

115TH CONGRESS
1ST SESSION

S. 728

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. McCONNELL (for himself and Mrs. CAPITO) 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,*

2 This Act may be cited as the “Revitalizing the Econ-
3 omy of Coal Communities by Leveraging Local Activities
4 and Investing More Act of 2017” or the “RECLAIM Act
5 of 2017”.

6 SEC. 2. ECONOMIC REVITALIZATION FOR COAL COUNTRY.

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

“SEC. 416. ABANDONED MINE LAND ECONOMIC REVITALIZATION.

“(a) PURPOSE.—The purpose of this section is to promote economic revitalization, diversification, and development in economically distressed mining communities through the reclamation and restoration of land and water resources adversely affected by coal mining carried out before August 3, 1977.

“(b) IN GENERAL.—From amounts deposited into the fund under section 401(b) before October 1, 2007, and not otherwise appropriated to the extent such funds are available, \$200,000,000 shall be made available to the Secretary, without further appropriation, for each of fiscal years 2017 through 2021 for distribution to States and Indian tribes in accordance with this section for reclamation and restoration projects at sites identified as priorities under section 403(a): *Provided*, That if less than

1 \$200,000,000 is available in any fiscal year to the Sec-
 2 retary, such remaining amount shall be made available to
 3 the Secretary, without further appropriation, and such fis-
 4 cal year shall end distributions made available under this
 5 section.

6 “(c) USE OF FUNDS FOR PRIORITY SITES.—Funds
 7 distributed to a State or Indian tribe under subsection (d)
 8 shall be used only for projects classified under the prior-
 9 ities of section 403(a). In addition, if the project is classi-
 10 fied under paragraph (3) of such section, the project also
 11 must meet the following criteria:

12 “(1) CONTRIBUTION TO FUTURE ECONOMIC OR
 13 COMMUNITY DEVELOPMENT.—

14 “(A) IN GENERAL.—The project, upon
 15 completion of reclamation, is intended to create
 16 favorable conditions for the economic develop-
 17 ment of the project site or create favorable con-
 18 ditions that promote the general welfare
 19 through economic and community development
 20 of the area in which the project is conducted.

21 “(B) DEMONSTRATION OF CONDITIONS.—

22 Such conditions are demonstrated by—

23 “(i) documentation of the role of the
 24 project in such area’s economic develop-

ment strategy or other economic and community development planning process;

“(ii) any other documentation of the planned economic and community use of the project site after the primary reclamation activities are completed, which may include contracts, agreements in principle, or other evidence that, once reclaimed, the site is reasonably anticipated to be used for one or more industrial, commercial, residential, agricultural, or recreational purposes; or

“(iii) any other documentation agreed to by the State or Indian tribe that demonstrates the project will meet the criteria set forth in this subsection.

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

“(A) that has been adversely affected economically by a recent reduction in coal mining-related activity, as demonstrated by employment data, per capita income, or other indicators of reduced economic activity attributable to such reduction; or

1 “(B)(i) that has historically relied on coal
2 mining for a substantial portion of its economy;
3 and

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

6 “(3) STAKEHOLDER COLLABORATION.—

7 “(A) IN GENERAL.—The project has been
8 the subject of project planning under subsection
9 (g) and has been the focus of collaboration, in-
10 cluding partnerships, as appropriate, with inter-
11 ested persons or local organizations.

12 “(B) PUBLIC NOTICE.—As part of project
13 planning, the public has been notified and has
14 been given an opportunity to comment at a
15 public meeting convened in a community near
16 the proposed site.

17 “(4) ELIGIBLE APPLICANTS.—The project has
18 been proposed by entities of State, local, county, or
19 tribal governments, or local organizations, and will
20 be approved and executed by State or tribal pro-
21 grams, approved under section 405 or referred to in
22 section 402(g)(8)(B), which may include subcon-
23 tracting project-related activities, as appropriate.

24 “(d) DISTRIBUTION OF FUNDS.—

25 “(1) UNCERTIFIED STATES.—

1 “(A) IN GENERAL.—From the amount
2 made available in subsection (b), the Secretary
3 shall distribute \$195,000,000 annually for each
4 of fiscal years 2017 through 2021 to States and
5 Indian tribes that have a State or tribal pro-
6 gram approved under section 405 or are re-
7 ferred to in section 402(g)(8)(B), and have not
8 made a certification under section 411(a) in
9 which the Secretary has concurred, as follows:

10 “(i) Four-fifths of such amount shall
11 be distributed based on the proportion of
12 the amount of coal historically produced in
13 each State or from the lands of each In-
14 dian tribe concerned before August 3,
15 1977.

16 “(ii) One-fifth of such amount shall be
17 distributed based on the proportion of rec-
18 lamation fees paid during the period of fis-
19 cal years 2012 through 2016 for lands in
20 each State or lands of each Indian tribe
21 concerned.

22 “(B) SUPPLEMENTAL FUNDS.—Funds dis-
23 tributed under this section—

1 “(i) shall be in addition to, and shall
 2 not affect, the amount of funds distrib-
 3 uted—

4 “(I) to States and Indian tribes
 5 under section 401(f); and

6 “(II) to States and Indian tribes
 7 that have made a certification under
 8 section 411(a) in which the Secretary
 9 has concurred, subject to the cap de-
 10 scribed in section 402(i)(3); and

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

14 “(2) ADDITIONAL FUNDING TO CERTAIN
 15 STATES AND INDIAN TRIBES.—

16 “(A) ELIGIBILITY.—From the amount
 17 made available in subsection (b), the Secretary
 18 shall distribute \$5,000,000 annually for each of
 19 the five fiscal years beginning with fiscal year
 20 2017 to States and Indian tribes that have a
 21 State program approved under section 405 and
 22 have made a certification under section 411(a)
 23 in which the Secretary has concurred.

24 “(B) APPLICATION FOR FUNDS.—Using
 25 the process in section 405(f), any State or In-

dian tribe described in subparagraph (A) may submit a grant application to the Secretary for funds under this paragraph. The Secretary shall review each grant application to confirm that the projects identified in the application for funding are eligible under subsection (c).

“(C) DISTRIBUTION OF FUNDS.—The amount of funds distributed to each State or Indian tribe under this paragraph shall be determined by the Secretary based on the demonstrated need for the funding to accomplish the purpose of this section.

“(3) REALLOCATION OF UNCOMMITTED FUNDS.—

“(A) COMMITTED DEFINED.—For purposes of this paragraph the term ‘committed’—

“(i) means that funds received by the State or Indian tribe—

“(I) have been exclusively applied to or reserved for a specific project and therefore are not available for any other purpose; or

“(II) have been expended or designated by the State or Indian tribe for the completion of a project;

1 “(ii) includes use of any amount for
2 project planning under subsection (g); and

3 “(iii) reflects an acknowledgment by
4 Congress that, based on the documentation
5 required under subsection (c)(2)(B), any
6 unanticipated delays to commit such funds
7 that are outside the control of the State or
8 Indian tribe concerned shall not affect its
9 allocations under this section.

10 “(B) FISCAL YEARS 2020 AND 2021.—For
11 each of fiscal years 2020 and 2021, the Sec-
12 retary shall reallocate in accordance with sub-
13 paragraph (D) any amount available for dis-
14 tribution under this subsection that has not
15 been committed to eligible projects in the pre-
16 ceding 2 fiscal years, among the States and In-
17 dian tribes that have committed to eligible
18 projects the full amount of their annual alloca-
19 tion for the preceding fiscal year.

20 “(C) FISCAL YEAR 2022.—For fiscal year
21 2022, the Secretary shall reallocate in accord-
22 ance with subparagraph (D) any amount avail-
23 able for distribution under this subsection that
24 has not been committed to eligible projects or
25 distributed under paragraph (1)(A), among the

1 States and Indian tribes that have committed to
2 eligible projects the full amount of their annual
3 allocation for the preceding fiscal years.

4 “(D) AMOUNT OF REALLOCATION.—The
5 amount reallocated to each State or Indian
6 tribe under each of subparagraphs (B) and (C)
7 shall be determined by the Secretary to reflect,
8 to the extent practicable—

9 “(i) the proportion of unreclaimed eli-
10 gible lands and waters the State or Indian
11 tribe has in the inventory maintained
12 under section 403(c);

13 “(ii) the average of the proportion of
14 reclamation fees paid for lands in each
15 State or lands of each Indian tribe con-
16 cerned; and

17 “(iii) the proportion of coal mining
18 employment loss incurred in the State or
19 on lands of the Indian tribe, respectively,
20 as determined by the Mine Safety and
21 Health Administration, over the 5-year pe-
22 riod preceding the fiscal year for which the
23 reallocation is made.

24 “(e) RESOLUTION OF SECRETARY’S CONCERNS; CON-
25 GRESSIONAL NOTIFICATION.—If the Secretary does not

1 agree with a State or Indian tribe that a proposed project
2 meets the criteria set forth in subsection (c)—

3 “(1) the Secretary and the State or tribe shall
4 meet and confer for a period of not more than 45
5 days to resolve the Secretary’s concerns, except that
6 such period may be shortened by the Secretary if the
7 Secretary’s concerns are resolved;

8 “(2) during that period, at the State’s or In-
9 dian tribe’s request, the Secretary may consult with
10 any appropriate Federal agency; and

11 “(3) at the end of that period, if the Secretary’s
12 concerns are not resolved the Secretary shall provide
13 to the Committee on Natural Resources of the
14 House of Representatives and the Committee on En-
15 ergy and Natural Resources of the Senate an expla-
16 nation of the concerns and such project proposal
17 shall not be eligible for funds distributed under this
18 section.

19 “(f) ACID MINE DRAINAGE TREATMENT.—

20 “(1) IN GENERAL.—Subject to paragraph (2), a
21 State or Indian tribe that receives funds under this
22 section may use up to 30 percent of such funds as
23 necessary to supplement the State’s or tribe’s acid
24 mine drainage abatement and treatment fund estab-
25 lished under section 402(g)(6)(A), for future oper-

1 ation and maintenance costs for the treatment of
2 acid mine drainage associated with the individual
3 projects funded under this section. A State or Indian
4 tribe shall specify the total funds allotted for such
5 costs in its application submitted under subsection
6 (d)(2)(B).

7 “(2) CONDITION.—A State or Indian tribe may
8 use funds under this subsection only if the State or
9 tribe can demonstrate that the annual grant distrib-
10 uted to the State or tribe pursuant to section 401(f),
11 including any interest from the State’s or tribe’s
12 acid mine drainage abatement and treatment fund
13 that is not used for the operation or maintenance of
14 preexisting acid mine drainage treatment systems, is
15 insufficient to fund the operation and maintenance
16 of any acid mine drainage treatment system associ-
17 ated with an individual project funded under this
18 section.

19 “(g) PROJECT PLANNING AND ADMINISTRATION.—

20 “(1) STATES AND INDIAN TRIBES.—

21 “(A) IN GENERAL.—A State or Indian
22 tribe may use up to 10 percent of its annual
23 distribution under this section for project plan-
24 ning and the costs of administering this section.

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

3 “(i) identifying eligible projects;

4 “(ii) updating the inventory referred
5 to in section 403(c);

6 “(iii) developing project designs;

7 “(iv) collaborating with stakeholders,
8 including public meetings;

9 “(v) preparing cost estimates; or

10 “(vi) engaging in other similar activi-
11 ties necessary to facilitate reclamation ac-
12 tivities under this section.

13 “(2) SECRETARY.—The Secretary may expend,
14 from amounts made available to the Secretary under
15 section 402(g)(3)(D), not more than \$3,000,000
16 during the fiscal years for which distributions occur
17 under subsection (b) for staffing and other adminis-
18 trative expenses necessary to carry out this section.

19 “(h) REPORT TO CONGRESS.—The Secretary shall
20 provide to the Committee on Natural Resources of the
21 House of Representatives, the Committees on Appropria-
22 tions of the House of Representatives and the Senate, and
23 the Committee on Energy and Natural Resources of the
24 Senate at the end of each fiscal year for which such funds
25 are distributed a detailed report—

1 “(1) on the various projects that have been un-
2 dertaken with such funds;

3 “(2) the extent and degree of reclamation using
4 such funds that achieved the priorities described in
5 paragraph (1) or (2) of section 403(a);

6 “(3) the community and economic benefits that
7 are resulting from, or are expected to result from,
8 the use of the funds that achieved the priorities de-
9 scribed in paragraph (3) of section 403(a); and

10 “(4) the reduction since the previous report in
11 the inventory referred to in section 403(c).”.

12 (b) CLERICAL AMENDMENT.—The table of contents
13 in the first section of the Surface Mining Control and Rec-
14 lamation Act of 1977 is amended by adding at the end
15 of the items relating to title IV the following:

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

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

17 The Surface Mining Control and Reclamation Act of
18 1977 is amended—

19 (1) in section 401(c) (30 U.S.C. 1231(c)), by
20 striking “and” after the semicolon at the end of
21 paragraph (10), by redesignating paragraph (11) as
22 paragraph (12), and by inserting after paragraph
23 (10) the following:

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

1 (2) in section 401(d)(3) (30 U.S.C.
2 1231(d)(3)), by striking “subsection (f)” and insert-
3 ing “subsection (f) and section 416(a)”;

4 (3) in section 402(g) (30 U.S.C. 1232(g))—

5 (A) in paragraph (1), by inserting “and
6 section 416” after “subsection (h)”;

7 (B) by adding at the end of paragraph (3)
8 the following:

9 “(F) For the purpose of section
10 416(d)(2)(A).”;

11 (4) in section 403(c) (30 U.S.C. 1233(c)), by
12 inserting after the second sentence the following:

13 “As practicable, States and Indian tribes shall offer
14 such amendments based on the use of remote sens-
15 ing, global positioning systems, and other advanced
16 technologies.”.

17 **SEC. 4. MINIMUM STATE PAYMENTS.**

18 Section 402(g)(8)(A) of the Surface Mining Control
19 and Reclamation Act of 1977 (30 U.S.C. 1232(g)(8)) is
20 amended by striking “\$3,000,000” and inserting
21 “\$5,000,000”.

22 **SEC. 5. GAO STUDY OF USE OF FUNDS.**

23 Not later than two years after the date of the enact-
24 ment of this Act, the Comptroller General of the United

1 States shall study and report to the Congress on uses of
 2 funds authorized by this Act, including regarding—

3 (1) the solvency of the Abandoned Mine Rec-
 4 lamation Fund; and

5 (2) the impact of such use on payments and
 6 transfers under the Surface Mining Control and
 7 Reclamation Act of 1977 (30 U.S.C. 1201) to—

8 (A) States for which a certification has
 9 been made under section 411 of such Act (30
 10 U.S.C. 1241);

11 (B) States for which such a certification
 12 has not been made; and

13 (C) transfers to United Mine Workers of
 14 America Combined Benefit Fund.

15 **SEC. 6. ABANDONED MINE LAND RECLAMATION AND RES-**
 16 **TORATION INITIATIVE.**

17 (a) IN GENERAL.—Subchapter I of chapter 145 of
 18 title 40, United States Code, is amended by adding at the
 19 end the following:

20 **“§ 14510. Abandoned mine land reclamation and res-**
 21 **toration initiative**

22 “(a) IN GENERAL.—The Appalachian Regional Com-
 23 mission may provide technical assistance, make grants,
 24 enter into contracts, or otherwise provide amounts to indi-
 25 viduals or entities in the Appalachian region for projects

1 and activities on lands, or on or in waters, that have been
 2 reclaimed or restored with amounts provided under title
 3 IV of the Surface Mining Control or Reclamation Act of
 4 1977 (30 U.S.C. 1231 et seq.) or that are eligible for such
 5 reclamation or restoration.

6 “(b) LIMITATION ON AVAILABLE AMOUNTS.—Of the
 7 cost of any activity eligible for a grant under this sec-
 8 tion—

9 “(1) not more than 50 percent may be provided
 10 from amounts appropriated to carry out this section;
 11 and

12 “(2) notwithstanding paragraph (1)—

13 “(A) in the case of a project to be carried
 14 out in a county for which a distressed county
 15 designation is in effect under section 14526,
 16 not more than 80 percent may be provided from
 17 amounts appropriated to carry out this section;
 18 and

19 “(B) in the case of a project to be carried
 20 out in a county for which an at-risk designation
 21 is in effect under section 14526, not more than
 22 70 percent may be provided from amounts ap-
 23 propriated to carry out this section.

24 “(c) SOURCES OF ASSISTANCE.—Subject to sub-
 25 section (b), a grant provided under this section may be

1 provided from amounts made available to carry out this
 2 section in combination with amounts made available—

3 “(1) under any other Federal program; or

4 “(2) from any other source.

5 “(d) FEDERAL SHARE.—Notwithstanding any provi-
 6 sion of law limiting the Federal share under any other
 7 Federal program, amounts made available to carry out
 8 this section may be used to increase that Federal share,
 9 as the Appalachian Regional Commission determines to be
 10 appropriate.”.

11 (b) CLERICAL AMENDMENT.—The analysis for chap-
 12 ter 145 of title 40, United States Code, is amended by
 13 inserting after the item relating to section 14509 the fol-
 14 lowing:

“14510. Abandoned mine land reclamation and restoration initiative.”.

15 **SEC. 7. HEADQUARTERS OF APPALACHIAN REGIONAL COM-**
 16 **MISSION.**

17 (a) FINDING.—Congress finds that—

18 (1) the Delta Regional Commission, the Denali
 19 Commission, and the Northern Border Regional
 20 Commission are each headquartered in their respec-
 21 tive region; and

22 (2) the headquarters of the Appalachian Re-
 23 gional Commission should be relocated from the Dis-
 24 trict of Columbia to a more affordable location in
 25 the Appalachian Region.

1 (b) LOCATION OF HEADQUARTERS.—

2 (1) IN GENERAL.—Section 14301 of title 40,
3 United States Code, is amended by adding at the
4 end the following:

5 “(g) HEADQUARTERS.—The headquarters of the
6 Commission shall be located in the Appalachian Region.”.

7 (2) IMPLEMENTATION.—The Federal Cochair-
8 man of the Appalachian Regional Commission shall
9 take such actions as may be necessary to carry out
10 the amendment made by paragraph (1).

○