



Happenings From The Hill

American Industrial Hygiene Association Government Affairs Department

Aaron K. Trippler, Director
703-846-0730 atrippler@AIHA.org

April 7, 2009

Spending Measures Continue to Take Center Stage

While Congress is out of town on spring break, along with nearly everyone else, it's time to take a step back and see where we are when it comes to spending on occupational health and safety. To do so requires us to look at three main spending measures.

Stimulus - The final stimulus package provided the Department of Labor with \$80 million for OSHA, the Employment Standards Administration and the Employment Training Administration. There is still no word on how much OSHA can expect from this pot, but AIHA continues to hope that OSHA is provided a substantial amount to provide OH&S assistance with the stimulus spending. AIHA went so far as to send a request to Labor Secretary Hilda Solis with two specific recommendations for the stimulus dollars:

- Urged the Department of Labor to appropriate a considerable amount of the \$80 million to OSHA for the specific purpose of hiring additional OSHA personnel to work solely on the new job creation projects across the country. These positions could include inspectors, consultation experts, compliance assistance personnel, or other identified needs.
- Work with the President to require contracts awarded for new stimulus construction and manufacturing projects to include the hiring of an appropriate number of occupational health and safety professionals to oversee the day to day workplace of these workers. No contract should be awarded unless it includes adequate OH&S personnel.

For a look at this letter,
<http://www.aiha.org/1documents/GovernmentAffairs/AIHACongratulatesSolis.pdf>

2009 Budget – Yes, we finally have a 2009 budget that was supposed to have taken effect last October 1. So how did everyone fare? It depends on who you talk to and what figures are used. If this sounds confusing it is to everyone but those on Capitol Hill. That's because there is a 2008 budget allocation, a 2009 Presidential budget request, and the actual 2009 budget appropriation. In some cases the figures may be higher than 2008 but less than requested, so both sides can use the figures they wish. But here is all you really need to know – OSHA received an increase in overall dollars, with much of this coming in the form of enforcement appropriations. The breakdown:

OSHA

(millions)	<u>'08 Budget</u>	<u>'09 Request</u>	<u>'09 Budget</u>
Safety and Health Standards	16,597	17,204	17,204
Federal Enforcement	182,136	194,000	197,946
State Programs	89,502	91,093	92,593
Technical Support	21,681	22,632	22,632
Compliance Assistance			
Federal	71,390	76,541	72,659
State Consultation	52,425	54,531	54,531
Training Grants	9,939	---	10,000
Safety and Health Statistics	31,522	34,128	34,128
Administration	10,809	11,545	11,349
<u>TOTAL</u>	<u>486,001</u>	<u>501,674</u>	<u>513,042</u>

What is also interesting is the language attached to this final 2009 budget. Committee reports state OSHA should spend more of this money on enforcement, improved recordkeeping, specific issues such as diacetyl, cranes and derricks, pandemic flu, ergonomics guidelines, silica, etc.

NIOSH – Again, depending on how to compare apples to oranges, NIOSH received \$360 million for 2009. How does it compare to 2008? Some say it is a slight decrease and others say it is an increase. It all depends on how you include the dollars for research and the WTC project. The 2009 budget does include \$112 million for the National Occupational Research Agenda and \$70 million for the WTC health project.

2010 Budget – Here is where things get very confusing. The President submitted his budget request to Congress and both the Senate and the House have adopted budget resolutions with the total dollar amount to be spent in 2010. But attempting to find out where these dollars will be spent is impossible. This much we do know. The request for the Department of Labor is for an increase of \$600 million, but no breakdown is available for OSHA.

There are also no details on what NIOSH may receive in 2010. But there is a figure provided for the Environmental Protection Agency. The President is requesting a 34% increase in EPA spending. That's right! If the proposal goes through, EPA will be receiving more than \$10 billion per year compared to a little over \$500 million for OSHA – an agency created the very same time as EPA. Make up your own views on this one!

Legislative Action Very Slow

With Congress spending most of its time working on the economy, there is little interest in occupational health and safety legislation. This was expected, as is the fact that interest in OH&S will pick up in the very near future.

So far, there are really only three or four measures introduced impacting worker safety. Most of these will not receive serious consideration. One surprise bill introduced is a measure that would require OSHA to issue an interim standard on combustible dust within 90 days and enact a final standard within 18 months. We really didn't expect this bill to be introduced because we expected Congress to wait and allow the agency to address this issue on its own. However, by introducing this bill Congress is putting even more pressure on the agency. AIHA supports the measure with a couple of recommendations, specifically questioning whether or not the agency can enact a standard in the time period found in the legislation. To read AIHA's letter, <http://www.aiha.org/1documents/GovernmentAffairs/HR849-CombDust-Support-04-02-09.pdf>

Both industry and labor are waiting for the reintroduction of the Protect America Worker's Act, a bill that will address several issues of interest to AIHA and others. This bill will likely address issues such as expanding coverage to employees not currently covered by OSHA, increasing criminal penalties, whistleblower protections, and perhaps even a look at recordkeeping issues. Word is the bill is being drafted and may even be complete.

The "Name Game" Continues on Leadership for OSHA and NIOSH

Unless you really enjoy playing the "name game", following the rumor mill on who might lead OSHA can get old very quickly. In the last month we have heard of one potential nominee go from "no longer being considered to having the job wrapped up to no longer being considered". One candidate seems to have run into problems with securing support from labor. Another candidate seems to have the support of everyone but those who make the decisions. And new names appear out of nowhere everyday.

The bottom line is no one seems to know who might be nominated to be the next Assistant Secretary of Labor for OSHA. While AIHA has continued its push for the next Assistant Secretary to have considerable front-line experience in occupational health and safety, I am beginning to wonder if this will be the case. Notwithstanding the fact that the Obama Administration has indicated strong support for worker safety, there is no timeline for when we might learn of a potential nominee. Let's just hope we end up with someone who is more of an OH&S "technician" and not a political "tactician".

As for NIOSH, we appear to be having the same problem. But here it might even be more of a problem. With the OSHA position, we have a Secretary of Labor in place. With the NIOSH position, not only do we not yet have an HHS Secretary confirmed, we have no permanent director of CDC. And to think, there were those who laughed when we said not to expect leadership at OSHA or NIOSH to be confirmed and in place before summer – at the earliest.

Issue Update

It's hard to predict which of the many issue will receive priority, but here is where things stand:

Safety and Health Program Standard – Yes, there is talk that development of such a standard may occur. This is considered to be one of labor's top priorities. If such a standard is proposed, don't expect any quick action. Opponents can easily delay this standard for years through various efforts, including questions on whether OSHA could prove "significant risk".

Recordkeeping – OSHA has announced it is developing a new enforcement program for recordkeeping. There have always been reports that companies are underreporting workplace injuries so OSHA is proceeding with a national emphasis program. OSHA says the initiative could be in place in six months.

Cranes and Derricks – OSHA has completed public hearings on its proposal but no word on when the agency might finalize this standard. AIHA submitted comments on this proposed rule. Find them - http://www.aiha.org/1documents/GovernmentAffairs/CranesDerricksComments_03-01-09.pdf

Diacetyl – OSHA has withdrawn the advanced notice of proposed rulemaking and announced that it will initiate the formal rulemaking process. Some see this as an indication the administration will speed up the standard setting process in many areas. Others say the withdrawal on the ANPR will have no bearing on the overall process.

Respiratory Protection Factors for Respirators – OSHA has released a new guidance document on the assigned protection factors for the Respiratory Protection Standard. The document was released on April 1 and applies to general industry, construction, longshoring, shipyard and marine terminal workplaces.

Nanotechnology – Lots of activity in this area. NIOSH issued an updated version of its nano safety report on March 31. This report is especially helpful to IHS and others working with nanotechnology. NIOSH also issued interim guidelines for medical screening and surveillance. In Congress, the House approved a bill to strengthen federal research efforts to understand environmental, health and safety risks of nanotechnology. And the issue is receiving increased attention worldwide. Three Canadian institutions in February published a guide to help companies manage the health and safety risk of nanotechnology. And the Japanese Ministry of the Environment has released guidelines to reduce the risk of environmental harm to nanomaterials.

Ergonomics – A top priority for labor, this issue is not expected to be revived any time soon. The issue is so controversial many believe it would permanently damage any hope for this administration to build any type of bipartisan working relationship between industry and labor. However, there may be an attempt in Congress to address the issue of self-patient handling. By the way – in Canada, the Ontario Ministry of Labour is conducting a safety blitz on ergonomics injuries in April. The ministry's 430 full-time OH&S inspectors are concentrating their inspections on musculoskeletal tasks.

OSHA Field Compliance Manual – OSHA has revised its Field Operations Manual to provide OSHA compliance officers with a comprehensive resource of updated guidance in protecting employees from occupational injuries and fatalities.

Globally Harmonized Classification and Labeling System (GHS) – The Labor Department has completed its review of the proposed rule and said it is now ready for submission to the Office of Management and Budget. But don't bet on it. There has been little talk of this issue since last December and word is that most regulations are on hold.

Occupational Safety and Health Review Commission – Once again, the OSHRC will be facing a backlog of cases as the Commission loses yet another member. The Commission is supposed to be composed of three members and it takes two votes on any Commission case. Since 2007 there have been only two members, making the job difficult on several occasions. Now comes word that one of the Commission members will be leaving their post when their term ends the end of this month. Unless the administration jumps on this asap, the Commission backlog will grow quickly.

The Way I See It!

Finally, a few thoughts on current events. Those who live outside this so-called bubble of Washington shake their head anytime someone says "the government will solve the problem". Well don't think you are the only ones. Many of those who live and work here, including yours truly, also shake our head when we see Congress and the agencies attempt to do the work of governing. I realize the US Government is a huge bureaucracy, but unless we get it under control we will continue to have problems.

Two quick examples –

The Department of Labor Office of Inspector General recently conducted an audit regarding a consultant with OSHA. Seems the agency hired a consultant who the agency said provided "multiple examples of activity, including his organization of leadership conferences and his advice to the Assistant Secretary about succession planning and the agency's mission statement". The consultant worked for a period of 27 months, ending in mid-2008. His fee - \$572,946 billed for labor and \$108,434 in compensation for his commuting costs. This was more pay than that of the Assistant Secretary of Labor for OSHA, the Secretary of Labor, the Vice President of the U.S., or any member of Congress. Who in the heck is in charge? Not sure where this consultant now works but he is probably trying to get a contract somewhere on Wall Street!

While I am sure most taxpayers had never heard of this "consulting gig", the second example is one everyone should have heard of. Simply go back less than thirty days to the "AIG bonus scandal". Remember the uproar over the bonuses, using taxpayer dollars, paid to these executives. There was such an immediate outcry from the public that Congress became involved. Hearings were held, legislation introduced to tax these bonuses upwards of 90 to 100%. The administration called the bonuses "shameful". Amendments were proposed to the stimulus package to curb excessive payouts to bailout recipients, adopted unanimously as part of the stimulus bill. Guess what? All of this was dropped and to date nothing was enacted to tax the bonuses or curb the payouts.

I mention these examples to help show why it is so difficult to direct the attention of policymakers to the issues important to us. However, there are plenty of excellent policymakers and staff who do their best to improve the lives of others. AIHA spends a fair amount of time and resources promoting worker health and safety, but finding those who not only talk about the issues but help find solutions is a full-time job.

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 Tripler.