

COMMUNITY RECLAMATION PARTNERSHIPS ACT

—
FEBRUARY 25, 2020.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed
—

Mr. GRIJALVA, from the Committee on Natural Resources,
submitted the following

R E P O R T

[To accompany H.R. 315]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 315) to amend the Surface Mining Control and Reclamation Act of 1977 to authorize partnerships between States and non-governmental entities for the purpose of reclaiming and restoring land and water resources adversely affected by coal mining activities before August 3, 1977, and for other purposes, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE BILL

The purpose of H.R. 315 is to amend the Surface Mining Control and Reclamation Act of 1977 to authorize partnerships between states and nongovernmental entities for the purpose of reclaiming and restoring land and water resources adversely affected by coal mining activities before August 3, 1977, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

The Surface Mining Control and Reclamation Act of 1977¹ (SMCRA) established a system for the reclamation of Abandoned Mine Lands (AML), managed by the Office of Surface Mining Reclamation and Enforcement (OSMRE). To qualify as an AML, a site must have been affected by coal mining activities and abandoned prior to August 3, 1977, and there must be no responsible party for the reclamation of the land under state or federal laws. OSMRE,

¹Pub. L. No. 95-87, 91 Stat. 445 (1977), <https://uscode.house.gov/statviewer.htm?volume=91&page=445> (codified as 30 U.S.C. §§ 1201-328.).

states, and tribes become responsible for the reclamation of these abandoned coal mines, which until properly reclaimed often present serious risks to public health and safety and serve as environmental and economic burdens for states and communities.

Despite significant progress being made on AML cleanup since the passage of SMCRA, the states and OSMRE estimate that there are still more than \$12.3 billion in cleanup costs remaining, and costs are increasing due to inflation and the discovery of new AML hazards.² The Committee believes that the underlying logic behind the AML program has not changed since 1977: responsibility for addressing these legacy sites rests with the coal industry, and the AML program needs to be reauthorized beyond its current expiration date of September 2021. The Committee is advancing separate legislation along those lines.

However, the Committee acknowledges that other parties outside the coal industry, such as environmental or wildlife organizations, have expressed a willingness to spend their own money to supplement AML funding and more quickly clean up streams and watersheds affected by abandoned coal mine sites. These third parties are often referred to as “Good Samaritans” or, in the context of H.R. 315, “Community Reclaimers,” and they have been successful in speeding up environmental restoration efforts in certain circumstances.

Due to potential liability under the Clean Water Act (CWA), however, third parties are strongly disincentivized from becoming involved in AML cleanup projects. These organizations rarely have the funds to cover the perpetual bonding and liability costs required for water treatment and CWA permit compliance, and it is nearly impossible for them to obtain a permit since they are unlikely to be able to treat mine wastewater to a level compliant with CWA standards. As a result, private funds that could be used to improve the environment are being left on the sidelines.

H.R. 315 addresses this problem by amending SMCRA to allow states with approved coal AML programs to provide a liability shield to third parties who wish to fund all or part of the cost of addressing existing sites on a state’s AML inventory, much as states currently do under existing law for approved AML contractors. Interested states would enter into a Memorandum of Understanding with the Environmental Protection Agency to set up a Community Reclaimers program, and projects carried out under that program that meet the requirements laid out in H.R. 315 would be exempt from liability under environmental laws in the same way that states currently are under SMCRA.

COMMITTEE ACTION

H.R. 315 was introduced on January 8, 2019, by Representative Darin LaHood (R-IL). The bill was referred solely to the Committee on Natural Resources, and within the Committee to the Subcommittee on Energy and Mineral Resources. The Subcommittee conducted a hearing on the bill on March 28, 2019. On May 1, 2019, the Natural Resources Committee met to consider the bill. The Subcommittee was discharged by unanimous consent. No

²See generally *Abandoned Mine Land Inventory System (e-AMLIS)*, OFFICE OF SURFACE MINING RECLAMATION & ENFT, <https://amlis.osmre.gov/> (last visited Jan. 7, 2020).

amendments were offered. The bill was adopted and ordered favorably reported to the House of Representatives by unanimous consent.

HEARINGS

For the purposes of section 103(i) of H. Res. 6 of the 116th Congress—the following hearing was used to develop or consider H.R. 315: legislative hearing by the Subcommittee on Energy and Mineral Resources held on March 28, 2019.

SECTION-BY-SECTION ANALYSIS

Section 1 provides the short title of the bill: the “Community Reclamation Partnerships Act.”

Section 2 notes that all references in the bill are considered to be made to SMCRA unless otherwise noted.

Section 3 amends SMCRA by adding a subsection (m) to section 405³ of that Act. This subsection clarifies state authority related to water treatment at abandoned mine sites by statutorily recognizing valid Memorandum of Understanding agreements entered into between the relevant state and federal agencies. These agreements must include specific procedures for ensuring that activities carried out under the agreement will result in improved water quality, monitoring of water quality to ensure that it has been improved, and the operation and maintenance of water treatment systems. States are required to give the public an opportunity to comment on any proposed agreement and must hold at least one public meeting concerning the agreement. Agreements must be approved by the Secretary of the Interior and the Administrator of the Environmental Protection Agency, and once approved they become part of the state’s approved AML reclamation plan under SMCRA.

Section 3 also adds a subsection (n) to section 405 of SMCRA, which provides for the establishment of Community Reclaimer Partnerships that allow eligible Community Reclaimers to participate in AML cleanup projects. This subsection also provides partial liability shielding to Community Reclaimers, in a similar fashion to current state AML contractors, by enabling the states to formally assume liability and compliance responsibility on their behalf under the existing SMCRA liability model.

Subsection (n) authorizes the Secretary of the Interior to approve a Community Reclaimer Partnership project if: (1) the proposed project will be conducted by eligible Community Reclaimers and/or approved contractors; (2) any abandoned mine drainage remediation involved will be consistent with the state’s approved agreement under SMCRA Section 405(m); (3) the project will reclaim a Priority 1, 2, or 3 abandoned mine site; (4) the project meets all of the submission criteria required for project applications; (5) the state has assumed responsibility for the project on behalf of the Community Reclaimer and the landowner except in cases of gross negligence or intentional misconduct; (6) the state has the necessary legal authority and financial resources to ensure completion of the project; and (7) the project would not require a coal mining permit under title V of SMCRA.

³Pub. L. No. 95–87, § 405, 91 Stat. at 459, <https://uscode.house.gov/statviewer.htm?volume=91&page=459> (codified at 30 U.S.C. § 1235).

Paragraph (2) of subsection (n) lists what must be submitted to the Secretary for a project to be approved. Paragraph (3) defines a “Community Reclaimer” as an entity that seeks to voluntarily assist a state with a reclamation project, has not caused any lands to become eligible for reclamation under Section 404 of SMCRA, is not a past or current owner of abandoned mine sites or any other site with ongoing reclamation obligations, and does not have any outstanding violations under SMCRA.

Section 4 recognizes approved agreements as appropriate standards at acid mine drainage (AMD) treatment sites in lieu of Clean Water Act (CWA) requirements, if a state has an approved agreement in place under SMCRA Section 405(m) that will ensure the improvement of water quality at impacted sites.

Section 5 requires states to include a list of proposed Community Reclaimer Partnership projects in their annual applications to the Secretary requesting support for their respective State Reclamation Programs.

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources’ oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII AND CONGRESSIONAL BUDGET ACT

1. *Cost of Legislation and the Congressional Budget Act.* With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, May 9, 2019.

Hon. RAÚL M. GRIJALVA,
*Chairman, Committee on Natural Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 315, the Community Reclamation Partnerships Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Janani Shankaran.

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 315, Community Reclamation Partnerships Act			
As ordered reported by the House Committee on Natural Resources on May 1, 2019			
By Fiscal Year, Millions of Dollars	2019	2019-2024	2019-2029
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Deficit Effect	0	0	0
Spending Subject to Appropriation (Outlays)	0	1	n.e.
Pay-as-you-go procedures apply?	No	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2030?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
n.e. = not estimated.			

H.R. 315 would authorize states with abandoned mine reclamation plans to enter into agreements with the federal government aimed at reducing water pollution caused by abandoned mines. The bill also would allow states to assume liability on behalf of individuals or groups that seek to participate in abandoned mine cleanup projects. Under the bill, states and other parties conducting certain water treatments under those agreements would not be required to meet water quality standards under the Clean Water Act.

Based on the costs of similar tasks, CBO expects that the Department of the Interior would need two additional employees, at an average annual cost of \$140,000 each, to manage the agreements and approve projects under those agreements. CBO estimates that implementing the bill would cost about \$1 million over the 2020–2024 period; any spending would be subject to the availability of appropriated funds.

The CBO staff contact for this estimate is Janani Shankaran. The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

2. General Performance Goals and Objectives. As required by clause 3(c)(4) of rule XIII, the general performance goals and objectives of this bill are to amend the Surface Mining Control and Reclamation Act of 1977 to authorize partnerships between states and nongovernmental entities for the purpose of reclaiming and restoring land and water resources adversely affected by coal mining activities before August 3, 1977.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

UNFUNDED MANDATES REFORM ACT STATEMENT

This bill contains no unfunded mandates.

EXISTING PROGRAMS

This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

PREEMPTION OF STATE, LOCAL, OR TRIBAL LAW

Any preemptive effect of this bill over state, local, or tribal law is intended to be consistent with the bill's purposes and text and the Supremacy Clause of Article VI of the U.S. Constitution.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

**SURFACE MINING CONTROL AND RECLAMATION ACT
OF 1977**

* * * * *

TITLE IV—ABANDONED MINE RECLAMATION

* * * * *

STATE RECLAMATION PROGRAMS

SEC. 405. (a) Not later than the end of the one hundred and eighty-day period immediately following the date of enactment of this Act, the Secretary shall promulgate and publish in the Federal Register regulations covering implementation of an abandoned mine reclamation program incorporating the provisions of title IV and establishing procedures and requirements for preparation, submission, and approval of State programs consisting of the plan and annual submissions of projects.

(b) Each State having within its borders coal mined lands eligible for reclamation under this title, may submit to the Secretary a State Reclamation Plan and annual projects to carry out the purposes of this title.

(c) The Secretary shall not approve, fund, or continue to fund a State abandoned mine reclamation program unless that State has an approved State regulatory program pursuant to section 503 of this Act.

(d) If the Secretary determines that State has developed and submitted a program for reclamation of abandoned mines and has the ability and necessary State legislation to implement the provisions of this title, sections 402 and 410 excepted, the Secretary shall approve such State program and shall grant to the State exclusive re-

sponsibility and authority to implement the provisions of the approved program: *Provided*, That the Secretary shall withdraw such approval and authorization if he determines upon the basis of information provided under this section that the State program is not in compliance with the procedures, guidelines, and requirements established under subsection 405(a).

(e) Each State Reclamation Plan shall generally identify the areas to be reclaimed, the purposes for which the reclamation is proposed, the relationship of the lands to be reclaimed and the proposed reclamation to surrounding areas, the specific criteria for ranking and identifying projects to be funded, and the legal authority and programmatic capability to perform such work in conformance with the provisions of this title.

(f) On an annual basis, each State having an approved State Reclamation Plan may submit to the Secretary an application for the support of the State program and implementation of specific reclamation projects. Such annual requests shall include such information as may be requested by the Secretary including:

- (1) a general description of each proposed project;
- (2) a priority evaluation of each proposed project;
- (3) a statement of the estimated benefits in such terms as: number of acres restored, miles of stream improved, acres of surface lands protected from subsidence, population protected from subsidence, air pollution, hazards of mine and coal refuse disposal area fires;
- (4) an estimate of the cost for each proposed project;
- (5) in the case of proposed research and demonstration projects, a description of the specific techniques to be evaluated or objective to be attained;
- (6) an identification of lands or interest therein to be acquired and the estimated cost; **[and]**
- (7) in each year after the first in which a plan is filed under this title, an inventory of each project funded under the previous year's grant: which inventory shall include details of financial expenditures on such project together with a brief description of each such project, including project locations, landowner's name, acreage, type of reclamation performed[.]; *and*
- (8) *a list of projects proposed under subsection (n).*

(g) The costs for each proposed project under this section shall include; actual construction costs, actual operation and maintenance costs of permanent facilities, planning and engineering costs, construction inspection costs, and other necessary administrative expenses.

(h) Upon approval of State Reclamation Plan by the Secretary and of the surface mine regulatory program pursuant to section 503, the Secretary shall grant, on an annual basis, funds to be expended in such State pursuant to subsection 402(g) and which are necessary to implement the State reclamation program as approved by the Secretary.

(i) The Secretary, through his designated agents, will monitor the progress and quality of the program. The States shall not be required at the start of any project to submit complete copies of plans and specifications.

(j) The Secretary shall require annual and other reports as may be necessary to be submitted by each State administering the ap-

proved State reclamation program with funds provided under this title. Such reports shall include that information which the Secretary deems necessary to fulfill his responsibilities under this title.

(k) Indian tribes having within their jurisdiction eligible lands pursuant to section 404 or from which coal is produced, shall be considered as a "State" for the purposes of this title except for purposes of subsection (c) of this section with respect to the Navajo, Hopi and Crow Indian Tribes

(1) No State shall be liable under any provision of Federal law for any costs or damages as a result of action taken or omitted in the course of carrying out a State abandoned mine reclamation plan approved under this section. This subsection shall not preclude liability for cost or damages as a result of gross negligence or intentional misconduct by the State. For purposes of the preceding sentence, reckless, willful, or wanton misconduct shall constitute gross negligence.

(m) *STATE MEMORANDA OF UNDERSTANDING FOR REMEDIATION OF MINE DRAINAGE.*—

(1) *IN GENERAL.*—A State with a State program approved under subsection (d) may enter into a memorandum of understanding with relevant Federal or State agencies (or both) to remediate mine drainage on abandoned mine land and water impacted by abandoned mines within the State. The memorandum may be updated as necessary and resubmitted for approval under this subsection.

(2) *MEMORANDA REQUIREMENTS.*—Such memorandum shall establish a strategy satisfactory to the State and Federal agencies that are parties to the memorandum, 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—

(A) ensuring that activities carried out to address mine drainage will result in improved water quality;

(B) monitoring, sampling, and the reporting of collected information as necessary to achieve the condition required under subparagraph (A);

(C) operation and maintenance of treatment systems as necessary to achieve the condition required under subparagraph (A); and

(D) other purposes, as considered necessary by the State or Federal agencies, to achieve the condition required under subparagraph (A).

(3) *PUBLIC REVIEW AND COMMENT.*—

(A) *IN GENERAL.*—Before submitting a memorandum to the Secretary and the Administrator for approval, a State shall—

(i) invite interested members of the public to comment on the memorandum; and

(ii) hold at least one public meeting concerning the memorandum in a location or locations reasonably accessible to persons who may be affected by implementation of the memorandum.

(B) *NOTICE OF MEETING.*—The State shall publish notice of each meeting not less than 15 days before the date of the

meeting, in local newspapers of general circulation, on the Internet, and by any other means considered necessary or desirable by the Secretary and the Administrator.

(4) *SUBMISSION AND APPROVAL.*—The State shall submit the memorandum to the Secretary and the Administrator of the Environmental Protection Agency for approval. The Secretary and the Administrator shall approve or disapprove the memorandum within 120 days after the date of its submission if the Secretary and Administrator find that the memorandum will facilitate additional activities under the State Reclamation Plan under subsection (e) that improve water quality.

(5) *TREATMENT AS PART OF STATE PLAN.*—A memorandum of a State that is approved by the Secretary and the Administrator under this subsection shall be considered part of the approved abandoned mine reclamation plan of the State.

(n) *COMMUNITY RECLAIMER PARTNERSHIPS.*—

(1) *PROJECT APPROVAL.*—Within 120 days after receiving such a submission, the Secretary shall approve a Community Reclaimer project to remediate abandoned mine lands if the Secretary finds that—

(A) the proposed project will be conducted by a Community Reclaimer as defined in this subsection or approved subcontractors of the Community Reclaimer;

(B) for any proposed project that remediates mine drainage, the proposed project is consistent with an approved State memorandum of understanding under subsection (m);

(C) the proposed project will be conducted on a site or sites inventoried under section 403(c);

(D) the proposed project meets all submission criteria under paragraph (2);

(E) the relevant State has entered into an agreement with the Community Reclaimer under which the State shall assume all responsibility with respect to the project for any costs or damages resulting from any action or inaction on the part of the Community Reclaimer in carrying out the project, except for costs or damages resulting from gross negligence or intentional misconduct by the Community Reclaimer, on behalf of—

(i) the Community Reclaimer; and

(ii) the owner of the proposed project site,

if such Community Reclaimer or owner, respectively, did not participate in any way in the creation of site conditions at the proposed project site or activities that caused any lands or waters to become eligible for reclamation or drainage abatement expenditures under section 404;

(F) the State has the necessary legal authority to conduct the project and will obtain all legally required authorizations, permits, licenses, and other approvals to ensure completion of the project;

(G) the State has sufficient financial resources to ensure completion of the project, including any necessary operation and maintenance costs (including costs associated with emergency actions covered by a contingency plan under paragraph (2)(K)); and

- (H) the proposed project is not in a category of projects that would require a permit under title V.*
- (2) *PROJECT SUBMISSION.—The State shall submit a request for approval to the Secretary that shall include—*
 - (A) a description of the proposed project, including any engineering plans that must bear the seal of a professional engineer;*
 - (B) a description of the proposed project site or sites, including, if relevant, the nature and extent of pollution resulting from mine drainage;*
 - (C) identification of the past and current owners and operators of the proposed project site;*
 - (D) the agreement or contract between the relevant State and the Community Reclaimer to carry out the project;*
 - (E) a determination that the project will facilitate the activities of the State reclamation plan under subsection (e);*
 - (F) sufficient information to determine whether the Community Reclaimer has the technical capability and expertise to successfully conduct the proposed project;*
 - (G) a cost estimate for the project and evidence that the Community Reclaimer has sufficient financial resources to ensure the successful completion of the proposed project (including any operation or maintenance costs);*
 - (H) a schedule for completion of the project;*
 - (I) an agreement between the Community Reclaimer and the current owner of the site governing access to the site;*
 - (J) sufficient information to ensure that the Community Reclaimer meets the definition under paragraph (3);*
 - (K) a contingency plan designed to be used in response to unplanned adverse events that includes emergency actions, response, and notifications; and*
 - (L) a requirement that the State provide notice to adjacent and downstream landowners and the public and hold a public meeting near the proposed project site before the project is initiated.*

(3) *COMMUNITY RECLAIMER DEFINED.—For purposes of this section, the term “Community Reclaimer” means any person who—*

- (A) seeks to voluntarily assist a State with a reclamation project under this section;*
- (B) did not participate in any way in the creation of site conditions at the proposed project site or activities that caused any lands or waters to become eligible for reclamation or drainage abatement expenditures under section 404;*
- (C) is not a past or current owner or operator of any site with ongoing reclamation obligations; and*
- (D) is not subject to outstanding violations listed pursuant to section 510(c).*

* * * * *

MISCELLANEOUS POWERS

SEC. 413. (a) The Secretary or the State pursuant to an approved State program, shall have the power and authority, if not granted it otherwise, to engage in any work and to do all things necessary

or expedient, including promulgation of rules and regulations, to implement and administer the provisions of this title.

(b) The Secretary or the State pursuant to an approved State program, shall have the power and authority to engage in cooperative projects under this title with any other agency of the United States of America, any State and their governmental agencies.

(c) The Secretary or the State pursuant to an approved State program, may request the Attorney General, who is hereby authorized to initiate, in addition to any other remedies provided for in this title, in any court of competent jurisdiction, an action in equity for an injunction to restrain any interference with the exercise of the right to enter or to conduct any work provided in this title.

(d) The Secretary or the State pursuant to an approved State program, shall have the power and authority to construct and operate a plant or plants for the control and treatment of water pollution resulting from mine drainage. The extent of this control and treatment may be dependent upon the ultimate use of the water: *Provided*, That the above provisions of this paragraph shall not be deemed in any way to repeal or supersede any portion of the Federal Water Pollution Control Act (33 U.S.C.A. 1151, et seq. as amended) and no control or treatment under this subsection shall in any way be less than that required under the Federal Water Pollution Control Act *unless such control or treatment will be conducted in accordance with a State memorandum of understanding approved under section 405(m) of this Act*. The construction of a plant or plants may include major interceptors and other facilities appurtenant to the plant.

(e) The Secretary may transfer funds to other appropriate Federal agencies, in order to carry out the reclamation activities authorized by this title.

* * * * *

SUPPLEMENTAL, MINORITY, ADDITIONAL, OR DISSENTING VIEWS

None.

○