

April 20, 1977

BLACK LUNG BENEFITS REFORM ACT

H.R. 4544

The Issue

An important but comparatively confusing issue in the first session of the 95th Congress is the Black Lung Benefits Reform Bill of 1977. Confusing because it involves complicated medical, budgetary, and administrative matters; important because the proposals affect the coal mining industry, the health and safety of American miners, and, if the current bill is passed, possibly many other industries in the future as well as the American taxpayer. The bill seeks to clarify the criteria by which miners or their widows or orphans can claim entitlement for "Black Lung" disease. It also proposes to transfer much of the responsibility for these benefits from the federal government to the coal industry itself by establishing a "Black Lung Disability Insurance Fund" (BLDIF) to be financed and administered by the operators themselves.

Status of H.R. 4544

The bill was introduced on March 7, 1977, by Congressmen John H. Dent (D-Pa 21) and Carl D. Perkins (D-Ky 7), and it was referred to the Committee on Education and Labor. The Full Committee held five days of hearings on March 14-17 and March 21 and on March 22 reported favorably by a roll call vote of 27-9. The bill is in the House Rules Committee which has not scheduled any further action at this date. Some members of the Committee had objected to what they considered the speedy processing of the bill through the Committee and the bypassing of the subcommittee. They pointed out that nine members of the Committee were not members of the 94th Congress and that other members were unfamiliar with existing legislation.

H.R. 4544 is very similar to H.R. 10760 which passed the House on March 2, 1976, by a vote of 210-183. Extensive hearings had been held by the Labor Standards Subcommittee in 1973 and

1974. H.R. 10760 did not reach the Senate until September 30, 1976, when, after an hour's debate, it was put aside and never returned to.

The Background

Black Lung disease, or Coal Workers' Pneumoconiosis (CWP), is a respiratory ailment caused by the long term inhalation of coal dust, particularly anthracite dust. Two forms of the disease -- simple and complicatory -- are known. The latter is by far the more serious leading to progressive massive fibrosis and possibly to tuberculosis. The disease can lead to early death or disablement from working in heavy labor. The disease has no known cure and is progressive and irreversible.

Benefits for miners totally disabled from working by CWP were established by the Federal Coal Mines Health and Safety Act of 1969. The burden of payments was to be born by the federal government, and the administration of the program to be undertaken by the Department of Health, Education, and Welfare under the Social Security Administration (SSA). In 1972, the Black Lung Benefits Reform Act of that year broadened the terms under which entitlement to benefits could be obtained and increased the role of the federal government in the payment of benefits. The present bill developed out of dissatisfaction with the administration and funding of the existing programs.

Provisions of H.R. 4544

The principal provisions of the current bill are two:

(1) Section 2(a) of the current bill abandons medical tests for total disability by CWP altogether. It replaces these tests with automatic entitlement for all miners with a work experience of thirty years or more in bituminous areas and twenty-five years or more in anthracite areas. By the 1972 Act, miners who have fifteen years experience of work in mines may present medical evidence of CWP to claim benefits. The current bill (sec. 8[a]) amends the 1972 Act, which made affidavits from friends or widows of deceased miners for whom no medical evidence was available acceptable as evidence. The current bill amends this provision to make such affidavits sufficient for establishing disability in the case of deceased miners.

(2) Section 9 establishes the Black Lung Disability Insurance Fund (BLDIF) to be financed and administered by the operators themselves. This fund is intended to replace the present federal funding of the program by the operators' fund until such time as the states have implemented adequate compensation programs of their own. The Secretary of Labor shall determine the adequacy of any state program. The proposed bill also severely restricts the appeal rights of the operator-contributors to the fund and prohibits their intervention in the process by which claims are made or administered.

Arguments for the Bill

(1) Current dissatisfaction with existing programs: It is said that many miners believe as an article of faith that the SSA administration of the program is intentionally hostile and reluctant to grant eligibility to miners and their eligible dependents. By amending the laws in the current bill, these dissatisfactions will be resolved by forbidding appeals of favorable decisions except on the motion of the claimant. This provision will also ease the backlog of cases and the administrative burden.

(2) Current laws are inadequate: Some doctors have testified that CWP is not easily detectable through present X-ray technology and other medical tests. By doing away with these medical tests and substituting the thirty-year rule for entitlement, the current bill solves this problem.

(3) The bill absolves the federal government of responsibility: By establishing the BLDIF, the bill places the burden of paying for Black Lung Benefits on the coal operators rather than on the American taxpayer. It was never intended that the federal government be permanently responsible for these payments. Because in 1969 there were no adequate state programs and because until that time no dust control standards had been established, it was felt that it would be unfair to require either the states or the operators to be responsible for these payments. States could not be expected to pay for miners who might have contracted their disease in another state. Thus, it was deemed temporarily necessary for the federal government to pay these benefits. This interim approach is now being ended by the current bill.

Arguments Against the Bill

(1) The bill will not reform the inequitable administration of the existing programs. These administrative problems are the fault of the administration agencies themselves and not of the laws as they exist. The current bill will only increase the administrative burdens by increasing the number of applicants. Applicants will be increased by (a) the new, more liberal rules for establishing eligibility, (b) the requirement that HFW and the Labor Dept. review previously denied claims (253,000), and (c) the requirement that HEW individually notify eligible parties (Sec. 6).

(2) The current bill is unfair because it abolishes all medical tests and essentially turns the compensation program into a pension fund for coal miners. This is far from the original intention of the program and is unique to this industry. Furthermore, the bill (sec. 4[a]) defines "total Disability" in such

a way that a working miner may be entitled to benefits at the very time that he is supposedly totally disabled from working at all. CWP can be diagnosed by X-rays, as several physicians and experts have testified. The fact that 80.89% of successful claimants in the SSA administration through 1974 had worked for 30 years or more--often alleged as evidence of the validity of the new entitlement rules--does not mean that all workers for 30 years or more have CWP.

(3) The current bill does not end all Federal responsibility. The HEW is required to individually notify eligible parties, and this is to be a permanent part of the program. This innovation contradicts the often repeated promise of the bill's original sponsors that the program was to be a "one shot" program.

(4) The BLDIF could be unfair; the prohibition of operator intervention in the claims process, while intended to prevent the use of the Fund for the industry's own benefit, may be a denial of due process. Miners will be forced to pay for claims over which they have no control and some operators will have to pay for the claims arising from "dirty" mines even though they themselves operate "clean" mines in accordance with dust control standards.

(5) The program established in this bill could be a precedent for other hazardous occupations and their compensation. The Committee has stated that

it regards this concept of an industry financed, industry administered trust fund as a possible prototype for future legislative treatment of other occupational diseases....

If this type of program were extended to other industries, it could turn into the equivalent of a national pension fund paid by each industry under the guise of a disability compensation payment. This could have harmful industrial and economic effects and would be a deceptive practice, not approved by the citizens or their representatives. This would be unfair to the operator-contributors in each industry, and the current bill is also unfair to other coal workers who are not compensated for other occupational disabilities (such as accidents.)

Costs of This Program

The costs of this program have steadily mounted from its inception under the Act to the present day, far exceeding the original estimates. The original estimates put the costs within a range of \$40-355 million. Between the beginnings

and the amendment of the Act in 1972, 364,000 claims were filed with the SSA. Of these, 345,000 received decisions of which 171,000 were allowed and 174,000 were denied. In the 1969 debate, Congressman Dent said that 100,000 miners and former miners suffered from the disease and that about half of these would be eligible for funds. The cost of payment of benefits for the 171,000 accepted claims was \$700 million. After amendment in 1972, 556,000 more claims were filed by the close of 1974. 58.6% of the miner claimants were accepted and 74.7% of the survivor claimants. At that time there were 509,000 individuals in the U.S who received CWP benefits. At the end of 1974, the cumulative cost of the program was \$3 billion. In 1975 and 1976, \$1 billion was spent in each year.

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