

109TH CONGRESS
1ST SESSION

S. 1701

To amend the Surface Mining Control and Reclamation Act of 1977 to improve the reclamation of abandoned mines.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 14, 2005

Mr. THOMAS (for himself and Mr. ENZI) 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 improve the reclamation of abandoned mines.

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 Reform Act of 2005”.

6 **SEC. 2. ABANDONED MINE RECLAMATION FUND.**

7 (a) IN GENERAL.—Section 401(c) of the Surface
8 Mining Control and Reclamation Act of 1977 (30 U.S.C.
9 1231(c)) is amended—

10 (1) by striking paragraphs (2) and (6); and

1 (2) by redesignating paragraphs (3) through
2 (5) and (7) through (13) as paragraphs (2) through
3 (11), respectively.

4 (b) CONFORMING AMENDMENT.—Section 712(b) of
5 the Surface Mining Control and Reclamation Act of 1977
6 (30 U.S.C. 1302(b)) is amended by striking “section
7 401(c)(11)” and inserting “section 401(c)(9)”.

8 **SEC. 3. RECLAMATION FEE.**

9 (a) IN GENERAL.—Section 402 of the Surface Min-
10 ing Control and Reclamation Act of 1977 (30 U.S.C.
11 1232) is amended—

12 (1) by striking subsection (a) and inserting the
13 following:

14 “(a) IN GENERAL.—Any operator of a coal mining
15 operation subject to this Act shall pay to the Secretary
16 of the Interior, for deposit in the fund—

17 “(1) for coal produced by surface coal mining—

18 “(A) for the period beginning on July 1,
19 2006, and ending on October 1, 2009, 32 cents
20 per ton of coal produced;

21 “(B) for the period beginning on October
22 1, 2009, and ending on October 1, 2013, 30
23 cents per ton of coal produced; and

1 “(C) for the period beginning on October
2 1, 2013, and ending on October 1, 2016, 28
3 cents per ton of coal produced;

4 “(2) for coal produced by underground min-
5 ing—

6 “(A) for the period beginning on July 1,
7 2006, and ending on October 1, 2009, 15 cents
8 per ton of coal produced;

9 “(B) for the period beginning on October
10 1, 2009, and ending on October 1, 2013, 12
11 cents per ton of coal produced; and

12 “(C) for the period beginning on October
13 1, 2013, and ending on October 1, 2016, 12
14 cents per ton of coal produced; and

15 “(3) for lignite coal—

16 “(A) for the period beginning on July 1,
17 2006, and ending on October 1, 2009, 10 cents
18 per ton of lignite coal produced;

19 “(B) for the period beginning on October
20 1, 2009, and ending on October 1, 2013, 8
21 cents per ton of lignite coal produced; and

22 “(C) for the period beginning on October
23 1, 2013, and ending on October 1, 2016, 8
24 cents per ton of lignite coal produced.”;

1 (2) in subsection (b), by striking “June 30,
2 2006,” and all that follows through the end and in-
3 serting “September 30, 2016.”; and

4 (3) in subsection (g)—

5 (A) in paragraph (1)(D), by striking “in
6 any area under paragraph (2), (3), (4), or (5)”
7 and inserting “under paragraph (4)”;

8 (B) by striking paragraph (2);

9 (C) by redesignating paragraphs (3), (4),
10 (5), (6), (7), and (8) as paragraphs (2), (3),
11 (4), (5), (6), and (7), respectively;

12 (D) in paragraph (2) (as redesignated by
13 subparagraph (C))—

14 (i) in the matter preceding subpara-
15 graph (A), by striking “paragraphs (2)
16 and (5)” and inserting “paragraph (4)”;

17 (ii) in subparagraph (A), by striking
18 “401(c)(11)” and inserting “401(c)(9)”;

19 and

20 (iii) by adding at the end the fol-
21 lowing:

22 “(E) For the purpose of paragraph (7).”;

23 (E) in paragraph (3) (as redesignated by
24 subparagraph (C))—

1 (i) in subparagraph (A), by striking
2 “paragraphs (1), (2), and (5) or expended
3 under paragraph (3)” and inserting “para-
4 graphs (1) and (4) or expended under
5 paragraph (2)”; and

6 (ii) in subparagraph (E), by striking
7 “paragraphs (1) and (5)” and inserting
8 “paragraphs (1) and (4)”; and

9 (F) in paragraph (4) (as redesignated by
10 subparagraph (C))—

11 (i) in the first sentence, by striking
12 “The Secretary shall allocate 40” and in-
13 serting “(A) The Secretary shall allocate
14 60”;

15 (ii) in the last sentence, by striking
16 “Funds allocated or expended by the Sec-
17 retary under paragraphs (2), (3), or (4) of
18 this subsection” and inserting “Funds
19 made available under paragraph (2) or
20 (3)”; and

21 (iii) by adding at the end the fol-
22 lowing:

23 “(B) Any amount that is made available
24 under paragraph (8) shall be in addition to

1 amounts that are allocated under subparagraph
2 (A).”; and

3 (G) by striking paragraphs (5), (6), and
4 (7) (as redesignated by subparagraph (C)) and
5 inserting the following:

6 “(5) ABATEMENT OF ACID MINE DRAINAGE.—

7 “(A) DEFINITION OF QUALIFIED HYDRO-
8 LOGIC UNIT.—In this paragraph, the term
9 ‘qualified hydrologic unit’ means a hydrologic
10 unit—

11 “(i) in which the water quality has
12 been significantly affected by acid mine
13 drainage from coal mining practices in a
14 manner that adversely affects biological re-
15 sources; and

16 “(ii) that contains land and water
17 that is—

18 “(I) eligible under section 404
19 and appropriate for the expenditure of
20 moneys from the fund for the pur-
21 poses specified in section 403(a); and

22 “(II) the subject of expenditures
23 by the State from the forfeiture of a
24 bond filed under section 509 or from

1 any other State source to abate and
2 treat acid mine drainage.

3 “(B) USE OF FUNDS FOR ABATEMENT OF
4 ACID MINE DRAINAGE.—Any State with an ap-
5 proved abandoned mine reclamation program
6 under section 405 may receive and retain, with-
7 out regard to the 3-year limitation referred to
8 in paragraph (1)(D), up to 20 percent of the
9 total amount of the grants made annually to
10 the State under paragraphs (1) and (4) if—

11 “(i) the amount retained is deposited
12 in an acid mine drainage abatement and
13 treatment fund established under State
14 law; and

15 “(ii) the amount deposited under
16 clause (i) (together with all interest earned
17 on the amount) is expended by the State
18 for the abatement of the causes and the
19 treatment of the effects of acid mine drain-
20 age in a comprehensive manner within
21 qualified hydrologic units affected by coal
22 mining practices.

23 “(6) CERTAIN RECLAMATION PROJECTS.—In
24 complying with the priorities specified in section
25 403(a), any State or Indian tribe may expend

1 amounts available in grants made annually to the
2 State or tribe under paragraphs (1) and (4) for
3 projects for the purpose specified in section
4 403(a)(3) prior to the completion of reclamation
5 projects under paragraphs (1) and (2) of section
6 403(a) only if the expenditure is made in conjunc-
7 tion with the expenditure of funds before, on, or
8 after the date of enactment of the Abandoned Mine
9 Land Reclamation Reform Act of 2005 for reclama-
10 tion projects under paragraphs (1) and (2) of sec-
11 tion 403(a).

12 “(7) MINIMUM AMOUNT.—In making grants re-
13 ferred to in paragraph (1)(C) and in making expend-
14 itures under paragraph (2)(C), the Secretary, using
15 amounts allocated to a State or Indian tribe under
16 subparagraph (A) or (B) of paragraph (1), or, as
17 necessary, amounts available to the Secretary under
18 paragraph (2), shall ensure that total grant awards
19 or expenditures of not less than \$2,000,000 are
20 made annually to or in each State that has an ap-
21 proved abandoned mine reclamation program under
22 section 405 in effect on June 30, 2004, the State of
23 Tennessee, and each Indian tribe.

24 “(8) PAYMENTS TO STATES AND INDIAN
25 TRIBES.—

1 “(A) IN GENERAL.—The Secretary shall,
2 using amounts allocated in the fund to a State
3 or Indian tribe before October 1, 2006, pay to
4 the State or Indian tribe an amount equal to
5 the sum of the aggregate unappropriated
6 amount allocated to the State or Indian tribe
7 under subparagraph (A) or (B) of paragraph
8 (1) (referred to in this paragraph as the
9 ‘amount due’).

10 “(B) SCHEDULE.—Payments under sub-
11 paragraph (A) shall be made in accordance with
12 the following schedule:

13 “(i) If the amount due to a State or
14 Indian tribe is less than \$2,000,000, the
15 Secretary shall pay to the State or Indian
16 tribe the amount due on December 31,
17 2006.

18 “(ii) If the amount due to a State or
19 Indian tribe is \$2,000,000 or more but less
20 than \$30,000,000, the Secretary shall pay
21 to the State or Indian tribe—

22 “(I) $\frac{1}{2}$ of the amount due on De-
23 cember 31, 2006; and

24 “(II) $\frac{1}{2}$ of the amount due on
25 December 31, 2007.

1 “(iii) If the amount due to a State or
2 Indian tribe is \$30,000,000 or more but
3 less than \$100,000,000, the Secretary
4 shall pay to the State or Indian tribe—

5 “(I) $\frac{1}{3}$ of the amount due on De-
6 cember 31, 2006;

7 “(II) $\frac{1}{3}$ of the amount due on
8 December 31, 2007; and

9 “(III) $\frac{1}{3}$ of the amount due on
10 December 31, 2008.

11 “(iv) If the amount due to a State or
12 Indian tribe is \$100,000,000 or more but
13 less than \$200,000,000, the Secretary
14 shall pay to the State or Indian tribe—

15 “(I) $\frac{1}{4}$ of the amount due on De-
16 cember 31, 2006;

17 “(II) $\frac{1}{4}$ of the amount due on
18 December 31, 2007;

19 “(III) $\frac{1}{4}$ of the amount due on
20 December 31, 2008; and

21 “(IV) $\frac{1}{4}$ of the amount due on
22 December 31, 2009.

23 “(v) If the amount due to a State or
24 Indian tribe is more than \$200,000,000,

1 the Secretary shall pay to the State or In-
2 dian tribe—

3 “(I) $\frac{1}{5}$ of the amount due on De-
4 cember 31, 2006;

5 “(II) $\frac{1}{5}$ of the amount due on
6 December 31, 2007;

7 “(III) $\frac{1}{5}$ of the amount due on
8 December 31, 2008;

9 “(IV) $\frac{1}{5}$ of the amount due on
10 December 31, 2009; and

11 “(V) $\frac{1}{5}$ of the amount due on
12 December 31, 2010.

13 “(C) PAYMENTS NOT SUBJECT TO APPRO-
14 PRIATIONS.—Payments under subparagraph
15 (A) shall not be subject to the availability of ap-
16 propriations.

17 “(D) USE OF FUNDS.—

18 “(i) CERTIFIED STATES AND INDIAN
19 TRIBES.—

20 “(I) IN GENERAL.—A State or
21 Indian tribe that makes a certification
22 under section 411(a) in which the
23 Secretary concurs shall use any
24 amounts provided under this para-
25 graph for the purposes established by

1 the State legislature or tribal council
2 of the Indian tribe, with priority given
3 for addressing the impacts of mineral
4 development.

5 “(II) DEADLINE NOT APPLICA-
6 BLE.—Paragraph (1)(D) shall not
7 apply to amounts provided under this
8 paragraph to a State or Indian tribe
9 described in subclause (I).

10 “(ii) UNCERTIFIED STATES AND IN-
11 DIAN TRIBES.—A State or Indian tribe
12 that has not made a certification under
13 section 411(a) in which the Secretary has
14 concurred shall use any amounts provided
15 under this paragraph for the purposes de-
16 scribed in section 403.”.

17 (b) CONFORMING AMENDMENTS.—the Surface Min-
18 ing Control and Reclamation Act of 1977 is amended—

19 (1) Section 403(b) of the Surface Mining Con-
20 trol and Reclamation Act of 1977 (30 U.S.C.
21 1233(b)) is amended—

22 (A) in paragraph (1), by striking “para-
23 graphs (1) and (5)” and inserting “paragraphs
24 (1) and (4)”; and

1 (B) in paragraph (2), by striking
2 “402(g)(4)(B)” each place it appears and in-
3 serting “section 402(g)(3)(B)”;

4 (2) Section 404 of the Surface Mining Control
5 and Reclamation Act of 1977 (30 U.S.C. 1234) is
6 amended by striking “section 402(g)(4)” and insert-
7 ing “section 402(g)(3)”.

8 (3) Section 409(b) of the Surface Mining Con-
9 trol and Reclamation Act of 1977 (30 U.S.C.
10 1239(b)) is amended by striking “paragraphs (1)
11 and (5)” and inserting “paragraphs (1) and (4)”.

12 (4) Section 701(34) of the Surface Mining Con-
13 trol and Reclamation Act of 1977 (30 U.S.C.
14 1291(34)) is amended by striking “section
15 402(g)(4)” and inserting “section 402(g)(3)”.

16 **SEC. 4. TEMPORARY FINANCIAL RELIEF.**

17 Section 402(h) of the Surface Mining Control and
18 Reclamation Act of 1977 (30 U.S.C. 1232(h)) is amended
19 by striking paragraph (1) and inserting the following:

20 “(1) Notwithstanding any other provision of law, for
21 fiscal year 2007 and each fiscal year thereafter, the Sec-
22 retary of the Interior shall, as of the beginning of the fis-
23 cal year, use an amount in the fund equal to the amount
24 of interest that was paid to the fund during the preceding

1 fiscal year and remains unexpended to make the transfers
2 under paragraph (2).”.

3 **SEC. 5. COLLECTION OF RECLAMATION FEES BY STATES**
4 **AND INDIAN TRIBES.**

5 Section 402 of the Surface Mining Control and Rec-
6 lamation Act of 1977 (30 U.S.C. 1232) (as amended by
7 section 4) is amended by adding at the end the following:

8 “(i) COLLECTION OF RECLAMATION FEES.—

9 “(1) IN GENERAL.—On the request of the Gov-
10 ernor of a State or head of a governing body of an
11 Indian tribe, the Secretary shall enter into an agree-
12 ment authorizing the State or Indian tribe to collect
13 the fees required under subsection (a) (referred to in
14 this subsection as the ‘reclamation fees’) on or after
15 July 1, 2006.

16 “(2) PAYMENTS.—

17 “(A) IN GENERAL.—Any operator of a coal
18 mining operation subject to this Act, with re-
19 spect to coal mined in a State or from land of
20 an Indian tribe that is subject to an agreement
21 entered into under paragraph (1), shall pay to
22 the head of the State agency or Indian tribe
23 that is responsible for collecting revenue from
24 coal mining operators (referred to in this sub-

1 section as the ‘agency head’) the reclamation
2 fees.

3 “(B) CERTIFICATION.—On receipt of the
4 reclamation fees under subparagraph (A), the
5 agency head shall—

6 “(i) certify to the Secretary receipt of
7 the fees;

8 “(ii) remit $\frac{1}{2}$ of the fees to the Sec-
9 retary; and

10 “(iii) retain $\frac{1}{2}$ of the fees as the
11 share due to the State or Indian tribe.

12 “(C) LIMITATION.—A State or Indian
13 tribe that collects reclamation fees under this
14 subsection is not eligible for an allocation under
15 subparagraph (A) or (B) of section 402(g)(1).

16 “(D) USE OF FUNDS.—Any reclamation
17 fees collected and retained by an agency head
18 under subparagraph (A) shall be used by the
19 State or Indian tribe for the purposes described
20 in section 403.”.

21 **SEC. 6. OBJECTIVES OF FUND.**

22 Section 403 of the Surface Mining Control and Rec-
23 lamation Act of 1977 (30 U.S.C. 1233(a)) is amended—

24 (1) in subsection (a)—

25 (A) in paragraph (1)—

1 (i) by striking “(1) the protection”
2 and inserting “(1)(A) the protection”;

3 (ii) in subparagraph (A) (as des-
4 ignated by clause (i)), by striking “general
5 welfare,”; and

6 (iii) by adding at the end the fol-
7 lowing:

8 “(B) the restoration of land and water re-
9 sources and the environment that—

10 “(i) have been degraded by the ad-
11 verse effects of coal mining practices; and

12 “(ii) are adjacent to a site that has
13 been remediated under subparagraph
14 (A);”; and

15 (B) in paragraph (2), by striking “health,
16 safety, and general welfare” and inserting
17 “health and safety”;

18 (2) in subsection (b)—

19 (A) by striking the subsection heading and
20 inserting “Water Supply Restoration.—”; and

21 (B) in paragraph (1), by striking “up to
22 30 percent of the”; and

23 (3) in the second sentence of subsection (c), by
24 inserting “, subject to the approval of the Sec-
25 retary,” after “amendments”.

1 **SEC. 7. RECLAMATION OF RURAL LAND.**

2 Section 406 of the Surface Mining Control and Rec-
3 lamation Act of 1977 (30 U.S.C. 1236) is amended—

4 (1) in subsection (h), by striking “Soil Con-
5 servation Service” and inserting “Natural Resources
6 Conservation Service”; and

7 (2) by adding at the end the following:

8 “(i) There are authorized to be appro-
9 priated to the Secretary of Agriculture,
10 from amounts in the Treasury other than
11 amounts in the fund, such sums as are
12 necessary to carry out this section.”.

13 **SEC. 8. LIENS.**

14 Section 408(a) of the Surface Mining Control and
15 Reclamation Act of 1977 (30 U.S.C. 1238) is amended
16 in the last sentence by striking “who owned the surface
17 prior to May 2, 1977, and”.

18 **SEC. 9. REMINING.**

19 (a) INCENTIVES.—Title IV of the Surface Mining
20 Control and Reclamation Act of 1977 (30 U.S.C. 1231
21 et seq.) is amended by adding at the end the following:

22 **“SEC. 415. REMINING INCENTIVES.**

23 “(a) IN GENERAL.—Notwithstanding any other pro-
24 vision of this Act, the Secretary may, after opportunity
25 for public comment, promulgate regulations that describe
26 conditions under which amounts in the fund may be used

1 to provide incentives to promote reining of eligible land
2 under section 404 in a manner that leverages the use of
3 amounts from the fund to achieve more reclamation with
4 respect to the eligible land than would be achieved without
5 the incentives.

6 “(b) REQUIREMENTS.—Any regulations promulgated
7 under subsection (a) shall specify that the incentives shall
8 apply only if the Secretary of the Interior determines, with
9 the concurrence of the State regulatory authority referred
10 to in title V, that, without the incentives, the eligible land
11 would not be likely to be reined and reclaimed.

12 “(c) INCENTIVES.—

13 “(1) IN GENERAL.—Incentives that may be con-
14 sidered for inclusion in the regulations promulgated
15 under subsection (a) include—

16 “(A) a rebate or waiver of the reclamation
17 fees required under section 402(a); and

18 “(B) the use of amounts in the fund to
19 provide financial assurance for reining oper-
20 ations in lieu of all or a portion of the perform-
21 ance bonds required under section 509.

22 “(2) LIMITATIONS.—

23 “(A) USE.—A rebate or waiver under
24 paragraph (1)(A) shall be used only for oper-
25 ations that—

1 “(i) remove or reprocess abandoned
2 coal mine waste; or

3 “(ii) conduct remining activities that
4 meet the priorities specified in paragraph
5 (1) or (2) of section 403(a).

6 “(B) AMOUNT.—The amount of a rebate
7 or waiver provided as an incentive under para-
8 graph (1)(A) to remine or reclaim eligible land
9 shall not exceed the estimated cost of reclaim-
10 ing the eligible land under this section”.

11 (b) EXTENSION OF AUTHORITY.—Section 510(e) of
12 the Surface Mining Control and Reclamation Act of 1977
13 (30 U.S.C. 1260(e)) is amended in the last sentence by
14 striking “2004” and inserting “2015”.

15 **SEC. 10. INTEREST TRANSFERS.**

16 Notwithstanding any other provision of law, interest
17 credited to the fund established by section 401 of the Sur-
18 face Mining Control and Reclamation Act of 1977 (30
19 U.S.C. 1231) that are not transferred to the Combined
20 Benefit Fund referred to in section 402(h) of that Act
21 (30 U.S.C. 1232(h)), before the date of enactment of this
22 Act shall be available for fiscal year 2006 and thereafter
23 for the transfers referred to in section 402(h)(2) of that

- 1 Act (30 U.S.C. 1232(h)(2)), in the same manner as are
- 2 other amounts available for the transfers.

○