

House Democrats Signal Willingness to Compromise on MSHA Subpoena Authority

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Democrats in the U.S. **House of Representatives** want to hand subpoena authority to the **Mine Safety and Health Administration**, and appear willing to try to pass mine safety amendments to reach a bargain.

U.S. Representative Frederica Wilson (D-FL) announced at a subcommittee hearing on April 23 that she and fellow Democrat Representative Bobby Scott (VA) had reintroduced sweeping reform legislation containing a provision which would allow MSHA to issue subpoenas to compel witness testimony and the production of documents during investigations and inspections.

At present, during investigations, the agency must rely on subpoena authority enjoyed by some states, including West Virginia (which exercised its subpoena power during state and federal investigations into the deadly Upper Big Branch Mine explosion in April 2010), unless MSHA calls a public hearing. The subpoena provision in the bill, entitled the “Robert C. Byrd Mine Safety Protection Act of 2015” (H.R. 1926), would give MSHA independent subpoena authority for investigations and inspections without having to call a public hearing.

One iteration or another of broad mine safety reform legislation has been introduced in Congress numerous times since 2007, all without success. Perhaps in recognizing that the outcome is likely to be no different this time around, especially in a Congress controlled by Republicans, the minority party appears open to compromise.

“At a bare minimum, I would ask that we join in a bipartisan effort to enact legislation to provide MSHA with expanded subpoena authority,” Wilson said before the House Workforce Protections Subcommittee. “Although it’s only a piece of the Byrd bill, I hope we can at least reach a compromise on this issue.”

The purpose of the April 23rd hearing was to hear testimony on MSHA’s enforcement efforts from Assistant Secretary Joe Main. In detailing those efforts, he lauded the effect on improved compliance that he said had come about as a result of a pattern of violation (POV) rule the agency issued in 2013. Being pattern-listed is enormously disruptive to a mining operation because it requires that the

portion of a POV-mine affected by an allegedly serious violation be shut down until the violation is abated. Getting delisted is also difficult, since a mine receives clearance only after no allegedly serious violations are detected following a comprehensive MSHA inspection.

"I think that this has been one of the biggest game changers for really reining in chronic violators in this country," said Main, who noted that the number of mines placed on POV status has dropped by 76 percent since 2010.

Subcommittee Chairman Tim Walberg (R-MI) was concerned about what he said were vague provisions of the rule that could be read to permit MSHA to change its POV criteria at any time and with little or no notice to mine operators. But Main argued that flexibility is necessary to adapt to potential changes in the industry and said MSHA has not changed its criteria since it began implementing the POV revisions.

Main also testified that MSHA is transferring some coal inspectors into the metal/nonmetal sector in response to an increase in metal/nonmetal fatalities. An indication of elevated enforcement in that sector is evident from impact inspections carried out in March. Affected metal/nonmetal mines received 52 more citations than did those in coal, reversing a nearly uninterrupted five-year trend of greater impact inspection enforcement in the coal sector. Impact inspections target mines MSHA believes show compliance problems.

Other provisions of the proposed legislation include increasing penalties for some violations, strengthening whistleblower protections, broadening the definition of what constitutes a "significant and substantial" violation, giving MSHA authority to close mines delinquent longer than 180 day in making civil penalty payments, expanding the agency's authority to issue imminent danger withdrawal orders, and authorizing payment to idled miners for up to 60 days if a mine is temporarily closed for safety reasons. Companion legislation (S. 1145) has been introduced in the Senate.

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