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Legislative Bulletin.....November 5, 2009

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Amendments to H.R. 2868—Chemical Facility Anti-Terrorism Act

The Chemical Facility Anti-Terrorism Act of 2009 sponsored by *Rep. Thompson (D-MS)* is scheduled to be considered on Thursday, November 5, 2009, under a structured rule (H.Res.885) providing for 90 minutes of general debate equally divided among the Committee on Homeland Security, the Committee on Energy and Commerce, and the Committee on Transportation and Infrastructure.

The rule makes in order one amendment in the nature of a substitute to be considered as an original bill that self executes under passage of the rule, as well as, ten additional amendments made under regular order. The rule waives all points of order against consideration of the bill, except earmark and “pay-go” violations. The rule allows one motion to recommit with or without instructions. The RSC will summarize each amendment made in order in a separate document.

Additionally, the rule allows the majority to consider legislation under “suspension of the rules” through Saturday. Typically, suspension bills are only allowed to be considered under House rules Monday through Wednesday.

AMENDMENT IN THE NATURE OF A SUBSTITUTE PROPOSED TO BE CONSIDERED AS AN ORIGINAL BILL FOR THE PURPOSE OF AMENDMENT-PART A

1. *Thompson (D-MS)*. The amendment in the nature of a substitute renames the legislation to the Chemical and Water Security Act of 2009 and combines three bills aimed to increase security within the chemical industry, drinking water suppliers, and wastewater treatment facilities. A detailed summary of the amendment in the nature of a substitute is incorporated into the legislative bulletin for H.R. 2868.

AMENDMENTS MADE IN ORDER UNDER THE RULE-PART B

1. *Thompson (D-MS)*. The Amendment mostly makes technical corrections for the bill to address grammar and typos. However, the amendment changes the definition of “protected information” to not include information, other than a secretary vulnerability assessment or site security plans that the administrator has determined to be “appropriate” and non-detrimental to security if disclosed or that can be obtained from another source.

2. **Barton (R-TX)**. Amends the federal preemption portions of the bill to prohibit states and localities from implementing laws that would "hinder, pose obstacles to, or frustrate the purpose of the federal program".
3. **Hastings (D-FL)**. Amends the newly established Office of Chemical Facility Security under the Department of Homeland Security to designate a point of contact responsible for interagency coordination and promoting outreach to update emergency planning and training procedures.
4. **Dent (R-PA)/Olson (R-TX)**. Removes the entire first title of the bill dealing with the regulations of chemical facilities and replaces it with legislation (H.R. 2477) to extend authorization for the current program through Oct. 1, 2012, in order to provide ample time to adequately establish a mature regulatory regime under an eight-step process.
5. **Dent (R-PA)**. Strikes Section 2111, which prescribes methods to reduce the consequences of a chemical release. This provision forces facilities to justify to DHS why they should not have to replace certain equipment for inherently safer technologies (IST). Some conservatives believe that mandating a company to substitute products and processes with government-selected technologies goes beyond security protections and would lead to confusion, loss of products, additional legal liabilities, and business failures.
6. **Flake (R-AZ)**. Prohibits the earmarking of grants, created in the bill and requires a report to Congress if competitive procedures are not used from the Secretary of Homeland Security.
7. **Schrader (D-OR)/Kissell (D-ID)**. Amends the legislation to require greater consideration be given to the agricultural industry in an assessment of the potential impacts to comply with provisions of the act to implement methods to reduce the consequences of a terrorist attack. Additionally, it gives additional emphasis to farm supply merchants that engage in the sale of chemicals, fertilizers, animal feeds, and others products.
8. **McCaul (R-TX)**. Strikes the citizen enforcement provisions of the legislation which allows *any person* to proceed with a civil action against any governmental entity alleged to be in violation of an order or against the Secretary for failure to perform non-discretionary duties. Some conservatives have expressed concern that allowing suits against the federal government to be brought by "any person" will lead to excessive and frivolous litigation.
9. **Halverson (D-IL)**. Permits the Secretary of Homeland Security to provide guidance and technology to assist "smaller covered chemical facilities" to comply with the requirements set forth in the bill.
10. **Foster (D-IL)/Lujan (D-NM)**. Directs the Secretary of Homeland Security to establish modified security standards and procedures for vulnerability assessments for covered chemical facilities that are also academic libraries.