

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—113th Cong., 2d Sess.

S. 2511

To amend the Employee Retirement Income Security Act of 1974 to clarify the definition of substantial cessation of operations.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended
to be proposed by _____

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

3 **SECTION 1. SUBSTANTIAL CESSATION OF OPERATIONS.**

4 (a) IN GENERAL.—Subsection (e) of section 4062 of
5 the Employee Retirement Income Security Act of 1974
6 (29 U.S.C. 1362) is amended to read as follows:

7 “(e) TREATMENT OF SUBSTANTIAL CESSATION OF
8 OPERATIONS.—

9 “(1) GENERAL RULE.—Except as provided in
10 paragraphs (3) and (4), if there is a substantial ces-
11 sation of operations at a facility, the employer shall

1 be treated with respect to any single employer plan
2 established and maintained by the employer covering
3 participants at such facility as if the employer were
4 a substantial employer under a plan under which
5 more than one employer makes contributions and
6 the provisions of sections 4063, 4064, and 4065
7 shall apply.

8 “(2) SUBSTANTIAL CESSATION OF OPER-
9 ATIONS.—For purposes of this subsection:

10 “(A) IN GENERAL.—The term ‘substantial
11 cessation of operations’ means a permanent ces-
12 sation of operations at a facility which results
13 in a workforce reduction of a number of eligible
14 employees at the facility equivalent to more
15 than 15 percent of the number of all eligible
16 employees at all facilities of the employer, de-
17 termined immediately before the date of the em-
18 ployer’s decision to implement such cessation.

19 “(B) WORKFORCE REDUCTION.—Subject
20 to subparagraphs (C) and (D), the term ‘work-
21 force reduction’ means the number of eligible
22 employees at a facility who are separated from
23 employment by reason of the permanent ces-
24 sation of operations of the employer at the fa-
25 cility.

1 “(C) RELOCATION OF WORKFORCE.—An
2 eligible employee separated from employment at
3 a facility shall not be taken into account in
4 computing a workforce reduction if, within a
5 reasonable period of time, the employee is re-
6 placed by the employer, at the same or another
7 facility located in the United States, by an em-
8 ployee who is a citizen or resident of the United
9 States.

10 “(D) DISPOSITIONS.—In the case of a sale
11 or other disposition of the assets or stock of a
12 contributing sponsor (or any member of the
13 same controlled group as such a sponsor) of the
14 plan relating to operations at a facility—

15 “(i) an eligible employee separated
16 from employment at the facility shall be
17 taken into account in computing a work-
18 force reduction unless—

19 “(I) within a reasonable period of
20 time, the employee is replaced by the
21 acquiring person by an employee who
22 is a citizen or resident of the United
23 States; and

24 “(II) the acquiring person main-
25 tains the single employer plan of the

1 predecessor employer that includes as-
2 sets and liabilities attributable to the
3 accrued benefit of the employee at the
4 time of the sale or disposition; and

5 “(ii) an eligible employee who con-
6 tinues to be employed at the facility by the
7 acquiring person shall be treated as having
8 a separation from employment with the
9 predecessor employer unless the acquiring
10 person maintains the single employer plan
11 of the predecessor employer that includes
12 assets and liabilities attributable to the ac-
13 crued benefit of the employee at the time
14 of the sale or disposition.

15 “(3) EXEMPTION FOR PLANS WITH LIMITED
16 UNDERFUNDING.—Paragraph (1) shall not apply
17 with respect to a single employer plan if, for the
18 plan year preceding the plan year in which the ces-
19 sation occurred—

20 “(A) there were fewer than 100 partici-
21 pants with accrued benefits under the plan as
22 of the valuation date of the plan for the plan
23 year (as determined under section 303(g)(2));
24 or

1 “(B) the ratio of the market value of the
2 assets of the plan to the funding target of the
3 plan for the plan year was 90 percent or great-
4 er.

5 “(4) ELECTION TO MAKE ADDITIONAL CON-
6 TRIBUTIONS TO SATISFY LIABILITY.—

7 “(A) IN GENERAL.—An employer may
8 elect to satisfy the employer’s liability with re-
9 spect to a plan by reason of paragraph (1) by
10 making additional contributions to the plan in
11 the amount determined under subparagraph
12 (B) for each plan year in the 7-plan-year period
13 beginning with the plan year in which the ces-
14 sation occurred. Any such additional contribu-
15 tion for a plan year shall be in addition to any
16 minimum required contribution under section
17 303 for such plan year and shall be paid not
18 later than the earlier of—

19 “(i) the due date for the minimum re-
20 quired contribution for such year under
21 section 303(j); or

22 “(ii) in the case of the first such con-
23 tribution, the date that is 1 year after the
24 date on which the employer notifies the
25 Corporation of the substantial cessation of

1 operations or the date the Corporations de-
2 termines a substantial cessation of oper-
3 ations has occurred, and in the case of
4 subsequent contributions, the same date in
5 each succeeding year.

6 “(B) AMOUNT DETERMINED.—

7 “(i) IN GENERAL.—Except as pro-
8 vided in clause (iii), the amount deter-
9 mined under this subparagraph with re-
10 spect to each plan year in the 7-plan-year
11 period is the product of—

12 “(I) $\frac{1}{7}$ of the unfunded vested
13 benefits determined under section
14 4006(a)(3)(E) as of the valuation
15 date of the plan (as determined under
16 section 303(g)(2)) for the plan year
17 preceding the plan year in which the
18 cessation occurred; and

19 “(II) the reduction fraction.

20 “(ii) REDUCTION FRACTION.—For
21 purposes of clause (i), the reduction frac-
22 tion of a single employer plan is equal to—

23 “(I) the number of participants
24 with accrued benefits in the plan who
25 were included in computing the work-

1 force reduction under paragraph
2 (2)(B) as a result of the cessation of
3 operations at the facility; divided by

4 “(II) the number of participants
5 with accrued benefits in the plan at
6 the facility, determined immediately
7 before the date of the employer’s deci-
8 sion to implement the cessation.

9 “(iii) LIMITATION.—The additional
10 contribution under this subparagraph for
11 any plan year shall not exceed the excess,
12 if any, of—

13 “(I) 25 percent of the difference
14 between the market value of the as-
15 sets of the plan and the funding tar-
16 get of the plan for the preceding plan
17 year; over

18 “(II) the minimum required con-
19 tribution under section 303 for the
20 plan year.

21 “(C) PERMITTED CESSATION OF ANNUAL
22 INSTALLMENTS WHEN PLAN BECOMES SUFFI-
23 CIENTLY FUNDED.—An employer’s obligation to
24 make additional contributions under this para-
25 graph shall cease with respect to the first plan

1 year for which the ratio of the market value of
2 the assets of the plan to the funding target of
3 the plan for the plan year is 90 percent or
4 greater and any subsequent plan year in the 7-
5 plan-year period.

6 “(D) COORDINATION WITH FUNDING WAIV-
7 ERS.—

8 “(i) IN GENERAL.—If the Secretary of
9 the Treasury issues a funding waiver
10 under section 302(c) with respect to the
11 plan for a plan year in the 7-plan-year pe-
12 riod under subparagraph (A), the addi-
13 tional contribution with respect to such
14 plan year shall be permanently waived.

15 “(ii) NOTICE.—An employer main-
16 taining a plan with respect to which such
17 a funding waiver has been issued or a re-
18 quest for such a funding waiver is pending
19 shall provide notice to the Secretary of the
20 Treasury, in such form and at such time
21 as the Secretary of the Treasury shall pro-
22 vide, of a cessation of operations to which
23 paragraph (1) applies.

24 “(E) ENFORCEMENT.—

1 funding waiver described in such sub-
2 paragraph is granted; and

3 “(V) the cessation of any obliga-
4 tion to make additional contributions
5 under subparagraph (C), not later
6 than 10 days after the due date for
7 payment of the additional contribution
8 for the first plan year to which such
9 cessation applies.

10 “(ii) ACCELERATION OF LIABILITY TO
11 THE PLAN FOR FAILURE TO PAY.—If an
12 employer fails to pay the additional con-
13 tribution in the full amount for any year in
14 the 7-plan-year period by the due date for
15 such payment, the employer shall, as of
16 such date, be liable to the plan in an
17 amount equal to the balance which remains
18 unpaid as of such date of the aggregate
19 amount of additional contributions re-
20 quired to be paid by the employer during
21 such 7-year-plan period. The Corporation
22 may waive or settle the liability described
23 in the preceding sentence, at the discretion
24 of the Corporation.

1 “(iii) CIVIL ACTION.—The Corpora-
2 tion may bring a civil action in the district
3 courts of the United States in accordance
4 with section 4003(e) to compel an em-
5 ployer making such election to pay the ad-
6 ditional contributions required under this
7 paragraph.

8 “(5) DEFINITIONS.—For purposes of this sub-
9 section:

10 “(A) ELIGIBLE EMPLOYEE.—The term ‘eli-
11 gible employee’ means an employee who is eligi-
12 ble to participate in an employee pension ben-
13 efit plan (as defined in section 3(2)) established
14 and maintained by the employer.

15 “(B) FUNDING TARGET.—The term ‘fund-
16 ing target’ means the funding target as deter-
17 mined under section 4006(a)(3)(E)(iii)(I).

18 “(C) MARKET VALUE.—The market value
19 of the assets of a plan shall be determined in
20 the same manner as for purposes of section
21 4006(a)(3)(E).

22 “(6) SPECIAL RULES.—

23 “(A) CHANGE IN OPERATION OF CERTAIN
24 FACILITIES AND PROPERTY.—For purposes of
25 paragraphs (1) and (2), an employer shall not

1 be treated as ceasing operations at a facility or
2 property to which section 856(d)(9) of the In-
3 ternal Revenue Code of 1986 applies if such op-
4 erations are continued by an eligible inde-
5 pendent contractor (as defined in section
6 856(d)(9)(A) of such Code) pursuant to an
7 agreement with the employer.

8 “(B) AGGREGATION OF PRIOR SEPARA-
9 TIONS.—The workforce reduction under para-
10 graph (2) with respect to any cessation of oper-
11 ations shall be determined by taking into ac-
12 count the separation from employment of any
13 eligible employees at the facility occurring dur-
14 ing the 3-year period preceding such cessation
15 (other than separations which are not taken
16 into account as workforce reduction by reason
17 of subparagraph (C) or (D) of paragraph (2)).

18 “(C) NO ADDITION TO PREFUNDING BAL-
19 ANCE.—For purposes of section 303(f)(6)(B)
20 and section 430(f)(6)(B) of the Internal Rev-
21 enue Code of 1986, any additional contribution
22 made under paragraph (4) shall be treated in
23 the same manner as a contribution an employer
24 is required to make in order to avoid a benefit
25 reduction under paragraph (1), (2), or (4) of

1 section 206(g) or subsection (b), (c), or (e) of
2 section 436 of the Internal Revenue Code of
3 1986 for the plan year.”.

4 (b) EFFECTIVE DATE.—

5 (1) IN GENERAL.—The amendment made by
6 this section shall apply to a cessation of operations
7 or other event at a facility occurring on or after
8 June 1, 2014.

9 (2) TRANSITION RULE.—An employer that had
10 a cessation of operations before June 1, 2014 (as
11 determined under subsection 4062(e) of the Em-
12 ployee Retirement Income Security Act of 1974 as
13 in effect on such date), but did not enter into an ar-
14 rangement with the Pension Benefit Guaranty Cor-
15 poration to satisfy the requirements of such sub-
16 section (as so in effect) before the date of the enact-
17 ment of this Act, shall be permitted to make the
18 election under section 4062(e)(4) of such Act (as in
19 effect after such date of enactment) as if such ces-
20 sation had occurred on June 1, 2014. Such election
21 shall be made not later than 30 days after such Cor-
22 poration notifies the employer, on or after the date
23 of the enactment of this Act, that the Corporation
24 has determined (whether upon notice to the Cor-

1 poration under section 4063 or otherwise) that a
2 substantial cessation of operations has occurred.

3 (c) DIRECTION TO THE CORPORATION.—The Pension
4 Benefit Guaranty Corporation shall not take any enforce-
5 ment, administrative, or other action pursuant to section
6 4062(e) of the Employee Retirement Income Security Act
7 of 1974, or in connection with an agreement settling liabil-
8 ity arising under such section, that is inconsistent with
9 the amendments made by this section, without regard to
10 whether the action relates to a cessation or other event
11 that occurs before, on, or after the date of the enactment
12 of this Act, unless such action is in connection with a set-
13 tlement agreement that is in place before June 1, 2014.
14 The Pension Benefit Guaranty Corporation shall not ini-
15 tiate a new enforcement action with respect to section
16 4062(e) that is inconsistent with its enforcement policy
17 in effect on June 1, 2014.