

**Statement of Thomas L. Clarke, Executive Director
Interstate Mining Compact Commission regarding
House Energy and Mineral Resources Subcommittee
Legislative Hearing – 9:30 AM EDT, June 9, 2022**

My name is Thomas Clarke. I serve as Executive Director of the Interstate Mining Compact Commission (IMCC). I am providing this statement on behalf of IMCC's 26 member states as well as the 32 member states and tribes of the National Association of Abandoned Mine Lands Programs (NAAML). We appreciate the opportunity to provide input at this timely hearing and thank the Subcommittee for its attention to the important matter of water pollution at abandoned coal mines, which is addressed by the STREAM Act, H.R. 7283, that is before the Subcommittee today. We also thank Representatives Cartwright and McKinley for their leadership in introducing this bill and all of the bill's cosponsors for their support.

IMCC is an interstate organization representing the mineral and natural resource interests of its member states. IMCC also serves as a policy liaison with Congress and the federal government for NAAML. IMCC and NAAML members are responsible for nearly all (in excess of 99%) of on-the-ground implementation of the coal abandoned mine lands (AML) program under Title IV of the Surface Mining Control and Reclamation Act (SMCRA). On behalf of the states and tribes, we are working closely with them and our federal partners at the Office of Surface Mining Reclamation and Enforcement (OSMRE) to ensure the coal AML program, as recently re-invigorated by the Infrastructure Investment and Jobs Act (Public Law 117-58) (IIJA), is optimally and efficiently implemented.

Congress clearly recognizes the value of the AML program, not only for its value in effectively addressing the safety, health and environmental hazards that persist from the more than two centuries of unregulated coal mining that preceded adoption of federal SMCRA, but also for the demonstrated role this program plays as a job creator and contributor to the economic well-being of the nation's coalfields. The IIJA's investment of \$11.3 billion in federal treasury funds in the coal AML program, as well as its reauthorization of the AML fee, will dramatically expand the state and tribal AML programs' ability to address the continuing impacts of legacy coal mining.

One of the most important things this investment will do is to enable the states and tribes to expand their efforts to remediate acid mine drainage (AMD). AMD is a persistent scourge on human and environmental health that negatively impacts economic growth for coalfield communities, particularly in Appalachia and the Midwest. A community has no greater infrastructure need than the availability of clean water. Streams that were once orange-tinted and devoid of life can be brought back through water treatment systems built by state AML programs. Congress explicitly endorsed the states' AMD remediation efforts by specifying in the IIJA that this type of work is eligible for IIJA funding. Secretary Haaland of the Interior Department has also recognized the importance of this type of work in remarks she has made during her many appearances at sites where state AML programs are remediating AMD.

An important distinction between the nature of AMD remediation and other types of AML work, such as addressing safety hazards, is what makes the STREAM Act so important. An AML safety hazard can be effectively addressed by a one-time construction project that eliminates the

hazard. In contrast, after an AMD treatment system is built, ongoing efforts to operate, maintain and rehabilitate the system are necessary for it to remain effective. The expenses of this work go on in perpetuity. Accordingly, each AMD treatment system a state builds represents a long-term liability that must be funded in perpetuity. The pre-existing fee-based coal AML program under Title IV of SMCRA provided a way to fund these liabilities. § 402(g)(6) of SMCRA authorized a state to place up to 30% of its annual AML grant in an interest-bearing state account, called a set aside account, to pay for these long-term costs. A funding mechanism for long term AMD costs is fundamental and essential to a complete solution to the scourge of AMD. Because of this reality, when the IJJA specified that states could use the new treasury-sourced AML funding it provided to address AMD, we believe the clear intent was to give states parallel authority for AMD set aside accounts using the new IJJA funds. Unfortunately, the Interior Department's interpretation is that this authority is absent from the IJJA. Without it, the states' efforts to effectively address AMD will be severely limited.

The bi-partisan "Safeguarding Treatment for the Restoration of Ecosystems from Abandoned Mines" or STREAM Act makes the truly minor adjustments to the IJJA that are necessary for AML programs to provide a complete solution for the problem of long term AMD costs. It will clarify that a state can place up to 30% of its annual grant from treasury-sourced IJJA AML funds in an AMD set aside account. The STREAM Act does not require any new outlay of federal funds. Neither does it alter the share of money any state is entitled to receive under the IJJA. It simply provides those states that must address AMD with the flexibility they need to set aside a portion of the IJJA's treasury-sourced AML funds in the very same way they have done for years with grants from the fee-sourced AML program.

While the IJJA authorizes continuation of collection of AML fees on coal production and, with it, the authority to set aside up to 30% of state grant funds coming from this source also continues, the IJJA reduced these fees by 20%. With this reduction and the continuing decline in coal production, funding for long-term AMD costs from this source will decline. Without authority to set aside a portion of the treasury funds from the IJJA to cover the long-term costs of addressing AMD, the amount available for long-term liabilities will dwindle, thereby severely impairing the states' ability to make further progress in eliminating AMD. If the full potential of the IJJA as a means of putting the AMD legacy of coal behind us is to be realized, the STREAM Act must be adopted so states will have the flexibility they need to provide a complete, long-term solution for addressing AMD.

A couple of additional points regarding the impact of AMD set aside accounts should be made. First, consistent with the title and purpose of the Infrastructure Investment and *Jobs Act*, AMD set aside funds facilitate creation of permanent AMD treatment jobs in coalfield communities, many of which can go to former miners. Second, the states have been judicious in their use of available AML funds for AMD. While existing law gives AML programs the authority to set aside up to 30% of their annual AML grant, in practice only eleven states are setting money aside and the total amount they set aside is much less than 30%. As the table and chart included at the end of this document demonstrate, only about 8% of the total of all AML grant dollars has been set aside since 2015. Out of the AML grants during this time to the eleven states using AMD set aside accounts, about 16% has been set aside. So, 30% is not a hard figure for what can be expected to be set aside for AMD treatment. Rather, authority for a set aside of up to 30%

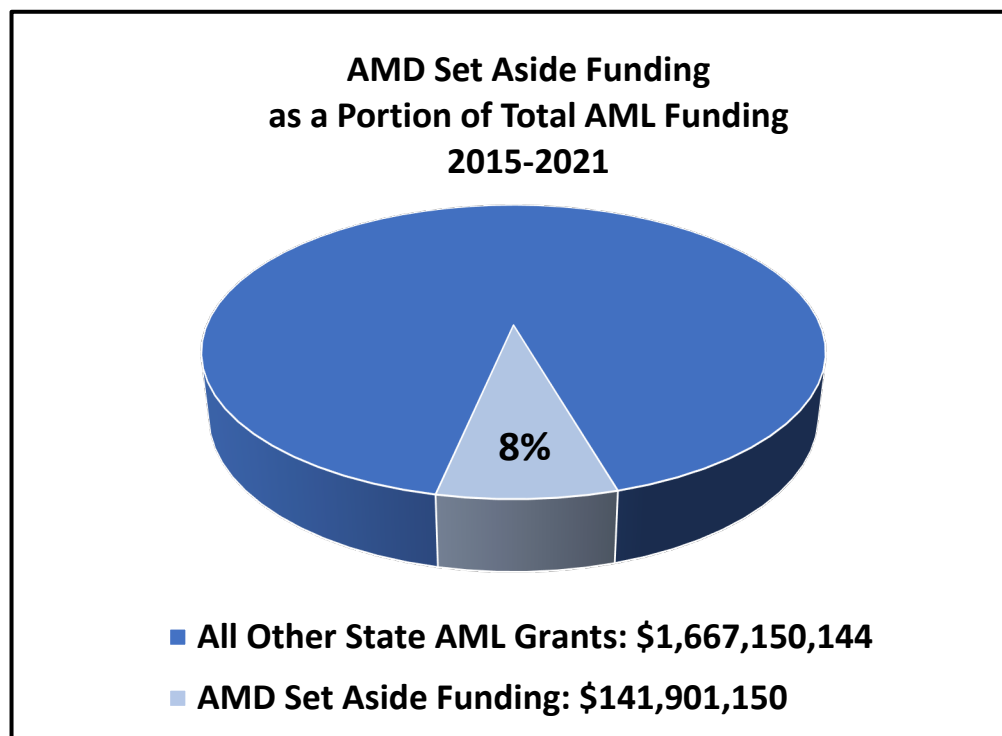
annually gives states the flexibility they need at those times when, in their year-to-year AML project planning, more is needed for long term AMD costs. The states have been judicious in their use of available AML funds. This will continue as the new law is implemented.

One last thing that should be said is that the AML programs of the states where AMD is a problem unanimously support the STREAM Act. The AML programs of the other states support providing this flexibility to their sister state programs. We are attaching letters of support for this AMD fix from the Honorable Mike DeWine, Governor of the State of Ohio, the Honorable Jim Justice, Governor of the State of West Virginia. Letters from Tyler Abbot, Chief of Staff for the Maryland Department of the Environment and Colleen Callahan, Director of the Illinois Department of Natural Resources, in support of the Stream Act are also attached. We understand that similar letters from other states may be coming but they were not available in time to include with this statement.¹

We would like to once again thank the Subcommittee for its attention to this important matter and urge it to advance the STREAM Act for consideration and passage by the House of Representatives. We welcome any questions.

¹ Where similar letters were sent to multiple members of Congress, we are attaching a copy of only one of the letters. We would be glad to submit the remaining letters, if desired.

AMD Set Aside Funding 2015-2021			
State	Total AML Grant*	AMD Set Aside	% Set Aside
Alabama	\$ 28,830,899	\$ 5,941,345	21%
Illinois	\$ 102,768,389	\$ 30,400,000	30%
Indiana	\$ 47,131,529	\$ 12,814,583	27%
Kentucky	\$ 108,793,160	\$ 500,000	0%
Maryland**	\$ 19,638,000	\$ 6,085,660	31%
Missouri	\$ 6,600,619	\$ 257,582	4%
Pennsylvania	\$ 291,653,648	\$ 39,701,370	14%
Ohio	\$ 48,750,833	\$ 4,821,920	10%
Tennessee	\$ 9,618,018	\$ 2,928,295	30%
Virginia	\$ 31,736,093	\$ 350,000	1%
West Virginia	\$ 200,567,641	\$ 38,100,395	19%
AMD States Total	\$ 896,088,829	\$ 141,901,150	16%
All Other States Total	\$ 912,962,465	\$ -	0%
All States Total	\$ 1,809,051,294	\$ 141,901,150	8%



* For the AMD states, these amounts include only the grant amounts that are eligible for AMD set aside, which includes “state share” and “historic coal share” portion of grants and excludes “minimum program make up” funds.

** As a result of the omnibus appropriations bill of 2009, Maryland has been given special dispensation to set aside up to \$1M of its \$3M total annual grant under Title IV of SMCRA, which means it can effectively set aside up to 33% of its grant rather than only 30%.



MIKE DEWINE

GOVERNOR OF OHIO

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Columbus, OH 43215
www.governor.ohio.gov

April 25, 2022

The Honorable Raúl M. Grijalva
Chair, Natural Resources Committee
United States House of Representatives
1324 Longworth House Office Building
Washington, DC 20515

The Honorable Bruce Westerman
Ranking Member, House Natural Resources Committee
United States House of Representatives
202 Cannon House Office Building
Washington DC 20515

Dear Chairman Grijalva and Ranking Member Westerman,

I am writing to ask for your support of H.R. 7283, the Safeguarding Treatment for the Restoration of Ecosystems from Abandoned Mines Act (STREAMS), and its companion bill, S. 3957. These bills clarify that states with acid mine drainage (AMD) set-aside programs can deposit a portion of the Infrastructure Investment and Jobs Act (IIJA) Abandoned Mine Land (AML) grant funds into AMD set-aside accounts. The authority to do so will improve our nation's water quality.

Ohio has a rich history of mining that began more than 200 years ago when the state was still a territory. It is, in part, thanks to Ohio's miners and coal resources that the industrial revolution grew. During the 19th and 20th Centuries, more than 3.6 billion tons of coal were extracted from Ohio, and, while mining has been an integral part of Ohio's past economic prosperity, the after-effects of coal production still endure.

Although laws and regulations on proper mining practices and reclamation exist today, that wasn't the case for the first 100 years of coal mining. Prior to the enactment of our nation's first mining laws in 1977, mines were often left abandoned and unreclaimed as mining companies moved on to the next site. Thousands of abandoned underground mines exist in Ohio and pose significant geologic hazards, as the acids that discharge from mined rock leech into our streams and other waterways.

Thankfully, funding mechanisms have been put in place to confront this challenge. The IIJA includes \$11.3 billion in new funding for AML reclamation. These funds will significantly increase states' ability to address legacy safety and environmental hazards of coal mining.

An important aspect of restoring abandoned mine lands is remediating acid mine drainage (AMD), which is caused by surface water flowing over or through mined rock, making the water highly acidic. AMD is addressed by building water treatment systems to neutralize acidic water and remove dissolved metals that harm water quality in streams and rivers.

However, addressing AMD is different than the safety hazards caused by AML, because a safety hazard can be effectively eliminated through a one-time construction project, but AMD requires a treatment system to be operated, maintained, and rehabilitated in perpetuity for it to remain effective. Accordingly, each AMD treatment system that a state builds represents a long-term liability that must be funded.

Ohio currently operates and maintains 33 treatment systems with plans to establish more, and unfortunately, the IJA does not provide the ability to set aside a portion of the funds made available for ongoing AMD remediation. Without this authority, it will be extremely difficult to responsibly build the treatment systems necessary to make significant improvements in water quality that has been harmed by abandoned coal mines.

H.R. 7283 and S. 3957 would clarify that states with approved AMD set-aside programs can deposit up to 30% of annual IJA grant funds into the AMD set-aside account. This legislation is imperative to Ohio, along with 10 other states in the Appalachian and the Midwest regions who are committed to addressing the legacy safety and environmental hazards of coal mining.

As the 2021 Chair of the Interstate Mining Compact Commission and former co-chair of the Appalachian Regional Commission, I can attest to the importance of this legislation in addressing water quality issues resulting from abandoned mines in Ohio. The legislation provides the flexibility and long-term financial stability necessary to plan, design, build, operate and maintain critical acid mine drainage treatment systems.

Again, I ask for your support of this important legislation. Thank you for your attention to this issue.

Very respectfully yours,

A handwritten signature in blue ink that reads "Mike DeWine". The signature is fluid and cursive, with the first name "Mike" and last name "DeWine" clearly legible.

Mike DeWine
Governor

CC: Ohio Congressional Delegation Members



Jim Justice
Governor of West Virginia

May 31, 2022

The Honorable Joe Manchin III
United States Senate
306 Hart Senate Office Bldg
Washington, DC 20510

The Honorable Shelley Moore Capito
United States Senate
172 Russell Senate Office Bldg
Washington, DC 20510

The Honorable David McKinley
United States House of Representatives
412 Cannon House Office Bldg
Washington, DC 20515

The Honorable Alex Mooney
United States House of Representatives
1232 Longworth House Office Bldg
Washington, DC 20515

The Honorable Carol Miller
United State House of Representatives
1605 Longworth House Office Bldg
Washington, DC 20515

Dear Members of Congress:

I am writing to you today on a matter that urgently needs your attention. As many of you know, the recently adopted Bipartisan Infrastructure Law transfers \$11.3 billion from the federal treasury to the Abandoned Mine Lands (AML) trust fund. State AML programs use this fund to address the adverse impacts from the centuries of unregulated coal mining that took place prior to the adoption of the federal Surface Mining Control and Reclamation Act in 1977. This additional money will be monumental to West Virginia's AML program, and AML programs across the country, as we work together to eliminate safety and environmental hazards caused by abandoned mines.

While we applaud the passage of the historic Infrastructure Law, we want to call on our congressional leaders to pass the recently introduced legislation that will allow states to move a portion of the treasury funds into their Acid Mine Drainage (AMD) Set Aside funds. This authority will provide West Virginia and other states with even more resources to address the impacts from mining's early years.

A key component in addressing AML sites in West Virginia and the surrounding region has been building water treatment systems to remediate AMD. Treating AMD presents a bigger challenge than addressing safety hazards, which can often be eliminated through one-time construction projects. Once an AMD treatment system is built, additional funding is needed for operations and maintenance, so it remains effective. The expenses of this work go on in perpetuity.

Historically, state AML programs have been funded through grants from the AML trust fund and fees collected from coal production. The federal AML program allows states to set aside 30 percent of its grant funding into an interest-bearing account to cover the long-term cost of treating AMD. Although the Infrastructure Law authorizes continuation of collection of AML fees on coal production and the authority to set aside 30 percent of grant funds, it does not allow states to set aside a portion of the treasury funds. The ability to use these funds to cover the long-term costs of treating AMD will be vital to keeping that burden off future generations.

Much like traditional AML projects, treating AMD benefits both the environment and the economy. Building and operating AMD treatment systems helps facilitate the creation of permanent jobs while cleaning up our rivers and streams – a true win-win for all West Virginians.

Over the past four years, people from across the country and all over the world have finally discovered what a great place West Virginia is to live, work, and play. They want to kayak and fish in our pristine waters and hike in our beautiful mountains.

Passing this legislation will ensure that West Virginia's resources will be protected and enjoyed by all citizens for years to come.

Sincerely,



Jim Justice
Governor



Maryland

Department of the Environment

Larry Hogan, Governor
Boyd K. Rutherford, Lt. Governor

Ben Grumbles, Secretary
Horacio Tablada, Deputy Secretary

May 10, 2022

The Honorable Chris Van Hollen
United States Senate
Washington, DC 20515

Dear Senator Van Hollen:

I am writing to ask for your support of S. 3957, the Safeguarding Treatment for the Restoration of Ecosystems from Abandoned Mines Act (STREAMS), and its companion bill, H.R. 7283. These bills clarify that states with acid mine drainage (AMD) set-aside programs, like Maryland, can deposit a portion of the Infrastructure Investment and Jobs Act (IIJA), Abandoned Mine Land (AML) grant funds into state's AMD set-aside accounts. This authority will improve our nation's water quality by providing funding for AMD treatment projects as well as the long-term operation and maintenance of treatment systems.

Western Maryland has a rich history of coal mining that began more than 250 years ago and helped fuel the industrial revolution. Hundreds of millions of tons of coal were mined prior to the passage of state and federal laws requiring land and water reclamation. The Surface Mining Control and Reclamation Act (SMCRA or the Act) of 1977 instituted national mining and reclamation standards that have reduced environmental impacts from modern coal mining. SMCRA also created the Abandoned Mine Reclamation Fund, by taxing coal production, to address the legacy of health, safety, and environmental hazards that existed prior to passage of the Act.

The IIJA has significantly increased funding available for AML programs by depositing \$11.3 billion into the Abandoned Mine Reclamation Fund to address the myriad of legacy health, safety, and environmental hazards of coal mining.

An important aspect to restoring abandoned mines is remediating AMD, which is caused by groundwater and surface water flowing through abandoned deep mines and surface mines resulting in very acidic water with high concentrations of dissolved metals. Maryland currently has 60 AMD treatment systems that have improved or restored over 100 miles of stream, but hundreds of miles of streams remain degraded. Treating AMD is costly and requires long-term funding for operation and maintenance of the treatment systems. Without continued funding for operation and maintenance, the improvements will quickly be lost as the streams revert to their pretreatment status.

S. 3957 and H.R. 7283 would clarify that states with approved AMD set-aside programs can deposit up to 30% of annual IJA grant funds into the AMD set-aside account. This legislation is imperative to Maryland, along with 10 other states in the Appalachian and the Midwest regions who are committed to addressing the legacy of coal mining. The legislation provides the flexibility and long-term financial stability necessary to plan, design, build, operate, and maintain critical acid mine drainage treatment systems.

Thank you for your attention to this important issue of improving water quality in Maryland and ask for your support of this legislation. If you have any questions, please contact me at tyler.abbott@maryland.gov or (410) 537-3537.

Sincerely,

A handwritten signature in black ink, appearing to read "Tyler Abbott", with a long horizontal line extending to the left.

Tyler Abbott
Chief of Staff

cc: Ariel Judah, Governor's Director of Federal Relations
Kaley Laleker, Director, Land and Materials Administration



Illinois Department of Natural Resources

One Natural Resources Way Springfield, Illinois 62702-1271
www.dnr.illinois.gov

JB Pritzker, Governor
Colleen Callahan, Director

April 21, 2022

Honorable Richard Durbin
711 Hart Senate Office Building
Washington, DC 20515-1301

Dear Senator Durbin:

The Abandoned Mine Land (AML) program for the state of Illinois is under the purview of the Illinois Department of Natural Resources. I am writing to express our continuing strong support for the AML program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA).

As you may know, Section 40701 of the recently adopted Bipartisan Infrastructure Law (BIL) transfers funds to the Illinois Abandoned Mine Lands (AML) Division for use in addressing the adverse impacts of coal mining that preceeded SMCRA. An important aspect of the work is the remediation of acid mine drainage (AMD). Treatment of AMD requires the construction, operation, maintenance and rehabilitation of a treatment system to remain effective, resulting in a long-term liability. The historic fee-based AML program allows up to 30 percent of its annual AML grant in an interest-bearing account to cover the long-term costs of AMD. However, the BIL does not confer parallel authority. Without this authority, the amount available for long-term liabilities will dwindle, thereby limiting AMD treatment.

Therefore, I am requesting your support for S. 3957, to amend the Infrastructure Investment and Jobs Act to make certain activities eligible for grants from the Abandoned Mine Reclamation Fund, which was introduced by Senator Bob Casey and Senator Mike Braun to allow not more than 30 percent of the total amount of the BIL grant to be deposited into an AMD fund.

I have attached a summary about the importance of the AMD Set Aside Authority and S. 3957, STREAM Act. Should you have any questions or require additional information about the valuable work our state has undertaken, please contact Lance Range, Acting Manager of the Division of AML at 217-782-0357 or Lance.l.range@illinois.gov.

Thank you for your consideration of this request to protect the physical, environmental, and economic health of the people of Illinois.

Sincerely,

Colleen Callahan
Director



Why is AMD Set Aside Authority Needed Under the Infrastructure Law?

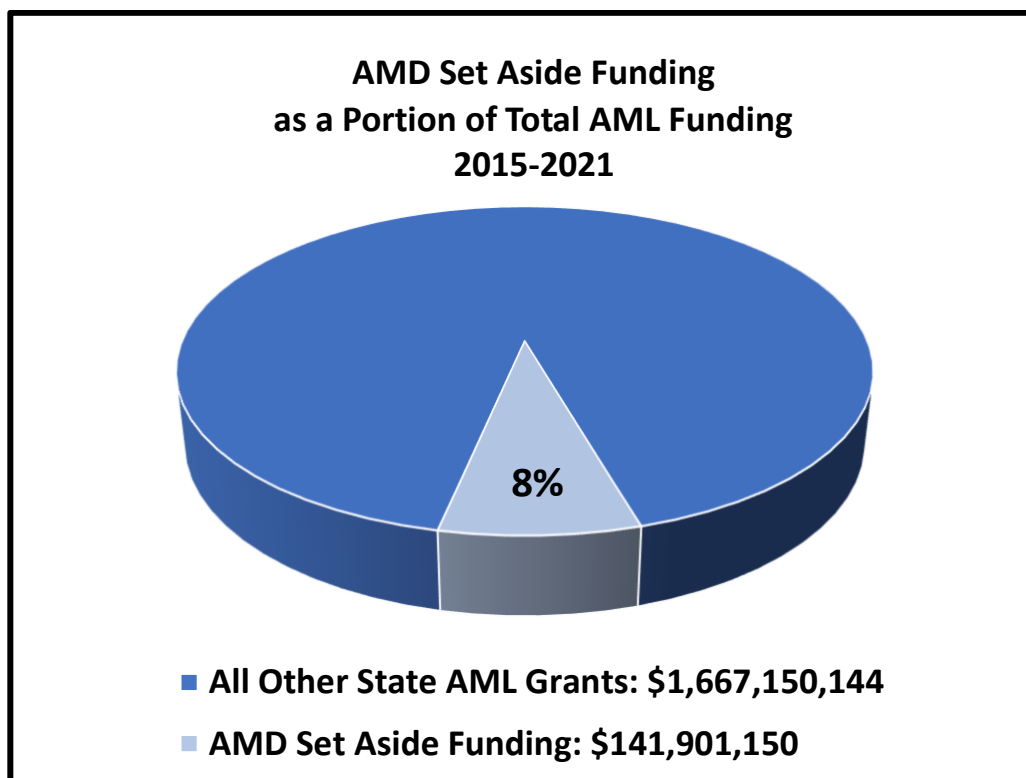
Section 40701 of the recently adopted Bipartisan Infrastructure Law transfers \$11.3 billion from the treasury to the Abandoned Mine Lands (AML) trust fund for use by state AML programs in addressing the adverse impacts of the two centuries of unregulated and under-regulated coal mining that preceded the adoption of the federal Surface Mining Control and Reclamation Act in 1977 (SMCRA). The new funds will greatly increase the ability of the AML programs to address legacy safety and environmental hazards of coal mining over what had previously been possible with funds coming only from fees on coal production.

An important aspect of this work throughout the historic coal mining regions of Appalachia and the Midwest has been remediating acid mine drainage (AMD) by building water treatment systems for this polluted water. The challenge in addressing AMD is different than for safety hazards. A safety hazard can be effectively addressed by one-time construction projects that eliminate the hazard. In contrast, after an AMD treatment system is built, ongoing efforts to operate, maintain and rehabilitate the system are necessary for it to remain effective. The expenses of this work go on in perpetuity. Accordingly, each AMD treatment system a state builds represents a long-term liability that must be funded.

Funding for these liabilities is very important for states with significant legacy AMD. The historic fee-based AML program allows a state to set aside up to 30% of its annual AML grant in an interest-bearing account to cover the long-term costs of AMD treatment facilities. However, the infrastructure law does not confer parallel authority to do this with the new treasury funds it authorizes for coal AML. While the infrastructure law authorizes continuation of collection of AML fees on coal production and, with it, the authority to set aside up to 30% of state grant funds coming from this source also continues, these fees have been cut by 20% and coal production can be expected to continue to decline. Without authority to set aside a portion of the treasury funds from the infrastructure law to cover the long-term costs of addressing AMD, the amount available for long-term liabilities will dwindle, thereby severely impairing the states' ability to make further progress in eliminating AMD. If the full potential of the infrastructure law as a means of putting the AMD legacy of coal behind us is to be realized, legislation to give states parallel set aside authority for the infrastructure law's treasury-sourced funds is needed.

At least two points should be made regarding the impact of the AMD set aside. First, AMD set aside funds facilitate creation of *permanent* AMD treatment jobs. Second, while existing law gives states *the authority* to set aside up to 30% of an annual AML grant, *in actuality* only 11 states are setting any money aside and the actual amount they set aside is much less than 30%. Only about 8% of the total of *all* AML grant dollars has been set aside since 2015. Out of the AML grants during this time to the 11 states that actually need the AMD set aside, about 16% has been set aside. So, 30% is not a hard figure for what can be expected to be set aside to enable long term AMD treatment. Rather, authority for a set aside of *up to* 30% annually simply gives states *flexibility* they need at those times when, in their year-to-year AML project planning, more is needed for long term AMD costs. The states have been judicious in their use of available AML funds. This will continue as the new law is implemented. Use of the AMD set aside since 2015 is shown on the charts below.

AMD Set Aside Funding 2015-2021			
State	Total AML Grant*	AMD Set Aside	% Set Aside
Alabama	\$ 28,830,899	\$ 5,941,345	21%
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