



**Volume 2 | Issue 2**  
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## **Manchin must ensure Black Lung Excise Tax is included in budget bill**

Last year, the Build Back Better Act represented our best hope of getting the Black Lung Excise Tax restored to its historic rate, and extended for ten years. After months of negotiations in Washington, and grassroots pressure from Appalachia and all corners of the country, that bill was finally pronounced dead when West Virginia Senator Joe Manchin came out in opposition to it shortly before Christmas.

As a result of the failure of Build Back Better, the Black Lung Excise Tax was cut in half at the end of 2021. This has caused the Black Lung Disability Trust Fund to lose \$2.8 million of revenue every week so far in 2022. But now, Senate Democrats want to try again. This time, they want to pass a smaller budget reconciliation bill that would accomplish some, but not all, of the objectives of the defunct Build Back Better legislation.

Under the current Senate rules, the minority party can use the filibuster to kill any legislation that does not have the support of two thirds of the entire chamber. Budget reconciliation is an exception to this rule which allows Congress to pass certain tax and budget legislation with a simple majority.

Starting in March, news reports stated that Senate Democrats were back at work on a new budget reconciliation bill. Since Senator Manchin's opposition torpedoed the Build Back Better Act last year, the rest of his party may now be inclined to simply vote for whatever he wants, rather than risk failing to pass anything at all, as happened in December.

This means that it is more important now than ever for Senator Manchin to publicly and loudly express

his support for restoring and extending the Black Lung Excise Tax for ten years.

It's simple. If Joe Manchin wants a budget bill to pass, it will pass. If he wants this bill to extend the Excise Tax and assure that medical care and benefits for miners with black lung will be funded, then that is what will happen.

Call Senator Manchin right now! Tell him how black lung has impacted your life. Tell him to make sure the Black Lung Excise Tax is restored and extended for 10 years as part of the budget reconciliation bill. Please call both his Charleston and DC offices to make sure his staff gets the message, and understands that we are paying attention to this.

**Manchin's Charleston office: 304-342-5855**  
**Manchin's DC office: 202-224-3954**

**Call your Senator today at 888.780.5864**

to tell him/her we need a multi-year extension of the excise tax to fund the Black Lung Disability Trust Fund.

### **Talking Points for your call:**

- Introduce yourself
- State that you are calling because there remains no extension of the historic excise tax and the Black Lung Disability Trust Fund is losing needed funds every week without this extension.
- Ask your senator to support a multi-year extension of the excise tax in the new reconciliation bill and remind them "We are counting on you"

the **black lung**  
**BULLETIN**



## Black Lung Benefits Improvement Act (H.R. 6102)

For several years, Senator Casey (D-PA) and Representative Cartwright (D-PA) have introduced the Black Lung Benefits Improvement Act - legislation to improve the disability claims process for miners and address other oversight and regulation issues related to black lung. Representative Cartwright re-introduced the bill in March of this year. Below are some of the things that the bill does:

- Helps families navigate the complicated and costly benefits adjudication process. It allows for the reimbursement of medical exams that are needed for the claims process and develops procedures to help ensure that miners have representation and support through the claims process. For example, it supports clinics in providing assistance on claims as well as provides more timely reimbursement of some attorney expenses.
- Provides much needed clarity on how to determine whether a miner suffers from complicated black lung. Currently, the law is interpreted differently across the federal circuit courts. That makes it such that the determination of whether a miner has the most serious form of the disease is evaluated differently depending on the state in which the miner last worked. This Act would standardize that process.
- Provides a slight increase in miner benefit levels. Currently, a single miner receives just \$708 per month in disability benefits. This Act develops a new system for determining benefit levels so that they are not tied to the rate of pay for federal employees but instead to annual cost-of-living adjustments. It brings us one step closer to ensuring that miners and their families are taken care of by requiring a modest increase in benefit levels.
- Requires the Department of Labor (DOL) to develop new, stronger requirements for coal operators that self-insure their black lung liability. Coal companies continue to pass on their black lung liability to the Black Lung Disability Trust Fund when they go through bankruptcy. A February 2020 GAO report found \$865 million in black lung liability was pushed from bankrupt “self-insured” coal companies to the Black Lung Disability Trust Fund just between 2014 and 2016, increasing costs to the Fund in spite of the Fund’s insolvency. Stronger requirements will help ensure that coal operators remain accountable for paying the black lung benefits of their employees.

In this year’s version, there are quite a few adjustments to the language that have been made to make the bill better informed from a medical perspective. There are, however, also some sections that were not included at all in this year’s bill that have been in previous versions. The bill no longer includes a section to require MSHA to promulgate a silica standard. However, MSHA has said that they are moving forward a proposed rule on silica and that we should see a draft rule this summer. The bill also used to include language on the irrebuttable 15 year presumption from the Affordable Care Act (ACA). That has been excluded in this version as there is now more confidence that the ACA is not going to be overturned in its entirety by the Supreme Court. There also used to be a provision that required that all medical evidence developed by either the claimant or coal operator attorney be disclosed to the other party. However, in 2016 the DOL amended its regulations to require all parties to disclose their evidence to the other so this is already something that is practiced today. Past bills also included language to require NIOSH to develop a medical evidence training program but this, too, is already being carried forward without legislation. Many of the pieces that were cut from the bill this Congress are already being addressed through other regulatory and agency processes. The section of the bill that requires the DOL to create stricter requirements for coal companies that self-insure their black lung liability is new this session. Last, the bill no longer requires a GAO report to assess the adequacy of miners’ benefit levels. However, the Relief for Survivors of Miners Act (S. 757) that was introduced last year by Senator Warner does include this report.

In conclusion, this bill would enact measures that will help miners with black lung in many different ways. It is unclear whether or how the bill will pass, but it will certainly be helpful for BLA members to talk to their senators and representatives about the importance of this bill.

## Update on the Warrior Met Strike, one year in

*An interview with attorney Jack Jacobs*

Miners in Alabama have been on strike against Warrior Met Coal for more than a year now. The strike was triggered last spring when Warrior Met refused to sign a contract providing a fair wage for its workers. Just a few years earlier these same miners had already agreed to accept cuts to their wages, overtime pay, time-off, and quality healthcare coverage, in order to enable the company to continue operations after the bankruptcy of Walter Energy, which had previously owned Warrior Met’s mines.

Below is an interview with Jack Jacobs, an attorney from Pelham, Alabama who specializes in Black Lung and Workers Compensation Claims, and who represents members of UMWA District 20 who are on strike against Warrior Met.

### **Tell us about how Warrior Met treats its workers. What company policies and workplace conditions led to this strike?**

There are several areas of concern for the miners. They generally work six days a week with very few company holidays during the year. The company has been aggressive in discharging employees for fairly minor infractions as well. But I would say the biggest policy problem for the membership is the low pay they are getting compared to before the bankruptcy and compared to the two other UMWA mines in Alabama.

### **In your view, why won't Warrior Met agree to UMWA's demands, and what is the company's explanation as to why not?**

I think the biggest problem is that they are an investment company that owns a coal mine. They are more concerned with fighting the union and keeping their wages as low as possible rather than trying to get back to the business of mining coal. Comparatively, Peabody had closed their mine for almost a year before opening up last year at Shoal Creek. The UMWA and Peabody were able to negotiate a reasonable price contract through a lot of hard work but something that was fair for the members. Warrior Met has so far not been willing to do that.

### **A year into the strike, what happens next? How do you guys ultimately win?**

Negotiations are still going on and I am hopeful they are getting close to an agreement. Warrior Met has hired a few scabs to cross the picket line, but overall the UMWA has held strong in this fight. Warrior Met is not running at full capacity and they can’t while this strike continues. Leadership from Larry Spencer, District 20 Vice President and James Blankenship have done a great job here in Alabama. Cecil E. Roberts and Brian Sanson have been down in Alabama about every week to help with the fight and negotiations during the strike. The support the UMWA has received from other unions both here in Alabama and across the country has been impressive.

### **What can members of the Black Lung Association do to support the Warrior Met Miners, and help make sure you all win this strike?**

There are two different funds that people can contribute to in support of the miners. The UMWA has the UMWA Strike Aid Fund - UMWA where donations can be made. They can also be mailed to UMWA Strike Aid Fund PO Box 513 Dumfries, VA 22026.

The UMWA Women’s Auxiliary has a separate fund that has been raising money for their food pantry and other support for the members. They can be made online:



*A young union supporter on the Warrior Met picket line.  
Photo courtesy of Chris Brubaker.*

<https://www.paypal.com/paypalme/UMWAStrikePantry> or sent by mail to the UMWA Women's Auxiliary at 21922 Highway 216 McCalla, AL 35111.

### **In your experience, how much of a concern is black lung among Warrior Met miners and broader the mining community in Alabama?**

Most of the miners want to get evaluated to see how they are doing when they decide to leave the mines. Many of our miners here are second, third or fourth generation coal miners. They have seen what black lung can do and try to get evaluated regularly as needed.

### **Rates of black lung, particularly complicated, are spiking in VA, KY, and WV for the past decade plus. What can you tell me about rates and severity of black lung in Alabama in recent years?**

Mining in Alabama is different, so we are not seeing the high rates of complicated black lung that are coming up in VA, KY and WV. I think it mostly comes from the fact that [Alabama miners] do not cut as much quartz when they mine, and the silica levels are lower. If I see a miner here in Alabama that has complicated and is under the age of 60, it is almost always someone that worked in Kentucky or West Virginia before coming here. We are seeing some increases in miners, but I do not think it is nearly the rates in other parts of the country.

### **What are the impacts of the Walter Energy bankruptcy, and Warrior Met's operations on the Black Lung Disability Trust Fund?**

Under the Federal Black Lung Act, the mine operator is not allowed to escape their black lung obligations in bankruptcy.\* Warrior Met is obligated to make payments to the miners that are awarded their benefits whether they worked for them or for the predecessor company, Jim Walter Resources.

The Warrior Met mines are close to the Warrior River in Alabama. Most of the coal that is mined is barged to the port of Mobile, AL and sold overseas. None of that coal is subject to the black lung excise tax. Practically it does not make a lot of sense, but that is how it works for now.

\*As Mr. Jacobs says, the Mine Act does in fact disallow companies from discharging black lung beneficiary obligations through bankruptcy. In recent years however, we have seen several companies bypass this by simply defaulting on their excise tax payments at the conclusion of bankruptcy proceedings. This default causes the DOL to absorb that company's beneficiaries under the Black Lung Disability Trust Fund.

## **Kentucky State Policy Updates on the B-Reader Bill**

In 2018, the Kentucky state legislature passed House Bill 2 which affected multiple state worker's compensation programs including black lung claims. Since then, we have been fighting yearly to have radiologists that are NIOSH certified B readers to once again be able to evaluate x-rays for state compensation claims. This year, the bill was introduced by Ashley Tackett-Lafferty, and though it did have bipartisan support, it was never placed into a committee to be passed out onto the house floor. Though the bill did not proceed this year, there is currently only one pulmonologist now reading for state benefits. Though this is not ideal, the pulmonologists now reading for the state has a history of reading fairly for miners. We will continue to monitor readings for the state and will work with legislators to bring stronger bills in the next session.

## **West Virginia State Policy Updates**

Black Lung Association members and UMWA lobbyists worked alongside one another in fighting for black lung policy in the West Virginia legislature this year. The state created a new committee, House Select Coalfield Communities Committee, this year with the focus on revitalizing the state's coal communities. A bill brought to this committee included a bill that would not limit the number of times and under what conditions a miner can be evaluated by the Occupational Pneumoconiosis Board. This bill is identical to legislation that was introduced in the House and Senate the past three legislative sessions but has never passed from

(*WV Policy Updates cont'd*) committee and would assist those impacted by the 2018 Supreme Court of Appeals ruling that a miner was not entitled to a permanent partial disability award if pulmonary function studies found the miner had no breathing impairment. This bill would allow miners to be able to present their case before the board even if no breathing impairment has been shown following a pneumoconiosis diagnosis. This legislation wasn't passed out of the house this year, nor was its matching Senate bill passed out of the Senate, but we will continue to push for improved black lung policy in the state.

## **Study Links Silica to Complicated Black Lung**

Dr. Cohen, Dr. Go, and several other researchers recently published a study that has officially linked silica dust exposure to the complicated black lung cases that have become regular in the Appalachian coalfields. These findings were reached by comparing modern miners' lungs to the lungs of miners who worked decades ago. It was found that miners born after 1930 had more silica in their lungs than miners that were born between 1910 to 1930. Dr. Cohen and Black Lung Association supporters are hopeful that these findings will push MSHA to decrease the standard of silica exposure for working miners.

## **Clinic Funding Passed**

Though an excise tax extension was not included in the appropriations bill of 2022, passed last month, there was a provision included that provided over \$11.8 million dollars of funding for the black lung clinics. This bill also prioritized the Black Lung health screening mobile bus and calls for the CDC to evaluate the possibility of purchasing a second unit.

## **Postcard Campaign**

The West Virginia Black Lung Associations have launched a postcard campaign that will target their U.S. Representatives. The postcards acknowledge the strain on the fund and the need for them to support the ten year extension of the excise tax by signing onto H.B. 6462. If you or your chapter are interested in doing a similar campaign, contact Courtney at 606.633.3929.

## **Silica Rule Update**

Several members of the Black Lung Association have been talking with officials from the Mine Safety and Health Administration (MSHA) by phone on a quarterly basis. The Association is pushing for the current silica level to be cut in half. Occupational Safety and Health Administration's (OSHA) current level for silica exposure is one half of what the MSHA level is. Our miners are contracting pulmonary massive fibrosis (complicated black lung) at higher rates than ever recorded. We think cutting the level in half will help prevent complicated black lung. We have been advocating for this change for the last twelve years. This is important to Jerry Coleman, President of the Kanawha County Chapter. He is a disabled miner with complicated black lung. His son is working in the mines now. Jerry doesn't want to see his son or any other miner in the same shape this disease has left him. He says, "It should be cut in half because the seams they are cutting now are smaller, and they're taking a whole lot of rock with it. So we really need silica levels cut in half." Gary Hairston, President of the Fayette County Chapter and President of the National Black Lung Association, said, "I really think we need to get it passed for our younger coal miners. The companies want to wait on a study on it. We can't wait for no study. Younger miners need it now. OSHA has a lower standard-we're the only ones with the higher standard." As the Senate finally confirmed an Undersecretary of Labor earlier this month, we think the rule could be changed by the end of the year. But not without pressure to make the change!

### **Representative, I and the National Black Lung Association urge you to support miners with black lung.**

- The excise tax was allowed to drop to less than half of its former rate on January 1, 2022.
- Each week in 2022, the Trust Fund has lost over \$2.6 million in revenue.
- In 2021, West Virginia received over 38 million dollars from the Trust Fund.



I implore you to support a multi-year extension of the excise tax, which would provide security to the fund that provides miners their benefits. Congress should act as quickly as possible to pass a ten-year extension of the excise tax (S. 2810 & H.B. 6462).

## Members in the News

Several of the Black Lung Association leaders and members have been hard at work speaking up about the need for a quick legislation that would reinstate the excise tax to its historical rate. Dianna Perdue, Secretary of the National Black Lung Association and Treasurer of the Kanawha County Black Lung Association, submitted a Letter to the Editor to The Hill in January. Perdue urged Senator Manchin to push for a solution to the cut excise tax. “The Trust Fund cannot afford a cut as need increases. Thankfully, there is a solution already on the table (S. 2810)...Manchin can step up and lead the way to that solution like he has in the past,” states Perdue.

Bethel Brock, President of the Southwest Virginia Chapter 2 Black Lung Association, also had an op ed featured in the Roanoke Times, and was republished in the Coalfield Progress, in February. “He [Griffith] has dodge this issue [solvency of the trust fund] for long enough...I am calling on Griffith to co-sponsor... H.R. 6462...,” writes Brock. Arvin Hanshaw, President of the Nicholas County Black Lung Association, penned an Op Ed that was featured in the Charleston Gazette last month. Hanshaw voiced the need for Manchin to champion an extension of the excise tax, “...we need him [Manchin] to take the lead in restoring the excise tax to its normal rate, and extending it for at least 10 years.”

We hope to continue to see members' voices raised on the local and national level this year.

## Griffith fails to help sick coal miners



BETHEL BROCK

I've lived in Southwest Virginia all my life, and I started working in the coal mines as a teenager. When I was 45, after decades of working for Westmoreland Coal, I noticed it was becoming difficult for me to walk through the mine without stopping to rest. It got worse and worse, and became difficult to do much of anything without getting winded. By my mid-50s, I was diagnosed with black lung and could no longer work.

Black lung is caused by inhaling coal and silica dust while working in the mines. Some days, I worked in dust so thick, I couldn't see my hand in front of my face. The dust accumulates in the miner's lungs and becomes hard like concrete. It makes it harder and harder to

breathe, ultimately suffocating many. There is no cure for it, only therapies to live with it. When a miner gets diagnosed with black lung, his employer is required by law to pay for all the ongoing medical treatment the disease requires, and to provide a monthly disability payment of less than \$700 for the miner to live on. But when the company goes bankrupt, the federal government picks up the tab through a program called the Black Lung Disability Trust Fund.

I had to fight Westmoreland Coal for 14 years to get the medical care and disability benefits that were owed to me as a miner with black lung. In fact, Westmoreland only quit fighting me on it after my case was scrutinized in the media.

Not long after I finally received my black lung benefits and medical care, Westmoreland and a number of other coal companies started filing for bankruptcy. These bankruptcies pawed me

and about 20,000 other miners off onto the Black Lung Disability Trust Fund.

The trust fund is financed by the black lung excise tax, a very small tax paid by coal companies for each ton of coal they sell. Congress must extend this tax each year, but failed to do so this past December, effectively slashing this crucial source of funds for sick and dying miners by more than half. Thanks to our lawmakers, the Black Lung Disability Trust Fund is now losing \$2.8 million every week as a result.

Another issue with the black lung excise tax is that it does not apply to coal exported to other countries, which makes up a large percentage of the coal mined in Southwest Virginia and across Appalachia.

In many cases, these are the mines that are causing the worst cases of black lung, because they are mostly exporting valuable metallurgical coal used to make steel, these companies can justify

having workers cut through tons of sandstone, exposing them to incredible levels of toxic silica dust. This export loophole costs the trust fund tens of millions of dollars each year.

There is a bill before Congress called the Black Lung Trust Fund Solvency Act. It wouldn't do anything about the export loophole, but it would restore the historic rate of the black lung excise tax and extend it for 10 years. This would be a big step in the right direction. We miners have asked U.S. Rep. Morgan Griffith, R-Salem, to support this legislation, but he has shown no interest.

He has told us he can't help us as he is not on the right congressional committee. Never mind my plea that he weigh in on other issues outside his committee assignments all the time. He told us he wants to find a compromise with the coal companies that can share up the trust fund, but he's never given any idea what that compromise might be.

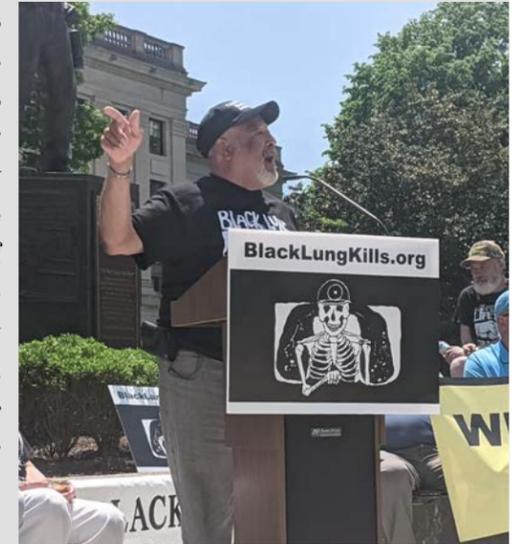
Griffith should represent the sick miners in the 9th Congressional District of Virginia who have supported him at the polls election after election. Yet he just folds his hands and sits back when we need him most. It is my belief that Griffith is more interested in supporting the greed of the coal companies than the needs of the coal miners.

He has dodged this issue for long enough. It is time for Griffith to stop dodging, and make a public commitment to us miners. I am calling on Griffith to co-sponsor the Black Lung Disability Trust Fund Solvency Act (H.R. 6462), and to commit to leading the way on future legislation that will close the export loophole. If he doesn't feel like he can do that, then he needs to tell us what compromise he thinks he could live with.

Brock is president of the Southwest Virginia Black Lung Association, Chapter 2, based in Norton.

## “We’re Counting on You, Joe” Campaign Launch and Press Conference

On May 12, the National Black Lung Association and supporters launched the “We’re Counting on You, Joe” campaign via a press conference at the West Virginia Capitol. During the press conference, Gary Hairston, the President of the National Black Lung Association, Jerry Coleman, the President of the Kanawha County Black Lung Association, and Dianna Perdue, the Secretary of the National Black Lung Association each spoke about the importance of the Black Lung Disability Trust Fund and asked Manchin to ensure there is an extension of the excise tax included in the new reconciliation budget bill. In addition to the press from Thursday's event, there will also be radio and social media ads circulating over the month. If you would like to call your Senator to express your support of having the extension included in the budget reconciliation bill, visit [blacklungkills.org](http://blacklungkills.org) or call (888)780-LUNG (5864).



## BLACK LUNG SUMMER SPEAKER SERIES

2nd Tuesday of every month at 6 PM  
UMWA Hall  
623 Cherokee Ave., Big Stone Gap  
Presented by: SWVA Black Lung Association Chapter 2

- Tuesday, June 14th – **Laura Blevins**, SWVA Regional Director for Sen. Tim Kaine, and **Kelli Bledsoe**, Black Lung Program Director at Stone Mountain Health
- Tuesday, July 12th – **Shane Clem**, SWVA Regional Director for Sen. Mark Warner, and **Marcy Tate**, Director of New Beginnings Pulmonary Rehab
- Tuesday, August 9th – **Rebecca Shelton**, Director of Policy, Appalachian Citizens Law Center
- Tuesday, September 13th – **Dr. Brandon Crum**, Radiologist/ B-Reader, United Medical Group

Claims counselors will be present to answer questions about filing for black lung benefits.  
For more info:  
276-870-5843,  
[willie@appvoices.org](mailto:willie@appvoices.org).

[BLACKLUNGKILLS.ORG](http://BLACKLUNGKILLS.ORG)

## Black Lung Association leaders and care providers speak to educators on webinar

On April 25th, 34 individuals, mostly educators working at colleges and universities across the country, participated in an online webinar entitled Caring for Miners with Black Lung: a panel discussion with medical professionals and Black Lung Association Leaders. The event was geared towards students and faculty in nursing and other medical fields. The subject matter was mostly focused on how black lung develops and impacts the body and the life of the miner, and how the disease is diagnosed and treated. Policy issues like the insolvency of the Black Lung Disability Trust Fund, and the inadequacy of regulations protecting miners from silica exposure, were also discussed.

Jerry Coleman, President of the Kanawha County chapter and the first panelist to speak on the webinar, told attendees how the disease has impacted his life, and discussed what the Black Lung Association is doing to support miners like him. Other speakers included Dr. Leonard Go, a pulmonologist at the University of

Illinois-Chicago and Northwestern University; Brenda Halsey Marion, former director of the New River Breathing Center in Scarbro, WV; Susie Criss, claims counselor at Cabin Creek Health in Dawes, WV; and Debbie Johnson, black lung program director at Bluestone Health in Princeton, WV.



## About the Bulletin

The Black Lung Bulletin is the newsletter of the Black Lung Association, which is composed of both union and non-union miners, and their families. The Bulletin was originally published from 1970-1972. The Bulletin has reemerged, now, as a way to stay connected in a time when it is challenging to be together. In collaboration with Black Lung Association leaders, this bulletin has been organized by John Cline, Debbie Wills (Valley Health), Willie Dodson (Appalachian Voices), Courtney Rhoades (Appalachian Citizens' Law Center), and Rebecca Shelton (Appalachian Citizens' Law Center) and published by Appalachian Citizens' Law Center. We hope that a bulletin can be sent out every few months. Please contact your chapter president or Courtney Rhoades if you have ideas for content (articles you would like to see, or art or poetry you would like to share), if you would like to participate in editing and distributing this bulletin, if you do not want to receive this bulletin, or if you would prefer to receive this bulletin via email.

Courtney Rhoades: [courtney@aclc.org](mailto:courtney@aclc.org) or (606) 633-3929