



One Hundred Tenth Congress
U.S. House of Representatives
Committee on Homeland Security
Washington, DC 20515

June 19, 2009

REVISED (6/21/2009)

COMMITTEE ACTION

The Committee on Homeland Security met, pursuant to notice, in open markup session, a quorum being present, on Thursday, June 18, and Friday, June 19, 2009, in 311 Cannon House Office Building to consider H.R. 2868.

The Committee continued, but did not complete consideration of H.R. 2868. The Committee took the following actions:

H.R. 2868, “to amend the Homeland Security Act of 2002 to extend, modify, and recodify the authority of the Secretary of Homeland Security to enhance security and protect against acts of terrorism against chemical facilities, and for other purposes.”

The following amendments were offered:

An Amendment in the Nature of a Substitute to H.R. 2868 offered by Mr. Thompson (#1).

An Amendment offered by Mr. Lungren to the Amendment in the Nature of a Substitute (#1A); Page 48, after line 10, insert a new subsection (3) entitled “Appeals”.; was AGREED TO by voice vote.

A unanimous consent request by Mr. Cuellar to be listed as a cosponsor of amendment (#1A), was not objected to.

A unanimous consent request by Ms. Jackson-Lee to be listed as a cosponsor of amendment (#1A), was not objected to.

An Amendment offered by Mr. Dent and Mr. Souder to the Amendment in the Nature of a Substitute (#1B); Page 47, line 11, strike “and”. Page 47, line 15, strike the period at the end and insert “; and”. Page 47, after line 15, insert the following: (D) would not significantly or demonstrably reduce the operations of the covered chemical facility or result in a reduction of the workforce of the covered chemical facility; was AGREED TO by voice vote.

An Amendment offered by Mr. Dent to the Amendment in the Nature of a Substitute (#1C); Page 47, after line 15, insert a new paragraph (2) entitled “Analysis Required.”; was AGREED TO, without amendment, by voice vote.

An amendment offered by Ms. Miller to the amendment offered by Mr. Dent to the Amendment in the Nature of a Substitute (#1C1); Page 1, line 12, strike “and”. Page 1, line 14, strike the period and insert “; and”. Page 1, after line 14, insert the following“(iv) the costs to agricultural facilities as a result of mandatory implementation.” Page 2, line 6, strike “and”. Page 2, line 8, strike the period and insert “; and”. Page 2, after line 8, insert the following: “(v) representatives of agricultural facilities.”; was NOT AGREED TO by voice vote.

An Amendment offered by Mr. Broun to the Amendment in the Nature of a Substitute (#1D); Page 45, line 21, after “facility” insert “assigned to tier 1 or tier 2”. Page 46, line 20, strike “shall” and insert “may”. Page 49, line 21, strike “that are required” and all that follows through “such methods”. Page 49, after line 22, insert the following: “(e) Assessments Assistance Required.–If a covered chemical facility is required by subsection (a) to conduct an assessment of methods to reduce the consequences of a terrorist attack, the facility may request, and the Secretary shall provide, such assistance as may be necessary for the completion of the required assessment.”; was NOT AGREED TO by a recorded vote of 11 yeas and 15 nays (Roll Call Vote No. 5).

The vote was as follows:

ROLL CALL VOTE NO. 5	
YEAS	NAYS
Mr. King	Mr. Thompson
Mr. Smith	Ms. Sanchez
Mr. Souder	Ms. Jackson-Lee
Mr. McCaul	Mr. Cuellar
Mr. Dent	Mr. Carney
Mr. Bilirakis	Ms. Clarke
Mr. Broun	Ms. Richardson
Mrs. Miller	Mrs. Kirkpatrick
Mr. Olson	Mr. Luján
Mr. Cao	Mr. Pascrell
Mr. Austria	Mr. Cleaver
	Mr. Himes
	Ms. Kilroy
	Mr. Massa
	Ms. Titus
11	15

Per a unanimous consent request by Ms. Norton; that, had she been present, she would have voted “nay” on Roll Call Vote No. 5.

An Amendment offered by Mr. Souder to the Amendment in the Nature of a Substitute (#1E); Page 13, line 19, strike “and”. Page 13, line 23, strike the period and insert “; and”. Page 13, after line 23, insert the following: “(D) the reduction of risk to the covered chemical facility demonstrated by submission of an updated security vulnerability assessment and site security plan as required under section 2103.”; was NOT AGREED TO by a recorded vote of 11 yeas and 16 nays (Roll Call Vote No. 6).

The vote was as follows:

ROLL CALL VOTE NO. 6	
YEAS	NAYS
Mr. King	Mr. Thompson
Mr. Souder	Ms. Sanchez
Mr. Rogers	Ms. Jackson-Lee
Mr. McCaul	Mr. Cuellar
Mr. Dent	Mr. Carney
Mr. Bilirakis	Ms. Clarke
Mr. Broun	Ms. Richardson
Mrs. Miller	Mrs. Kirkpatrick
Mr. Olson	Mr. Luján
Mr. Cao	Mr. Pascrell
Mr. Austria	Mr. Cleaver
	Mr. Green
	Mr. Himes
	Ms. Kilroy
	Mr. Massa
	Ms. Titus
11	16

Per a unanimous consent request by Ms. Norton; that, had she been present, she would have voted “nay” on Roll Call Vote No. 6.

Per a unanimous consent request by Mr. Smith; that had he been present he would have voted “yea” on Roll Call Vote No. 6.

An Amendment offered by Mr. Austria to the Amendment in the Nature of a Substitute (#1F); Page 49, after line 22, insert the following: “(e) Non-Applicability to Small Business Concerns.—This section does not apply to any business that is a small business concern, as determined by the Administrator of the Small Business Administration pursuant to the regulations set forth in 13 C.F.R. § 121.201, as in effect on January 1, 2009.”; was AGREED TO, as

amended (by Roll Call Vote No. 7), by a recorded vote of 29 yeas and 0 nays (Roll Call Vote No. 8).

The vote was as follows:

ROLL CALL VOTE NO. 8	
YEAS	NAYS
Mr. Thompson	
Ms. Sanchez	
Ms. Norton	
Ms. Lofgren	
Ms. Jackson-Lee	
Mr. Cuellar	
Mr. Carney	
Ms. Clarke	
Ms. Richardson	
Mrs. Kirkpatrick	
Mr. Luján	
Mr. Pascrell	
Mr. Cleaver	
Mr. Green	
Mr. Himes	
Ms. Kilroy	
Ms. Titus	
Mr. King	
Mr. Souder	
Mr. Lungren	
Mr. Rogers	
Mr. McCaul	
Mr. Dent	
Mr. Bilirakis	
Mr. Broun	
Mrs. Miller	
Mr. Olson	
Ms. Cao	
Mr. Austria	
29	0

Per a unanimous consent request by Mr. Smith; that, had he been present, he would have voted “yea” on Roll Call Vote No. 8.

An amendment offered by Mr. Pascrell to the amendment offered by Mr. Austria to the Amendment in the Nature of a Substitute (#1F1); strike “page 49” following and insert the following: “(e) Applicability to Small Business Concerns.—“(1) Report.—“(A) In General.—Not later than one year after

the date of enactment of this Act, the Secretary shall submit to the Committee on Homeland Security of the House of Representatives that reviews and assesses the security issues associated with exempting from section 2111 of this Act businesses that are small business concerns as determined by the Administrator of the Small Business Administration pursuant to the regulations set forth in 13 C.F.R. §121.201, as in effect on January 1, 2009. “(B) Contents.—The Report shall include—“(i) an analysis of the potential issues relevant to exempting small business concerns, as defined in paragraph (1), from the requirements of such section 2111 of this Act, including the potential effect of such an exemption on the security of chemical facilities in the United States and the economic effect of applying section 2111 to such small business concerns; and “(ii) any other elements the Secretary determined to be relevant or appropriate. “(2) Determination of Applicability.—Upon submission of the report, the Secretary shall determined whether small business concerns as defined in paragraph (1) shall be subject to or exempt from section 2111 of this Act.”.; was AGREED TO by a recorded vote of 18 yeas and 11 nays (Roll Call Vote No. 7).

The vote was as follows:

ROLL CALL VOTE NO. 7	
YEAS	NAYS
Mr. Thompson	Mr. King
Ms. Sanchez	Mr. Souder
Ms. Norton	Mr. Lungren
Ms. Jackson-Lee	Mr. Rogers
Mr. Cuellar	Mr. McCaul
Mr. Carney	Mr. Dent
Ms. Clarke	Mr. Bilirakis
Ms. Richardson	Mr. Broun
Mrs. Kirkpatrick	Mrs. Miller
Mr. Luján	Mr. Olson
Mr. Pascrell	Mr. Austria
Mr. Cleaver	
Mr. Green	
Mr. Himes	
Ms. Kilroy	
Mr. Massa	
Ms. Titus	
Mr. Cao	
18	11

Per a unanimous consent request by Mr. Smith; that, had he been present, he would have voted “nay” on Roll Call Vote No. 7.

An En Bloc Amendment offered by Ms. Jackson-Lee to the Amendment in the Nature of a Substitute (#1G); Page 62, line 1, strike “60” and insert “120”.; and Page 21, lines 2, after the semicolon insert “and”. Page 21, strike lines 3 through 8. Page 21, line 9, strike “(I)” and insert “(H)”.was AGREED TO by voice vote.

A unanimous consent request by Ms. Jackson-Lee to consider the amendments en bloc was not objected to.

An Amendment offered by Mr. Dent to the Amendment in the Nature of a Substitute (#1H); Page 9, beginning on line 14, strike the proposed subparagraph (S). Page 9, line 17, strike “(T)” and insert “(S)”. Page 9, line 20, strike “(U)” and insert “(T)”. Page 25, lines 22 though 23, strike “, including the requirements under section 2111,” Page 45, beginning on line 18, strike section 2111, relating to methods to reduce the consequences of a terrorist attack, and conform the amendment to the table of contents made by section 3(b) accordingly.; was NOT AGREED TO by a recorded vote of 11 yeas and 14 nays (Roll Call Vote No. 9).

The vote was as follows:

ROLL CALL VOTE NO. 9	
YEAS	NAYS
Mr. King	Mr. Thompson
Mr. Souder	Mr. Cuellar
Mr. Lungren	Mr. Carney
Mr. Rogers	Ms. Clarke
Mr. McCaul	Ms. Richardson
Mr. Dent	Mrs. Kirkpatrick
Mr. Bilirakis	Mr. Luján
Mr. Broun	Mr. Pascrell
Mr. Olson	Mr. Cleaver
Mr. Cao	Mr. Green
Mr. Austria	Mr. Himes
	Ms. Kilroy
	Mr. Massa
	Ms. Titus
11	14

An Amendment offered by Mr. Cao to the Amendment in the Nature of a Substitute (#1I); Page 32, after line 15, insert the following: “(d) Chemical Security Inspectors Authorized.–Subject to availability of appropriations for such purpose, the Secretary shall hire not fewer than 100 additional chemical facility inspectors in fiscal years 210 and 2011 to ensure compliance with this title.”.; was AGREED TO by voice vote.

An Amendment offered by Mr. Cao to the Amendment in the Nature of a Substitute (#1J); Page 10, line 8, after “means” insert the following “a chemical facility employee who is also”. Page 10, line 12, strike “the” and insert “a”; was NOT AGREED TO by voice vote.

An Amendment offered by Mr. Broun to the Amendment in the Nature of a Substitute (#1K); In the proposed section 2115, redesignate subsections (c) through (h) as subsections (d) through (i), respectively. Page 56, after line 21, insert the following: “(c) Termination of Employment.—If an owner or operator of a chemical facility finds that a covered individual meet any of the criteria under subsection (b), the owner or operator shall cease to employ the covered individual subject to the redress process under subsection (d).”; was NOT AGREED TO by voice vote.

An Amendment offered by Mr. Bilirakis to the Amendment in the Nature of a Substitute (#1L); Page 66, after line 25, insert the following (and adjust the amendment to the table of contents made by section 3(b) accordingly): “Sec. 2119. Personal Flexibilities. “(a) In General.—The Secretary may, after providing public notice, appoint and employ qualified applicants as chemical security inspectors without regard to sections 3309 through 3318 of title 5, United States Code, and the regulation thereto, including 5 CFR part 211, or 5 CFR part 337, subpart A. “(b) Sunset.—The authority in subsection (a) shall terminate on September 30, 2011.”.; was NOT AGREED TO by a recorded vote of 11 yeas and 17 nays (Roll Call Vote No. 10).

The vote was as follows:

ROLL CALL VOTE NO. 10	
YEAS	NAYS
Mr. King	Mr. Thompson
Mr. Souder	Ms. Norton
Mr. Lungren	Ms. Jackson-Lee
Mr. Rogers	Mr. Cuellar
Mr. McCaul	Mr. Carney
Mr. Dent	Ms. Clarke
Mr. Bilirakis	Ms. Richardson
Mr. Broun	Mrs. Kirkpatrick
Mrs. Miller	Mr. Luján
Mr. Olson	Mr. Pascrell
Mr. Austria	Mr. Cleaver
	Mr. Green
	Mr. Himes
	Ms. Kilroy
	Mr. Massa
	Ms. Titus

	Mr. Cao
11	17

An Amendment offered by Mr. Cao to the Amendment in the Nature of a Substitute (#1M); Page 25, starting on line 1, strike the proposed subsection (e). Page 50, after line 8, insert the following: "(A) has an approved facility security plan under section 70103 of title 46, United States Code;". Page 50, line 9 strike "(A)" and insert "(B)". Page 50, line 9 strike "(B)" and insert "(C)". Page 50, line 9 strike "(C)" and insert "(D)".; was NOT AGREED TO by voice vote.

An Amendment offered by Mr. Souder to the Amendment in the Nature of a Substitute (#1N); Page 62, line 8, strike "or". Page 62, after line 14, strike the period and insert "; or". Page 62, after line 14, insert the following: "(3) if the Secretary or any alleged violator of such standard, regulation, condition, requirement, prohibition, or order must divulge security risk information or proprietary information in the course of such action.";

A recorded vote has been requested on amendment #1N, pursuant to the notice of the Chairman, the Committee will consider the postponed votes on those votes on which a recorded vote was requested at 5:30 p.m. on Tuesday, June 23, 2009.

An Amendment offered by Mr. McCaul to the Amendment in the Nature of a Substitute (#1O); Strike the proposed section 2116, relating to civil suits, insert a new section 2116, entitled "Civil Complaints", and conform matter proposed to be added to the table of contents by section 3(b) accordingly.;

A recorded vote has been requested on amendment #1O, pursuant to the notice of the Chairman, the Committee will consider the postponed votes on those votes on which a recorded vote was requested at 5:30 p.m. on Tuesday, June 23, 2009.

An Amendment offered by Mr. Broun to the Amendment in the Nature of a Substitute (#1P); Page 60, beginning on line 12, strike the proposed section 2116, relating to civil suits, and conform the table of contents accordingly.;

A recorded vote has been requested on amendment #1P, pursuant to the notice of the Chairman, the Committee will consider the postponed votes on those votes on which a recorded vote was requested at 5:30 p.m. on Tuesday, June 23, 2009.

An Amendment offered by Mr. Austria to the Amendment in the Nature of a Substitute (#1Q); Page 66, after line 25, insert the following (and adjust the amendment to the table of contents made by section 3(b) accordingly): Insert a new section entitled "Sec. 2119. Notification System to Address Public Concerns."; was AGREED TO by voice vote.

An Amendment offered by Mr. Souder to the Amendment in the Nature of a Substitute (#1R); Page 14, after line 11, insert a new subsection “(14) The term ‘surface transportation modes’ means mass transit, commuter and long-distance passenger rail, freight rail, commercial vehicles (including intercity buses), and pipelines, and related infrastructure (including roads and highways), that are within the territory of the United States.”. Page 47, line 11, strike “and”. Page 47, line 15, strike the period and insert “; and”. Page 47, after line 15, insert the following: “(D) would not significantly transfer security risk to the surface transportation modes of the United States.”; was AGREED TO by voice vote.

An Amendment offered by Mr. King to the Amendment in the Nature of a Substitute (#1S); In the proposed section 2115, redesignate subsections (c) through (h) as subsections (d) through (i), respectively. Page 56, after line 21, insert the following: “(c) Termination of Employment.—If an owner or operator of a chemical facility finds that pursuant to a security background check a covered individual is not legally authorized to work in the United States, the owner or operator shall cease to employ the covered individual subject to the redress process under subsection (d).”. was AGREED TO by voice vote.

The Committee stands in recess until 5:30 p.m. on Tuesday, June 23, 2009, the Committee will consider the postponed votes on those votes on which a recorded vote was requested.

