

115TH CONGRESS
1ST SESSION

S. _____

To amend the Mineral Leasing Act to improve coal leasing, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. MARKEY introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend the Mineral Leasing Act to improve coal leasing, 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; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Coal Oversight and Leasing Reform Act of 2017” or the
6 “COAL Reform Act of 2017”.

7 (b) **TABLE OF CONTENTS.**—The table of contents of
8 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Deferred bonus payments.
- Sec. 3. Confidentiality requirements for consultants.
- Sec. 4. Exploration data.
- Sec. 5. Fair market value.

- Sec. 6. Public availability data.
- Sec. 7. Lease modifications.
- Sec. 8. Findings necessary for coal lease modifications.
- Sec. 9. Size of coal leasing modifications.
- Sec. 10. Coal leasing program.
- Sec. 11. Rental rates.
- Sec. 12. Primary term of lease.
- Sec. 13. Minimum value.
- Sec. 14. Inspection and enforcement.
- Sec. 15. Civil penalties.
- Sec. 16. Moratorium on new coal lease sales pending implementation.

1 SEC. 2. DEFERRED BONUS PAYMENTS.

2 Section 2(a) of the Mineral Leasing Act (30 U.S.C.
3 201(a)) is amended—

4 (1) in paragraph (1), by striking the second
5 and third sentences; and

6 (2) by striking paragraphs (4) and (5).

**7 SEC. 3. CONFIDENTIALITY REQUIREMENTS FOR CONSULT-
8 ANTS.**

9 Section 2(a) of the Mineral Leasing Act (30 U.S.C.
10 201(a)) (as amended by section 2(2)) is amended by add-
11 ing at the end the following:—

12 “(4) CONFIDENTIALITY REQUIREMENTS FOR
13 CONSULTANTS.—If the Secretary uses an inde-
14 pendent consultant in evaluating a lease sale, the
15 independent consultant shall be subject to a non-
16 disclosure agreement and any other confidentiality
17 requirements the Secretary determines necessary.”.

18 SEC. 4. EXPLORATION DATA.

19 Section 2(b)(3) of the Mineral Leasing Act (30
20 U.S.C. 202(b)(3)) is amended by adding at the end the

1 following: “Subject to applicable penalties for submitting
2 false data, the licensee shall certify the accuracy of the
3 data submitted under this paragraph. The Secretary shall
4 consider whether to independently verify the data sub-
5 mitted under this paragraph. The Secretary shall conduct
6 and document any inspections of exploration activities
7 conducted under this section.”.

8 **SEC. 5. FAIR MARKET VALUE.**

9 Section 2 of the Mineral Leasing Act is amended by
10 inserting after subsection (d) (30 U.S.C. 202a) the fol-
11 lowing:

12 “(e) FAIR MARKET VALUE.—

13 “(1) IN GENERAL.—A proposed lease sale shall
14 not be held under this section until the date on
15 which the Secretary of the Interior (acting through
16 the Director of the Bureau of Land Management)
17 (referred to in this subsection as the ‘Secretary’), in
18 consultation with the applicable Bureau of Land
19 Management field office with jurisdiction over the
20 leasing tract subject to the proposed lease sale and
21 the Office of Valuation Services of the Department
22 of Interior, makes a determination with respect to
23 the fair market value of the coal to be extracted
24 under the proposed lease.

1 “(2) CONSIDERATIONS AND REQUIREMENTS.—

2 In making a determination of fair market value
3 under paragraph (1), the Secretary—

4 “(A)(i) shall account for the export poten-
5 tial of the coal to be extracted under the pro-
6 posed lease, including—

7 “(I) conducting an analysis of wheth-
8 er the coal extracted under the proposed
9 lease would be exported, the potential ex-
10 port markets for the coal, and the price at
11 which the coal could be sold in export mar-
12 kets; and

13 “(II) providing in the appraisal report
14 under paragraph (4) an assessment of ex-
15 port activity for coal extracted from other
16 leases under this section; and

17 “(ii) for purposes of the analysis under
18 clause (i)(I) and the assessment under clause
19 (i)(II), may consult with other agencies with
20 relevant expertise relating to coal exports, such
21 as the Energy Information Administration;

22 “(B) shall use a comparable lease sale ap-
23 proach and income approach for purposes of
24 calculating fair market value;

1 “(C) shall not rely on any information
2 from lease sales conducted more than 5 years
3 before the date of the proposed lease sale for
4 purposes of calculating fair market value; and

5 “(D) shall consider domestic coal reserve
6 estimates.

7 “(3) APPRAISAL REPORT.—The Secretary shall
8 include a fair market value determination with re-
9 spect to a lease under paragraph (1) in a formal,
10 documented appraisal report that provides
11 verification of the consultation required under that
12 paragraph by including the signatures of the individ-
13 uals representing the offices consulted under that
14 paragraph in the completed appraisal report.

15 “(4) GAO REPORT.—Not later than 2 years
16 after the date of enactment of this subsection, the
17 Comptroller General of the United States shall sub-
18 mit to the appropriate committees of Congress a re-
19 port that describes whether the Secretary has com-
20 plied with the requirements of paragraph (2)(A) in
21 making fair market value determinations of leases
22 under this subsection.

23 “(5) MINIMUM BIDS.—Notwithstanding any
24 other provision of this Act, the Secretary may not
25 accept a bid for a lease to extract coal under this

1 Act that is less than the fair market value of the
2 coal to be extracted under the lease, even if a bid
3 is above the minimum bid requirement.”.

4 **SEC. 6. PUBLIC AVAILABILITY OF DATA.**

5 Section 2 of the Mineral Leasing Act (as amended
6 by section 5) is amended by adding at the end the fol-
7 lowing:

8 “(f) PUBLIC AVAILABILITY OF APPRAISAL RE-
9 PORTS.—Any appraisal report conducted under this sec-
10 tion shall be made publicly available on the website of the
11 Bureau of Land Management, with appropriate redactions
12 of or protections for confidential material or information.

13 “(g) PUBLIC AVAILABILITY OF LEASE SALES, HIGH
14 BIDS, ROYALTY PAYMENTS, AND REVENUE.—The Sec-
15 retary shall track and make publicly available on the
16 website of the Bureau of Land Management information
17 on individual and total lease sales, high bids, royalty pay-
18 ments, and revenue relating to activities conducted under
19 this section.”.

20 **SEC. 7. LEASE MODIFICATIONS.**

21 Section 3(a)(1) of the Mineral Leasing Act (30
22 U.S.C. 203(a)(1)) is amended by inserting “and on com-
23 pletion of a fair market value determination under sub-
24 section (e)(1) with respect to the modifications” after
25 “under paragraph (2)”.

1 **SEC. 8. FINDINGS NECESSARY FOR COAL LEASE MODIFICA-**
2 **TIONS.**

3 Section 3(a)(2) of the Mineral Leasing Act (30
4 U.S.C. 203(a)(2)) is amended—

5 (1) in subparagraph (B), by striking “and”
6 after the semicolon at the end;

7 (2) in subparagraph (C), by striking the period
8 at the end and inserting “; and”; and

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

10 “(D) would not result in a reduction of rev-
11 enue.”.

12 **SEC. 9. SIZE OF COAL LEASING MODIFICATIONS.**

13 Section 3(a)(3)(A) of the Mineral Leasing Act (30
14 U.S.C. 203(a)(3)(A)) is amended by striking “960 acres”
15 and inserting “160 acres”.

16 **SEC. 10. COAL LEASING PROGRAM.**

17 The Mineral Leasing Act is amended by inserting
18 after section 3 (30 U.S.C. 203) the following:

19 **“SEC. 4. COAL LEASING PROGRAM.**

20 “(a) IN GENERAL.—The Secretary shall prepare, pe-
21 riodically revise, and maintain a coal leasing program to
22 implement this Act.

23 “(b) CONTENT.—The leasing program shall consist
24 of a schedule of proposed lease sales indicating, as pre-
25 cisely as practicable, the size, timing, and location of leas-
26 ing activity that the Secretary determines will best meet

1 national needs for the 5-year period following the approval
2 or reapproval of the program.

3 “(c) PRINCIPLES.—The leasing program shall be pre-
4 pared and maintained in a manner consistent with the fol-
5 lowing principles:

6 “(1) Leasing activities for coal subject to this
7 Act shall be conducted—

8 “(A) to ensure receipt of fair market value
9 for the land leased and the rights conveyed by
10 the Federal Government;

11 “(B) to maximize competition for Federal
12 coal leases; and

13 “(C) to maximize the financial return per
14 ton of coal leased for taxpayers of the United
15 States.

16 “(2) Management of coal subject to this Act
17 shall be conducted in a manner that considers—

18 “(A) the economic, social, and environ-
19 mental values of Federal land and the coal re-
20 source; and

21 “(B) the potential impact of coal leasing
22 on other resource values and the natural and
23 human environments.

24 “(3) Timing and location of exploration, devel-
25 opment, and production of coal among or within the

1 coal-bearing physiographic regions shall be based on
2 a consideration of—

3 “(A) existing information concerning the
4 geographical, geological, and ecological charac-
5 teristics of the regions;

6 “(B) an equitable sharing of developmental
7 benefits and environmental risks among or
8 within the various regions;

9 “(C) the location of the regions with re-
10 spect to, and the relative needs of, regional and
11 national energy markets;

12 “(D) the location of the regions with re-
13 spect to other anticipated uses of the resources
14 and space of the regions;

15 “(E) the interest of potential coal pro-
16 ducers in the development of coal resources as
17 indicated by exploration or nomination;

18 “(F) laws, goals, and policies of affected
19 States that have been specifically identified by
20 the Governors of the States as relevant matters
21 for the consideration of the Secretary;

22 “(G) the relative environmental sensitivity
23 and natural productivity of different areas con-
24 taining the coal; and

1 “(H) relevant environmental and predictive
2 information for the different areas.

3 “(4) The Secretary shall select the timing and
4 location of leasing, to the maximum extent prac-
5 ticable, so as to obtain a proper balance between—

6 “(A) the potential for environmental dam-
7 age;

8 “(B) the potential for the discovery of coal;
9 and

10 “(C) the potential for adverse impact on
11 areas containing the coal.

12 “(5) The Secretary shall develop the plan and
13 manage coal leasing and development in a manner
14 that considers the impact of coal leasing and devel-
15 opment on climate change.

16 “(d) ESTIMATED APPROPRIATIONS AND STAFF.—
17 The leasing program shall include estimates of the appro-
18 priations and staff required—

19 “(1) to obtain resource information and any
20 other information needed to prepare the leasing pro-
21 gram required by this section;

22 “(2) to analyze and interpret the exploratory
23 data and any other information that may be com-
24 piled under this Act;

1 “(3) to conduct environmental studies and pre-
2 pare any environmental impact statement required
3 in accordance with this Act and section 102(2)(C) of
4 the National Environmental Policy Act of 1969 (42
5 U.S.C. 4332(2)(C)); and

6 “(4) to supervise operations conducted pursuant
7 to each lease in the manner necessary to ensure due
8 diligence in the exploration and development of the
9 lease area and compliance with the requirement of
10 applicable laws (including regulations) and with the
11 terms of the lease.

12 “(e) PROPOSED LEASING PROGRAM.—

13 “(1) IN GENERAL.—During the preparation of
14 any proposed leasing program under this section, the
15 Secretary—

16 “(A) shall invite and consider suggestions
17 for the program from—

18 “(i) any interested Federal agency, in-
19 cluding the Department of Justice, in con-
20 sultation with the Federal Trade Commis-
21 sion; and

22 “(ii) the Governor of any State that
23 may become an affected State under the
24 proposed program; and

1 “(B) may invite or consider any sugges-
2 tions from—

3 “(i) the executive of any affected local
4 government in an affected State, which
5 have been previously submitted to the Gov-
6 ernor of the State; and

7 “(ii) any other person.

8 “(2) REVIEW AND COMMENTS BY AFFECTED
9 STATES.—

10 “(A) IN GENERAL.—After preparation and
11 at least 60 days before publication of a pro-
12 posed leasing program in the Federal Register
13 pursuant to paragraph (3), the Secretary shall
14 submit a copy of the proposed program to the
15 Governor of each affected State for review and
16 comment.

17 “(B) LOCAL GOVERNMENTS.—The Gov-
18 ernor of a State may solicit comments from the
19 executives of local governments in the State
20 that the Governor, at the discretion of the Gov-
21 ernor, determines will be affected by the pro-
22 posed program.

23 “(C) REPLY BY SECRETARY.—If any com-
24 ment by a Governor is received by the Secretary
25 at least 15 days before submission to Congress

1 pursuant to such paragraph (3) and includes a
2 request for any modification of the proposed
3 program, the Secretary shall reply in writing—

4 “(i)(I) granting or denying the re-
5 quest in whole or in part; or

6 “(II) granting the request in such
7 modified form as the Secretary considers
8 appropriate; and

9 “(ii) stating the reasons for the ac-
10 tions of the Secretary.

11 “(D) CORRESPONDENCE.—All correspond-
12 ence between the Secretary and Governor of
13 any affected State under this paragraph, to-
14 gether with any additional information and data
15 relating to the correspondence, shall accompany
16 the proposed program when the proposed pro-
17 gram is submitted to Congress.

18 “(3) SUBMISSION AND PUBLICATION.—

19 “(A) IN GENERAL.—Not later than 270
20 days after the date of enactment of the COAL
21 Reform Act of 2017, the Secretary shall—

22 “(i) submit a proposed leasing pro-
23 gram to Congress, the Attorney General,
24 and the Governors of affected States; and

1 “(ii) publish the proposed program in
2 the Federal Register.

3 “(B) LOCAL GOVERNMENTS.—A Governor
4 shall, on request, submit a copy of the proposed
5 leasing program to the executive of any local
6 government affected by the proposed program.

7 “(f) ADMINISTRATION.—

8 “(1) IN GENERAL.—Not later than 90 days
9 after the date of publication of a proposed leasing
10 program, the Attorney General may, after consulta-
11 tion with the Federal Trade Commission, submit
12 comments on the anticipated effects of the proposed
13 program on competition.

14 “(2) OTHER COMMENTS.—Any State, local gov-
15 ernment, or other person may submit comments and
16 recommendations as to any aspect of the proposed
17 program.

18 “(3) RESPONSE BY SECRETARY.—

19 “(A) IN GENERAL.—At least 60 days be-
20 fore approving a proposed leasing program, the
21 Secretary shall submit the proposed program to
22 the President and Congress, together with any
23 comments received.

24 “(B) RECOMMENDATIONS.—The submis-
25 sion shall indicate why any specific rec-

1 ommendation of the Attorney General or a
2 State or local government was not accepted.

3 “(4) NEW LEASES.—

4 “(A) IN GENERAL.—Except as provided in
5 subparagraph (B), after the leasing program
6 has been approved by the Secretary or the date
7 that is 18 months after the date of enactment
8 of the COAL Reform Act of 2017 (whichever
9 first occurs), no lease shall be issued under this
10 Act unless the lease—

11 “(i) is for an area included in the ap-
12 proved leasing program; and

13 “(ii) contains provisions that are con-
14 sistent with the approved leasing program.

15 “(B) CONTINUED LEASING.—Leasing shall
16 be permitted to continue until the program is
17 approved and while the program is under judi-
18 cial or administrative review pursuant to this
19 Act.

20 “(g) REVIEW AND REVISION.—

21 “(1) REVIEW.—The Secretary shall review the
22 leasing program approved under this section at least
23 once each year.

24 “(2) REVISIONS.—

1 “(A) IN GENERAL.—The Secretary may re-
2 vise and reapprove the leasing program at any
3 time.

4 “(B) PROCEDURE.—The Secretary shall
5 revise and reapprove the leasing program in the
6 same manner at the original plan unless the re-
7 vision is not significant, as determined by the
8 Secretary.

9 “(h) PROCEDURES.—

10 “(1) IN GENERAL.—The Secretary shall, by
11 regulation, establish procedures for—

12 “(A) receipt and consideration of nomina-
13 tions for any area to be offered for lease or to
14 be excluded from leasing;

15 “(B) public notice of and participation in
16 development of the leasing program;

17 “(C) review by State and local govern-
18 ments that may be impacted by the proposed
19 leasing; and

20 “(D) periodic consultation with State and
21 local governments, coal lessees and permittees,
22 and representatives of other individuals or orga-
23 nizations engaged in activity in areas covered
24 by leases.

1 “(2) REVISIONS.—The procedures shall be ap-
2 plicable to any significant revision or reapproval of
3 the leasing program.

4 “(i) INFORMATION REQUESTED BY SECRETARY.—

5 “(1) IN GENERAL.—The Secretary may obtain
6 from public sources, or purchase from private
7 sources, any survey, data, report, or other informa-
8 tion (including interpretations of such data, survey,
9 report, or other information) that may be necessary
10 to assist the Secretary in preparing any environ-
11 mental impact statement and in making other eval-
12 uations required by this Act.

13 “(2) CONFIDENTIAL INFORMATION.—

14 “(A) IN GENERAL.—Data of a classified
15 nature provided to the Secretary under this
16 subsection shall remain confidential for such pe-
17 riod of time as agreed to by the head of the de-
18 partment or agency from whom the information
19 is requested.

20 “(B) PERIOD.—The Secretary shall main-
21 tain the confidentiality of all privileged or pro-
22 prietary data or information for such period of
23 time as is provided for in this Act, established
24 by regulation, or agreed to by the parties.

1 “(j) INFORMATION PROVIDED BY OTHER FEDERAL
2 AGENCIES.—

3 “(1) IN GENERAL.—The head of a Federal de-
4 partment or agency—

5 “(A) shall provide the Secretary with any
6 nonprivileged or nonproprietary information the
7 Secretary requests to assist the Secretary in
8 preparing the leasing program; and

9 “(B) may provide the Secretary with any
10 privileged or proprietary information the Sec-
11 retary requests to assist the Secretary in pre-
12 paring the leasing program.

13 “(2) CONFIDENTIAL INFORMATION.—Privileged
14 or proprietary information provided to the Secretary
15 under this subsection shall remain confidential for
16 such period of time as agreed to by the head of the
17 department or agency from whom the information is
18 requested.

19 “(3) EXISTING RESOURCES.—In carrying out
20 this subsection, the Secretary may use the existing
21 capabilities and resources of a Federal department
22 or agency by appropriate agreement.

23 “(k) REGULATIONS.—Not later than 180 days after
24 the date of enactment of the COAL Reform Act of 2017,
25 the Secretary shall issue such regulations as are necessary

1 to carry out this section, including regulations that (to the
2 maximum extent practicable)—

3 “(1) minimize discretion by State offices of the
4 Department of the Interior in conducting lease sales;
5 and

6 “(2) maximize the financial return for tax-
7 payers of the United States.”.

8 **SEC. 11. RENTAL RATES.**

9 Section 7(a) of the Mineral Leasing Act (30 U.S.C.
10 207) is amended in the third sentence by inserting “at
11 a rental rate of not less than \$100 per acre (as reviewed
12 and, if appropriate, adjusted by the Secretary every 5
13 years)” before the period at the end.

14 **SEC. 12. PRIMARY TERM OF LEASE.**

15 Section 7 of the Mineral Leasing Act (30 U.S.C. 207)
16 is amended—

17 (1) in subsection (a)—

18 (A) in the first sentence, by striking
19 “twenty” and inserting “10”;

20 (B) in the second sentence, by striking
21 “ten” and inserting “5”; and

22 (C) in the sixth sentence—

23 (i) by striking “twenty” and inserting
24 “10”; and

1 (ii) by striking “ten” and inserting
2 “5”; and
3 (2) in subsection (b)(5), by striking “20” and
4 inserting “10”.

5 **SEC. 13. MINIMUM VALUE.**

6 The Mineral Leasing Act (30 U.S.C. 181 et seq.) is
7 amended—

8 (1) in sections 7(a) and 14 (30 U.S.C. 207(a),
9 223), by striking “12½ per centum” each place it
10 appears and inserting “18.75 percent”;

11 (2) in section 17 (30 U.S.C. 226)—

12 (A) in subsection (b)—

13 (i) in paragraph (1)(A), in the fifth
14 sentence, by striking “12.5 percent” and
15 inserting “18.75 percent”; and

16 (ii) in paragraph (2)(A)(ii)—

17 (I) by striking “12½ per cen-
18 tum” and inserting “18.75 percent”;
19 and

20 (II) by striking “(k)(1)(c)” and
21 inserting “(k)(1)(C)”;

22 (B) in subsection (c)(1), in the second sen-
23 tence, by striking “12.5 percent” and inserting
24 “18.75 percent”; and

1 (C) in subsections (l) and (n)(1)(C), by
2 striking “12½ per centum” each place it ap-
3 pears and inserting “18.75 percent”;

4 (3) in section 18 (41 Stat. 443), by striking
5 “12½ per centum” and inserting “18.75 percent”;
6 and

7 (4) in sections 19, 20, and 31(f)(4) (30 U.S.C.
8 228, 229, 188(f)(4)), by striking “12½ per centum”
9 each place it appears and inserting “18.75 percent”.

10 **SEC. 14. INSPECTION AND ENFORCEMENT.**

11 Section 41 of the Mineral Leasing Act (30 U.S.C.
12 195) is amended by adding at the end the following:

13 “(g) INSPECTION AND ENFORCEMENT.—

14 “(1) IN GENERAL.—The Director of the Bureau
15 of Land Management shall promulgate regulations
16 for inspections and enforcement of coal operations
17 carried out under this Act to ensure consistent and
18 effective inspections and enforcement.

19 “(2) INCLUSIONS.—The regulations promul-
20 gated pursuant to paragraph (1) shall—

21 “(A) provide for oversight of State inspec-
22 tion and enforcement programs for coal oper-
23 ations by the Washington, District of Columbia
24 office of the Bureau of Land Management;

1 “(B) standardize inspection and enforce-
2 ment practices for all State offices of the Bu-
3 reau of Land Management;

4 “(C) require documentation of inspection
5 and enforcement activities and the recordation
6 of all inspection results in a central database;
7 and

8 “(D) require periodic unannounced inspec-
9 tions.”.

10 **SEC. 15. CIVIL PENALTIES.**

11 Section 41 of the Mineral Leasing Act (30 U.S.C.
12 195) (as amended by section 14) is amended by adding
13 at the end the following:

14 “(h) BLM AUTHORITY TO ASSESS CIVIL PEN-
15 ALTIES.—

16 “(1) IN GENERAL.—The Director of the Bureau
17 of Land Management may include in a notice of
18 noncompliance issued to a person subject to the re-
19 quirements of this Act an assessment of a civil pen-
20 alty in accordance with paragraph (2).

21 “(2) MAXIMUM AMOUNT.—Subject to para-
22 graph (3), a penalty assessed pursuant to paragraph
23 (1) shall not exceed \$100,000 per incident per day.

24 “(3) ADJUSTMENT.—The Secretary may in-
25 crease the maximum amount described in paragraph

1 (2) after notice and opportunity for public com-
2 ment.”.

3 **SEC. 16. MORATORIUM ON NEW COAL LEASE SALES PEND-**
4 **ING IMPLEMENTATION.**

5 Notwithstanding any other provision of law, the Sec-
6 retary of the Interior shall not conduct a new lease sale,
7 or enter into a new lease, for coal subject to the Mineral
8 Leasing Act (30 U.S.C. 181 et seq.) until the Secretary
9 certifies to Congress that this Act and the amendments
10 made by this Act have been implemented.