



July 20, 2010

The Honorable George Miller  
Chair  
House Education and Labor Committee  
2181 Rayburn House Office Building  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable John Kline  
Ranking Member  
House Education and Labor Committee  
2101 Rayburn House Office Building  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Chairman Miller and Ranking Member Kline:

On behalf of Associated Builders and Contractors (ABC), a national association with 77 chapters representing 25,000 merit shop construction and construction-related firms with 2 million employees, we write to express our opposition to H.R. 5663, *Miner Safety and Health Act of 2010*. While the bill deals primarily with mine safety laws, Title VII includes significant changes to the Occupational Safety and Health Act's (OSH Act) enforcement, penalties, abatement and whistleblower provisions. The proposed changes will impose substantial costs on our member companies, particularly the smaller businesses, which are struggling to create and retain jobs. At the same time, the bill does nothing to help prevent workplace accidents and injuries.

ABC and its members are ardent advocates of workplace safety, which is demonstrated through our proven record of cooperation and collaboration with the Occupational Safety and Health Administration (OSHA) and dedication to workplace safety education and training.

Over the years, ABC and its 77 chapters nationwide have had the privilege of building excellent working relationships with OSHA's national, regional and area offices. OSHA staff members have addressed ABC members at our annual Construction Education Conference and worked with our chapters to conduct safety training courses throughout the country. Communication between both OSHA and ABC members has increased understanding of workplace safety, which has contributed to the decrease in the number of fatalities and injuries in the construction industry since 1994.

The approach taken in H.R. 5663 would strain communications and relations between ABC, its members and OSHA, however, by unnecessarily increasing the adversarial nature of the relationship between OSHA and employers. Specifically, H.R. 5663 changes the OSH Act's penalty scheme by altering the *mens rea* requirements for criminal liability from "willful" to "knowing" and the broadening the definition of employers to "any company officer or director." The bill provides no definition of "knowing," nor does it provide any limitation or guidance on which "officers or directors" could face criminal charges. At the same time, H.R. 5663 would dramatically increase civil and criminal monetary penalties.

These proposed changes will increase litigation, discourage settlements, and create disincentives for cooperation between employers, associations and OSHA. This will stretch and misdirect the resources of

OSHA and other federal agencies and impose substantial costs on businesses at a time they can afford it least, all while doing nothing to prevent workplace accidents and injuries.

ABC also opposes the provision requiring immediate abatement and the limits the provision imposes on an employer's ability to challenge a citation. This denies employers due process rights, and OSHA already has the authority to seek an injunction if a hazard poses an imminent threat.

Moreover, under the bill, OSHA inspectors could require employers to make immediate and costly changes to the workplace without OSHA showing an imminent threat or providing employers with a hearing or judicial review of the inspector's allegations. These changes can include shutting down the workplace or critical processes or machinery. This is particularly troubling given that inspectors are **not** industry experts and lack knowledge or background regarding the industry specific safety practices and operations. Employers who fail to comply with the work stoppage would face a fine of \$7,000 per day. Not only is this provision costly, it is unnecessary—OSHA's Director of Enforcement recently informed the House Education and Labor Committee that OSHA is currently able to halt operations within an hour if a serious hazard poses an imminent danger to employees.

Lastly, H.R. 5663 contains neither support nor assistance for employers to help them implement better safety programs or understand their obligations. Such compliance assistance is particularly necessary to help small businesses, who often cannot afford to maintain safety personnel or hire consultants to guide them through complicated OSHA regulations.

The construction industry is already strained with job loss, with unemployment over 20 percent, and adding more bureaucratic layers to an already burdened industry is not conducive to expedient economic recovery. Jobsite safety and health is a top priority for ABC, whose objective is to have "zero accident" worksites.

In order to work towards our shared goals of healthy and safe workplaces, OSHA must be a resource for employers as well as an enforcement agency. However, we strongly believe that H.R. 5663, as introduced, will not improve safety but will instead create greater cost, litigation and hamper job creation. For these reasons, we urge you to vote against the bill.

Sincerely,

A handwritten signature in black ink that reads "Brewster B. Bevis". The signature is written in a cursive style with a large, stylized initial "B".

Brewster B. Bevis  
Senior Director, Legislative Affairs