

115TH CONGRESS
1ST SESSION

S. 1911

To amend the Surface Mining Control and Reclamation Act of 1977 to transfer certain funds to the 1974 United Mine Workers of America Pension Plan, and for other purposes.

IN THE SENATE OF THE UNITED STATES

OCTOBER 3, 2017

Mr. MANCHIN (for himself, Mrs. CAPITO, Mr. BROWN, Mr. CASEY, Mrs. McCASKILL, Mr. DONNELLY, Ms. DUCKWORTH, Mr. KAINE, Mr. WARNER, and Ms. HEITKAMP) introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Surface Mining Control and Reclamation Act of 1977 to transfer certain funds to the 1974 United Mine Workers of America Pension Plan, 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.**

4 This Act may be cited as the “American Miners Pen-
5 sion Act of 2017”.

1 **SEC. 2. TRANSFERS TO 1974 UMWA PENSION PLAN.**

2 (a) IN GENERAL.—Subsection (i) of section 402 of
3 the Surface Mining Control and Reclamation Act of 1977
4 (30 U.S.C. 1232) is amended—

5 (1) by redesignating paragraph (4) as para-
6 graph (5); and

7 (2) by inserting after paragraph (3) the fol-
8 lowing:

9 “(4) ADDITIONAL AMOUNTS.—

10 “(A) CALCULATION.—If the dollar limita-
11 tion specified in paragraph (3)(A) exceeds the
12 aggregate amount required to be transferred
13 under paragraphs (1) and (2) for a fiscal year,
14 the Secretary of the Treasury shall transfer an
15 additional amount equal to the difference be-
16 tween such dollar limitation and such aggregate
17 amount to the trustees of the 1974 UMWA
18 Pension Plan to pay benefits required under
19 that plan.

20 “(B) CESSATION OF TRANSFERS.—The
21 transfers described in subparagraph (A) shall
22 cease as of the first fiscal year beginning after
23 the first plan year for which the funded per-
24 centage (as defined in section 432(i)(2) of the
25 Internal Revenue Code of 1986) of the 1974
26 UMWA Pension Plan is at least 100 percent,

1 taking fully into account all outstanding liabil-
2 ities for loans made pursuant to subparagraph
3 (D).

4 “(C) PROHIBITION ON BENEFIT IN-
5 CREASES, ETC.—During a fiscal year in which
6 the 1974 UMWA Pension Plan is receiving
7 transfers under subparagraph (A), no amend-
8 ment of such plan which increases the liabilities
9 of the plan by reason of any increase in bene-
10 fits, any change in the accrual of benefits, or
11 any change in the rate at which benefits become
12 nonforfeitable under the plan may be adopted
13 unless the amendment is required as a condi-
14 tion of qualification under part I of subchapter
15 D of chapter 1 of the Internal Revenue Code of
16 1986.

17 “(D) TREATMENT OF TRANSFERS FOR
18 PURPOSES OF WITHDRAWAL LIABILITY UNDER
19 ERISA.—The amount of any transfer made
20 under subparagraph (A) (and any earnings at-
21 tributable thereto) shall be disregarded in deter-
22 mining the unfunded vested benefits of the
23 1974 UMWA Pension Plan and the allocation
24 of such unfunded vested benefits to an employer
25 for purposes of determining the employer’s

1 withdrawal liability under section 4201 of the
2 Employee Retirement Income Security Act of
3 1974.

4 “(E) ADDITIONAL LOAN AUTHORITY.—

5 “(i) IN GENERAL.—In addition to the
6 amounts transferred under any provision
7 other than this subparagraph, and without
8 regard to the limitations described in para-
9 graph (3), each year beginning with fiscal
10 year 2018 the Secretary of the Treasury
11 shall transfer to the 1974 UMWA Pension
12 Plan as a loan the amount certified by the
13 Trustees of the 1974 UMWA Pension Plan
14 to be necessary to prevent the insolvency of
15 such plan.

16 “(ii) ANNUAL CAP.—The amount of
17 each annual loan under clause (i) shall not
18 exceed \$600,000,000.

19 “(iii) LOAN TERMS.—

20 “(I) IN GENERAL.—Each such
21 annual loan shall bear interest at the
22 rate of 1 percent per annum, and each
23 shall be treated as a separate loan.

24 “(II) REPAYMENT.—For the first
25 10 years of each such loan, only the

1 interest on such loan shall be repay-
2 able, and payments on the principal
3 shall be distributed over the 30-year
4 period beginning with the 11th year of
5 the loan.

6 “(III) ADDITIONAL PAYMENTS.—

7 Notwithstanding subclauses (I) and
8 (II), to the extent that the Trustees of
9 the 1974 UMWA Pension Plan certify
10 that such plan has surplus assets
11 which are not needed to pay benefits
12 under the plan or to ensure the future
13 solvency of the plan, such surplus as-
14 sets shall be applied towards the re-
15 payment of the oldest outstanding
16 loan made pursuant to this subpara-
17 graph.

18 “(IV) MAINTENANCE OF CER-

19 TAIN MEASURES UNDER REHABILITA-
20 TION PLAN.—Each loan under this
21 subparagraph shall specify as a condi-
22 tion of the loan that, if the 1974
23 UMWA Pension Plan emerges from
24 critical status (within the meaning of
25 section 432 of the Internal Revenue

1 Code of 1986 and section 305 of the
2 Employee Retirement Income Security
3 Act of 1974), the Plan will continue
4 to meet the requirements of section
5 432(b)(3) of such Code and 305(b)(3)
6 of such Act, and the measures adopt-
7 ed pursuant to section
8 432(e)(3)(A)(ii) of such Code and sec-
9 tion 305(e)(3)(A)(ii) of such Act will
10 remain in place. During the period
11 such measures are required to remain
12 in place, sections 412(b)(3) of such
13 Code and 302(b)(3) of such Act shall
14 continue to apply as if the plan were
15 still in critical status.

16 “(iv) ANNUAL CERTIFICATION.—Each
17 year beginning with fiscal year 2018, the
18 Trustees of the 1974 UMWA Pension Plan
19 shall certify the amount required to be
20 loaned pursuant to clause (i) and the
21 amount of any surplus assets described in
22 clause (iii)(III). Such certification shall
23 also include a certification that—

24 “(I) such loan amount, in com-
25 bination with future amounts available

1 to the Plan, is projected to be suffi-
2 cient to maintain indefinitely the sol-
3 vency of the plan (without regard to
4 any outstanding loan balance); and

5 “(II) the Plan is projected to be
6 able to repay the amount of such loan,
7 with interest, as required under clause
8 (iii).

9 The preceding sentence shall not apply
10 with respect to any year in which the
11 amount determined by the Trustees under
12 clause (i) is \$0 and no loans under this
13 subparagraph remain outstanding.

14 “(v) PLAN INSOLVENCY OR DE-
15 FAULT.—If the 1974 UMWA Pension Plan
16 becomes insolvent in any year despite re-
17 ceiving loan amounts under this subpara-
18 graph, or if the Plan is unable to make
19 any payment on a loan under this subpara-
20 graph when due, employers contributing to
21 the Plan and employer associations with
22 members contributing to the Plan shall not
23 be subject to any new or increased liability,
24 including any increased fee, expense, con-
25 tribution, assessment, or surcharge.

1 “(vi) **INSOLVENCY.**—For purposes of
2 this subparagraph, a plan is insolvent if
3 the plan’s available resources are not suffi-
4 cient to pay benefits under the plan when
5 due for the plan year and as projected in-
6 definitely into future plan years, or if the
7 plan is determined to be insolvent under
8 section 418E(d) of the Internal Revenue
9 Code of 1986.

10 “(vii) **INITIAL LOAN.**—The first loan
11 under this subparagraph shall be made not
12 later than 60 days after the date of enact-
13 ment of the American Miners Pension Act
14 of 2017.

15 “(F) **ENHANCED ANNUAL REPORTING.**—

16 “(i) **IN GENERAL.**—Not later than the
17 90th day of each plan year beginning after
18 the date of enactment of the American
19 Miners Pension Act of 2017, the trustees
20 of the 1974 UMWA Pension Plan shall file
21 with the Secretary of the Treasury or the
22 Secretary’s delegate and the Pension Ben-
23 efit Guaranty Corporation a report (includ-
24 ing appropriate documentation and actu-
25 arial certifications from the plan actuary,

1 as required by the Secretary of the Treas-
2 ury or the Secretary’s delegate) that con-
3 tains—

4 “(I) whether the plan is in en-
5 dangered or critical status under sec-
6 tion 305 of the Employee Retirement
7 Income Security Act of 1974 and sec-
8 tion 432 of the Internal Revenue Code
9 of 1986 as of the first day of such
10 plan year;

11 “(II) the funded percentage (as
12 defined in section 432(i)(2) of such
13 Code) as of the first day of such plan
14 year, and the underlying actuarial
15 value of assets and liabilities taken
16 into account in determining such per-
17 centage;

18 “(III) the market value of the as-
19 sets of the plan as of the last day of
20 the plan year preceding such plan
21 year;

22 “(IV) the total value of all con-
23 tributions made during the plan year
24 preceding such plan year;

1 “(V) the total value of all bene-
2 fits paid during the plan year pre-
3 ceding such plan year;

4 “(VI) cash flow projections for
5 such plan year and either the 6 or 10
6 succeeding plan years, at the election
7 of the trustees, and the assumptions
8 relied upon in making such projec-
9 tions;

10 “(VII) funding standard account
11 projections for such plan year and the
12 9 succeeding plan years, and the as-
13 sumptions relied upon in making such
14 projections;

15 “(VIII) the total value of all in-
16 vestment gains or losses during the
17 plan year preceding such plan year;

18 “(IX) any significant reduction
19 in the number of active participants
20 during the plan year preceding such
21 plan year, and the reason for such re-
22 duction;

23 “(X) a list of employers that
24 withdrew from the plan in the plan
25 year preceding such plan year, and

1 the resulting reduction in contribu-
2 tions;

3 “(XI) a list of employers that
4 paid withdrawal liability to the plan
5 during the plan year preceding such
6 plan year and, for each employer, a
7 total assessment of the withdrawal li-
8 ability paid, the annual payment
9 amount, and the number of years re-
10 maining in the payment schedule with
11 respect to such withdrawal liability;

12 “(XII) any material changes to
13 benefits, accrual rates, or contribution
14 rates during the plan year preceding
15 such plan year;

16 “(XIII) any scheduled benefit in-
17 crease or decrease in the plan year
18 preceding such plan year having a
19 material effect on liabilities of the
20 plan;

21 “(XIV) details regarding any
22 funding improvement plan or rehabili-
23 tation plan and updates to such plan;

24 “(XV) the number of partici-
25 pants and beneficiaries during the

1 plan year preceding such plan year
2 who are active participants, the num-
3 ber of participants and beneficiaries in
4 pay status, and the number of termi-
5 nated vested participants and bene-
6 ficiaries;

7 “(XVI) the information contained
8 on the most recent annual funding no-
9 tice submitted by the plan under sec-
10 tion 101(f) of the Employee Retirement
11 Income Security Act of 1974;

12 “(XVII) the information con-
13 tained on the most recent Department
14 of Labor Form 5500 of the plan; and

15 “(XVIII) copies of the plan docu-
16 ment and amendments, other retire-
17 ment benefit or ancillary benefit plans
18 relating to the plan and contribution
19 obligations under such plans, a break-
20 down of administrative expenses of
21 the plan, participant census data and
22 distribution of benefits, the most re-
23 cent actuarial valuation report as of
24 the plan year, copies of collective bar-
25 gaining agreements, and financial re-

1 ports, and such other information as
2 the Secretary of the Treasury or the
3 Secretary's delegate, in consultation
4 with the Secretary of Labor and the
5 Director of the Pension Benefit Guar-
6 anty Corporation, may require.

7 “(ii) ELECTRONIC SUBMISSION.—The
8 report required under clause (i) shall be
9 submitted electronically.

10 “(iii) INFORMATION SHARING.—The
11 Secretary of the Treasury or the Sec-
12 retary's delegate shall share the informa-
13 tion in the report under clause (i) with the
14 Secretary of Labor.

15 “(iv) PENALTY.—Any failure to file
16 the report required under clause (i) on or
17 before the date described in such clause
18 shall be treated as a failure to file a report
19 required to be filed under section 6058(a)
20 of the Internal Revenue Code of 1986, ex-
21 cept that section 6652(e) of such Code
22 shall be applied with respect to any such
23 failure by substituting ‘\$100’ for ‘\$25’.
24 The preceding sentence shall not apply if
25 the Secretary of the Treasury or the Sec-

1 retary’s delegate determines that reason-
 2 able diligence has been exercised by the
 3 trustees of such plan in attempting to
 4 timely file such report.

5 “(G) 1974 UMWA PENSION PLAN DE-
 6 FINED.—For purposes of this paragraph, the
 7 term ‘1974 UMWA Pension Plan’ has the
 8 meaning given the term in section 9701(a)(3)
 9 of the Internal Revenue Code of 1986, but
 10 without regard to the limitation on participation
 11 to individuals who retired in 1976 and there-
 12 after.”.

13 (b) COORDINATION WITH TAXATION OF UNRELATED
 14 BUSINESS INCOME.—Subparagraph (A) of section
 15 514(e)(6) of the Internal Revenue Code of 1986 is amend-
 16 ed—

- 17 (1) by striking “or” at the end of clause (i);
 18 (2) by striking the period at the end of clause
 19 (ii)(II) and inserting “, or”; and
 20 (3) by adding at the end the following new
 21 clause:

22 “(iii) indebtedness with respect to the
 23 1974 UMWA Pension Plan (as defined in
 24 section 402(i)(4)(G) of the Surface Mining
 25 Control and Reclamation Act of 1977)

1 under a loan made by the Secretary pursu-
2 ant to section 402(i)(4)(E) of the Surface
3 Mining Control and Reclamation Act of
4 1977.”.

5 (c) EFFECTIVE DATE.—The amendments made by
6 this section shall apply to fiscal years beginning after Sep-
7 tember 30, 2016.

○