



Happenings From The Hill

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Congress Going Home Later This Week?

As this edition of *Happenings* is being written, Congress is supposed to be wrapping up the second session of the 110th Congress and going home where, for most of them, they will face their constituents in the November election. Notice I say they are supposed to be wrapping things up! What with the financial crisis facing the country all kinds of scenarios come into play.

There is some talk that Congress will stay in session for another week or two. Others say they will return after the election in a “lame-duck” session. But the majority of insiders feel they will finalize the financial bailout package and be out of Washington within the week.

Now, there is no sense in discussing the financial bailout package in this small newsletter. I’ll let each of you determine what should or should not be done and what you think of this Congress as it relates to your own perspective. As someone said to me earlier this week “don’t get me started on what I think of Congress!”

So let’s focus our attention on occupational health and safety and look at what Congress did and didn’t do in this second and final session of the 110th Congress.

What Passed –

Gee, I hate to be the bearer of bad news, but Congress passed no legislation that directly impacted occupational health and safety. On the other hand, there are

many who say it was good news that Congress did not enact many of the OH&S issues that came before it.

What Didn't Pass –

Here the list is a little longer. The highlights:

Fiscal '09 Budget. As expected, Congress did not seriously consider passing the appropriations bill that would address occupational health and safety. This bill is part of the huge Health and Human Services/Labor/Education bill. And this bill is only one of thirteen separate appropriations bills. What Congress did was pass a "Continuing Resolution" that funds the government through early March of 2009. As a matter of fact, Congress only enacted one of the thirteen appropriation bills.

There is good news and bad news in this continuing resolution. The good news is that OSHA, MSHA, NIOSH, EPA and other federal agencies are granted authority to spend the same amount of money in this continuing resolution as they are currently spending. Because agencies like NIOSH were taking a huge hit in the proposed budget, this continuing resolution provides them with a few more dollars to spend. The bad news is that agencies like OSHA were expected to receive a small increase in spending authority and they must now cut back to existing spending limits.

On the other hand, there is optimism that when the next Congress comes to town in January of '09 we may have a better chance of convincing them of the need for increased funding at OSHA, MSHA and NIOSH.

Combustible Dust. A bill that would require the Secretary of Labor to issue interim and final occupational safety and health standards regarding worker exposure to combustible dust passed the House of Representatives and was sent to the Senate in early May. No Senate hearings were held on the bill and the bill will die upon adjournment of Congress.

Diacetyl. A bill that would direct the Occupational Safety and Health Administration to issue a standard regulating worker exposure to diacetyl passed the House of Representatives and was sent to the Senate in September of 2007. The bill was placed on the Senate calendar and no action was taken. The bill will die upon adjournment of Congress.

Expand OSHA Coverage. A couple of different measures were introduced that would expand OSHA coverage to local and state government employees. Neither of the bills ever came out of Committee; therefore they will die upon adjournment of Congress.

Personal Protective Equipment. A bill that would direct OSHA to complete its rulemaking on employer payment for personal protective equipment for workers. The bill was introduced back in March of 2007 but was put on hold after OSHA agreed to finalize the rulemaking in November of 2007.

Asbestos. Several bills were introduced that would essentially ban the use of asbestos in the United States. The bill that was considered the "lead bill" passed the Senate and was sent to the House in October of 2007. The House held hearings on the measure but did not enact the bill and the measure will die upon adjournment of Congress. None of the other asbestos measures were seriously considered.

DOL Risk Assessment Rule. Bills were introduced in the House and Senate that would prohibit the Secretary of Labor from proceeding with a proposed rule on internal risk assessment of occupational health risks. Neither of the bills made it out of Committee. The bills will die upon adjournment of Congress.

Criminal Penalties. Bills were introduced that would increase penalties for willful violations resulting in the death of employees. The bills never made it out of Committee and will die upon adjournment of Congress.

OSHA Reform. A major OSHA reform measure was introduced in both the House and Senate. Neither of the bills made it out of Committee and both will die upon adjournment of Congress.

As you can see, the 110th Session of Congress was not exactly a “hotbed” for new legislation regarding OH&S. To some this is a positive and to others this is a negative. I’ll let you be the judge!

Activity at OSHA

As Congress winds down its work in Washington, it’s a good time to take a little closer look at OSHA as it winds down the final months of the Bush Administration. Let’s take a look at some of the major issues at the Agency.

Cranes and Derricks. The Agency has been working on this standard for several years and it finally looks as if the end is near. OSHA has released a draft of the proposed standard that gives a good look at what the agency has in mind. The official proposal is to appear in the Federal Register on October 3. But don’t look for the final rule to come out before the end of this year. The proposal will undoubtedly trigger a request for public hearings which will delay the final rule. The AIHA Construction Committee is reviewing the draft to determine an AIHA position.

Risk Assessment. Already mentioned earlier because of legislation introduced to stop this rule, the proposal would change the methods used to measure workplace exposures to toxic substances and hazardous chemicals. Obviously a very controversial proposal not only because of what it contains but how it was proposed. AIHA is on record as being opposed to the proposal and has submitted comments.

Globally Harmonized System. According to OSHA, a notice of proposed rulemaking will be published in October. We’ll see! But even if OSHA begins addressing the issue of GHS, the issue will not be resolved. OSHA is only addressing the portion of GHS that impacts OH&S. There are numerous other concerns with GHS that other federal agencies must address – and soon.

Silica. OSHA has resisted pressure from lawmakers and others to move forward on stalled silica rulemaking. OSHA has included silica in a National Emphasis Program. Don’t expect any action on this issue for some time.

Personal Protective Equipment. OSHA recently announced a proposed rule on personal protective equipment that would clarify what personal protective equipment and training employers must provide to each employee. Public hearings are scheduled for early October. AIHA submitted comments in support of the proposed rule.

Combustible Dust. The agency has refused requests to proceed with additional rules on combustible dust. The agency believes that existing rules are adequate, but has stepped up enforcement.

Diacetyl. Here again, the agency does not believe that a new rule is needed at this time. However, the agency has increased enforcement.

Activity at EPA

Not to be outdone, the Environmental Protection Agency has actually seen some activity in the past month. AIHA recently submitted comments on two EPA proposals.

The first proposal on which AIHA commented was an EPA proposal that provides for alternative asbestos control methods for asbestos-containing buildings.

The second proposal from EPA revised existing fees for EPA's Lead-Based Paint Activities and established fees for the Renovation, Repair, and Painting rule.

AIHA Public Policy Issues

Every two years, AIHA provides the membership with the opportunity to rank what they perceive is the top public policy issues the association should pursue in the coming two years. The survey is conducted just prior to the election so we can rank our priorities as a new Congress comes to town.

The 2009-2010 public policy survey is now being finalized and you should be provided with the opportunity to respond sometime in the next two weeks. The survey will be internet-based and will only take a few minutes to complete.

Once completed, AIHA national hopes to take a look at existing position statements to determine if these need to be updated. If new issues are forthcoming the association can also begin developing a position. These positions are used when working to educate policymakers in Washington and the States.

Be on the lookout for this survey and please take the time to complete.

The Election

That brings us to the big news taking place in Washington (other than the financial crisis) – the election!

As both presidential candidates step up their activity prior to November 4, we must also take a look at the Congressional elections that will take place. All 435 members of the House of Representatives are up for election and early signs show that the Democrats will probably pick up a dozen or so seats. A third of the Senate seats are up for grabs

and the Democrats will probably pick up a handful of the current Republican seats. The big question is whether or not the Democrats believe they can pick up enough Senate seats to create a “filibuster-proof” Senate. They now hold 51 seats but would need 60 to have filibuster-proof control. It will be difficult for this to occur.

Whatever your views on the Presidential race or your political affiliation, take the time to vote on November 4. Every election we hear people say that “this is the most important election we have ever faced”. This time, they may just be right!

Federal and State Legislative Action Centers

Visit the AIHA Federal Legislative Action Center to stay abreast of national issues important to occupational health and safety. Simply go to the AIHA home page. Click on “government affairs”, located left side under access to information. Once in government affairs, click on “Federal Legislation Action Center”. You will need to sign in as this is a members-only section. Also available within this Action Center is the opportunity for any member to directly contact their elected officials in Washington simply by inserting their zip code. You can send an email or learn how to contact them by phone or mail. Take a look!

The State Center offers AIHA members the opportunity to monitor all state legislative sites, scan IH professional recognition/title protection laws in states where adopted, and even review and follow all state legislation being monitored in the state legislatures throughout the year. Included under each State site is access to the various state agencies, including the Governor’s office and OSHA state plan sites. If professional recognition/title protection legislation has been enacted in a particular state, this law can also be found.

Another important feature is member access to each of the weekly legislative/regulatory reports sent to each state. With this access, members can follow any piece of legislation that may be of interest.

For information on any of the items in this report, please contact Aaron Trippler.