

115TH CONGRESS
1ST SESSION

S. 738

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.

IN THE SENATE OF THE UNITED STATES

MARCH 27, 2017

Mr. MANCHIN (for himself, Mr. BROWN, Mr. Kaine, Mr. Casey, and Mr. Warner) 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 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.

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

6 SEC. 2. ECONOMIC REVITALIZATION FOR COAL COUNTRY.

12 “(a) DEFINITION OF COMMITTED.—In this section:

“**(2) INCLUSION.**—The term ‘committed’ includes, with respect to a project agreement, any amount used for project planning under subsection (g).”

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1 for the purpose of promoting economic revitalization, di-
2 versification, and development in economically distressed
3 communities through the reclamation and restoration of
4 land and water resources adversely affected by coal mining
5 carried out before August 3, 1977.

6 “(c) USE OF FUNDS.—Funds distributed to a State
7 or Indian tribe under subsection (d) shall be used only
8 for those projects that meet the following criteria:

9 “(1) RELATED TO THE RECLAMATION OF ABAN-
10 DONED MINE LAND AND WATERS.—The project is
11 designed—

12 “(A) to achieve one or more of the prior-
13 ities stated in section 403(a); or

14 “(B) to be conducted on land adjacent to
15 eligible land and waters described in section
16 403(a) that has previously been remediated or
17 will be remediated under this section.

18 “(2) CONTRIBUTION TO FUTURE ECONOMIC OR
19 COMMUNITY DEVELOPMENT.—

20 “(A) IN GENERAL.—The project is reason-
21 ably likely to create favorable conditions, as
22 demonstrated in accordance with subparagraph
23 (B), for the economic development of the
24 project site or promote the general welfare

1 through economic and community development
2 of the area in which the project is conducted.

3 “(B) DEMONSTRATION OF CONDITIONS.—

4 The conditions referred to in subparagraph (A)
5 may be demonstrated by any documentation—

6 “(i) of the role of the project in the
7 economic development strategy or other
8 economic and community development
9 planning process of the applicable area;

10 “(ii) of the planned economic and
11 community use of the project site after the
12 primary reclamation activities are com-
13 pleted, which may include contracts, agree-
14 ments in principle, or other evidence that,
15 once reclaimed, the site is reasonably an-
16 ticipated to be used for one or more indus-
17 trial, commercial, residential, agricultural,
18 or recreational purposes; or

19 “(iii) agreed to by the State or Indian
20 tribe that demonstrates the project will
21 meet the criteria set forth in this sub-
22 section.

23 “(3) LOCATION IN COMMUNITY AFFECTED BY
24 RECENT DECLINE IN MINING.—The project will be
25 conducted in a community—

1 “(A) that has been adversely affected eco-
 2 nomically by a reduction in coal mining-related
 3 activity over the preceding 5 years, as dem-
 4 onstrated by employment data, per capita in-
 5 come, or other indicators of reduced economic
 6 activity attributable to the reduction; or

7 “(B)(i) that has traditionally relied on coal
 8 mining for a substantial portion of the economy
 9 of the community; and

10 “(ii) in which the economic contribution of
 11 coal mining has significantly declined.

12 “(4) STAKEHOLDER COLLABORATION.—The
 13 project has been—

14 “(A) the subject of project planning under
 15 subsection (g); and

16 “(B) the focus of collaboration, including
 17 partnerships, as appropriate, with interested
 18 persons or local organizations.

19 “(5) ELIGIBLE APPLICANTS.—The project has
 20 been proposed and will be executed by entities of
 21 State, local, county, or tribal government, which may
 22 include subcontracting project-related activities, as
 23 appropriate.

24 “(d) DISTRIBUTION OF FUNDS.—

25 “(1) UNCERTIFIED STATES.—

1 “(A) IN GENERAL.—Of the amount made
2 available under subsection (b), the Secretary
3 shall distribute \$195,000,000 for each of fiscal
4 years 2018 through 2022 to States and Indian
5 tribes that have a State program approved
6 under section 405 or are referred to in section
7 402(g)(8)(B), and have not made a certification
8 under section 411(a) in which the Secretary has
9 concurred, as follows:

10 “(i) FISCAL YEARS 2018 AND 2019.—
11 For each of fiscal years 2018 and 2019,
12 the Secretary shall allocate to each State
13 and Indian tribe the funds through a for-
14 mula based on the quantity of coal histori-
15 cally produced in each State or from the
16 land of each Indian tribe before August 3,
17 1977.

18 “(ii) FISCAL YEARS 2020 THROUGH
19 2022.—For each of fiscal years 2020
20 through 2022, the Secretary shall allocate
21 to each State and Indian tribe—

22 “(I) the amount allocated to the
23 State or Indian tribe for fiscal year
24 2018, plus any amount reallocated to
25 the State or Indian tribe under this

1 paragraph, if the State or Indian tribe
2 has committed the full amount of the
3 allocation of the State or Indian tribe
4 for the preceding fiscal year to eligible
5 projects; or

6 “(II) if the State or Indian tribe
7 has not committed the full amount of
8 the allocation of the State or Indian
9 tribe for the preceding fiscal year to
10 eligible projects, an amount equal to
11 the lesser of—

12 “(aa) the amount the State
13 or Indian tribe has committed to
14 eligible projects from the alloca-
15 tion of the State or Indian tribe
16 for the preceding fiscal year; and

17 “(bb) the amount allocated
18 to the State or Indian tribe for
19 fiscal year 2018.

20 “(iii) FISCAL YEAR 2023.—For fiscal
21 year 2023, the Secretary shall allocate to
22 each State and Indian tribe the amount re-
23 allocated to the State or Indian tribe under
24 subparagraph (B), if the State or Indian
25 tribe has committed the full amount of the

allocation of the State or Indian tribe for
fiscal year 2022 to eligible projects.

“(B) REALLOCATION OF UNCOMMITTED
FUNDS.—

“(i) FISCAL YEAR 2020 THROUGH
2022.—For each of fiscal years 2020
through 2022, the Secretary shall reallo-
cate in accordance with clause (iii) any
amount available for distribution under
this subsection that has not been com-
mitted to eligible projects in the preceding
2 fiscal years, among the States and In-
dian tribes that have committed to eligible
projects the full amount of the annual allo-
cation of the State or Indian tribe for the
preceding fiscal year as described in clause
(iii).

“(ii) FISCAL YEAR 2023.—For fiscal
year 2023, the Secretary shall reallocate in
accordance with clause (iii) any amount
available for distribution under this sub-
section that has not been committed to eli-
gible projects or distributed under sub-
paragraph (A)(iii), among the States and
Indian tribes that have committed to eligi-

ble projects the full amount of the annual allocation of the State or Indian tribe for fiscal year 2022.

“(iii) AMOUNT OF REALLOCATION.—

The amount reallocated to each State and Indian tribe under each of clauses (i) and (ii) shall be determined by the Secretary to reflect, to the extent practicable—

“(I) the proportion of unreclaimed eligible land and waters the State or Indian tribe has in the inventory maintained under section 403(c); and

“(II) the proportion of coal mining employment loss incurred in the State or Indian land, respectively, as determined by the Mine Safety and Health Administration, over the 5-year period preceding the fiscal year for which the reallocation is made.

“(C) SUPPLEMENTAL FUNDS.—Funds distributed under this subsection—

“(i) shall be in addition to, and shall not affect, the amount of funds distributed

1 to States and Indian tribes under section
2 401(f); and

3 “(ii) shall not reduce any funds dis-
4 tributed to a State or Indian tribe by rea-
5 son of the application of section 402(g)(8).

6 “(2) ADDITIONAL FUNDING TO CERTAIN
7 STATES AND INDIAN TRIBES.—

8 “(A) ELIGIBILITY.—Of the amount made
9 available under subsection (b), the Secretary
10 shall distribute \$5,000,000 for each of the 5
11 fiscal years beginning in fiscal year 2018 to
12 States and Indian tribes that—

13 “(i) have a State program approved
14 under section 405; and

15 “(ii)(I) have made a certification
16 under section 411(a) in which the Sec-
17 retary has concurred; or

18 “(II) receive an allocation by reason
19 of the application of section 402(g)(8)(A).

20 “(B) APPLICATION FOR FUNDS.—

21 “(i) IN GENERAL.—Using the process
22 described in section 405(f), any State or
23 Indian tribe described in subparagraph (A)
24 may submit a grant application to the Sec-
25 retary for funds under this paragraph.

1 “(ii) REVIEW.—The Secretary shall
2 review each grant application to confirm
3 that the projects identified in the applica-
4 tion for funding are eligible under sub-
5 section (c).

6 “(C) DISTRIBUTION OF FUNDS.—The
7 amount of funds distributed to each State and
8 Indian tribe under this paragraph shall be de-
9 termined by the Secretary based on the dem-
10 onstrated need for the funding to accomplish
11 the purposes of this section.

12 “(e) RESOLUTION OF CONCERNS OF SECRETARY;
13 CONGRESSIONAL NOTIFICATION.—If the Secretary does
14 not agree with a State or Indian tribe that a proposed
15 project meets the criteria set forth in subsection (c)—

16 “(1) the Secretary and the State or Indian tribe
17 shall meet and confer for a period of not less than
18 30 days to resolve the concerns of the Secretary;

19 “(2) during that period, the Secretary may con-
20 sult with any appropriate Federal agency, such as
21 the Appalachian Regional Commission, the Eco-
22 nomic Development Administration, and the Bureau
23 of Indian Affairs, to assist with the resolution of the
24 concerns; and

1 “(3) at the end of that period, if the concerns
2 of the Secretary are not resolved the Secretary shall
3 provide to Congress an explanation of the concerns.

4 “(f) ACID MINE DRAINAGE TREATMENT.—

5 “(1) IN GENERAL.—Subject to paragraph (3), a
6 State or Indian tribe that receives funds under this
7 section may retain such portion of the funds as is
8 necessary to supplement the acid mine drainage
9 abatement and treatment fund of the State or In-
10 dian tribe established under section 402(g)(6)(A),
11 for future operation and maintenance costs for the
12 treatment of acid mine drainage associated with the
13 individual projects funded under this section.

14 “(2) APPLICATION.—A State or Indian tribe
15 shall specify the total funds allotted for costs de-
16 scribed in paragraph (1) in the application of the
17 State or Indian tribe submitted under subsection
18 (d)(2)(B).

19 “(3) CONDITION.—A State or Indian tribe may
20 retain and use funds under this subsection only if
21 the State or Indian tribe demonstrates that the an-
22 nual grant distributed to the State or Indian tribe
23 pursuant to section 401(f), including any interest
24 from the acid mine drainage abatement and treat-
25 ment fund of the State or Indian tribe that is not

1 used for the operation or maintenance of preexisting
 2 acid mine drainage treatment systems, is insufficient
 3 to fund the operation and maintenance of any acid
 4 mine drainage treatment system associated with an
 5 individual project funded under this section.

6 “(g) PROJECT PLANNING AND ADMINISTRATION.—

7 “(1) STATES AND INDIAN TRIBES.—

8 “(A) IN GENERAL.—A State or Indian
 9 tribe may use up to 10 percent of the amounts
 10 distributed to the State or Indian tribe under
 11 this section for project planning and the costs
 12 of administering this section.

13 “(B) PLANNING REQUIREMENTS.—Plan-
 14 ning under this paragraph may include—

15 “(i) identification of eligible projects;

16 “(ii) updating the inventory referred
 17 to in section 403(c);

18 “(iii) developing project designs;

19 “(iv) preparing cost estimates; or

20 “(v) engaging in other similar activi-
 21 ties necessary to facilitate reclamation ac-
 22 tivities under this section.

23 “(2) SECRETARY.—In addition to amounts
 24 available for distribution under subsection (b), the
 25 Secretary may expend, without further appropria-

1 tion, not more than \$3,000,000 for the 5 fiscal years
 2 beginning after the date of enactment of the RE-
 3 CLAIM Act of 2017 for staffing and other adminis-
 4 trative expenses necessary to carry out this section.

5 “(h) REPORT TO CONGRESS.—Each State and Indian
 6 tribe to which funds are distributed under this section
 7 shall provide to Congress and the Secretary at the end
 8 of each fiscal year for which the funds are distributed a
 9 detailed report on—

10 “(1) the various projects that have been under-
 11 taken with the funds; and

12 “(2) the community and economic benefits that
 13 are resulting, or are expected to result, from the use
 14 of the funds.”.

15 (b) CLERICAL AMENDMENT.—The table of contents
 16 in the first section of the Surface Mining Control and Rec-
 17 lamation Act of 1977 (30 U.S.C. prec. 1201) is amended
 18 by adding at the end of the items relating to title IV the
 19 following:

“Sec. 415. Remaining incentives.

“Sec. 416. Abandoned mine land economic revitalization.”.

20 **SEC. 3. TECHNICAL AND CONFORMING AMENDMENTS.**

21 (a) ABANDONED MINE RECLAMATION FUND AND
 22 PURPOSES.—Section 401(c) of the Surface Mining Con-
 23 trol and Reclamation Act of 1977 (30 U.S.C. 1231) is
 24 amended—

1 (1) in subsection (c)—

2 (A) in paragraph (10), by striking “and”
3 at the end;

4 (B) by redesignating paragraph (11) as
5 paragraph (12); and

6 (C) by inserting after paragraph (10) the
7 following:

8 “(11) to implement section 416; and”; and

9 (2) in subsection (d)(3), by inserting “and sec-
10 tion 416(b)” before the period at the end.

11 (b) RECLAMATION FEE.—Section 402(g) of the Sur-
12 face Mining Control and Reclamation Act of 1977 (30
13 U.S.C. 1232(g)) is amended—

14 (1) in paragraph (1), in the matter preceding
15 subparagraph (A), by inserting “and section 416”
16 after “subsection (h)”; and

17 (2) in paragraph (3), by adding at the end the
18 following:

19 “(F) For the purpose of section
20 416(b)(2)(A).”.

21 (c) OBJECTIVES OF FUND.—Section 403(c) of the
22 Surface Mining Control and Reclamation Act of 1977 (30
23 U.S.C. 1233(c)) is amended—

24 (1) in the first sentence—

1 (A) by striking “For” and inserting the
2 following:

3 “(1) IN GENERAL.—For”;

4 (B) by inserting “any of” after “which
5 meet”; and

6 (C) by striking “paragraphs (1) and (2)
7 of”;

8 (2) in the second sentence—

9 (A) by striking “Under” and inserting the
10 following:

11 “(2) AMENDMENTS.—

12 “(A) IN GENERAL.—Under”; and

13 (B) by inserting after subparagraph (A)
14 (as so designated) the following:

15 “(B) ADVANCED TECHNOLOGIES.—As
16 practicable, States and Indian tribes shall offer
17 amendments described in subparagraph (A)
18 based on the use of remote sensing, global posi-
19 tioning systems, and other advanced tech-
20 nologies.”;

21 (3) by striking “The Secretary shall provide”
22 and inserting the following:

23 “(3) ASSISTANCE.—The Secretary shall pro-
24 vide”;

1 (4) by striking “The Secretary shall compile”
2 and inserting the following:

3 “(4) INVENTORY.—

4 “(A) IN GENERAL.—The Secretary shall
5 compile”;

6 (5) in the last sentence by striking “On” and
7 inserting the following:

8 “(B) PROJECTS.—On”; and

9 (6) by adding at the end the following:

10 “(C) UPDATES.—The Secretary may per-
11 form any work necessary to amend any entry in
12 the inventory that has not been updated by a
13 State or Indian tribe within the preceding 3
14 years to ensure that the entry is up-to-date and
15 accurate.”.

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