

(2) OPERATION OF FACILITY.—Not later than January 1, 2013, the facility designated in paragraph (1) shall be operational and shall accept custody, for the purpose of long-term management and storage, of elemental mercury generated within the United States and delivered to such facility.

(b) FEES.—

(1) IN GENERAL.—After consultation with persons who are likely to deliver elemental mercury to a designated facility for long-term management and storage under the program prescribed in subsection (a), and with other interested persons, the Secretary shall assess and collect a fee at the time of delivery for providing such management and storage, based on the pro rata cost of long-term management and storage of elemental mercury delivered to the facility. The amount of such fees—

(A) shall be made publically available not later than October 1, 2012;

(B) may be adjusted annually; and

(C) shall be set in an amount sufficient to cover the costs described in paragraph (2).

(2) COSTS.—The costs referred to in paragraph (1)(C) are the costs to the Department of Energy of providing such management and storage, including facility operation and maintenance, security, monitoring, reporting, personnel, administration, inspections, training, fire suppression, closure, and other costs required for compliance with applicable law. Such costs shall not include costs associated with land acquisition or permitting of a designated facility under the Solid Waste Disposal Act or other applicable law. Building design and building construction costs shall only be included to the extent that the Secretary finds that the management and storage of elemental mercury accepted under the program under this section cannot be accomplished without construction of a new building or buildings.

(c) REPORT.—Not later than 60 days after the end of each Federal fiscal year, the Secretary shall transmit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on all of the costs incurred in the previous fiscal year associated with the long-term management and storage of elemental mercury. Such report shall set forth separately the costs associated with activities taken under this section.

(d) MANAGEMENT STANDARDS FOR A FACILITY.—

(1) GUIDANCE.—Not later than October 1, 2009, the Secretary, after consultation with the Administrator of the Environmental Protection Agency and all appropriate State agencies in affected States, shall make available, including to potential users of the long-term management and storage program established under subsection (a), guidance that establishes procedures and standards for the receipt, management, and long-term storage of elemental mercury at a designated facility or facilities, including requirements to ensure appropriate use of flasks or other suitable shipping containers. Such procedures and standards shall be protective of human health and the environment and shall ensure that the elemental mercury is stored in a safe, secure, and effective manner. In addition to such procedures and standards, elemental mercury managed and stored under this section at a designated facility shall be subject to the requirements of the Solid Waste Disposal Act, including the requirements of subtitle C of that Act, except as provided in subsection (g)(2) of this section. A designated facility in existence on or before January 1, 2013, is authorized to operate under interim status pursuant to section 3005(e) of the Solid Waste Disposal Act until a final decision on a permit application is

made pursuant to section 3005(c) of the Solid Waste Disposal Act. Not later than January 1, 2015, the Administrator of the Environmental Protection Agency (or an authorized State) shall issue a final decision on the permit application.

(2) TRAINING.—The Secretary shall conduct operational training and emergency training for all staff that have responsibilities related to elemental mercury management, transfer, storage, monitoring, or response.

(3) EQUIPMENT.—The Secretary shall ensure that each designated facility has all equipment necessary for routine operations, emergencies, monitoring, checking inventory, loading, and storing elemental mercury at the facility.

(4) FIRE DETECTION AND SUPPRESSION SYSTEMS.—The Secretary shall—

(A) ensure the installation of fire detection systems at each designated facility, including smoke detectors and heat detectors; and

(B) ensure the installation of a permanent fire suppression system, unless the Secretary determines that a permanent fire suppression system is not necessary to protect human health and the environment.

(e) INDEMNIFICATION OF PERSONS DELIVERING ELEMENTAL MERCURY.—

(1) IN GENERAL.—(A) Except as provided in subparagraph (B) and subject to paragraph (2), the Secretary shall hold harmless, defend, and indemnify in full any person who delivers elemental mercury to a designated facility under the program established under subsection (a) from and against any suit, claim, demand or action, liability, judgment, cost, or other fee arising out of any claim for personal injury or property damage (including death, illness, or loss of or damage to property or economic loss) that results from, or is in any manner predicated upon, the release or threatened release of elemental mercury as a result of acts or omissions occurring after such mercury is delivered to a designated facility described in subsection (a).

(B) To the extent that a person described in subparagraph (A) contributed to any such release or threatened release, subparagraph (A) shall not apply.

(2) CONDITIONS.—No indemnification may be afforded under this subsection unless the person seeking indemnification—

(A) notifies the Secretary in writing within 30 days after receiving written notice of the claim for which indemnification is sought;

(B) furnishes to the Secretary copies of pertinent papers the person receives;

(C) furnishes evidence or proof of any claim, loss, or damage covered by this subsection; and

(D) provides, upon request by the Secretary, access to the records and personnel of the person for purposes of defending or settling the claim or action.

(3) AUTHORITY OF SECRETARY.—(A) In any case in which the Secretary determines that the Department of Energy may be required to make indemnification payments to a person under this subsection for any suit, claim, demand or action, liability, judgment, cost, or other fee arising out of any claim for personal injury or property damage referred to in paragraph (1)(A), the Secretary may settle or defend, on behalf of that person, the claim for personal injury or property damage.

(B) In any case described in subparagraph (A), if the person to whom the Department of Energy may be required to make indemnification payments does not allow the Secretary to settle or defend the claim, the person may not be afforded indemnification with respect to that claim under this subsection.

(f) TERMS, CONDITIONS, AND PROCEDURES.—The Secretary is authorized to establish such terms, conditions, and procedures as are necessary to carry out this section.

(g) EFFECT ON OTHER LAW.—

(1) IN GENERAL.—Except as provided in paragraph (2), nothing in this section changes or affects any Federal, State, or local law or the obligation of any person to comply with such law.

(2) EXCEPTION.—(A) Elemental mercury that the Secretary is storing on a long-term basis shall not be subject to the storage prohibition of section 3004(j) of the Solid Waste Disposal Act (42 U.S.C. 6924(j)). For the purposes of section 3004(j) of the Solid Waste Disposal Act, a generator accumulating elemental mercury destined for a facility designated by the Secretary under subsection (a) for 90 days or less shall be deemed to be accumulating the mercury to facilitate proper treatment, recovery, or disposal.

(B) Elemental mercury may be stored at a facility with respect to which any permit has been issued under section 3005(c) of the Solid Waste Disposal Act (42 U.S.C. 6925(c)), and shall not be subject to the storage prohibition of section 3004(j) of the Solid Waste Disposal Act (42 U.S.C. 6924(j)) if—

(i) the Secretary is unable to accept the mercury at a facility designated by the Secretary under subsection (a) for reasons beyond the control of the owner or operator of the permitted facility;

(ii) the owner or operator of the permitted facility certifies in writing to the Secretary that it will ship the mercury to the designated facility when the Secretary is able to accept the mercury; and

(iii) the owner or operator of the permitted facility certifies in writing to the Secretary that it will not sell, or otherwise place into commerce, the mercury.

This subparagraph shall not apply to mercury with respect to which the owner or operator of the permitted facility fails to comply with a certification provided under clause (ii) or (iii).

(h) STUDY.—Not later than July 1, 2014, the Secretary shall transmit to the Congress the results of a study, conducted in consultation with the Administrator of the Environmental Protection Agency, that—

(1) determines the impact of the long-term storage program under this section on mercury recycling; and

(2) includes proposals, if necessary, to mitigate any negative impact identified under paragraph (1).

SEC. 6. REPORT TO CONGRESS.

At least 3 years after the effective date of the prohibition on export of elemental mercury under section 12(c) of the Toxic Substances Control Act (15 U.S.C. 2611(c)), as added by section 4 of this Act, but not later than January 1, 2017, the Administrator of the Environmental Protection Agency shall transmit to the Committee on Energy and Commerce of the House of Representatives and the Committee on Environment and Public Works of the Senate a report on the global supply and trade of elemental mercury, including but not limited to the amount of elemental mercury traded globally that originates from primary mining, where such primary mining is conducted, and whether additional primary mining has occurred as a consequence of this Act.

PRIVILEGES OF THE FLOOR

Mr. BAUCUS. Mr. President, I ask unanimous consent that Kelsey Paulson and Alicia Marie Johnson be granted the privilege of the floor for today's debate.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent that during

floor consideration of H.R. 2638 that Arex Avanni, a detailee to the Committee on Appropriations, be granted the privilege of the floor.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXECUTIVE SESSION

INTERNATIONAL CONVENTION ON CONTROL OF HARMFUL ANTI-FOULING SYSTEMS ON SHIPS, 2001

CCW PROTOCOL ON EXPLOSIVE REMNANTS OF WAR

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the Calendar Nos. 24 and 30, and that the treaties be considered as having advanced through the various parliamentary stages up to and including the presentation of the resolutions of ratification; that any committee understandings, declarations, and conditions, if applicable, be agreed to; that any statements be printed in the RECORD as if read; and that the Senate take one vote on the resolution of ratification; further, that when the resolutions of ratification are voted on, the motions to reconsider be considered made and laid on the table; the President be immediately notified of the Senate's action, and the Senate resume legislative session, all without intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. WHITEHOUSE. Mr. President, I ask for a division vote on the resolutions of ratification.

The PRESIDING OFFICER. A division vote was being requested. Senators in favor of ratification of these treaties will rise and remain standing until counted.

Those opposed will rise and stand until counted.

On a division vote, two-thirds of the Senators present having voted in the affirmative, the resolutions of ratification are agreed to.

The resolutions of ratification agreed to are as follows:

TREATY DOC. 109-10(C) CCW PROTOCOL ON EXPLOSIVE REMNANTS OF WAR (PROTOCOL V)

Resolved (two-thirds of the Senators present concurring therein),

Section 1. Senate Advice and Consent subject to an understanding and a declaration

The Senate advises and consents to the ratification of the Protocol on Explosive Remnants of War to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects (Protocol V), adopted at Geneva on November 28, 2003 (Treaty Doc. 109-10(C)), subject to the understanding of section 2 and the declaration of section 3.

Section 2. Understanding.

The advice and consent of the Senate under section 1 is subject to the following understanding, which shall be included in the instrument of ratification:

It is the understanding of the United States of America that nothing in Protocol V would preclude future arrangements in connection with the settlement of armed conflicts, or assistance connected thereto, to allocate responsibilities under Article 3 in a manner that respects the essential spirit and purpose of Protocol V.

Section 3. Declaration.

The advice and consent of the Senate under section 1 is subject to the following declaration:

With the exception of Articles 7 and 8, this Protocol is self-executing. This Protocol does not confer private rights enforceable in United States courts.

TREATY DOC. 110-13 INTERNATIONAL CONVENTION ON THE CONTROL OF HARMFUL ANTI-FOULING SYSTEMS ON SHIPS

Resolved (two-thirds of the Senators present concurring therein),

Section 1. Senate Advice and Consent subject to two declarations.

The Senate advises and consents to the ratification of the International Convention on the Control of Harmful Anti-Fouling Systems on Ships, adopted on October 5, 2001 (Treaty Doc. 110-13), subject to the declaration of section 2 and the declaration of section 3.

Section 2. Declaration.

The advice and consent of the Senate under section 1 is subject to the following declaration, which shall be included in the instrument of ratification:

The United States of America declares that, pursuant to Article 16(2)(f)(ii)(3) of the Convention, amendments to Annex 1 of the Convention shall enter into force for the United States of America only after notification to the Secretary-General of its acceptance with respect to such amendments.

Section 3. Declaration.

The advice and consent of the Senate under section 1 is subject to the following declaration:

This Convention is not self-executing.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate returns to legislative session.

LEGISLATIVE SESSION

ACTION VITIATED—H.R. 2638

Mr. WHITEHOUSE. Mr. President, I ask unanimous consent that the previous action with respect to the House Message to H.R. 2638 be vitiated.

The PRESIDING OFFICER. Without objection, it is so ordered.

CONSOLIDATED SECURITY, DISASTER ASSISTANCE, AND CONTINUING APPROPRIATIONS ACT, 2009

Mr. WHITEHOUSE. I ask unanimous consent that the Chair lay before the Senate a message from the House with respect to H.R. 2638.

The PRESIDING OFFICER laid before the Senate the following message:

Resolved that the House agree to the amendment of the Senate, to the bill, H.R. 2638, an act making appropriations for the Department of Homeland Security for the fiscal year ending September 30, 2008, and for other purposes, do pass with a House amendment to the Senate amendment.

CLOTURE MOTION

Mr. WHITEHOUSE. I move to concur in the House amendment to the Senate amendment to H.R. 2638 and I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close debate on the motion to concur in the House amendment to H.R. 2638, the Department of Homeland Security Appropriations Act/Continuing Resolution for fiscal year 2009.

Evan Bayh, Debbie Stabenow, Benjamin L. Cardin, Byron L. Dorgan, Barbara A. Mikulski, Jeff Bingaman, John F. Kerry, Herb Kohl, Sherrod Brown, Jon Tester, E. Benjamin Nelson, Richard Durbin, Patrick J. Leahy, Amy Klobuchar, Robert P. Casey, Jr., Claire McCaskill, Bernard Sanders.

Mr. WHITEHOUSE: I ask unanimous consent that the mandatory quorum be waived.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 5670

Mr. WHITEHOUSE. I now move to concur in the House amendment to the Senate amendment to H.R. 2638 with an amendment which is at the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Rhode Island [Mr. WHITEHOUSE] moves to concur in the House amendment to the Senate amendment to H.R. 2638, with an amendment numbered 5670.

Mr. WHITEHOUSE. I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

At the end, add the following:

The provisions of this Act shall become effective 2 days after enactment.

Mr. WHITEHOUSE. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 5671

Mr. WHITEHOUSE. I have a second-degree amendment at the desk and ask for its consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Rhode Island [Mr. WHITEHOUSE], for Mr. REID, proposes an amendment numbered 5671 to amendment No. 5670.

Mr. WHITEHOUSE. I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.