



Legislative Bulletin.....January 16, 2008

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H.R. 2768—Supplemental Mine Improvement and New Emergency Response Act (S-MINER)

Summary of the Bill Under Consideration Today:

Total Number of New Government Programs: Several

Total Cost of Discretionary Authorizations: \$121 million over five years

Effect on Revenue: \$68 million increase over five years

Total Change in Mandatory Spending: \$0

Total New State & Local Government Mandates: 1

Total New Private Sector Mandates: Numerous, but at least 12

Number of Bills Without Committee Reports: 0

Number of Reported Bills that Don't Cite Specific Clauses of Constitutional Authority: 0

H.R. 2768—Supplemental Mine Improvement and New Emergency Response Act (S-MINER) (Miller, George, D-CA)

Note the Conservative Concerns Starting on Page 6.

Order of Business: The bill is scheduled to be considered on Wednesday, January 16th, subject to a likely structured rule. A summary of the rule and any amendments made in order will be provided in a separate RSC document.

Summary: H.R. 2768 would implement a variety of new and updated federal mandates on mine operators, regarding such matters as conveyor belts, air monitoring devices, communications

systems, and ventilation. The bill would also bypass the current administrative procedures for the Mine Safety and Health Administration (MSHA) to promulgate safety regulations. Highlights of the legislation are as follows:

Emergency Response Plans.

- Requires mine operators to amend their emergency response plans, within four months of this bill's enactment, to provide for a post-accident communication and tracking system between underground and surface personnel using certain updated technologies, as referenced in the bill and tested by the National Institute for Occupational Safety and Health (NIOSH, an entity within the Centers for Disease Control).
- Requires that mine operators "promptly" update their emergency plans as NIOSH certifies new components to enhance systems performance.
- Prohibits any miner from being disciplined based on information obtained from an electronic communications and tracking system.
- Requires that the Secretary of Labor, by June 15, 2008, issue final interim regulations for the installation of underground mine refuges that are consistent with design criteria recommended by NIOSH.
- Extends from December 31, 2007 to three months after S-MINER's enactment the deadline for MSHA to finalize rules for mine seals (structures for sealing off abandoned areas and making them explosion-proof), and includes details about what such rules must include.
- Establishes new requirements regarding the integrity of ventilation controls.
- Requires MSHA to issue interim final regulations by January 31, 2008 to put new standards for conveyor belts into place.
- Requires that all conveyor belts already in use in underground coal mines be replaced no later than December 31, 2012 with belts that can meet NIOSH-recommended flame resistance standards and that limit smoke and toxic emissions. Any conveyor belt installed in a coal mine after the date of S-MINER's enactment would have to meet these new requirements.
- Requires that the Labor Secretary, not later than June 20, 2008, issue regulations that essentially prohibit the use of "belt air," unless the mine operator can demonstrate to the Secretary (to the satisfaction of the Secretary) that such use is required for safety and that certain procedures and safeguards are utilized. "Belt air" refers to the use of air intake and conveyor belts in the same entryway into the mountain.
- Requires oral communications between those inspecting a mine prior to a work shift and those beginning the next shift (regarding conditions in the mine).

- Requires that, no later than May 1, 2008, all underground mine operators must install atmospheric detection and warning systems in all underground areas where miners normally work and travel. The systems would have to provide real-time information on carbon monoxide levels and withstand explosions and fires to the “maximum extent possible.”
- Requires a study of, and increased regulations on, retreat mining, which is mining that removes coal that had been left there to hold up the roof of the mine.
- Creates a NIOSH program to randomly remove and test field samples of each model of self-rescue device used in an underground coal mine.
- Applies the conveyor belt mandates to underground metal and nonmetal mines—not just coal.
- Directs MSHA to give priority to the approval of any self-rescue device that permits the replenishment of oxygen without requiring the device user to remove it and to the approval of any underground communication device that provides for communication between underground and surface personnel via a wireless two-way medium. The bill would also list certain health and technology research priorities for NIOSH.

Enforcement Authority.

- Explicitly prohibits interference with MSHA inspectors during the course of their activities (currently, such prohibition has just been common practice, rather than law).
- Requires MSHA to establish a Master Inspection program that would lift the current limits on inspectors for five years so that new and existing personnel could work together during this timeframe, if resources to do so are adequate and permit retired inspectors to perform such services for MSHA under contract without loss of retirement benefits.
- Creates a Senate-confirmable Miner Ombudsman (authorized at “such sums”) within the Labor Department’s Office of the Inspector General to be a clearinghouse for miner complaints and reports of safety violations, incidents, injuries, etc. The Ombudsman would have to provide **plastic wallet cards, refrigerator magnets**, or other such items to miners so that the miners know how to contact the Ombudsman.
- Makes it easier to cite mine operators for safety violations, and implements a new penalty (up to \$250,000) on operators with a pattern of violations. Miners would have to be withdrawn from the entire mine when such a pattern is found, though an operator could appeal such classification through demonstrated improvement in conditions. Unpaid penalties could lead to a closing of the entire mine.
- Directs mine operators to notify MSHA within the time specified in the citation that any violations previously identified and cited by MSHA have been abated. If this notice is

not provided before the stated deadline, MSHA would have to issue a withdrawal order to prohibit miners from entering the affected area until MSHA can make its own further assessment.

- Increases the current \$50,000 for a variety of MSHA violations to \$100,000 (\$150,000 for larger, more serious violations). MSHA could no longer take into account the effect of a fine on an operator's financial viability when assessing penalties, and "operator" would be defined by aggregating all operators under one ownership or controlling entity.
- Establishes a minimum penalty of \$10,000 and a maximum of \$100,000 for retaliating against miners who report safety and health violations.
- Makes operators liable for any unpaid fines of its subcontractors, in certain instances.
- Preempts state law to prohibit attorneys for the Labor Department who contact miners or non-managerial mining employees during the course of a safety investigation from disciplinary action or disbarment under state law.
- Prohibits attorneys who represent mine operators in a matter from simultaneously representing individual miners in the same matter.
- Clarifies that the liability of directors, officers, and agents for violations of mining law and regulations does not change because of the form of the mine operator's business (e.g. becoming a limited liability corporation does not change the operator's liability under law).
- Directs the Labor Secretary to create an advisory committee to study whether there should be federal licensing of mines, mine operators, mine controllers, or various mine personnel.

Rescue, Recovery, and Incident Investigation Authority.

- Requires that, within 30 days of S-MINER'S enactment, MSHA establish a central communications emergency call center for mine operations, staffed and operated 24 hours per day, 7 days per week by MSHA employees with adequate experience and training to handle emergency mine situations. A single national phone number would have to be created for this service, and the Secretary would have to ensure that all miners and mine operators are issued **laminated cards** with emergency call center information.
- Requires that MSHA's website contain the geographic coordinates of all U.S. mines and mine impoundments, including abandoned mines, as determined by a global positioning system. Also authorizes the Secretary of Labor to obtain copies of historic mine maps (maps showing the underground networks) and create a central repository for them.
- Requires mine operators to notify MSHA within an hour of the time at which the operator realizes that any of the following has occurred:

- a fire not required to be reported more promptly (i.e. within 15 minutes, as under current law);
 - a sudden change in the mine atmospheric conditions in a sealed area;
 - a coal or rock outburst that causes the withdrawal of miners; or
 - any other event that needs to be examined to determine if the working conditions in the mine are safe, as set forth by regulations promulgated by the Secretary.
- Implements a variety of steps aimed at making it easier for mine rescue teams to operate in an organized fashion on site and for non-rescue personnel (such as family members) to be on site without interfering with the work of the rescue team.
 - Directs the Secretary to establish guidelines for rescue operations that set clear chains of command and lines of demarcation among the various involved entities.
 - Requires an operator to comply with requests of the authorized representative of the Labor Secretary in connection with rescue or recovery, subject to a \$250,000 non-compliance penalty.
 - Requires that MSHA designate a family liaison during rescue operation to act as primary communicator.
 - Gives the Labor Secretary's representative onsite at a mine accident the sole authority to determine when a rescue becomes a recovery and when a recovery should cease altogether, based on whether continuing such efforts pose a "serious danger" to rescue workers or other workers.
 - Allows for independent (i.e. non-MSHA) investigations of multiple fatality mine accidents.

Respirable Dust Standards.

- Reduces by 50% the permitted limit in current law for coal dust, as recommended by NIOSH, and the permitted dose would be adjusted to reflect hours actually worked. A separate limit would be established for silica dust (which applies to non-coal mines as well), also as recommended by NIOSH. Compliance sampling would be done by MSHA, not mine operators (as under current law).
- Requires that all coal mine operators use the NIOSH-developed and certified Personal Dust Monitor (PDM) for all coal dust sampling (traditional methods would still be used for silica dust sampling). All underground miners would have to be equipped with PDMs, so that they would be able to adjust their work to keep their exposure below the applicable limits.

Other Health Requirements.

- Directs the Labor Secretary to adopt the NIOSH-created exposure limits for chemical and other hazards to which miners may be exposed as the Labor Department's Permissible Exposure Limits (PELs). NIOSH would have to submit annual (at minimum) updates to the PELs, which the Labor Department would automatically have to adopt or exceed. These procedures bypass the normal rulemaking procedure at the Labor Department.
- Applies the asbestos exposure standard of the Occupational Safety and Health Administration (OSHA) to the mining industry (by trumping the MSHA standard without the normal rulemaking process).

Additional Background: In June of 2006, President Bush signed into law the Mine Improvement and New Emergency Response Act (S. 2803, Public Law 109-236), which created new programs, a new permanent office, and new regulations and requirements dealing with mine safety and mine emergencies. To view the RSC Legislative Bulletin on that legislation, click here: http://www.house.gov/hensarling/rsc/doc/LB_060706_Suspensions.pdf. Click here to see the overwhelmingly bipartisan 381-37 roll-call vote for the legislation: <http://clerk.house.gov/evs/2006/roll234.xml>.

That legislation, and presumably S-MINER, are based on the mine accidents at Sago, Aracoma, Darby and others in 2006, as well as on the August 2007 tragedy of Crandall Canyon, Utah, where six miners were trapped by a collapse and three other individuals lost their lives in rescue efforts.

According to the Bureau of Labor Statistics Industry Injury and Illness Data—2006, mining experienced the lowest incidence rate in 2006 among goods-producing industry sectors—3.5 cases per 100 full-time workers. In comparison, the rate for agriculture, forestry, fishing and hunting was 6.0 cases, for construction—5.9 cases, and for manufacturing—6.0 cases.

Coal is the leading source of electricity in the United States today. Some analysts have asserted that coal is to the U.S. what oil is to Saudi Arabia. To learn more about how coal is converted to electricity, as well as other facts about coal, please visit this webpage: <http://www.worldcoal.org/pages/content/index.asp?PageID=108>.

RSC Bonus Fact: NIOSH has a staff of over 1,400 people in Washington, DC; Cincinnati, OH; Morgantown, WV; Pittsburgh, PA; Spokane, WA; and Atlanta, GA. Though NIOSH was created in 1970 (the same time as OSHA), it was not given specific authority to perform coal mine health research until 1977. <http://www.cdc.gov/niosh/about.html>

Committee Action: On June 19, 2007, the bill was referred to the Education and Labor Committee, which, on October 31st, marked up and ordered the bill reported to the full House by a party-line vote of 26-18. During hearings on the bill, representatives of the National Mining Association and non-union miners (who make up 75% of the mining workforce) were NOT allowed to testify as witnesses.

Possible Conservative Concerns: Numerous aspects of this legislation may raise concerns for conservatives, including, but not necessarily limited to, the following:

- Private-Sector Mandates on Small and Large Businesses. As detailed below, the bill contains at least a dozen new federal mandates on the private sector, affecting small and large businesses, and companies doing coal, metal, and nonmetal mining. Such mandates include those on conveyor belts, continuous motoring devices at mine seals, personal dust monitors, atmospheric monitoring systems, post-accident communication and tracking systems, belt air, seals, refuge chambers, ventilation controls, roof screens, and respirable dust and other chemicals. Many businesses have reported that they would not be able to absorb the increased costs and requirements without significantly scaling back—or shutting down—their operations.
- Intergovernmental Mandate. The bill would preempt state law to prohibit attorneys for the Department of Labor who contact miners or non-managerial mining employees during the course of a safety investigation from being disciplined or disbarred.
- Violation of UMRA. CBO estimates that the costs of these mandates to the private sector in the bill would be **at least \$1.1 billion** and thus exceed the annual threshold established in the Unfunded Mandates Reform Act or UMRA (\$131 million in FY2007, adjusted annually for inflation). CBO admits that this figure is a low estimate, since it has no basis for estimating the cost of several of the mandates.
- Boon for Environmentalists and Minor Energy Sources. While the bill would affect all types of mining, its biggest target is coal mining. Increasing the cost of coal mining will either increase the cost of coal or make coal mine operators less profitable (forcing them to close operations, fire workers, etc.). Such occurrences would weaken the coal industry, which provides more than half of America's electricity, and thus would relatively strengthen the market positions of minor energy sources (like wind) and deliver a win for environmentalists looking to take down the coal industry.
- Bypasses Public Input for Rulemaking. In many ways, the bill would bypass the normal rulemaking process for mining safety. As one example, the bill would require NIOSH to forward all of its recommended exposure limits for air contaminants to the Labor Secretary, who then **must** require MSHA to adopt them as enforceable health standards. Public participation in rulemaking would be circumvented, as would the input of other scientific entities besides NIOSH. Furthermore, this would remove the authority of the Labor Secretary as the prime decision-maker in promulgating federal rules for the Labor Department, since NIOSH is an entity within the Health and Human Services Department. The bill would push NIOSH into a regulatory and policy-setting role for which it, as a research and education agency, is not prepared.
- Particular Harm to the West. While the bill would affect mining in all parts of the country, one could argue that the bill's negative affects will be more profound in the West. Because mountains are larger in the West, any mandate to replace conveyor belts and such would be a greater burden on mines that require more linear feet (or miles) of belts.

Additionally, the prohibition on the use of belt air to ventilate the face of underground mines would particularly harm mining in Utah, since according to the Utah Mining Association, most, if not all, of the underground coal mines in Utah use belt air. Without the ability to continue to use belt air, construction of additional mine entries or access ways into the mine would be required, thereby reducing the support for the roof of the mine and increasing the potential for dangerous roof falls and face outbursts. Though such mine operators could petition to keep using belt air, neither a timely nor a positive response is guaranteed.

- One-Size-Fits-All Approach. The bill incorporates a one-size-fits-all approach to mine safety and regulations, making virtually no distinctions between the varying needs of different types of mining in different parts of the country under different conditions.
- Not Enough Time for the MINER Act to Work. The MINER Act was just signed in to law 1-1/2 years ago and has not been given enough time to work. Many of the MINER Act's requirements are in the midst of being implemented by MSHA, according to the Republican staff of the Education & Labor Committee, and some of the reports required by the MINER Act have either not yet been released or have just been released a few weeks ago. Thus, the passage of S-MINER seems premature and could actually delay the implementation of aspects of the bipartisan MINER Act.

Administration Position: The Administration is expected to issue a Statement of Administration Policy (SAP) indicating that the President's senior advisers would recommend he veto this legislation, should it make it to his desk in its current form.

Cost to Taxpayers: CBO estimates that H.R. 2768 would authorize \$19 million in FY2008 and \$121 million over the FY2008-FY2012 period. The bill would also increase revenues by less than \$500,000 in FY2008 and by \$68 million over the FY2008-FY2012 period. Note the mandates section below.

Does the Bill Expand the Size and Scope of the Federal Government?: Yes, the bill would implement a variety of new federal mandates on the private sector, as detailed below.

Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?: Yes, the bill contains one intergovernmental mandate and numerous private sector mandates, as follows:

Intergovernmental. The bill would preempt state law to prohibit attorneys for the Department of Labor who contact miners or non-managerial mining employees during the course of a safety investigation from being disciplined or disbarred.

Private Sector. The bill contains a litany of private sector mandates, including:

- Installing conveyor belts that meet certain flame resistance requirements by 2012 (CBO estimates a \$600 million cost to the private sector over five years);

- Monitoring behind certain mine seals using a continuous motoring device (CBO estimates a \$120 million cost to the private sector over five years);
- Equipping each miner with a personal dust monitor (CBO estimates a \$100 million cost to the private sector over five years);
- Installing an atmospheric monitoring system (CBO estimates a \$60 million cost to the private sector over five years); and
- Providing a certain post-accident communication and tracking system (CBO estimates a \$200 million cost to the private sector over five years).

Therefore, CBO estimates that the aggregate cost of the private-sector mandates in the bill would be **at least \$1.1 billion** and thus exceed the annual threshold established in UMRA (\$131 million in FY2007, adjusted annually for inflation).

However, CBO also notes that it has no basis for estimating the costs to the private sector of some other mandates in the bill, including: belt air, seals in underground coal, metal, and nonmetal mines, refuge chambers, ventilation controls, roof screens, standards for respirable dust and other chemicals, and reporting and notification requirements.

Thus, the true cost to the private sector would likely far exceed \$1.1 billion over five years.

Does the Bill Comply with House Rules Regarding Earmarks/Limited Tax Benefits/Limited Tariff Benefits?: The Education and Labor Committee, in [House Report 110-457](#), asserts that, “H.R. 2768 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(d), 9(e) or 9(f) of rule XXI.”

Constitutional Authority: The Education and Labor Committee, in [House Report 110-457](#), cites constitutional authority in Article I, Section 8, Clause 3 (the congressional power to regulate interstate, international, and Indian-related commerce).

Outside Organizations: H.R. 2768 is being supported by the United Mine Workers of America and the United Steelworkers.

H.R. 2768 is being opposed by at least the following organizations:

- Alliance for Worker Freedom (will likely key-vote the bill)
- American Composites Manufacturers Association
- American Foundry Society
- American Iron and Steel Institute
- American Road and Transportation Builders Association
- Associated Builders and Contractors
- Associated Equipment Distributors
- Associated General Contractors
- Association of Equipment Manufacturers
- Engine Manufacturers Association
- Independent Electrical Contractors
- Industrial Minerals Association of North America

- Mason Contractors Association of America
- National Association of Home Builders
- National Association of Manufacturers
- National Association of Wholesaler-Distributors
- National Federation of Independent Business
- National Industrial Sand Association
- National Lime Association
- National Marine Manufacturers Association
- National Mining Association
- National Roofing Contractors Association
- National Stone, Sand, & Gravel Association
- Printing Industries of America
- Salt Institute
- U.S. Chamber of Commerce (will likely key-vote the bill)
- U.S. Steel
- Utah Mining Association

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