The bill (S. 1956), as amended, was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 1956

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''European Union Emissions Trading Scheme Prohibition Act of 2011''.

SEC. 2. PROHIBITION ON PARTICIPATION IN THE EUROPEAN UNION'S EMISSIONS TRADING SCHEME.

(a) IN GENERAL.—The Secretary of Transportation shall prohibit an operator of a civil aircraft of the United States from participating in the emissions trading scheme unilaterally established by the European Union in EU Directive 2003/87/EC of October 13, 2003, as amended, in any case in which the Secretary determines the prohibition to be, and in a manner that is, in the public interest, taking into account—

(1) the impacts on U.S. consumers, U.S. carriers, and U.S. operators;

(2) the impacts on the economic, energy, and environmental security of the United States; and

(3) the impacts on U.S. foreign relations, including existing international commitments.

(b) PUBLIC HEARING.—After determining that a prohibition under this section may be in the public interest, the Secretary must hold a public hearing at least 30 days before imposing any prohibition.

(c) REASSESSMENT OF DETERMINATION OF PUBLIC INTEREST.—The Secretary—

(1) may reassess a determination under subsection (a) that a prohibition under that subsection is in the public interest at any time after making such a determination; and

(2) shall reassess such a determination after—

(A) any amendment by the European Union to the EU Directive referred to in subsection (a); or

(B) the adoption of any international agreement pursuant to section 3(1).

(C) enactment of a public law or issuance of a final rule after formal agency rulemaking, in the United State to address aircraft emissions.

SEC. 3. NEGOTIATIONS.

(a) IN GENERAL.—The Secretary of Transportation, the Administrator of the Federal Aviation Administration, and other appropriate officials of the United States Government—

(1) should, as appropriate, use their authority to conduct international negotiations, including using their authority to conduct international negotiations to pursue a worldwide approach to address aircraft emissions, including the environmental impact of aircraft emissions; and

(2) shall, as appropriate and except as provided in subsection (b), take other actions under existing authorities that are in the public interest necessary to hold operators of civil aircraft of the United States harmless from the emissions trading scheme referred to under section 2.

(b) EXCLUSION OF PAYMENT OF TAXES AND PENALTIES.—Actions taken under subsection (a)(2) may not include the obligation or expenditure of any amounts in the Airport and Airway Trust Fund established under section 9905 of the Internal Revenue Code of 1986, or amounts otherwise made available to the Department of Transportation or any other Federal agency pursuant to appropriations Acts, for the payment of any tax or penalty imposed on an operator of civil aircraft of the United States pursuant to the emissions trading scheme referred to under section 2.

SEC. 4. DEFINITION OF CIVIL AIRCRAFT OF THE UNITED STATES.

In this Act, the term ''civil aircraft of the United States'' has the meaning given the term under section 40102(a) of title 49, United States Code.

Mr. REID. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. PRYOR. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

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

MORNING BUSINESS

Mr. PRYOR. Mr. President, I ask unanimous consent the Senate proceed to a period of morning business, with Senators permitted to speak therein for up to 10 minutes each.

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

CHANGES TO THE SENATE RULES

Mr. LEVIN. Mr. President, the institution of the Senate is unique in its robust protections of the rights of the minority. In establishing our democracy, our Founders warned of the dangers of a tyrannical majority, and through our history as a country the Senate has stood, often alone, against that threat. One of the essential aspects of the Senate is the ability of 41 Senators, a minority, to defeat a measure if they are willing to talk and there are not 60 Senators who will vote to end the talking. Throughout the history of the Senate, the minority has usually used its right to thwart the will of the majority judiciously and only on measures of the greatest importance. Without that self-restraint, we would be exchanging a tyranny of the majority for a tyranny of the minority, and, indeed, that could mean a tiny minority.

That important quality of self-restraint is essential for the proper functioning of the Senate. With this quality, the Senate can debate, negotiate, and compromise; and without it, the result is gridlock. In a legislative body where extended debate is a central principle, self-restraint is what allows the gears of government to eventually turn. The Senate cannot operate without it.

It is that self-restraint that is too often missing in today's Senate. It is one reason for the low public approval of Congress. In fact, scholars of the Congress have noted an unprecedented change in the functioning of the Senate. In his testimony before the Senate Rules Committee on May 19, 2010, Norm Ornstein said:

The sharp increase in cloture motions reflects the routinization of the filibuster; it's used not as a tool of last resort for a minority that feels intensely about a major issue but as a weapon to delay and obstruct on nearly all matters, including routine and widely supported ones. It is fair to say that this has never happened before in the history of the Senate.

Wait, some might say, the Senate seems to have plenty of debate, perhaps too much. But the sad fact is, in today's Senate, a small minority of Senators routinely block the Senate from even beginning debate on legislation by filibustering or more accurately, perhaps, threaten to filibuster the motion to proceed to legislation. Without 60 votes to end debate on the motion to proceed, the Senate is routinely blocked from even beginning debate on critical legislation, making negotiation and compromise on legislation far more difficult.

Mr. Ornstein is right. The routine threat of a filibuster is an abuse of the rules. Just consider the number of filibusters of the motions to proceed. From the time the cloture rule was first extended to cover the motion to proceed in 1949 to 1990, 41 years, the Senate saw a total of 53 filibusters on the motion to proceed. During those years, Senate minorities would filibuster no more than a handful of motions to proceed during any single Congress. In recent years, the numbers of filibusters have exploded. Now, it is not uncommon for the Senate to see dozens of filibusters of the motions to proceed during any single Congress, as has been the case in the last 2 years. Where is the self-restraint?

Why is this so important? Why should the country care if a small group of Senators block the Senate from doing its work? What is at stake? In my opinion, the stakes could not be higher.

Over and over again, the Senate is forced to waste time just on the question of whether to begin debate on a bill. The process of threatening a filibuster and requiring cloture on every motion to proceed, including the mandatory postcloture debate time of 30 hours under the Senate rules, can consume a week of the Senate's time. That is a full week of the Senate's time consumed just by the question of whether to begin debate on a bill. Where is the self-restraint?

Does self-restraint mean that Senators must abandon long-held positions or violate principle? Of course not. Throughout the history of the Senate, Senators have fought fiercely for their positions and beliefs. Still, at some point, the fighting stopped and agreements were struck. That is the way of every legislative body. The majority's ability to act is what allows other legislative bodies to function. Self-restraint is what separates a functioning U.S. Senate from a broken one. It is what separates a Senate that is capable of doing the Nation's business from a Senate that is prevented from even beginning a debate on that business. The lack of self-restraint is the root of the problem the Senate faces.

In the Senate, a tension has always existed between the majority that wishes to enact legislation and the minority that wishes to amend or defeat it. That tension is not unique to today's Senate. The rules of the Senate have always provided the minority with an arsenal of parliamentary weapons to counter a determined majority. For instance, if a majority leader blocks the minority from offering amendments to a bill, then the minority can filibuster the legislation and deny it passage if it lacks 60 votes. The ability to extend debate and deny cloture are powerful tools that the minority can use to prevent the Senate from acting.

On the other hand, short of 60 votes, Senate rules do not provide a tool for the majority to counter an obstructionist minority. The majority leader could offer a minority days, weeks, or months of debate and endless amendments to a bill, but nothing in the rules of this body would allow the majority to even begin debate if a unified minority filibusters the motion to proceed, which it does now routinely.

Republicans insist that they filibuster motions to proceed because the majority leader fills the amendment tree and blocks consideration of minority amendments. That rationale could justify a filibuster of a bill after the Senate begins its consideration and the leader fills the tree. It does not justify the routine filibusters of the motion to proceed.

The Senate must strike a balance between protecting the rights of the minority and the need of the Senate to function better. To limit the consideration of the motion to proceed would not stifle debate; in fact, it would help ensure Senators have the opportunity to have a debate.

As a practical matter, we will have little chance of ending the filibuster on the motion to proceed unless we, at the same time, assure the minority opportunities to offer and vote on amendments, forcing them to filibuster the bill itself in order to gain that assurance.

According to the Senate rules, any change to those rules can be adopted by a simple majority vote. However, rule XXII of the Standing Rules of the Senate requires an affirmative vote of two-thirds of the Senators present and voting in order to invoke cloture and end debate on a proposed change to the rules. This extraordinarily high threshold has prevented most attempts to amend the rules of the Senate.

Some of our colleagues believe the rules of the Senate can be changed outside the auspices of the Senate rules. They say the U.S. Constitution allows a simple majority to change the Senate rules. They call it ''the constitutional option;'' others call it ''the nuclear option.'' Supporters of the constitutional option point out that the Constitution endows each House of Congress with the authority to establish its own rules of proceedings. Accordingly, at the beginning of every Congress, the House of Representatives adopts rules by a majority vote. Those rules govern proceedings of the House for only the term of that Congress. Supporters of the constitutional option argue the Constitution empowers the Senate to do the same.

The mechanics of the constitutional option are fairly straightforward. One such approach to this option would occur as follows. At the beginning of a Congress, a Senator would offer a resolution adopting Senate rules. The resolution would be filibustered, and so cloture would be filed. Cloture would yield an affirmative vote of a simple majority, but not the two-thirds necessary to end debate as described in rule XXII. Supporters of the resolution would raise a constitutional point of order, which the Presiding Officer, presumably the Vice President, would sustain under this scenario. The chair's ruling would be appealed, and finally the appeal would be tabled by a simple majority vote. And just like that, the Senate could become a simple majoritarian body.

Historically, of course, the Senate has not adopted its rules at the beginning of a Congress as the House does. In fact, Senate rules explicitly address this. According to rule V of the Standing Rules of the Senate, ''The rules of the Senate shall continue from one Congress to the next Congress unless they are changed as provided in these rules.'' Rule V makes clear that the Senate is a continuing body. Indeed, only one-third of its membership is up for election every 2 years while the other two-thirds of its membership continue their service into the new Congress, which is why a quorum in the Senate is continuously in being from Congress to Congress.

Both supporters and opponents of the constitutional option have compelling arguments, but none of them are new. This question has been debated for decades. Confronting the same question in 1949, Senator Arthur Vandenberg, one of my predecessors from Michigan, said:

> I continue to believe that the rules of the Senate are as important to equity and order in the Senate as is the Constitution to the life of the Republic, and that those rules should never be changed except by the Senate itself, in the direct fashion prescribed by the rules themselves. One of the immutable truths in Washington's Farewell Address, which cannot be altered even by changing events in a changing world, is the following sentence: The Constitution, which at any time exists, until changed by an explicit and authentic act of the whole people, is sacredly obligatory upon all.' I respectfully submit as a basic explanation of my attitude, that I accept this admonition without reservation, and I think it is equally applicable to the situation which Senators here confront, though obviously the comparison cannot be literal. . . . [T]he Father of his Country said to us, by analogy, The rules of the Senate, which at any time exist, until changed by an explicit and authentic act of the whole Senate, are sacredly obligatory upon all.'

Senator Vandenberg continued:

I have heard it erroneously argued in the cloakrooms that since the Senate rules themselves authorize a change in the rules through due legislative process by a majority vote, it is within the spirit of the rules when we reach the same net result by a majority vote of the Senate upholding a parliamentary ruling of the Vice President which, in effect, changes the rules. This would appear to be some sort of doctrine of amendment by proxy. It is argued that the Senate itself makes the change in both instances by majority vote; and it is asked, What is the difference? Of course, this is really an argument that the end justifies the means.

Senator Vandenberg continued:

When a substantive change is made in the rules by sustaining a ruling of the Presiding Officer of the Senate—and that is what I contend is being undertaken here—it does not mean that the rules are permanently changed. It simply means that regardless of precedent or traditional practice, the rules hereafter, mean whatever the Presiding Officer of the Senate, plus a simple majority of Senators voting at the time, want the rules to mean. We fit the rules to the occasion, instead of fitting the occasion to the rules. Therefore, in the final analysis, under such circumstances, there are no rules except the transient, unregulated wishes of a majority of whatever quorum is temporarily in control of the Senate. That, Mr. President, is not my idea of the greatest deliberative body in the world. . . . No matter how important [the pending issue's] immediate incidence may seem to many today, the integrity of the Senate's rules is our paramount concern, today, tomorrow, and so long as this great institution lives.

Mr. President, the November elections are upon us. I believe it is important to lay out my position on the constitutional option now, before we know the outcome of the election and the makeup of the Senate next year. I believe one's position on this question is so essential to the nature and the future of the Senate that it should not be dependent upon the outcome of an election but upon the best interests of this institution.

I believe the so-called constitutional option to change the rules of the Senate, if actually implemented, would turn the Senate into a legislative body where the majority can, whenever it wishes, run roughshod over the rights of the minority. My frustration with the recent abuses of the rules does not overwhelm my duty to defend the uniqueness and integrity of this great institution.

With that in mind, I suggest a change to the Senate rules that would provide the majority leader with an additional procedural option that preserves his ability to control the floor while maintaining the necessary 60-vote threshold to end debate. This alternative procedure would avoid the filibuster on the motion to proceed, preserve the ability of the majority leader to fill the amendment tree, but at the same time ensure all Senators have the ability to offer and have votes on relevant, timely filed amendments prior to a vote on final passage of a measure.

Using this procedure, the majority leader could move to proceed to the consideration of a measure with only

relevant amendments in order. When a motion to proceed is made in such form, the consideration of that motion would be limited to 2 hours. If the Senate adopted that motion, then Senators would have until 1 p.m. the following session day to file relevant, first-degree amendments and until 1 p.m. the session day after that to file relevant, second-degree amendments.

This procedure would guarantee that any Senator who has a timely filed, relevant amendment could offer that amendment prior to final passage, even if the amendment tree is filled. For example, if the Senate is considering a bill under this procedure and the amendment tree is filled, following disposition of all pending amendments but prior to the third reading, it would be in order for any Senator with a relevant, timely filed amendment to call up that amendment. Once pending, that amendment would need to be disposed of before final passage.

While this procedure would expedite the process to begin consideration of a bill, it would not abandon the essential principle that a supermajority is necessary to bring debate to a close on a bill in the Senate. Nothing under this procedure would deny Senators his or her right to extended debate on a bill, unless, of course, 60 or more Senators vote to invoke cloture. Aside from the filing deadlines, the only substantive change from the current cloture process would be the application of a relevancy standard rather than the conventional germaneness standard. Only relevant amendments would be in order only if the majority leader opted to use this alternative approach to moving to proceed.

This procedure would not be needed or even appropriate for every bill that is placed on the calendar. But for some bills, the majority leader might view this alternative procedure as a useful tool that could help both the majority and the minority achieve their aims. And should this alternative procedure prove to be ineffective, the majority leader could always abandon it for regular order, and if the right to get votes on relevant amendments is abused by filing a dilatory number of relevant amendments, the majority leader would simply not utilize the option.

As I said, an election season is upon us. We will soon recess, and only after November 6 will we know who will hold a majority in this body. My support for ending the current motion to proceed process will be there after the election, regardless which party controls the Senate in the next Congress. My goal is not to gain partisan advantage but to protect the unique role of the Senate. Increasingly, after facing years of excessive obstruction, some Members on my side of the aisle see the filibuster as an archaic procedure that prevents the Senate from addressing the pressing needs of the Nation. I suspect that some of my friends in the minority today, if in the majority sometime in the future, will find the filibuster equally frustrating to their own efforts. We face an increasing danger that, in order to end the gridlock that prevents either side from offering solutions to the challenges we face, pressure to severely reduce minority rights will become irresistible.

If we are to preserve the Senate's function as a check on haste, as a haven for minority views, we must ensure that protection of minority rights is no longer a barrier to any and all action. Limiting excessive filibusters on the motion to proceed is one modest change we can make that addresses this crisis without changing the Senate's fundamental character. I ask my colleagues to consider carefully whether a change in the present might be necessary to avoid more radical change in the future.

REMEMBERING NEIL A. ARMSTRONG

Mr. COCHRAN. Mr. President, I rise today in celebration of the life and career of Neil A. Armstrong. Americans and people around the world paused when Mr. Armstrong passed away on August 25, 2012, to recall his heroic accomplishments and historic legacy.

Neil Armstrong is remembered as a man who pushed the frontiers of space exploration and engineering. Over the course of his life and service to the Nation, he promoted the idea of never doubting what is possible. He inspired countless young men and women to pursue careers in science and engineering, many of whom became aeronautics workers at facilities like the Stennis Space Center in Mississippi.

Mr. Armstrong was born in Wapakoneta, OH, on August 5, 1930. He received a Bachelor of Science in Aerospace Engineering from Perdue University, a Master of Science in Aerospace Engineering from the University of California, and received honorary doctorates from multiple universities.

Mr. Armstrong embarked on a remarkable career that would involve his flying more than 200 different models of aircraft including jets, rockets, helicopters and gliders.

From 1949 to 1952, Mr. Armstrong served as a naval aviator, and in 1955 joined the National Advisory Committee for Aeronautics, now the National Aeronautics and Space Administration. From 1955 through 1972, he served as an engineer, test pilot, astronaut, and administrator for our Nation's ambitious space program.

Mr. Armstrong's transfer to astronaut status in 1962 led to his performing the first successful docking of two vehicles in space in March 1966 as the command pilot for Gemini 8. Mr. Armstrong subsequently became commander for Apollo 11, the first manned lunar mission, and was the first man to land a craft on the moon. At 10:56 p.m. ET on July 20, 1969, Neil Armstrong became the first man to step on the surface of the moon. It was one of the defining moments of the 20th century and one of the proudest days for the American people.

Following his career with NASA, Mr. Armstrong was a Professor of Aerospace Engineering at the University of Cincinnati between 1971 and 1979. Mr. Armstrong was decorated by 17 countries and was the recipient of many special honors including: the Presidential Medal of Freedom, the Congressional Gold Medal, the Congressional Space Medal of Honor, the Explorers Club Medal, the Robert H. Goddard Memorial Trophy, the NASA Distinguished Service Medal, the Harmon International Aviation Trophy, the Royal Geographic Society's Gold Medal, the Federal Aeronautique Internationale's Gold Space Medal, the American Astronautical Society Flight Achievement Award, the Robert J. Collier Trophy, the AIAA Astronautics Award, the Octave Chanute Award, and the John J. Montgomery Award.

Mr. Armstrong will be remembered not only for his famous words as he stepped foot on the moon—''That's one small step for a man, one giant leap for mankind''—but more importantly for inspiring generations of people around the world to explore and push the boundaries of what they believe is possible. Neil Armstrong was a true American hero who will be missed by many, but never forgotten.

CAPACITY TO IMPLEMENT THE ACA

Mr. GRASSLEY. Mr. President, the Supreme Court decision on the Affordable Care Act has put the brakes on Medicaid expansion for now.

The Federal Government can no longer force States to expand their Medicaid programs.

With the expansion and the billions of dollars that States would have had to spend on hold, and as we look at solutions to address our 16 trillion dollar national debt, now is a good time for us to step back and ask what role health care should play for States in our Federal system.

Mr. President, as of today, the primary function of a state is health administration—not primary and secondary education, not public safety, not roads and bridges.

According to the National Association of State Budget Officers, Medicaid is the single largest spending line in state budgets at 23.6 percent.

The economic downturn and high unemployment have resulted in an increase in Medicaid enrollment as individuals lose job-based coverage and incomes decline.

Medicaid enrollment increased by 5.1 percent during fiscal 2011 and is estimated to increase by 3.3 percent in fiscal 2012.

In governors' recommended budgets for fiscal 2013, Medicaid enrollment would rise by an additional 3.6 percent.

This would represent a 12.5 percent increase in Medicaid enrollment over this three year period.