

AMENDMENTS SUBMITTED AND PROPOSED

SA 2523. Mr. BINGAMAN proposed an amendment to amendment SA 2515 proposed by Mr. GRAHAM (for himself, Mr. KYL, Mr. CHAMBLISS, and Mr. CORNYN) to the bill S. 1042, to authorize appropriations for fiscal year 2006 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes.

SA 2524. Mr. GRAHAM (for himself, Mr. LEVIN, and Mr. KYL) proposed an amendment to amendment SA 2515 proposed by Mr. GRAHAM (for himself, Mr. KYL, Mr. CHAMBLISS, and Mr. CORNYN) to the bill S. 1042, *supra*.

TEXT OF AMENDMENTS

SA 2523. Mr. BINGAMAN proposed an amendment to amendment SA 2515 proposed by Mr. GRAHAM (for himself, Mr. KYL, Mr. CHAMBLISS, and Mr. CORNYN) to the bill S. 1042, to authorize appropriations for fiscal year 2006 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; as follows:

Strike subsection (d) and insert the following:

(d) JUDICIAL REVIEW OF DETENTION OF ENEMY COMBATANTS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction to consider an application for writ of habeas corpus filed by or on behalf of an alien outside the United States (as that term is defined in section 101(a)(38) of the Immigration and Naturalization Act (8 U.S.C. 1101(a)(38))—

(A) who is, at the time a request for review by such court is filed, detained by the Department of Defense at Guantanamo Bay, Cuba; and

(B) for whom a Combatant Status Review Tribunal has been conducted, pursuant to applicable procedures specific by the Department of Defense.

(2) EXCEPTIONS.—This subsection does not apply to the following:

(A) An individual charged with an offense before a military commission.

(B) An individual who is not designated as an enemy combatant following a combatant status review, but who continues to be held by the United States Government.

(3) VENUE.—Review under paragraph (1) shall commence in the United States Court of Appeals for the District of Columbia Circuit.

(4) CLAIMS REVIEWABLE.—The United States Court of Appeals for the District of Columbia Circuit may not, in a review under paragraph (1) with respect to an alien, consider claims based on living conditions, but may only hear claims regarding—

(A) whether the status determination of the Combatant Status Review Tribunal with regard to such alien was consistent with the procedures and standards specified by the Secretary of Defense for Combatant Status Review Tribunals;

(B) whether such status determination was supported by sufficient evidence and reached in accordance with due process of law, provided that statements obtained through

undue coercion, torture, or cruel or inhuman treatment may not be used as a basis for the determination; and

(C) the lawfulness of the detention of such alien.

(5) TERMINATION ON RELEASE FROM CUSTODY.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit with respect to the claims of an alien under this subsection shall cease upon the release of such alien from the custody or control of the United States.

(6) EFFECTIVE DATE.—This subsection shall apply to any application or other action that is pending on or after the date of the enactment of this Act.

SA 2524. Mr. GRAHAM (for himself, Mr. LEVIN, and Mr. KYL) proposed an amendment to amendment SA 2515 proposed by Mr. GRAHAM (for himself, Mr. KYL, Mr. CHAMBLISS, and Mr. CORNYN) to the bill S. 1042, to authorize appropriations for fiscal year 2006 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, and for other purposes; as follows:

In lieu of the matter proposed to be inserted, insert the following:

SEC. _____. REVIEW OF STATUS OF DETAINEES.

(a) SUBMITTAL OF PROCEDURES FOR STATUS REVIEW OF DETAINEES AT GUANTANAMO BAY, CUBA.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the congressional defense committees, and to the Committees on the Judiciary of the Senate and the House of Representatives, a report setting forth the procedures of the Combatant Status Review Tribunals and the noticed Administrative Review Boards in operation at Guantanamo Bay, Cuba, for determining the status of the detainees held at Guantanamo Bay.

(b) PROCEDURES.—The procedures submitted to Congress pursuant to subsection (a) shall, with respect to proceedings beginning after the date of the submittal of such procedures under that subsection, ensure that—

(1) in making a determination of status of any detainee under such procedures, a Combatant Status Review Tribunal or Administrative Review Board may not consider statements derived from persons that, as determined by such Tribunal or Board, by the preponderance of the evidence, were obtained with undue coercion; and

(2) the Designated Civilian Official shall be an officer of the United States Government whose appointment to office was made by the President, by and with the advice and consent of the Senate.

(c) REPORT ON MODIFICATION OF PROCEDURES.—The Secretary of Defense shall submit to the committees of Congress referred to in subsection (a) a report on any modification of the procedures submitted under subsection (a) not later than 60 days before the date on which such modification goes into effect.

(d) JUDICIAL REVIEW OF DETENTION OF ENEMY COMBATANTS.—

(1) IN GENERAL.—Section 2241 of title 28, United States Code, is amended by adding at the end the following:

“(e) No court, justice, or judge shall have jurisdiction to hear or consider an application for a writ of habeas corpus filed by or on behalf of an alien outside the United States (as that term is defined in section 101(a)(38) of the Immigration and Naturalization Act (8 U.S.C. 1101(a)(38)) who is detained by the De-

partment of Defense at Guantanamo Bay, Cuba.”

(2) REVIEW OF DECISIONS OF COMBATANT STATUS REVIEW TRIBUNALS OF PROPRIETY OF DETENTION.—

(A) IN GENERAL.—Subject to subparagraphs (B), (C), and (D), the United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction to determine the validity of any decision of a Designated Civilian Official described in subsection (b)(2) that an alien is properly detained as an enemy combatant.

(B) LIMITATION ON CLAIMS.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit under this paragraph shall be limited to claims brought by or on behalf of an alien—

(i) who is, at the time a request for review by such court is filed, detained by the Department of Defense at Guantanamo Bay, Cuba; and

(ii) for whom a Combatant Status Review Tribunal has been conducted, pursuant to applicable procedures specified by the Secretary of Defense.

(C) SCOPE OF REVIEW.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit on any claims with respect to an alien under this paragraph shall be limited to the consideration of—

(i) whether the status determination of the Combatant Status Review Tribunal with regard to such alien applied the correct standards and was consistent with the procedures specified by the Secretary of Defense for Combatant Status Review Tribunals (including the requirement that the conclusion of the Tribunal be supported by a preponderance of the evidence and allowing a rebuttable presumption in favor of the Government's evidence); and

(ii) whether subjecting an alien enemy combatant to such standards and procedures is consistent with the Constitution and laws of the United States.

(D) TERMINATION ON RELEASE FROM CUSTODY.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit with respect to the claims of an alien under this paragraph shall cease upon the release of such alien from the custody of the Department of Defense.

(3) REVIEW OF FINAL DECISIONS OF MILITARY COMMISSIONS.—

(A) IN GENERAL.—Subject to subparagraphs (C) and (D), the United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction to determine the validity of any final decision rendered pursuant to Military Commission Order No. 1, dated August 31, 2005 (or any successor military order).

(B) GRANT OF REVIEW.—Review under this paragraph—

(i) with respect to a capital case or a case in which the alien was sentenced to a term of imprisonment of 10 years or more, shall be as of right; or

(ii) with respect to any other case, shall be at the discretion of the United States Court of Appeals for the District of Columbia Circuit.

(C) LIMITATION ON APPEALS.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit under this paragraph shall be limited to an appeal brought by or on behalf of an alien—

(i) who was, at the time of the proceedings pursuant to the military order referred to in subparagraph (A), detained by the Department of Defense at Guantanamo Bay, Cuba; and

(ii) for whom a final decision has been rendered pursuant to such military order.

(D) SCOPE OF REVIEW.—The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit on an appeal of

a final decision with respect to an alien under this paragraph shall be limited to the consideration of—

(i) whether the final decision applied the correct standards and was consistent with the procedures specified in the military order referred to in subparagraph (A); and

(ii) whether subjecting an alien enemy combatant to such order is consistent with the Constitution and laws of the United States.

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), this section shall take effect on the day after the date of the enactment of this Act.

(2) REVIEW OF COMBATANT STATUS TRIBUNAL AND MILITARY COMMISSION DECISIONS.—Paragraphs (2) and (3) of subsection (d) shall apply with respect to any claim whose review is governed by one of such paragraphs and that is pending on or after the date of the enactment of this Act.

AUTHORITIES FOR COMMITTEES TO MEET

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. DOMENICI. Mr. President. I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Monday, November 14, 2005, at 11:30 a.m., on Implementing Legislation for the Agreement between the Government of the United States and the Government of the Russian Federation on the Conservation and Management of the Alaska-chukotka Polar Bear Population.

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. DOMENICI. Mr. President. I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Monday, November 14, 2005, at 2:30 p.m., on the nominations of Thomas Rosch and William Kovacic to be Federal Trade Commissioners.

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

COMMITTEE ON FINANCE

Mr. DOMENICI. Mr. President, I ask unanimous consent that the Committee on Finance be authorized to meet in open Executive Session on Monday, November 14, 2005, at 6 p.m., to consider an original bill that will include the Committee's budget reconciliation instructions pertaining to expiring tax provisions and also additional incentives for hurricane affected areas.

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

SUBCOMMITTEE ON INTERNATIONAL ECONOMIC POLICY, EXPORT AND TRADE PROMOTION

Mr. DOMENICI. Mr. President, I ask unanimous consent that the Subcommittee on International Economic Policy, Export and Trade Promotion be authorized to meet during the session of the Senate on Monday, November 14, 2005, at 3 p.m. to hold a hearing on U.S.-International Climate Change Approach: A Clean Technology Solution.

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

PRIVILEGES OF THE FLOOR

Mr. DOMENICI. Mr. President, I ask unanimous consent, on behalf of Senator FEINSTEIN, that floor privileges be granted to Josh Trapani, a legislative fellow in her office, for the duration of floor debate on the Energy and Water appropriations conference report.

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

Mr. DAYTON. I ask unanimous consent that Luke Ballman of my staff be granted the privilege of the floor for the remainder of the debate on this authorization bill.

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

ORDERS FOR TUESDAY,
NOVEMBER 15, 2005

Mr. WARNER. Mr. President, I ask unanimous consent that when the Senate completes its business today the Senate stand in adjournment until 9:45

a.m., on Tuesday, November 15. I further ask that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved, and the Senate proceed to a period of morning business for up to 30 minutes, with the first 15 minutes under the control of the Democratic leader or his designee and the final 15 minutes under the control of the majority leader or his designee; further, that the Senate then resume consideration of S. 1042, the Defense authorization bill; I further ask that there then be 30 minutes of time equally divided between the Senator from Michigan and myself, between the bill managers, followed by a series of stacked votes as under the previous order; I further ask that there be 2 minutes equally divided prior to each vote; I further ask that following the vote on passage of the Defense bill, the Senate stand in recess until 2:15 p.m. to accommodate the weekly policy lunches.

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

PROGRAM

Mr. WARNER. Tomorrow the Senate will vote on final passage of the Defense authorization bill. Senators should note that we will have several votes starting at approximately 10:45. We have a lot to address this week and the majority leader reminds his colleagues to plan for many votes, late nights, and a longer than usual week.

ADJOURNMENT UNTIL 9:45 A.M.
TOMORROW

Mr. WARNER. If there is no further business to come before the Senate, I ask unanimous consent the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 8:21 p.m., adjourned until Tuesday, November 15, 2005 at 9:45 a.m.