



## INSIGHTS JANUARY 2012 - ADMINISTRATION/CONGRESS

### NEW MINE SAFETY LEGISLATION

West Virginia Republican House member Shelley Moore Capito has introduced legislation that would increase civil and criminal penalties, strengthen pattern of violation provisions, and form an independent board to investigate major mining accidents.

HR 3697 would impose new potential criminal penalties for retaliation against a miner who reported health or safety violations or unhealthful or unsafe conditions, policies or practices, and for providing advance notice of inspections. The first offense would carry a penalty of up to \$1 million and/or up to five years in prison. The penalty for those who knowingly provide false information to investigators would go to a maximum of \$50,000. Civil penalties for retaliatory offenses would be raised to between \$10,000 and \$100,000.

An independent five-member National Mine Safety Board would investigate accidents involving three or more fatalities and recommend changes. The Board would have subpoena authority, as would MSHA. MSHA would also be given expanded injunctive authority. Sec. 104(d)(1) would be amended to cover any violation, not just violations of mandatory safety and health standards, as is currently the case.

Mines meeting initial screening criteria as potential pattern violators (PPOV) under Sec. 104(e) of the Mine Act would be given a written notice. They would find themselves on pattern status for any significant and substantial (S&S) violation received within the next 90 days. Criteria would be set by regulation and would consist of violations classified as S&S, failure to abate, unwarrantable failure, imminent danger, untrained miners, other enforcement measures leveled against the mine, and information from sources such as accident, injury and illness records that demonstrate serious safety and health management problems. PPOV reviews would be required at least twice annually.

A mine on a pattern would be shut down until MSHA concluded an inspection looking for any hazards or violation that "could be immediately harmful" to miner health or safety. The mine would be permitted to reopen only after all violations were corrected and a remediation plan approved by MSHA was developed. The plan would have to include a safety and health management program. Penalties would be doubled for failure to meet performance benchmarks. Mines on pattern status would remain in place for a minimum of 180 days and be subject to quarterly inspections. Fees would be assessed against POV mines to pay for any extra inspection efforts made by MSHA.

The Mine Safety Accountability and Improved Protection Act, which includes a number of other provisions, has been referred to the House Education and Labor Committee. However, passage of the bill is considered unlikely in 2012, even though oversight hearings on MSHA are likely.

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