Capito Introduces Mine Safety Bill

Congresswoman Shelley Moore Capito (R-WV) introduced H.R. 3697, the “Mine Safety Accountability and Improved Protection Act” in December 2011. Capito’s legislation seeks to streamline the conference and appeals process, improve implementation of mine safety and health regulation, hold violators accountable by increasing penalties—both financial and criminal—for violations of the law, all with the end goal of creating a safer working environment for our miners.

“As we have come to learn through official reports, the mine disaster that claimed 29 lives in West Virginia in April 2010 was stoppable; the catalysts of the explosion could have been addressed. In an effort to address serious shortcomings in current mine safety standards, I have introduced a mine safety bill that I hope will ignite a fruitful debate on how we can improve the effectiveness of mine safety laws, as well as create tougher penalties for those who do not play by the rules,” stated Capito, co-founder of the Congressional Coal Caucus.

Capito urges her colleagues on both sides of the aisle to join together to honor America’s fallen miners to pass this bill to protect miners from preventable disasters in the future.

“Mine safety is not a partisan issue. We can work together across party lines and across the Capitol to give everyone involved in mine safety, from inspectors to operators to the miners themselves, the resources they want, need and deserve to run a safe mine,” concluded Capito.

In April 2010, 29 miners were killed at Massey Energy’s Upper Big Branch Mine in Montcoal, WV, the worst coal mine disaster in America in 40 years.

112th Congress Mine Safety Accountability & Improved Protection Act (H.R. 3697) Representative Shelley Moore Capito (WV-02)

Streamline the Citation Appeals Process
•Conferences: Reinstates the conference process MSHA previously used to improve the safety and health of miners by providing operators ample opportunity to discuss safety and health issues with inspectors.
•After ending the conference process, MSHA conducted a pilot of preassessment safety and health conferences from Aug. 31, 2010, through Nov. 30, 2010. The pilot proved successful, and on Dec. 1, 2011, MSHA announced that it will reinstate the conference process on a district-by-district basis based on available resources. This provision will provide national regulatory certainty and will ensure that MSHA does not end the conference process in the future.

Challenging Revocation of Plans: Mine plan disputes between the operator and MSHA must be swiftly resolved by the commission.

Improve Implementation of Mine Safety & Health Regulation
•Miner Representative: Requires miners to designate a representative of their choosing, much like they would beneficiaries for a 401(k) or life insurance policy. The legislation provides that the closest relative of any miner who has not designated a representative may act as a designated representative should the miner be entrapped. The provision gives operators 60 days after enactment to comply.

Significant and Substantial Violations: Adopts the “substantial probability” language from the Occupational Safety and Health Act to better highlight conditions and practices that pose the greatest potential to cause injury or illness.

Pattern of Violations: This bill amends Section 104(c) of the Mine Safety Health Act to create a statu-
tory system that is consistent with MSHA’s current pattern of violations (POV) process.

• If MSHA determines that an operator has a possible POV based on the initial screening criteria (same criteria as proposed by MSHA) and receives a significant and substantial (S&S) violation within 90 days of the notification, the operator will be placed into POV status. Once in POV status, the operator has the opportunity to be removed from POV status due to mitigating circumstances. Operators also have the opportunity to challenge placement in POV through an expedited process.

• MSHA is specifically permitted to establish different criteria for different types of mines.

• Upon placement in POV status, all miners must be removed while MSHA conducts a complete inspection of the mine. Operators are required to submit a remediation plan to MSHA, and disagreements between MSHA and the operator will be settled through an expedited review conducted by the Mine Safety and Health Review Commission.

• After placement in POV, MSHA must evaluate the performance of the POV operator every 90 days to determine if it meets required rates of citations for such S&S violations. If operators fail to attain these benchmarks, then MSHA may reimpose the withdrawal order and require modification of the remediation plan.

• POV status may be terminated after 180 days if the operator meets certain benchmarks for the rate of S&S citations.

• The POV sections do not apply for a period of 12 months following a purchaser’s acquisition of a mine.

• National Mine Safety Board: Establishes the National Mine Safety Board, a completely separate independent federal agency, to investigate, report on and make recommendations for the prevention of future mining disasters. The board would be tasked with investigating accidents where three or more deaths occur. The board is given subpoena power and would be responsible for reviewing the activities of MSHA, state regulators and operators.

• Subpoena Authority: MSHA would be granted the authority to subpoena documents and testimony in the investigation of fatalities on mine property.

Consistent Application of the Law

• Annual Inspector Training: Requires increased annual training and review for inspectors.

• MSHA Staffing Needs: Requires MSHA to report to Congress on the need for additional inspectors to carry out and fulfill promises made to protect miners.

• Scholarships: The legislation will expand the education scholarship program to promote those mining disciplines in the greatest need.

Hold Violators Accountable

• Civil and Criminal Penalties: Increases penalties, both financial sanctions and jail time, for violations of the law.

• Advance Notice Penalties: Increases penalties for advance notice given with the intent of interfering with an inspection with a fine and up to 5 years in prison.

• Civil and Criminal Liability of Officers, Directors and Agents: If an operator violates a law or regulation related to mine safety, any director, officer or agent who willfully authorized, ordered or carried out such violation or any policy or practice that contributed to the occurrence of a fatality shall be subject to the same civil and criminal penalties that may be imposed upon a person under Section 110 of the Federal Mine Safety and Health Act.

• Civil and Criminal Penalties for False Statements and Representations: Whoever knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be maintained, upon conviction, may be punished by a fine of not more than $50,000 or by imprisonment for not more than 5 years, or both. The fine was previously a maximum of $10,000 and 5 years’ imprisonment. This provision is designed to deter operators from keeping books and records that contain false statements or representations.

Create a Safer Working Environment

• Hours of Inspection: Extends mine inspections so they are conducted in the evenings and during weekends.

• Whistleblower Protections: Empowers miners to speak out on mine safety standards by protecting them from loss of pay or retaliation.

• Training: Allows MSHA to require that a miner receive additional training beyond what is otherwise required by law if an operator has shown a history of inadequately training its miners.

Fiscally Responsible

• Budget Neutrality: This legislation is fiscally responsible and is designed to be budget neutral.

NIOSH Video

NIOSH’s educational video, Faces of Black Lung, was screened Nov. 1, 2011, during the 8th Annual Film Festival of the American Public Health Association in Washington, DC. The film festival is the only one of its kind dedicated to public health. The video, which was highlighted on the NIOSH Science Blog, features stories from two coal miners who were diagnosed with black lung disease. They share their stories and explain how their lives have changed due to the disease. Click here for more information.