

Committee on Natural Resources

Rob Bishop Chairman
Mark-Up Memorandum

June 20, 2017

To: All Natural Resources Committee Members

From: Majority Committee Staff—Joshua Hoffman, Ashley Nichols
Subcommittee on Energy and Mineral Resources (x5-9297)

Markup: **H.R. 1731 (Rep. Hal Rogers)** To amend the Surface Mining Control and Reclamation Act of 1977 to provide funds to States and Indian tribes for the purpose of promoting economic revitalization, diversification, and development in economically distressed communities through the reclamation and restoration of land and water resources adversely affected by coal mining carried out before August 3, 1977, and for other purposes.
June 22 & 27, 2017; 1324 Longworth HOB

H.R. 1731 (Rep. Hal Rogers), “RECLAIM Act of 2017”

Summary of the Bill

Amends the Surface Mining Control and Reclamation Act of 1977 to make \$200 million available to the Department of the Interior for each of fiscal year (FY) 2018-2022 for distribution to states and Indian tribes to for the reclamation and restoration of land and water resources adversely affected by “abandoned mine lands” (AML) stemming from coal mining carried out before August 3, 1977 to catalyze economic revitalization, diversification, and development in economically distressed communities.

Cosponsors

Rep. Barletta, Lou [R-PA-11], Rep. Cartwright, Matt [D-PA-17], Rep. Fleischmann, Charles J. "Chuck" [R-TN-3], Rep. Griffith, H. Morgan [R-VA-9], Rep. Jenkins, Evan H. [R-WV-3], Rep. LaHood, Darin [R-IL-18], Rep. McKinley, David B. [R-WV-1], Rep. Mooney, Alexander X. [R-WV-2], Rep. Shuster, Bill [R-PA-9], Rep. Stivers, Steve [R-OH-15], Rep. Thompson, Glenn [R-PA-5]

Background

Title IV of the Surface Mine Control and Reclamation Act of 1977 (“SMCRA”) established a system for the reclamation of abandoned mine lands (“AML”). AML sites are “those which were mined for coal or which were affected by such mining, wastebanks, coal processing, or other coal mining processes . . . and abandoned or left in an inadequate

reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under State or other Federal laws.”¹

Thus, to qualify as an AML site, two attributes must exist: first, the site must have been affected by coal mining activities and abandoned prior to August 3, 1977; and second, there must be no responsible party for the reclamation of the land under state or federal laws. With no liable party, the state in which an AML site is located becomes the de facto entity responsible for remediating the site. These sites pose an economic burden to states’ economies, as well as health and environmental hazards to the local community.

Classifying AML Sites

Although all AML sites share two basic attributes, AML sites are further divided into a priority system dependent on the observed severity and threat of the condition:

- Priority 1 conditions are those that pose an extreme danger to public health, safety, and property;
- Priority 2 conditions are those that threaten adverse effects to public health and safety; and
- Priority 3 conditions are defined as those with environmental degradation, in either water or land resources, due to the adverse effects of coal mining.²

Therefore, SMCRA established a clear preference to prioritize the remediation of conditions that impact human health over those that degrade the environment.³

Despite the distinguishing characteristics between each priority, the actual classification of a condition is contingent on a number of considerations made by a state reclamation program, including the geographic and climatic features of the site, proximity to the public, and the realities of the regional coal mining practices. As such, each condition must be independently assessed. For instance, water runoff flowing from a site or an abandoned highwall may be classified as Priority 1, 2, or 3 depending on the perceived impact the condition will have on surrounding communities.⁴

Furthermore, AML sites do not generally fit neatly within a single classification. Indeed, many AML sites include a number of conditions with varying priorities – and thus, state reclamation programs are not able to prioritize the reclamation of sites based solely on the corresponding Priority numbers.⁵

¹ 30 U.S.C. § 1234.

² 30 U.S.C. § 1233(a).

³ See 30 U.S.C. § 1232(g).

⁴ OSM, e-AMLIS Priority 1 and 2, available at https://www.osmre.gov/programs/AMLIS/priority1_2.shtm#dh and OSM, e-AMLIS Priority 3, <https://www.osmre.gov/programs/AMLIS/priority3.shtm#h>

⁵ For instance, in Clearfield, PA one site included three Priority 1 conditions, three Priority 2 conditions, and two Priority 3 Conditions. Site Number PA006462, available at <https://amlis.osmre.gov/QueryAdvanced.aspx>

Certified and Uncertified States

Another important element established within Title IV of SMCRA is the distinction made between certified and uncertified states, a classification meant to indicate whether a state has achieved the remediation of all Priorities within its boundaries.⁶

Initially, all states with an approved reclamation program are deemed uncertified, but a state may seek certification from the Secretary of the Interior (“Secretary”) once, in the state’s own determination, the state has achieved “all of the priorities stated in section 403(a) . . . for eligible lands and waters.” Such certification is contingent on the Secretary concurring with the determination after proceeding through notice and comment procedures in the Federal Register.⁷

Once certified, states are given more latitude on how they spend federal AML funding. Specifically, states may spend federal AML funds on the protection and restoration of land or water resources affected by “mineral mining and processing practices,” as certified states are presumed by definition to no longer have sites affected by abandoned coal mining operations.⁸ Unfortunately, when several states sought certification in the early 1980s, the breadth of AML sites was not fully understood, and as such, several states that achieved certification have updated AML inventories with liabilities exceeding \$100 million.⁹

Abandoned Mine Reclamation Fund and Costs of AML Sites

Title IV of SMCRA established a funding mechanism for associated reclamation activities, an “Abandoned Mine Reclamation Fund” (“Fund”), which is funded via a fee imposed on current mining operations.¹⁰ Currently, the fee is assessed at 28 cents per ton for surface coal mining, 12 cents per ton for underground coal mining, and 8 cents per ton for lignite coal. In total, the Fund is predicted to have raised a cumulative total of \$11.2 billion by the end of the current fiscal year.¹¹

SMCRA tasks the Secretary with the collection of the fee and the paying of uncertified states in their ongoing reclamation efforts from the Fund. Each uncertified state receives 50% of the fees collected within its boundaries, as well as an additional sum of money conditioned on the amount of historic coal production that occurred within its borders.¹² All uncertified states are statutorily required to receive at least \$3,000,000 annually.¹³

⁶ See 30 U.S.C. § 1240a.

⁷ 30 U.S.C. § 1240(a)(1).

⁸ 30 U.S.C. § 1240(c).

⁹ See Appendix A of this hearing memorandum for an updated list of outstanding, unfunded liabilities by state.

¹⁰ See 30 U.S.C. § 1232.

¹¹ OSM, Fiscal Year 2017 Budget Justification, at 118, available at https://www.doi.gov/sites/doi.gov/files/uploads/FY2017_OSM_Budget_Justification.pdf

¹² See 30 U.S.C. § 1232(g). Given the shift in market conditions to favor western coal production, the majority of eastern states now receive more money based on historic coal production numbers than they do from fees collected. See OSM, Fiscal Year 2017 Grant Distribution, available at <https://www.osmre.gov/resources/grants/docs/FY17GrantDist.pdf>

¹³ 30 U.S.C. § 1232(g)(8).

For certified states, SMCRA directs the U.S. Department of the Treasury (“Treasury”) to provide the funding. Unlike uncertified states, certified state payments are limited to 50% of the fees collected from coal mining within the state.¹⁴

An important distinction between the payments to certified and uncertified states is the source of the funding itself. While both are mandatory, uncertified payments remain insulated from potential budgetary offsets because they are derived from the Fund itself, whereas certified payments are paid out of the General Fund of the Treasury. As such, certified state payments have been subjected to unfair and improper budgetary caps in the past to pay for non-AML spending programs.¹⁵

Although the Fund has been in existence for nearly 40 years and collected over \$10 billion in fees, much work is yet to be done. On top of the \$3.8 billion in completed projects, the Secretary currently assesses outstanding and unfunded liabilities in excess of \$10.4 billion, including \$475.2 million in unfunded Priority 1 sites and \$7.2 billion in unfunded Priority 2 sites.¹⁶

The *RECLAIM Act of 2017* seeks to address outstanding AML issues, while also encouraging the reinvigoration of the economies of depressed coal communities by accelerating the release of \$1 billion from the remaining, unappropriated balance in the Fund. Reclaiming abandoned mines near coal communities impacted by both abandoned mine lands and the recent decrease in coal mining paves the way for the economic revitalization of these communities. To be clear, the monies authorized to be spent by *RECLAIM* are limited to reclamation work alone. Community partnerships would be leveraged for the economic after-projects. While the economic component is only explicitly required for Priority 3 sites, nothing prohibits a state from considering additional resources brought to bear from community organizations when considering Priority 1 or 2 sites.

Major Provisions/Section-by-Section Analysis of H.R. 1731

Section 1 - Short Title

Section 2 – Economic Revitalization for Coal Country

Provides for the addition of Section 416: Abandoned Mine Land Economic Revitalization to Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Section 416 is outlined below:

Subsection (a): Purpose – summarizes the purpose of Section 416, which is to promote economic revitalization, diversification, and development in economically distressed mining communities.

Subsection (b): In General – provides the Secretary of Interior with \$200 million annually from Fiscal Year 2017 to 2021 for the purposes outlined in section (a).

¹⁴ See 30 U.S.C. § 1232(i)(2).

¹⁵ See e.g. Moving Ahead for Progress in the 21st Century, Pub. L. No. 112-175, § 100125 (2012) (capping the amount of money certified states could receive from the Treasury at \$15,000,000).

¹⁶ Data taken from query of the Abandoned Mine Land Inventory System on March 22, 2017, available at <https://amlis.osmre.gov/QueryAdvanced.aspx>

Subsection (c): Use of Funds for Projects at Priority 3 Sites – specifies that funding distributed to States and Indian tribes used to carry out reclamation projects on Priority 3 sites must be intended to create favorable conditions for economic development in the surrounding area.

Eligible project applicants include state, local, county, or tribal entities and project-related activities may be sub-contracted out to nongovernmental organizations. These projects must be conducted in areas that have been adversely affected by a recent reduction in coal mining-related activity or in communities that have traditionally relied on coal mining for a substantial portion of their economy.

Each project applicant must engage in appropriate project planning and can collaborate with outside persons or organizations if necessary. The public must be notified during the project planning process and be given the opportunity to comment at public meetings near proposed project sites.

Subsection (d): Distribution of Funds – distributes funds to states and Indian tribes:

Uncertified States and Indian Tribes

\$195 million will be distributed to uncertified states and tribes with approved AML programs each year from Fiscal Year 2017 to 2021.

- Fiscal Years 2017, 2018, and 2019 – funding is allocated based on the distribution formula. The formula is based on historical coal production and the proportion coal fees paid into the AML fund between the years of 2012 and 2016.
- Fiscal Year 2020 through 2021 – if a state or tribe has fully committed the funding it received in FY17, FY18, and FY19 to projects, it will receive the same amount it received in those years for each of FY20-21 (if it fully utilizes its allocation in each year). It will also have an opportunity to apply for additional funding through the reallocation process explained below. This process will award additional funding to states and tribes based on their unmet reclamation needs, the amount they paid into the AML Fund, and coal mining employment losses. If a state or tribe has not fully committed the funding it received in the previous fiscal year, then it will receive either the amount it has committed to projects in that previous year, or the amount it received in FY17 (whichever amount is lesser).
- Fiscal Year 2022 – each state or Indian tribe that has committed the full amount of its FY21 allocation to projects is eligible for a reallocation or “bonus payment” in FY22. These payments will be awarded from the pot of funds that remain uncommitted from all previous fiscal years. The reallocation process is described below.

Additional Funding to Certain State and Indian Tribes

An additional \$5 million will be available each year to certified states, to be distributed by the Secretary through a grant application process.

Reallocation of Uncommitted Funds

This section is intended to incentivize states and tribes to execute project agreements and to use the funding they are granted under this section in a timely manner. It will also ensure that funding allocated under this section is used for its intended purpose and not wasted by states and tribes who choose not to use it. By reallocating unused funds to states and tribes, the program is offering them the opportunity of a bonus payment (if funds are available) as a reward for using their funds for eligible projects. This process will allow for the efficient reclamation of as much abandoned mine land as possible during the life of the program. The reallocation process is summarized here:

- Fiscal Year 2020 through 2021 – states and tribes will lose any funding that they have not committed to projects from their FY17, FY18, and FY19 allocation. The Secretary will redistribute unused funding to states and tribes that have fully utilized their funding allocations in each of FY20-21 through an application process. For eligible states and tribes, this section essentially provides them with an opportunity to apply for “bonus payments” on top of the direct allocation they receive from the Secretary. In order to remain eligible for bonus payments, a state or tribe must commit its full allocation from the previous year to projects.
- Fiscal Year 2022 – the Secretary will award “bonus payments” to states and tribes that have committed all of the funding allotted to them in FY21 for projects, provided that funds are available. Funds will be available for these bonus payments if there are funds that remain uncommitted from previous fiscal years.
- Amount of Reallocation – the amount to be reallocated to states and Indian tribes will be based on the amount of unmet reclamation needs in their inventory, the amount the state or Indian tribe paid into the Fund, and the proportion of recent coal mining employment loss incurred in the state or tribe, based on Mine Safety and Health Administration coal employment data.

The term “committed” is defined to mean that funds received by the state or Indian tribe have been reserved for a specific project or have been expended or designated for the completion of a project.

Subsection (e): Resolution of Secretary’s Concerns and Congressional Notification – requires the Secretary to engage with the relevant state or Indian tribe if it determines that a selected project does not meet the criteria specified in the bill. This process will take place before a project is rejected by the Secretary, and is intended to assist states and tribes in making their preferred

projects eligible for the program. This process can take no longer than 45 days from the moment problems are identified with the project in question. If a project must be rejected, the Secretary will provide Congress with an explanation for the rejection.

Subsection (f): Acid Mine Drainage Treatment – authorizes states and Indian tribes to use up to 30% of the funds received under this section to be used for the treatment of acid mine drainage problems. If a state or tribe can demonstrate that its current acid mine drainage funding allocation is insufficient, it may use funding from this program to remedy existing acid mine drainage problems. As with any other project funded through this program, if a state or tribe executes a project agreement to use funding provided under this section for acid mine drainage work, then it will be considered “committed” for purposes of reallocation.

Subsection (g): Project Planning and Administration – allows states and tribes to designate up to 10% of their distribution for project planning and administrative purposes. During project planning, the state or Indian tribe should identify eligible projects, update the inventory of abandoned mine sites, develop project designs, prepare cost estimates, and engage in other similar activities necessary to facilitate the reclamation of these lands.

Subsection (h): Report to Congress – requires the Secretary to report to the Committees on Natural Resources and Appropriations of the House of Representatives and the Committees on Energy and Natural Resources and Appropriations of the Senate about the projects they have undertaken and the resulting economic and community benefits.

Section 3 – Technical and Conforming Amendments

This section makes several conforming and technical amendments to title IV of SMCRA, including adding references to the new authority in several sections and updating the inventory language in section 403(c) to achieve a more accurate inventory of existing AML problems.

Section 4 – Minimum State Payments

Language is included raising the cap on minimum state payments from \$3 million to \$5 million per year.

Section 5 – GAO Study on Use of Funds

GAO must issue a report to Congress no later than two years after enactment on the solvency of the Abandoned Mine Reclamation Fund and the impact of the RECLAIM Act on the payments issued to certified and uncertified states under SMCRA and transfers to the United Mine Workers of America Combined Benefit Fund.

Section 6 – Abandoned Mine Land Reclamation and Restoration Initiative

Clarifies that ARC funds appropriated by Congress can be used for economic and community development projects on AML land.

Section 7 – Headquarters of the Appalachian Regional Commission

The Federal Co-chairs of the Appalachian Regional Commission must develop a plan to move the headquarters of the Appalachian Regional Commission from Washington, D.C. to a location in Appalachia.

Cost

No cost estimate is available from CBO at this time.

Anticipated Amendments

Despite the relative bipartisan nature of the bill, the Committee anticipates at least two amendments:

- An amendment to further clarify the RECLAIM funds to be dispersed will not adversely impact the funding from the Treasury to certified states.
- An amendment to require an economic nexus for all sites, but allowing states that do not wish to use RECLAIM moneys for those purposes to waive out of such requirement for Priority 1 and 2 sites.

Administration Position

Unknown.

[Effect on Current Law \(Ramseyer\)](#)