

116TH CONGRESS
2D SESSION

S. 4099

To require the approval of Congress before explosive nuclear testing may be resumed.

IN THE SENATE OF THE UNITED STATES

JUNE 29, 2020

Ms. CORTEZ MASTO (for herself, Ms. ROSEN, and Mr. COONS) introduced the following bill; which was read twice and referred to the Committee on Armed Services

A BILL

To require the approval of Congress before explosive nuclear testing may be resumed.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “No Nuclear Testing
5 Without Approval Act”.

6 **SEC. 2. REQUIREMENT FOR APPROVAL OF CONGRESS FOR**
7 **CONDUCT OF EXPLOSIVE NUCLEAR TESTING.**

8 Section 4210(a) of the Atomic Energy Defense Act
9 (50 U.S.C. 2530(a)) is amended to read as follows:

10 “(a) EXPLOSIVE NUCLEAR TESTING.—

1 “(1) IN GENERAL.—No explosive nuclear test-
2 ing may be conducted by the United States after the
3 date of the enactment of the National Defense Au-
4 thorization Act for Fiscal Year 2021, and none of
5 the funds described in paragraph (2) may be obli-
6 gated or expended to conduct such testing, unless—

7 “(A)(i) a foreign state conducts a nuclear
8 test after that date; or

9 “(ii) there is a technical need for such test-
10 ing;

11 “(B) not less than 180 days before the
12 date proposed to conduct such testing, the
13 President submits to Congress a notification de-
14 scribed in paragraph (3) with respect to such
15 testing; and

16 “(C) a joint resolution approving the test-
17 ing with respect to which the notification is
18 submitted under subparagraph (B) is enacted
19 into law—

20 “(i) in the case of testing proposed to
21 be conducted after a foreign state conducts
22 a nuclear test—

23 “(I) without use of expedited pro-
24 cedures under paragraph (4); but

1 “(II) requiring, for passage in
2 the Senate, the affirmative vote of
3 two-thirds of Senators, duly chosen
4 and sworn; or

5 “(ii) in the case of testing proposed to
6 be conducted because there is a technical
7 need for such testing, pursuant to para-
8 graph (4).

9 “(2) FUNDS DESCRIBED.—The funds described
10 in this paragraph are funds—

11 “(A) authorized to be appropriated or oth-
12 erwise made available for fiscal year 2021 or
13 any fiscal year thereafter; or

14 “(B) authorized to be appropriated or oth-
15 erwise made available for any fiscal year before
16 fiscal year 2021 and available for obligation as
17 of the date of the enactment of the National
18 Defense Authorization Act for Fiscal Year
19 2021.

20 “(3) NOTIFICATION DESCRIBED.—

21 “(A) IN GENERAL.—A notification de-
22 scribed in this paragraph with respect to a pro-
23 posal to conduct explosive nuclear testing shall
24 include—

1 “(i) a description of the testing pro-
2 posed to be conducted;

3 “(ii) a statement of the reasons for
4 conducting the testing, including—

5 “(I) whether or not there is a
6 technical need for conducting the test-
7 ing;

8 “(II) if there is a technical need
9 for conducting the testing—

10 “(aa) a description of the
11 technical need;

12 “(bb) an assessment of al-
13 ternative options for addressing
14 the need; and

15 “(cc) an explanation of why
16 those options were not selected;
17 and

18 “(III) if the reason for con-
19 ducting the testing is in response to a
20 geopolitical event under the responsi-
21 bility of the President acting as the
22 Commander in Chief of the Armed
23 Forces, a detailed explanation of why
24 the testing would be in the supreme
25 national interest of the United States;

1 “(iii) an estimate of the timelines and
2 costs of conducting the testing; and

3 “(iv) any other information the Presi-
4 dent considers relevant.

5 “(B) FORM.—A notification described in
6 subparagraph (A) shall be submitted in unclas-
7 sified form but may include a classified annex.

8 “(4) JOINT RESOLUTION OF APPROVAL FOR EX-
9 PLOSIVE NUCLEAR TESTING FOR WHICH THERE IS A
10 TECHNICAL NEED.—

11 “(A) JOINT RESOLUTION OF APPROVAL
12 DEFINED.—In this paragraph, the term ‘joint
13 resolution of approval’ means a joint resolution
14 of either House of Congress the sole matter
15 after the resolving clause of which is the fol-
16 lowing: ‘Congress approves of the proposal of
17 the President to conduct explosive nuclear test-
18 ing for which there is a technical need, notice
19 of which was submitted to Congress under sec-
20 tion 4210(a) of the Atomic Energy Defense Act
21 (50 U.S.C. 2530(a)) on _____.’, with the
22 blank space being filled with the appropriate
23 date.

24 “(B) INTRODUCTION; REFERRAL.—A joint
25 resolution of approval—

1 “(i) may be introduced in either
2 House by any member; and

3 “(ii) shall be referred—

4 “(I) in the Senate, to the Com-
5 mittee on Armed Services of the Sen-
6 ate; and

7 “(II) in the House of Represent-
8 atives, to the Committee on Armed
9 Services of the House of Representa-
10 tives.

11 “(C) CONSIDERATION IN HOUSE OF REP-
12 RESENTATIVES.—

13 “(i) REPORTING AND DISCHARGE.—
14 The Committee on Armed Services of the
15 House of Representatives shall report a
16 joint resolution of approval to the House
17 not later than 60 calendar days after the
18 date of receipt of the notification sub-
19 mitted under paragraph (1)(B). If the
20 committee fails to report the joint resolu-
21 tion within that period, the committee shall
22 be discharged from further consideration
23 of the joint resolution and the joint resolu-
24 tion shall be referred to the appropriate
25 calendar.

1 “(ii) PROCEEDING TO CONSIDER-
2 ATION.—After the Committee on Armed
3 Services of the House of Representatives
4 reports the joint resolution of approval to
5 the House or has been discharged from its
6 consideration, it shall be in order, not later
7 than the 120th day after Congress receives
8 the notification submitted under paragraph
9 (1)(B), to move to proceed to consider the
10 joint resolution in the House. All points of
11 order against the motion are waived. Such
12 a motion shall not be in order after the
13 House has disposed of a motion to proceed
14 on the joint resolution. The previous ques-
15 tion shall be considered as ordered on the
16 motion to its adoption without intervening
17 motion. The motion shall not be debatable.
18 A motion to reconsider the vote by which
19 the motion is disposed of shall not be in
20 order.

21 “(iii) CONSIDERATION.—The joint
22 resolution of approval shall be considered
23 as read. All points of order against the
24 joint resolution and against its consider-
25 ation are waived. The previous question

1 shall be considered as ordered on the joint
2 resolution to its passage without inter-
3 vening motion except 24 hours of debate
4 equally divided and controlled by the pro-
5 ponent and an opponent. A motion to re-
6 consider the vote on passage of the joint
7 resolution shall not be in order.

8 “(D) CONSIDERATION IN SENATE.—

9 “(i) REPORTING AND DISCHARGE.—

10 The Committee on Armed Services of the
11 Senate shall report a joint resolution of ap-
12 proval to the Senate not later than 60 cal-
13 endar days after the date of receipt of the
14 notification submitted under paragraph
15 (1)(B). If the committee fails to report the
16 joint resolution within that period, the
17 committee shall be discharged from further
18 consideration of the joint resolution and
19 the joint resolution shall be placed on the
20 Calendar of Business.

21 “(ii) FLOOR CONSIDERATION.—

22 “(I) IN GENERAL.—Notwith-
23 standing Rule XXII of the Standing
24 Rules of the Senate, it is in order at
25 any time after the Committee on

1 Armed Services reports a joint resolu-
2 tion of approval or is discharged from
3 consideration of a joint resolution of
4 approval to move to proceed to the
5 consideration of the joint resolution,
6 and all points of order against the
7 motion to proceed to the joint resolu-
8 tion (and against consideration of the
9 joint resolution) are waived. The mo-
10 tion to proceed is not debatable. The
11 motion is not subject to a motion to
12 postpone. A motion to reconsider the
13 vote by which the motion is agreed to
14 or disagreed to shall not be in order.
15 If a motion to proceed to the consider-
16 ation of the resolution is agreed to,
17 the joint resolution shall remain the
18 unfinished business until disposed of.

19 “(II) CONSIDERATION.—Consid-
20 eration of a joint resolution of ap-
21 proval, and on all debatable motions
22 in connection therewith, shall be lim-
23 ited to not more than 10 hours, which
24 shall be divided equally between the
25 majority and minority leaders or their

1 designees. A motion further to limit
2 debate is in order and not debatable.
3 An amendment to, a motion to post-
4 pone, or a motion to proceed to the
5 consideration of other business, or a
6 motion to recommit the joint resolu-
7 tion is not in order.

8 “(III) VOTE ON PASSAGE.—The
9 vote on passage shall occur imme-
10 diately following the conclusion of the
11 debate on a joint resolution of ap-
12 proval, and a single quorum call at
13 the conclusion of the debate if re-
14 quested in accordance with the rules
15 of the Senate. Passage of the joint
16 resolution shall require the affirmative
17 vote of two-thirds of Senators, duly
18 chosen and sworn.

19 “(IV) RULINGS OF THE CHAIR
20 ON PROCEDURE.—Appeals from the
21 decisions of the Chair relating to the
22 application of the rules of the Senate,
23 as the case may be, to the procedure
24 relating to a joint resolution of ap-

1 proval shall be decided without de-
2 bate.

3 “(E) RULES RELATING TO SENATE AND
4 HOUSE OF REPRESENTATIVES.—

5 “(i) COORDINATION WITH ACTION BY
6 OTHER HOUSE.—If, before the passage by
7 one House of a joint resolution of that
8 House, that House receives from the other
9 House a joint resolution of approval that is
10 identical to the joint resolution of the
11 House receiving the resolution, then the
12 following procedures shall apply:

13 “(I) The joint resolution of the
14 other House shall not be referred to a
15 committee.

16 “(II) With respect to a joint res-
17 olution of the House receiving the res-
18 olution—

19 “(aa) the procedure in that
20 House shall be the same as if no
21 joint resolution had been received
22 from the other House; but

23 “(bb) the vote on passage
24 shall—

1 “(AA) require the af-
2 firmative vote of two-thirds
3 of Senators, duly chosen and
4 sworn, for passage; and

5 “(BB) be on the joint
6 resolution of the other
7 House.

8 “(ii) TREATMENT OF JOINT RESOLU-
9 TION OF OTHER HOUSE.—If one House
10 fails to introduce or consider a joint resolu-
11 tion under this section, the joint resolution
12 of the other House shall be entitled to ex-
13 pedited floor procedures under this para-
14 graph.

15 “(iii) TREATMENT OF COMPANION
16 MEASURES.—If, following passage of the
17 joint resolution in the Senate, the Senate
18 then receives an identical resolution from
19 the House of Representatives, the resolu-
20 tion of the House shall not be debatable.

21 “(iv) CONSIDERATION OF VETO MES-
22 SAGES.—If the President vetoes a joint
23 resolution of approval, debate on a veto
24 message in the Senate shall be 1 hour

1 equally divided between the majority and
2 minority leaders or their designees.

3 “(F) RULES OF HOUSE OF REPRESENTA-
4 TIVES AND SENATE.—This paragraph enacted
5 by the Senate and the House of Representa-
6 tives—

7 “(i) as an exercise of the rulemaking
8 power of the Senate and House, respec-
9 tively, and as such it is deemed a part of
10 the rules of each House, respectively, but
11 applicable only with respect to the proce-
12 dure to be followed in that House in the
13 case of a joint resolution of approval, and
14 it supersedes other rules only to the extent
15 that it is inconsistent with such rules; and

16 “(ii) with full recognition of the con-
17 stitutional right of either House to change
18 the rules (so far as relating to the proce-
19 dure of that House) at any time, in the
20 same manner, and to the same extent as in
21 the case of any other rule of that House.

22 “(5) DEFINITIONS.—In this subsection:

23 “(A) EXPLOSIVE NUCLEAR TESTING.—The
24 term ‘explosive nuclear testing’—

1 “(i) means testing involving the explo-
2 sive compression or assembly of fissile ma-
3 terial to exceed critical mass with the at-
4 tendant release of any nuclear energy from
5 fission processes; and

6 “(ii) does not include subcritical ex-
7 periments carried out as part of the stock-
8 pile stewardship program under section
9 4201, laser fusion experiments, or other in-
10 ertial confinement fusion experiments how-
11 ever driven.

12 “(B) TECHNICAL NEED.—The term ‘tech-
13 nical need’, with respect to explosive nuclear
14 testing, means that all officials specified in sec-
15 tion 4205(b) determine that an explosive nu-
16 clear test is necessary to resolve an issue with
17 respect to the safety, reliability, performance, or
18 military effectiveness of a nuclear weapon
19 type.”.

○