

National Association of Home Builders

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July 20, 2010

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

Dear Ranking Member Kline:

As you prepare for tomorrow's Education and Labor Committee markup of H.R. 5663, the Miner Safety and Health Act of 2010, on behalf of the 175,000 members of the National Association of Home Builders (NAHB), I am writing to express our strong opposition to this legislation. 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 burdens on our members at a time when they can least afford to shoulder them. Further, the bill does nothing to help prevent workplace accidents and injuries.

Our members have long dedicated themselves to providing safer workplaces for their employees. To that end, NAHB and OSHA allied in 2003 to assist the many builders and trade contractors in the home building industry in preventing occupational injuries and complying with safety regulations. These efforts have lead to significant declines in injury and illness rates among private industry employers in recent years¹. We do not believe, however, the provisions of H.R. 5663 will assist us in our shared goal of further improving workplace safety.

H.R. 5663 imposes new and vague standards for criminal liability—including felony criminal sanctions against "any company officer or director" for "knowing" violations of the OSH Act. The bill, however, provides no definition of "knowing," nor does it provide any limitation or guidance on which "officers or directors" could face criminal charges. H.R. 5663 also imposes draconian penalties, and complicated and costly procedures for adjudicating whistleblower cases that include unlimited liability for companies.

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

¹ Based on Bureau of Labor Statistics (BLS) data obtained at <http://www.bls.gov/news.release/osh.nr0.htm>.

while doing nothing to prevent workplace accidents and injuries.

Moreover, under the bill, Occupational Safety and Health Administration (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, 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. NAHB's home builder members have acknowledged that even a small fine in today's economy could put them out of business. Not only is this provision costly, it is unnecessary—OSHA's Director of Enforcement recently informed the House Education & Labor Committee that the Agency is currently able to halt operations within an hour if a serious hazard poses an imminent danger to employees.

What is missing from H.R. 5663 is equally as concerning. The legislation contains no provisions that would actually help a business improve workplace safety. It contains no support or assistance for employers to help them implement better safety programs or better understand safe work practices and related legal obligations. Such compliance assistance is particularly necessary to help small businesses, which often cannot afford to maintain safety personnel or hire consultants to guide them through complicated OSHA regulations.

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. Unfortunately, this legislation will create a more adversarial relationship between small business owners and OSHA, as fears of felony prosecution will make employers leery of working with OSHA.

For these reason, we urge you to vote against the bill.

Best regards,

A handwritten signature in black ink, appearing to read 'J. Stanton', written in a cursive style.

Joseph Stanton
Senior Vice President and Chief Lobbyist
Government Affairs