

116TH CONGRESS  
1ST SESSION

# S. 2788

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.

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## IN THE SENATE OF THE UNITED STATES

NOVEMBER 6, 2019

Mr. MANCHIN (for himself, Mrs. CAPITO, Mr. McCONNELL, Mr. JONES, Mr. KAINE, Ms. DUCKWORTH, Mr. BROWN, Mr. CASEY, Mr. DURBIN, Mr. WARNER, Mr. PORTMAN, Ms. SINEMA, and Mr. VAN HOLLEN) introduced the following bill; which was read twice and referred to the Committee on Finance

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## 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 “Bipartisan American  
5 Miners Act of 2019”.

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) in paragraph (3)(A), by striking  
6 “\$490,000,000” and inserting “\$750,000,000”;

7 (2) by redesignating paragraph (4) as para-  
8 graph (5); and

9 (3) by inserting after paragraph (3) the fol-  
10 lowing:

11 “(4) ADDITIONAL AMOUNTS.—

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

22 “(B) CESSATION OF TRANSFERS.—The  
23 transfers described in subparagraph (A) shall  
24 cease as of the first fiscal year beginning after  
25 the first plan year for which the funded per-  
26 centage (as defined in section 432(j)(2) of the

1 Internal Revenue Code of 1986) of the 1974  
2 UMWA Pension Plan is at least 100 percent.

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

16 “(D) CRITICAL STATUS TO BE MAIN-  
17 TAINED.—Until such time as the 1974 UMWA  
18 Pension Plan ceases to be eligible for the trans-  
19 fers described in subparagraph (A)—

20 “(i) the Plan shall be treated as if it  
21 were in critical status for purposes of sec-  
22 tions 412(b)(3), 432(e)(3), and  
23 4971(g)(1)(A) of the Internal Revenue  
24 Code of 1986 and sections 302(b)(3) and

1           305(e)(3) of the Employee Retirement In-  
2           come Security Act;

3           “(ii) the Plan shall maintain and com-  
4           ply with its rehabilitation plan under sec-  
5           tion 432(e) of such Code and section  
6           305(e) of such Act, including any updates  
7           thereto; and

8           “(iii) the provisions of subsections (c)  
9           and (d) of section 432 of such Code and  
10          subsections (c) and (d) of section 305 of  
11          such Act shall not apply.

12          “(E) TREATMENT OF TRANSFERS FOR  
13          PURPOSES OF WITHDRAWAL LIABILITY UNDER  
14          ERISA.—The amount of any transfer made  
15          under subparagraph (A) (and any earnings at-  
16          tributable thereto) shall be disregarded in deter-  
17          mining the unfunded vested benefits of the  
18          1974 UMWA Pension Plan and the allocation  
19          of such unfunded vested benefits to an employer  
20          for purposes of determining the employer’s  
21          withdrawal liability under section 4201 of the  
22          Employee Retirement Income Security Act of  
23          1974.

24          “(F) REQUIREMENT TO MAINTAIN CON-  
25          TRIBUTION RATE.—A transfer under subpara-

1 graph (A) shall not be made for a fiscal year  
2 unless the persons that are obligated to con-  
3 tribute to the 1974 UMWA Pension Plan on  
4 the date of the transfer are obligated to make  
5 the contributions at rates that are no less than  
6 those in effect on the date which is 30 days be-  
7 fore the date of enactment of the Bipartisan  
8 American Miners Act of 2019.

9 “(G) ENHANCED ANNUAL REPORTING.—

10 “(i) IN GENERAL.—Not later than the  
11 90th day of each plan year beginning after  
12 the date of enactment of the Bipartisan  
13 American Miners Act of 2019, the trustees  
14 of the 1974 UMWA Pension Plan shall file  
15 with the Secretary of the Treasury or the  
16 Secretary’s delegate and the Pension Ben-  
17 efit Guaranty Corporation a report (includ-  
18 ing appropriate documentation and actu-  
19 arial certifications from the plan actuary,  
20 as required by the Secretary of the Treas-  
21 ury or the Secretary’s delegate) that con-  
22 tains—

23 “(I) whether the plan is in en-  
24 dangered or critical status under sec-  
25 tion 305 of the Employee Retirement

1 Income Security Act of 1974 and sec-  
2 tion 432 of the Internal Revenue Code  
3 of 1986 as of the first day of such  
4 plan year;

5 “(II) the funded percentage (as  
6 defined in section 432(j)(2) of such  
7 Code) as of the first day of such plan  
8 year, and the underlying actuarial  
9 value of assets and liabilities taken  
10 into account in determining such per-  
11 centage;

12 “(III) the market value of the as-  
13 sets of the plan as of the last day of  
14 the plan year preceding such plan  
15 year;

16 “(IV) the total value of all con-  
17 tributions made during the plan year  
18 preceding such plan year;

19 “(V) the total value of all bene-  
20 fits paid during the plan year pre-  
21 ceding such plan year;

22 “(VI) cash flow projections for  
23 such plan year and either the 6 or 10  
24 succeeding plan years, at the election  
25 of the trustees, and the assumptions

1 relied upon in making such projec-  
2 tions;

3 “(VII) funding standard account  
4 projections for such plan year and the  
5 9 succeeding plan years, and the as-  
6 sumptions relied upon in making such  
7 projections;

8 “(VIII) the total value of all in-  
9 vestment gains or losses during the  
10 plan year preceding such plan year;

11 “(IX) any significant reduction  
12 in the number of active participants  
13 during the plan year preceding such  
14 plan year, and the reason for such re-  
15 duction;

16 “(X) a list of employers that  
17 withdrew from the plan in the plan  
18 year preceding such plan year, and  
19 the resulting reduction in contribu-  
20 tions;

21 “(XI) a list of employers that  
22 paid withdrawal liability to the plan  
23 during the plan year preceding such  
24 plan year and, for each employer, a  
25 total assessment of the withdrawal li-

1 ability paid, the annual payment  
2 amount, and the number of years re-  
3 maining in the payment schedule with  
4 respect to such withdrawal liability;

5 “(XII) any material changes to  
6 benefits, accrual rates, or contribution  
7 rates during the plan year preceding  
8 such plan year;

9 “(XIII) any scheduled benefit in-  
10 crease or decrease in the plan year  
11 preceding such plan year having a  
12 material effect on liabilities of the  
13 plan;

14 “(XIV) details regarding any  
15 funding improvement plan or rehabili-  
16 tation plan and updates to such plan;

17 “(XV) the number of partici-  
18 pants and beneficiaries during the  
19 plan year preceding such plan year  
20 who are active participants, the num-  
21 ber of participants and beneficiaries in  
22 pay status, and the number of termi-  
23 nated vested participants and bene-  
24 ficiaries;



1           “(XVI) the information contained  
2           on the most recent annual funding no-  
3           tice submitted by the plan under sec-  
4           tion 101(f) of the Employee Retirement  
5           Income Security Act of 1974;

6           “(XVII) the information con-  
7           tained on the most recent Department  
8           of Labor Form 5500 of the plan; and

9           “(XVIII) copies of the plan docu-  
10          ment and amendments, other retire-  
11          ment benefit or ancillary benefit plans  
12          relating to the plan and contribution  
13          obligations under such plans, a break-  
14          down of administrative expenses of  
15          the plan, participant census data and  
16          distribution of benefits, the most re-  
17          cent actuarial valuation report as of  
18          the plan year, copies of collective bar-  
19          gaining agreements, and financial re-  
20          ports, and such other information as  
21          the Secretary of the Treasury or the  
22          Secretary’s delegate, in consultation  
23          with the Secretary of Labor and the  
24          Director of the Pension Benefit Guar-  
25          anty Corporation, may require.

1           “(ii) ELECTRONIC SUBMISSION.—The  
2 report required under clause (i) shall be  
3 submitted electronically.

4           “(iii) INFORMATION SHARING.—The  
5 Secretary of the Treasury or the Sec-  
6 retary’s delegate shall share the informa-  
7 tion in the report under clause (i) with the  
8 Secretary of Labor.

9           “(iv) PENALTY.—Any failure to file  
10 the report required under clause (i) on or  
11 before the date described in such clause  
12 shall be treated as a failure to file a report  
13 required to be filed under section 6058(a)  
14 of the Internal Revenue Code of 1986, ex-  
15 cept that section 6652(e) of such Code  
16 shall be applied with respect to any such  
17 failure by substituting ‘\$100’ for ‘\$25’.  
18 The preceding sentence shall not apply if  
19 the Secretary of the Treasury or the Sec-  
20 retary’s delegate determines that reason-  
21 able diligence has been exercised by the  
22 trustees of such plan in attempting to  
23 timely file such report.

24           “(H) 1974 UMWA PENSION PLAN DE-  
25 FINED.—For purposes of this paragraph, the

1 term ‘1974 UMWA Pension Plan’ has the  
2 meaning given the term in section 9701(a)(3)  
3 of the Internal Revenue Code of 1986, but  
4 without regard to the limitation on participation  
5 to individuals who retired in 1976 and there-  
6 after.”.

7 (b) EFFECTIVE DATES.—

8 (1) IN GENERAL.—The amendments made by  
9 this section shall apply to fiscal years beginning  
10 after September 30, 2016.

11 (2) REPORTING REQUIREMENTS.—Section  
12 402(i)(4)(G) of the Surface Mining Control and Rec-  
13 lamation Act of 1977 (30 U.S.C. 1232(i)(4)(G)), as  
14 added by this section, shall apply to plan years be-  
15 ginning after the date of the enactment of this Act.

16 **SEC. 3. INCLUSION IN MULTIEMPLOYER HEALTH BENEFIT**  
17 **PLAN.**

18 Section 402(h)(2)(C) of the Surface Mining Control  
19 and Reclamation Act of 1977 (30 U.S.C. 1232(h)(2)(C))  
20 is amended—

21 (1) by striking “the Health Benefits for Miners  
22 Act of 2017” both places it appears in clause (ii)  
23 and inserting “the Bipartisan American Miners Act  
24 of 2019”;

1           (2) by striking “, would be denied or reduced  
2 as a result of a bankruptcy proceeding commenced  
3 in 2012 or 2015” in clause (ii)(II) and inserting “or  
4 a related coal wage agreement, would be denied or  
5 reduced as a result of a bankruptcy proceeding com-  
6 menced in 2012, 2015, 2018, or 2019”;

7           (3) by striking “and” at the end of clause  
8 (ii)(I), by striking the period at the end of clause  
9 (ii)(II) and inserting “; and”, and by inserting after  
10 clause (ii)(II) the following new subclause:

11                           “(III) the cost of administering  
12 the resolution of disputes process ad-  
13 ministered (as of the date of the en-  
14 actment of the Bipartisan American  
15 Miners Act of 2019) by the Trustees  
16 of the Plan.”,

17           (4) by striking “January 1, 2017” in clause (ii)  
18 and inserting “January 1, 2019”; and

19           (5) by adding at the end the following new  
20 clause:

21                           “(vi) RELATED COAL WAGE AGREE-  
22 MENT.—For purposes of clause (ii), the  
23 term ‘related coal wage agreement’ means  
24 an agreement between the United Mine

1 Workers of America and an employer in  
2 the bituminous coal industry that—

3 “(I) is a signatory operator; or

4 “(II) is or was a debtor in a  
5 bankruptcy proceeding that was con-  
6 solidated, administratively or other-  
7 wise, with the bankruptcy proceeding  
8 of a signatory operator or a related  
9 person to a signatory operator (as  
10 those terms are defined in section  
11 9701(c) of the Internal Revenue Code  
12 of 1986).”.

13 **SEC. 4. REDUCTION IN MINIMUM AGE FOR ALLOWABLE IN-**  
14 **SERVICE DISTRIBUTIONS.**

15 (a) IN GENERAL.—Section 401(a)(36) of the Internal  
16 Revenue Code of 1986 is amended by striking “age 62”  
17 and inserting “age 59½”.

18 (b) APPLICATION TO GOVERNMENTAL SECTION  
19 457(b) PLANS.—Clause (i) of section 457(d)(1)(A) of the  
20 Internal Revenue Code of 1986 is amended by inserting  
21 “(in the case of a plan maintained by an employer de-  
22 scribed in subsection (e)(1)(A), age 59½)” before the  
23 comma at the end.

1       (c) EFFECTIVE DATE.—The amendments made by  
2 this section shall apply to plan years beginning after De-  
3 cember 31, 2019.

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