

116TH CONGRESS  
2D SESSION

# S. 3971

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

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## IN THE SENATE OF THE UNITED STATES

JUNE 17, 2020

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

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## 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 2020”.

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 “18.2  
2 cents”;

3 (2) by striking “12 cents” and inserting “7.8  
4 cents”; and

5 (3) by striking “8 cents” and inserting “5.2  
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 2020, the Sec-  
22 retary of the Interior shall distribute for fiscal year  
23 2021 to each State and each Indian tribe from  
24 which the amounts were withheld an amount equal

1 to the total amount so withheld from the State or  
 2 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 2021 through 2036, 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 project;

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

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

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

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

7 “(I) provide notice to adjacent and downstream landowners and the public; and

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

9 “(4) PROJECT APPROVAL.—Not later than 120 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 of the Interior

1 shall complete a study of technologies for use in the aban-  
2 doned mine land reclamation program established under  
3 title IV of the Surface Mining Control and Reclamation  
4 Act of 1977 (30 U.S.C. 1231 et seq.) that would improve  
5 reclamation and reduce costs under the program, includ-  
6 ing the application of technical innovations in the tech-  
7 nology development and transfer program of the Office of  
8 Surface Mining Reclamation and Enforcement, includ-  
9 ing—

- 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 of  
18 the Interior shall submit to the Committee on Energy and  
19 Natural Resources of the Senate and the Committee on  
20 Natural Resources of the House of Representatives a re-  
21 port describing the results of the study that includes rec-  
22 ommendations for areas of improvement identified under  
23 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) IN GENERAL.—Not later than 180 days after the  
6 date of enactment of this Act, the Secretary of the Interior  
7 shall complete a study—

8 (1) to identify areas throughout the abandoned  
9 mine land reclamation program established under  
10 title IV of the Surface Mining Control and Reclama-  
11 tion Act of 1977 (30 U.S.C. 1231 et seq.) in which  
12 costs could be reduced; and

13 (2) to determine the ratio of overhead spending  
14 in the administration of the abandoned mine land  
15 reclamation program described in paragraph (1) to  
16 spending on the clean up of abandoned mine land  
17 sites.

18 (b) REPORT.—As soon as practicable after com-  
19 pleting the study under subsection (a), the Secretary of  
20 the Interior shall submit to the Committee on Energy and  
21 Natural Resources of the Senate and the Committee on  
22 Natural Resources of the House of Representatives a re-  
23 port describing the results of the study that includes rec-  
24 ommendations for areas of improvement identified under  
25 the study.

