (A) in the subparagraph heading, by strik-
 20 ing “2023” and inserting “2038”;

21 (B) by striking “2023” and inserting
 22 “2038”; and

23 (C) by striking “2022” and inserting
 24 “2037”.

1 **SEC. 6. APPLICABILITY OF CERTAIN TRANSFER REQUIRE-**
 2 **MENT TO PAYMENTS TO STATES AND INDIAN**
 3 **TRIBES.**

4 Section 402(i)(3) of the Surface Mining Control and
 5 Reclamation Act of 1977 (30 U.S.C. 1232(i)(3)) is
 6 amended by adding at the end the following:

7 “(C) APPLICATION.—Subparagraph (B)
 8 shall not apply to transfers to the Secretary of
 9 the Interior for distribution to States and In-
 10 dian tribes under paragraph (2).”.

11 **SEC. 7. ADDITIONAL GRANTS FROM ABANDONED MINE**
 12 **RECLAMATION FUND.**

13 (a) IN GENERAL.—Title IV of the Surface Mining
 14 Control and Reclamation Act of 1977 is amended by in-
 15 serting after section 415 (30 U.S.C. 1244) the following:

16 **“SEC. 416. ADDITIONAL GRANTS FOR PRIORITY 1 AND PRI-**
 17 **ORITY 2 SITES.**

18 “(a) DEFINITION OF ELIGIBLE STATE OR INDIAN
 19 TRIBE.—In this section, the term ‘eligible State or Indian
 20 tribe’ means a State or Indian tribe—

21 “(1) with an approved State Reclamation Plan
 22 under section 405; and

23 “(2) that is not certified under section 411(a).

24 “(b) ADDITIONAL GRANTS.—Of amounts in the fund
 25 that are not otherwise appropriated, \$140,000,000 shall
 26 be made available to the Secretary, without further appro-

1 priation, for each of fiscal years 2022 through 2037, to
 2 make grants to eligible States and Indian tribes for the
 3 conduct of reclamation projects designed to achieve the
 4 priorities described in paragraphs (1) and (2) of section
 5 403(a).

6 “(c) REQUIREMENT.—In making grants under sub-
 7 section (b) to eligible States and Indian tribes, the Sec-
 8 retary shall allocate the grants to those States and Indian
 9 tribes based on the amount of coal historically produced
 10 in the State or from the Indian lands concerned before
 11 August 3, 1977, in the same manner as under section
 12 402(g)(5).”.

13 (b) CONFORMING AMENDMENTS.—

14 (1) Section 401 of the Surface Mining Control
 15 and Reclamation Act of 1977 (30 U.S.C. 1231) is
 16 amended—

17 (A) in subsection (c)—

18 (i) in paragraph (10), by striking
 19 “and” at the end;

20 (ii) by redesignating paragraph (11)
 21 as paragraph (12); and

22 (iii) by inserting after paragraph (10)
 23 the following:

24 “(11) to make additional grants under section
 25 416; and”; and

1 (B) in subsection (d)(3), by inserting “and
2 section 416” before the period at the end.

3 (2) Section 402(g) of the Surface Mining Con-
4 trol and Reclamation Act of 1977 (30 U.S.C.
5 1232(g)) is amended—

6 (A) in paragraph (1), in the matter pre-
7 ceding subparagraph (A), by inserting “and sec-
8 tion 416” after “subsection (h)”; and

9 (B) in paragraph (3), by adding at the end
10 the following:

11 “(F) For the purpose of section 416.”.

12 **SEC. 8. STATE MEMORANDA OF UNDERSTANDING FOR RE-**
13 **MEDIATION OF MINE DRAINAGE; COMMUNITY**
14 **RECLAIMER PARTNERSHIPS.**

15 (a) STATE MEMORANDA OF UNDERSTANDING FOR
16 CERTAIN REMEDIATION OF MINE DRAINAGE.—Section
17 405 of the Surface Mining Control and Reclamation Act
18 of 1977 (30 U.S.C. 1235) is amended by adding at the
19 end the following:

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

22 “(1) AUTHORIZATION.—

23 “(A) IN GENERAL.—Subject to the ap-
24 proval of the Secretary and the Administrator
25 of the Environmental Protection Agency (re-

ferred to in this subsection as the ‘Administrator’) under paragraph (4), a State with an approved State Reclamation Plan may enter into a memorandum of understanding with relevant Federal or State agencies to remediate mine drainage on abandoned mine land and water impacted by abandoned mines within the State.

“(B) UPDATES.—A memorandum of understanding entered into under subparagraph (A) may be updated as necessary and resubmitted for approval under paragraph (4).

“(2) MEMORANDA OF UNDERSTANDING REQUIREMENTS.—

“(A) IN GENERAL.—A memorandum of understanding entered into under paragraph (1)(A) shall establish a strategy 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—

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

1 “(ii) monitoring, sampling, and re-
2 porting of collected information as nec-
3 essary to achieve the condition required
4 under clause (i);

5 “(iii) operation and maintenance of
6 treatment systems as necessary to achieve
7 the condition required under clause (i);
8 and

9 “(iv) other purposes, as considered
10 necessary by the State or Federal agencies
11 that are parties to the memorandum of un-
12 derstanding, to achieve the condition re-
13 quired under clause (i).

14 “(B) REQUIREMENT.—The strategy estab-
15 lished under subparagraph (A) shall be satisfac-
16 tory to the State and Federal agencies that are
17 parties to the memorandum of understanding.

18 “(3) PUBLIC REVIEW AND COMMENT.—

19 “(A) IN GENERAL.—Before submitting a
20 memorandum of understanding to the Secretary
21 and the Administrator for approval under para-
22 graph (4), a State shall—

23 “(i) invite interested members of the
24 public to comment on the memorandum of
25 understanding; and

1 “(ii) hold not less than 1 public meet-
2 ing concerning the memorandum of under-
3 standing in a location reasonably accessible
4 to persons who may be affected by imple-
5 mentation of the memorandum of under-
6 standing.

7 “(B) NOTICE OF MEETING.—Not later
8 than 15 days before the date of a meeting
9 under subparagraph (A), the State shall publish
10 notice of the meeting in local newspapers of
11 general circulation, on the internet, and by any
12 other means considered necessary or desirable
13 by the Secretary and the Administrator.

14 “(4) SUBMISSION AND APPROVAL.—

15 “(A) IN GENERAL.—Before entering into a
16 memorandum of understanding under para-
17 graph (1)(A), a State shall submit the memo-
18 randum of understanding to the Secretary and
19 the Administrator for approval.

20 “(B) DEADLINE.—Not later than 120 days
21 after the date on which a State submits the
22 memorandum of understanding for approval
23 under subparagraph (A), the Secretary and the
24 Administrator shall approve or disapprove the
25 memorandum of understanding.

1 “(C) REQUIREMENT.—The Secretary and
 2 the Administrator shall approve a memorandum
 3 of understanding under this paragraph if the
 4 Secretary and Administrator find that the
 5 memorandum of understanding will facilitate
 6 additional activities to improve water quality
 7 under the approved State Reclamation Plan of
 8 the State.

9 “(5) TREATMENT AS PART OF STATE PLAN.—
 10 A memorandum of understanding that is approved
 11 by the Secretary and the Administrator under this
 12 subsection shall be considered to be part of the ap-
 13 proved State Reclamation Plan of the State.”.

14 (b) COMMUNITY RECLAIMER PARTNERSHIPS.—Sec-
 15 tion 405 of the Surface Mining Control and Reclamation
 16 Act of 1977 (30 U.S.C. 1235) (as amended by subsection
 17 (a)) is amended by adding at the end the following:

18 “(n) COMMUNITY RECLAIMER PARTNERSHIPS.—

19 “(1) DEFINITION OF COMMUNITY RE-
 20 CLAIMER.—In this subsection, the term ‘community
 21 reclaimer’ means any person who—

22 “(A) seeks to voluntarily assist a State
 23 with a reclamation project under this section;

24 “(B) did not participate in any way in—

1 “(i) the creation of site conditions at
2 the project site; or

3 “(ii) activities that caused any land or
4 waters at the project site to become eligible
5 for reclamation or drainage abatement ex-
6 penditures under section 404;

7 “(C) is not a past or current owner or op-
8 erator of any site with ongoing reclamation obli-
9 gations; and

10 “(D) is not subject to outstanding viola-
11 tions listed pursuant to section 510(c).

12 “(2) AUTHORIZATION OF COMMUNITY RE-
13 CLAIMER PROJECTS.—The Secretary may authorize
14 a community reclaimer to carry out a reclamation
15 project under this section for which a request for ap-
16 proval submitted by the State under paragraph (3)
17 has been approved by the Secretary in accordance
18 with paragraph (4).

19 “(3) PROJECT SUBMISSION.—

20 “(A) IN GENERAL.—A State may submit
21 to the Secretary a request to authorize a com-
22 munity reclaimer to carry out a reclamation
23 project under this section in the State.

24 “(B) REQUIREMENTS.—A request sub-
25 mitted under subparagraph (A) shall include—

1 “(i) a description of the project, in-
2 cluding any engineering plans that include
3 the seal of a professional engineer;

4 “(ii) a description of the 1 or more
5 project sites, including, if relevant, the na-
6 ture and extent of pollution resulting from
7 mine drainage;

8 “(iii) identification of the past and
9 current owners and operators of any
10 project sites;

11 “(iv) the agreement or contract be-
12 tween the State and the community re-
13 claimer to carry out the project;

14 “(v) a determination by the State that
15 the project will facilitate the activities of
16 the State Reclamation Plan under sub-
17 section (e);

18 “(vi) sufficient information to deter-
19 mine whether the community reclaimer has
20 the technical capability and expertise to
21 successfully conduct the project;

22 “(vii) a cost estimate for the project;

23 “(viii) evidence that the community
24 reclaimer has sufficient financial resources
25 to ensure the successful completion of the

1 project (including any operation or maintenance costs);

2 “(ix) a schedule for completion of the
3 project;

4 “(x) an agreement between the community reclaimer and the owner of the
5 project site governing access to the project
6 site;

7 “(xi) sufficient information to ensure
8 that the community reclaimer meets the
9 requirements of paragraph (1);

10 “(xii) a contingency plan designed to
11 be used in response to unplanned adverse
12 events that includes emergency actions, response, and notifications; and

13 “(xiii) an agreement by the State
14 that, before the initiation of the project,
15 the State shall—

16 “(I) provide notice to adjacent
17 and downstream landowners and the
18 public; and

19 “(II) hold a public meeting near
20 the project site.

21 “(4) PROJECT APPROVAL.—Not later than 120
22 days after the date on which the Secretary receives

1 a request submitted under paragraph (3)(A), the
2 Secretary shall approve the request for the commu-
3 nity reclaimer to carry out the project, if the Sec-
4 retary determines that—

5 “(A) the project—

6 “(i) complies with the submission re-
7 quirements under paragraph (3)(B);

8 “(ii) will be conducted by a commu-
9 nity reclaimer or 1 or more approved sub-
10 contractors of the community reclaimer;

11 “(iii) will be conducted on 1 or more
12 sites inventoried under section 403(c);

13 “(iv) in the case of a project that re-
14 mediates mine drainage, is consistent with
15 an approved State memorandum of under-
16 standing under subsection (m); and

17 “(v) is not in a category of projects
18 that would require a permit under title V;
19 and

20 “(B) the State that submitted the re-
21 quest—

22 “(i) has entered into an agreement
23 with the community reclaimer under which
24 the State shall assume all responsibility
25 with respect to the project for any costs or

1 damages resulting from any action or inac-
2 tion on the part of the community re-
3 claimer in carrying out the project, except
4 for costs or damages resulting from gross
5 negligence or intentional misconduct by the
6 community reclaimer, on behalf of the
7 community reclaimer and the owner of the
8 project site, if the community reclaimer or
9 owner, respectively, did not participate in
10 any way in the creation of site conditions
11 at the project site or activities that caused
12 any land or water to become eligible for
13 reclamation or drainage abatement expend-
14 itures under section 404;

15 “(ii)(I) has the necessary legal au-
16 thority to carry out the project; and

17 “(II) will obtain all authorizations,
18 permits, licenses, and other approvals re-
19 quired by law to ensure completion of the
20 project; and

21 “(iii) has sufficient financial resources
22 to ensure completion of the project, includ-
23 ing any necessary operation and mainte-
24 nance costs (including costs associated
25 with emergency actions covered by a con-

1 tingency plan under paragraph
2 (3)(B)(xii)).”.

3 (c) CLARIFYING STATE LIABILITY FOR MINE DRAIN-
4 AGE PROJECTS.—Section 413(d) of the Surface Mining
5 Control and Reclamation Act of 1977 (30 U.S.C. 1242(d))
6 is amended, in the second sentence, by striking “Act.” and
7 inserting “Act, unless that control or treatment will be
8 conducted in accordance with a State memorandum of un-
9 derstanding approved under section 405(m).”.

10 (d) CONFORMING AMENDMENTS.—Section 405(f) of
11 the Surface Mining Control and Reclamation Act of 1977
12 (30 U.S.C. 1235(f)) is amended—

13 (1) in paragraph (6), by striking “and” after
14 the semicolon;

15 (2) in paragraph (7), by striking the period at
16 the end and inserting “; and”; and

17 (3) by adding at the end the following:

18 “(8) a list of projects proposed under sub-
19 section (n).”.

20 **SEC. 9. DEPARTMENT OF THE INTERIOR STUDY AND RE-**
21 **PORT ON TECHNOLOGICAL INNOVATIONS**
22 **FOR USE IN THE ABANDONED MINE LAND**
23 **RECLAMATION PROGRAM.**

24 (a) IN GENERAL.—Not later than 180 days after the
25 date of enactment of this Act, the Secretary shall complete

1 a study of technologies for use in the abandoned mine land
2 reclamation program established under title IV of the Sur-
3 face Mining Control and Reclamation Act of 1977 (30
4 U.S.C. 1231 et seq.) (referred to in this Act as the “pro-
5 gram”) that would improve reclamation and reduce costs
6 under the program, including the application of technical
7 innovations in the technology development and transfer
8 program of the Office of Surface Mining Reclamation and
9 Enforcement, including—

10 (1) geomorphic reclamation;

11 (2) drone technology; and

12 (3) other technologies that would—

13 (A) improve overall reclamation;

14 (B) reduce costs of reclamation; and

15 (C) improve safety.

16 (b) REPORT.—As soon as practicable after com-
17 pleting the study under subsection (a), the Secretary shall
18 submit to the Committee on Energy and Natural Re-
19 sources of the Senate and the Committee on Natural Re-
20 sources of the House of Representatives a report describ-
21 ing the results of the study that includes recommendations
22 for areas of improvement identified under the study.

1 **SEC. 10. DEPARTMENT OF THE INTERIOR STUDY AND RE-**
2 **PORT TO STRENGTHEN OVERSIGHT OF THE**
3 **ABANDONED MINE LAND RECLAMATION PRO-**
4 **GRAM.**

5 (a) STUDY AND REPORT.—

6 (1) IN GENERAL.—Not later than 180 days
7 after the date of enactment of this Act, the Sec-
8 retary shall complete a study—

9 (A) to identify areas throughout the pro-
10 gram in which costs could be reduced; and

11 (B) to determine the ratio of overhead
12 spending in the administration of the program
13 to spending on the clean up of abandoned mine
14 land sites.

15 (2) REPORT.—As soon as practicable after com-
16 pleting the study under paragraph (1), the Secretary
17 shall submit to the Committee on Energy and Nat-
18 ural Resources of the Senate and the Committee on
19 Natural Resources of the House of Representatives
20 a report describing the results of the study that in-
21 cludes recommendations for areas of improvement
22 identified under the study.

23 (b) ANNUAL OSMRE REPORT.—The Secretary shall
24 require the Director of the Office of Surface Mining Rec-
25 lamation and Enforcement to publish annual reports on
26 the efficacy of the Abandoned Mine Land Reclamation

1 Economic Development Pilot Program (also known as the
 2 “AML Pilot”), including a detailed accounting of all
 3 projects funded and completed using funding made avail-
 4 able for that program under the heading “ABANDONED
 5 MINE RECLAMATION FUND” under the heading “OFFICE
 6 OF SURFACE MINING RECLAMATION AND ENFORCE-
 7 MENT” under the heading “DEPARTMENT OF THE
 8 INTERIOR” in title I of the division relating to Depart-
 9 ment of the Interior, Environment, and related agencies
 10 appropriations in each of—

- 11 (1) the Consolidated Appropriations Act, 2016
 12 (Public Law 114–113; 129 Stat. 2536);
- 13 (2) the Consolidated Appropriations Act, 2017
 14 (Public Law 115–31; 131 Stat. 446);
- 15 (3) the Consolidated Appropriations Act, 2018
 16 (Public Law 115–141; 132 Stat. 646);
- 17 (4) the Consolidated Appropriations Act, 2019
 18 (Public Law 116–6; 133 Stat. 217);
- 19 (5) the Further Consolidated Appropriations
 20 Act, 2020 (Public Law 116–94; 133 Stat. 2698);
- 21 (6) the Consolidated Appropriations Act, 2021
 22 (Public Law 116–260); and
- 23 (7) any future appropriations Act.

○