THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Legal Compilation

Statutes and Legislative History
Executive Orders
Regulations
Guidelines and Reports

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JANUARY 1973

WILLIAM D. RUCKELSHAUS
Administrator

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FOREWORD

It has been said that America is like a gigantic boiler in that once the fire is lighted, there are no limits to the power it can generate. Environmentally, the fire has been lit!

With a mandate from the President and an aroused public concern over the environment, we are experiencing a new American Revolution, a revolution in our way of life. The era which began with the industrial revolution is over and things will never be quite the same again. We are moving slowly, perhaps even grudgingly at times, but inexorably into an age when social, spiritual and aesthetic values will be prized more than production and consumption. We have reached a point where we must balance civilization and nature through our technology.

The U.S. Environmental Protection Agency, formed by Reorganization Plan No. 3 of 1970, was a major commitment to this new ethic. It exists and acts in the public's name to ensure that due regard is given to the environmental consequences of actions by public and private institutions.

In a large measure, this is a regulatory role, one that encompasses basic, applied, and effects research; setting and enforcing standards; monitoring; and making delicate risk-benefit decisions aimed at creating the kind of world the public desires.

The Agency was not created to harass industry or to act as a shield behind which man could wreak havoc on nature. The greatest disservice the Environmental Protection Agency could do to American industry is to be a poor regulator. The environment would suffer, public trust would diminish, and instead of free enterprise, environmental anarchy would result.

It was once sufficient that the regulatory process produce wise and well-founded courses of action. The public, largely indifferent to regulatory activities, accepted agency actions as being for the "public convenience and necessity." Credibility gaps and cynicism make it essential not only that today's decisions be wise and well-founded but that the public know this to be true. Certitude, not faith, is de rigueur.

In order to participate intelligently in regulatory proceedings, the citizen should have access to the information available to the agency. EPA's policy is to make the fullest possible disclosure of

information, without unjustifiable expense or delay, to any interested party. With this in mind, the EPA Compilation of Legal Authority was produced not only for internal operations of EPA, but as a service to the public, as we strive together to lead the way, through the law, to preserving the earth as a place both habitable by and hospitable to man.

WILLIAM D. RUCKELSHAUS
Administrator
U.S. Environmental Protection Agency

PREFACE

Reorganization Plan No. 3 of 1970 transferred 15 governmental units with their functions and legal authority to create the U.S. Environmental Protection Agency. Since only the major laws were cited in the Plan, the Administrator, William D. Ruckelshaus, requested that a compilation of EPA legal authority be researched and published.

The publication has the primary function of providing a working document for the Agency itself. Secondarily, it will serve as a research tool for the public.

A permanent office in the Office of Legislation has been established to keep the publication updated by supplements.

It is the hope of EPA that this set will assist in the awesome task of developing a better environment.

MARY LANE REED WARD GENTRY, J.D.
Assistant Director for Field Operations
Office of Legislation
U.S. Environmental Protection Agency

ACKNOWLEDGEMENT

The idea of producing a compilation of the legal authority of EPA was conceived and commissioned by William D. Ruckelshaus, Administrator of EPA. The production of this compilation involved the cooperation and effort of numerous sources, both within and outside the Agency. The departmental libraries at Justice and Interior were used extensively; therefore we express our appreciation to Marvin P. Hogan, Librarian, Department of Justice; Arley E. Long, Land & Natural Resources Division Librarian, Department of Justice; Frederic E. Murray, Assistant Director, Library Services, Department of the Interior.

For exceptional assistance and cooperation, my gratitude to: Gary Baise, formerly Assistant to the Administrator, currently Director, Office of Legislation, who first began with me on this project; A. James Barnes, Assistant to the Administrator; K. Kirke Harper, Jr., Special Assistant for Executive Communications; John Dezzutti, Administrative Assistant, Office of Executive Communications; Roland O. Sorensen, Chief, Printing Management Branch, and Jacqueline Gouge and Thomas Green, Printing Management Staff; Ruth Simpkins, Janis Collier, Wm. Lee Rawls, Peter J. McKenna, James G. Chandler, Jeffrey D. Light, Randy Mott, Thomas H. Rawls, John D. Whittaker, Linda L. Payne, Dana W. Smith, and John M. Himmelberg, a beautiful staff who gave unlimited effort; and to many others behind the scenes who rendered varied assistance.

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INSTRUCTIONS

The goal of this text is to create a useful compilation of the legal authority under which the U.S. Environmental Protection Agency operates. These documents are for the general use of personnel of the EPA in assisting them in attaining the purposes set out by the President in creating the Agency. This work is not intended and should not be used for legal citations or any use other than as reference of a general nature. The author disclaims all responsibility for liabilities growing out of the use of these materials contrary to their intended purpose. Moreover, it should be noted that portions of the Congressional Record from the 92nd Congress were extracted from the "unofficial" daily version and are subject to subsequent modification.

EPA Legal Compilation consists of the Statutes with their legislative history, Executive Orders, Regulations, Guidelines and Reports. To facilitate the usefulness of this composite, the Legal Compilation is divided into the eight following chapters:

A. General
B. Air
C. Water
D. Solid Waste
E. Pesticides
F. Radiation
G. Noise
H. International

RADIATION

The chapter labeled "Radiation" and color coded tan contains the legal authority of the Agency as it applies to radiation pollution abatement. It is well to note that any law which is applicable to more than one chapter of the Compilation will appear in each of the chapters; however, its legislative history will be cross referenced into the "General" chapter where it is printed in full.

SUBCHAPTERS

Statutes and Legislative History

For convenience, the Statutes are listed throughout the Compilation by a one-point system, i.e., 1.1, 1.2, 1.3, etc., and Legislative History begins wherever a letter follows the one-point system. Thusly, any 1.1a, 1.1b, 1.2a, etc., denotes the public laws comprising the 1.1, 1.2 statute. Each public law is followed by its

legislative history. The legislative history in each case consists of the House Report, Senate Report, Conference Report (where applicable), the Congressional Record beginning with the time the bill was reported from committee.

Example:

1.1 1954 Atomic Energy Act, as amended, 42 U.S.C. §§2013(d), 2021, 2051, 2073(b), (e), 2092, 2093, 2099, 2111, 2112, 2132, 2133, 2134, 2139, 2153, 2201, 2210 (1970).

1.1a Atomic Energy Act of 1946, August 1, 1946, P.L. 79–585, 60 Stat. 755.

(1) Senate Special Committee on Atomic Energy, S. REP. No. 1211, 79th Cong., 2d Sess. (1946).

(2) House Committee on Military Affairs, H.R. REP. No. 2478, 79th Cong., 2d Sess. (1946).

(3) Committee of Conference, H.R. REP. No. 2670, 79th Cong., 2d Sess. (1946).

(4) Congressional Record, Vol. 93 (1946):

(a) June 1: Passed Senate, pp. 6076–6098;

(b) July 16: House disagrees to Senate bill, pp. 9135–9144;

(c) July 17, 18, 19, 20: House debates and amends Senate bill, pp. 9249–9275, 9340–9386, 9463–9477, 9545–9563;

(d) July 22: Senate disagrees with House bill, asks for conference, pp. 9609–9611;

This example not only demonstrates the pattern followed for legislative history, but indicates the procedure where only one section of a public law appears. You will note that the Congressional Record cited pages are only those pages dealing with the discussion and/or action taken pertinent to the section of law applicable to EPA. In the event there is no discussion of the pertinent section, only action or passage, then the asterisk (*) is used to so indicate, and no text is reprinted in the Compilation. In regard to the situation where only one section of a public law is applicable, then only the parts of the report dealing with same are printed in the Compilation.

Secondary Statutes

Many statutes make reference to other laws and rather than have this manual serve only for major statutes, these secondary statutes have been included where practical. These secondary statutes are indicated in the table of contents to each chapter by a bracketed cite to the particular section of the major act which made the reference.

Citations

The United States Code, being the official citation, is used throughout the Statute section of the Compilation.

TABLE OF STATUTORY SOURCE

	Statutes	Source
1.1	1954 Atomic Energy Act, as amended, 42 U.S.C. §§2013(d), 2012, 2051, 2073(b), (e), 2092, 2093, 2099, 2111, 2112, 2131, 2133, 2134, 2139, 2153, 2201, 2210 (1970).	Direct reference in Reorg. Plan No. 3 of 1970.
1.2	Public Health Service Act, as amended, 42 U.S.C. §§203, 215, 241, 242(b), (c), (d), (f), (i), (j), 243, 244, 244a, 245, 246, 247 (1970).	Reorg. Plan No. 3 of 1970.
1.3	Public Contracts, Advertisements for Proposals for Purchases and Contracts for Supplies or Services for Government Departments; Application to Government Sales and Contracts to Sell and to Government Corporations, as amended, 41 U.S.C. §5 (1958).	Referred to in Public Health Service Act at §242c(e).
1.4	Research and Development Act, Contracts, as amended, 10 U.S.C. §§2353, 2354 (1956).	Referred to in Public Health Service Act at §241(h).
1.5	International Health Research Act, 22 U.S.C. §2101 (1960).	Referenced to in the Public Health Service Act at §242f(a).
1.6	Per Diem, Travel and Transportation Expenses; Experts and Consultants; Individuals Serving Without Pay, as amended, 5 U.S.C. §5703 (1966).	Referenced to in Public Health Service Act at §242f(b)(5), (6).
1.7	The Solid Waste Disposal Act, as amended, 42 U.S.C. §3254f (1970).	Section cited refers directly to national disposal sites for storage and disposal of hazardous waste including radioactivity.
1.8	National Environmental Policy Act, 42 U.S.C. §§4332(2)(c), 4344(5) (1970).	Reorganization Plan No. 3 of 1970.

Executive Orders

The Executive Orders are listed by a two-point system (2.1, 2.2, etc.). Executive Orders found in General are ones applying to more than one area of the pollution chapters.

Regulations

The Regulations are noted by a three-point system (3.1, 3.2, etc.). Included in the Regulations are those not only promulgated by the Environmental Protection Agency, but those under which the Agency has direct contact.

Guidelines and Reports

This subchapter is noted by a four-point system (4.1, 4.2, etc.). In this subchapter is found the statutorily required reports of EPA, published guidelines of EPA, selected reports other than EPA's and interdepartmental agreements of note.

UPDATING

Periodically, a supplement will be sent to the interagency distribution and made available through the U.S. Government Printing Office in order to provide an accurate working set of EPA Legal Compilation.

F. RADIATION

Volume I

Volume II

Volume III

1.1e(4) CONGRESSIONAL RECORD, VOL. 103 (1957)

1.1e(4)(a) Aug. 9: Amended and Passed House, p. 14261

[No Relevant Discussion on Pertinent Section]

1.1e(4)(b) Aug. 16: Amended and Passed Senate, pp. 15056, 15057

Mr. GORE. Mr. President, I offer an amendment, which has been discussed with members of the Joint Committee and to which the Senator from Iowa [Mr. HICKENLOOPER] has agreed.

The PRESIDING OFFICER. The amendment will be stated.

Mr. GORE. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with and that the text of the amendment be printed in the RECORD.

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

Mr. GORE'S amendment is as follows:

On page 17, line 24, add the following new sections:

"SEC. 201. Section 161e of the Atomic Energy Act of 1954, as amended, is amended by adding after the words 'adjusted terms which' in the proviso thereof, the following: '(at the time of the initial grant of any privilege grant, lease, or permit, or renewal thereof, or in order to avoid inequities or undue hardship prior to the sale by the United States of property affected by such grant)'.

"SEC. 202. Section 35 of the Atomic Energy Community Act of 1955, as amended, is amended by adding thereto:

" 'c. The appraised value of the Government's interest in commercial property shall, in the cases where renegotiation of the lease is requested by the lessee under the provisions of section 161e, of the Atomic Energy Act of 1954, as amended, be based upon the renegotiated lease if any is agreed on. Where such renegotiations are requested, the sales proceedings shall not be initiated until the completion of the renegotiation.'

"SEC. 203. The Atomic Energy Commission, the Federal Housing Administration, and the Housing and Home Finance Agency shall report to the Joint Committee by January 31, 1958, with respect to the renegotiations, reappraisals, and sales proceedings authorized under sections 201 and 202 of this act.

"SEC. 204. Section 161 of the Atomic Energy Act of 1954, as amended, is amended by adding the following new subsection:

" 's. Under such regulations and for such periods and at such prices the Commission may prescribe, the Commission may sell or contract to sell to purchasers within Commission-owned communities or in the immediate vicinity of the Commission community, as the case may be, any of the following utilities and related services, if it is determined that they are not available from another local source and that the sale is in the interest of the national defense or in the public interest:

" '(1) Electric power.

" '(2) Steam.

" '(3) Compressed air.

" '(4) Water.

" '(5) Sewage and garbage disposal.

" '(6) Natural, manufactured, or mixed gas.

" '(7) Ice.

" '(8) Mechanical refrigeration.

" '(9) Telephone service.

" 'Proceeds of sales under this subsection shall be credited to the appropriation currently available for the supply of that utility or service. To meet local needs the Commission may make minor expansions and extensions of any distributing system or facility within or in the immediate vicinity of a Commission-owned community through which a utility or service is furnished under this subsection.' "

Mr. HICKENLOOPER. As I understand, the amendment refers to the settlement of some community property problems we had under discussion. I personally believe they should be settled, and the amendment provides the only vehicle whereby that can be done.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment of the Senator from Tennessee [Mr. GORE] was agreed to.

Mr. BIBLE. Mr. President, I ask unanimous consent that a statement I have prepared concerning the atomic reactor problem in the State of Nevada be printed at this point in the RECORD.

There being no objection, the statement was ordered to be printed in the RECORD, as follows:

STATEMENT BY SENATOR BIBLE

Since the inception of nuclear tests authorized by our Government at the Nevada test site in southern Nevada, the residents of my State of Nevada have been more than cooperative.

The first atomic blast at the Nevada test site was conducted on January 27, 1951. This followed a single test in New Mexico on July 16, 1945. The entire Nation has focused its eyes on Nevada, as test after test, and blast after blast have occurred. In the 5 series of tests since the original shot in 1951, 45 atomic blasts in all have been the total result of nuclear tests in Nevada. Starting with the current series of tests early this spring, some 15 tests have been made, 4 of which were not nuclear.

The series has not yet ended. More are to come.

As I stated before, the residents of Nevada have been cooperative with the United States Government in keeping their objections to a minimum. This has not come about by the mere fact that they have felt they are secure from all danger; but has been more from the fact that they realize the importance of the testing program; the importance to our entire Nation and to the world. They fully realize that if the United States is to keep pace in the atomic weapons field and if the United States is to use the scientific knowledge at its disposal in this field that the tests are necessary. The residents of Nevada are peaceful people. They want our Government to have the means with which it can keep the peace of the world. However, I am certain that Nevada residents do not want Nevada to become the dumping grounds for the Atomic Energy Commission's experimental weapons program.

They would much prefer that the Atomic Energy Commission displayed some interest in establishing peaceful nuclear reactors of some type, which would insure a normal and peaceful growth for the State and thereby assist us in establishing industry for which our State is in such dire need.

In other words, Nevadans and myself, speaking as their elected representative, feel that the time is long overdue for recognition to our State by the Atomic Energy Commission, in establishing an atomic reactor for power purposes or for the establishment of experimental laboratories in our State university at some other site which would give our Nation and State a part in the important peaceful adaptation of nuclear energy.

The State of Nevada is one of the fastest growing States in the Union.

We need power.

Our water resources are limited.

We are ideally situated for the establishment of a nuclear reactor, from which we could obtain needed requirements in electrical energy. We have great wealth in the manner of minerals. We have ample transportation facilities. We are situated near heavily populated areas. We have enterprising residents, who want to see their State grow and prosper and attract industry. We cannot do this without ample power.

I am sure the majority of this body is well aware of the tremendous cost of establishing nuclear power facilities. This is one reason why private enterprise has been slow in developing nuclear reactors and power plants. Conventional plants are less costly.

Small power firms in Nevada do not have at their disposal men who are qualified to outline and draw plans for negotiating contracts with the Atomic Energy Commission or with industry to the point where they can give the necessary information for acquiring assistance needed to establish and construct nuclear power facilities. They are qualified in their particular field of generating power by other means. They are interested in the nuclear field and they need the assistance that is offered in this bill now before the Senate.

They realize nuclear power plants in Nevada will hurdle the obstacles of a shortage of water and high-cost fuel. They are also cognizant of the high costs involved in nuclear power.

There are two points which I want to convey to this body and I feel that both can be stated in simple words.

First, if the State of Nevada can bear the brunt of atomic blasts and a necessary testing program for nuclear weapons in carrying out the policy of our Government under the terms of laws and provisions at the command of the Atomic Energy Commission and its purview by the President, then the Atomic Energy Commission should also awaken to the needs of State and direct some effort toward establishing a portion of its experimental work along peaceful lines, such as a nuclear reactor in a section of Nevada to be chosen at the Commission's direction.

Second, I sincerely hope that this body will adopt measures to implement the present Atomic Energy Act, whereby a simplification of procedure will result, thereby allowing small privately owned or publicly owned power companies to compete in the construction of nuclear power reactors with material assistance from the United States Government.

[p. 15056]

Mr. BIBLE. Mr. President, I ask unanimous consent that an editorial from the Mineral County Independent, of Hawthorne, Nev., under date of August 7, 1957, dealing with the same general problem, be printed at this point in the RECORD.

There being no objection, the editorial was ordered to be printed in the RECORD, as follows:

[From the Mineral County Independent, Hawthorne, Nev., of August 7, 1957]

Causing almost as much rumble as the atomic-bomb blast itself is the growing demand for at least a temporary halt of all nuclear-bomb tests.

While the World Council of Churches was recommending this at a central council committee meeting in New Haven, Conn., another organized group, with temporary headquarters in Las Vegas, was carrying on an active program of protest against further tests at the atom test site in southern Nevada.

In fact, 11 demonstrators from this group were arrested Tuesday as they attempted to enter the test site as a protest action.

For several weeks there has been much written about such planned demonstrations, and also about the AEC's intention to make arrests for trespass and also about the stringing of barbed-wire barriers and posting of armed guards.

And all of this is going on within the boundaries of the sovereign State of Nevada, not in Washington, D. C., or some isolated Pacific island.

Which causes us to assert that it is high time our United States Senators and Congressmen, and even our Governor, speak up—in audible and firm voice—to the AEC.

Again we say that if Nevada is to be used as dumping ground for the Atomic Energy Commission's experimental program, this State should also receive first consideration as the location for some of the more permanent types of atomic research—such as nuclear powerplants now being tested in several other States.

Based upon what little information the AEC is willing to release (about the developments at these various test plants) there is more reason than ever to insist that one such plant be established in the vicinity of Schurz. The Government owns a vast amount of land in that area; there is the "river of water" that is so frequently referred to as a necessity.

And there is a great potential outlet for power—Mason Valley (with Anaconda and other mines) to the west; Nevada Scheelite (mine and carbide plant) and Gabbs (with its large mining and milling operations) to the east; Fallon (with the big expansion program at the naval air station) to the north; and Mineral county (with the huge naval installation at Hawthorne, and mining and industrial potential) to the south.

Franchise right of the privately and municipally owned power systems in these areas could be guaranteed through initial agreements and contracts, just as is done where large dams are built by the Government as a part of reclamation projects.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

Mr. ANDERSON. There is on the calendar, Calendar No. 870, H. R. 8996, and I ask unanimous consent that the Senate proceed to the consideration of that bill; that all after the enacting clause be stricken; that the text of the Senate bill, as amended, be inserted in lieu thereof; and that the Senate bill be indefinitely postponed.

The PRESIDING OFFICER. The House bill will be stated by title for the information of the Senate.

The LEGISLATIVE CLERK. A bill (H. R. 8996) to authorize appropriations for the Atomic Energy Commission in accordance with section 261 of the Atomic Energy Act of 1954, as amended, and for other purposes.

The PRESIDING OFFICER. Without objection, the bill is amended by striking out all after the enacting clause and substituting in lieu therefor the text of S. 2674, as amended.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read the third time, and passed.

The PRESIDING OFFICER. Without objection, S. 2674 is indefinitely postponed.

Mr. ANDERSON. Mr. President, I move that the Senate insist upon its amendment, request a conference thereon with the House of Representatives, and that the Chair appoint the conferees on the part of the Senate.

The motion was agreed to; and the Presiding Officer appointed Mr. ANDERSON, Mr. RUSSELL, Mr. PASTORE, Mr. GORE, Mr. JACKSON, Mr. HICKENLOOPER, Mr. KNOWLAND, Mr. BRICKER, and Mr. DWORSHAK conferees on the part of the Senate.

[p. 15057]

1.1e(4)(c) Aug. 20: Conference report submitted in Senate and agreed to, p. 15316

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The report was agreed to.

* * * * *

[p. 15316]

1.1e(4)(d) Aug. 20: Conference report submitted in House and agreed to, p. 15392

The SPEAKER. The question is on the conference report.

The conference report was agreed to and a motion to reconsider was laid on the table.

* * * * *

[p. 15392]

1.1f AMENDMENTS TO THE ATOMIC ENERGY ACT OF 1954

September 2, 1957, P.L. 85–256, §§2, 4, 71 Stat. 576

SEC. 2. Subsection 53 e. (8) of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"(8) except to the extent that the indemnification and limitation of liability provisions of section 170 apply, the licensee will hold the United States and the Commission harmless from any damages resulting from the use or possession of special nuclear material by the licensee."

SEC. 4. The Atomic Energy Act of 1954, as amended, is amended by adding thereto a new section, with the appropriate amendment to the table of contents:

"SEC. 170. INDEMNIFICATION AND LIMITATION OF LIABILITY.—

"a. Each license issued under section 103 or 104 and each construction permit issued under section 185 shall, and each license issued under section 53, 63, or 81 may, have as a condition of the license a requirement that the licensee have and maintain financial protection of such type and in such amounts as the Commission shall require in accordance with

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subsection 170 b, to cover public liability claims. Whenever such financial protection is required, it shall be a further condition of the license that the licensee execute and maintain

an indemnification agreement in accordance with subsection 170 c. The Commission may require, as a further condition of issuing a license, that an applicant waive any immunity from public liability conferred by Federal or State law.

"b. The amount of financial protection required shall be the amount of liability insurance available from private sources, except that the Commission may establish a lesser amount on the basis of criteria set forth in writing, which it may revise from time to time, taking into consideration such factors as the following: (1) the cost and terms of private insurance, (2) the type, size, and location of the licensed activity and other factors pertaining to the hazard, and (3) the nature and purpose of the licensed activity: *Provided,* That for facilities designed for producing substantial amounts of electricity and having a rated capacity of 100,000 electrical kilowatts or more, the amount of financial protection required shall be the maximum amount available from private sources. Such financial protection may include private insurance, private contractual indemnities, self insurance, other proof of financial responsibility, or a combination of such measures.

"c. The Commission shall, with respect to licenses issued between August 30, 1954, and August 1, 1967, for which it requires financial protection, agree to indemnify and hold harmless the licensee and other persons indemnified, as their interest may appear, from public liability arising from nuclear incidents which is in excess of the level of financial protection required of the licensee. The aggregate indemnity for all persons indemnified in connection with each nuclear incident shall not exceed $500,000,000 including the reasonable costs of investigating and settling claims and defending suits for damage. Such a contract of indemnification shall cover public liability arising out of or in connection with the licensed activity.

"d. In addition to any other authority the Commission may have, the Commission is authorized until August 1, 1967, to enter into agreements of indemnification with its contractors for the construction or operation of production or utilization facilities or other activities under contracts for the benefit of the United States involving activities under the risk of public liability for a substantial nuclear incident. In such agreements of indemnification the Commission may require its contractor to provide and maintain financial protection of such a type and in such amounts as the Commission shall determine

to be appropriate to cover public liability arising out of or in connection with the contractual activity, and shall indemnify the persons indemnified against such claims above the amount of the financial protection required, in the amount of $500,000,000 including the reasonable costs of investigating and settling claims and defending suits for damage in the aggregate for all persons indemnified in connection with such contract and for each nuclear incident. The provisions of this subsection may be applicable to lump sum as well as cost type contracts and to contracts and projects financed in whole or in part by the Commission.

"e. The aggregate liability for a single nuclear incident of persons indemnified, including the reasonable costs of investigating and settling claims and defending suits for damage, shall not exceed the sum of $500,000,000 together with the [p. 577] amount of financial protection required of the licensee or contractor. The Commission or any person indemnified may apply to the appropriate district court of the United States having venue in bankruptcy matters over the location of the nuclear incident, and upon a showing that the public liability from a single nuclear incident will probably exceed the limit of liability imposed by this section, shall be entitled to such orders as may be appropriate for enforcement of the provisions of this section, including an order limiting the liability of the persons indemnified, orders staying the payment of claims and the execution of court judgments, orders apportioning the payments to be made to claimants, orders permitting partial payments to be made before final determination of the total claims, and an order setting aside a part of the funds available for possible latent injuries not discovered until a later time.

"f. The Commission is authorized to collect a fee from all persons with whom an indemnification agreement is executed under this section. This fee shall be $30 per year per thousand kilowatts of thermal energy capacity for facilities licensed under section 103. For facilities licensed under section 104, and for construction permits under section 185, the Commission is authorized to reduce the fee set forth above. The Commission shall establish criteria in writing for determination of the fee for facilities licensed under section 104, taking into consideration such factors as (1) the type, size, and location of facility involved, and other factors pertaining to the hazard, and (2) the nature and purpose of the facility.

For other licenses, the Commission shall collect such nominal fees as it deems appropriate. No fee under this subsection shall be less than $100 per year.

"g. In administering the provisions of this section, the Commission shall use, to the maximum extent practicable, the facilities and services of private insurance organizations, and the Commission may contract to pay a reasonable compensation for such services. Any contract made under the provisions of this subsection may be made without regard to the provisions of section 3709 of the Revised Statutes, as amended, upon a showing by the Commission that advertising is not reasonably practicable and advance payments may be made.

"h. The agreement of indemnification may contain such terms as the Commission deems appropriate to carry out the purposes of this section. Such agreement shall provide that, when the Commission makes a determination that the United States will probably be required to make indemnity payments under this section, the Commission shall collaborate with any person indemnified and may approve the payment of any claim under the agreement of indemnification, appear through the Attorney General on behalf of the person indemnified, take charge of such action, and settle or defend any such action. The Commission shall have final authority on behalf of the United States to settle or approve the settlement of any such claim on a fair and reasonable basis with due regard for the purposes of this Act. Such settlement may include reasonable expenses in connection with the claim incurred by the person indemnified.

"i. After any nuclear incident which will probably require payments by the United States under this section, the Commission shall make a survey of the causes and extent of damage which shall forthwith be reported to the Joint Committee, and, except as forbidden by the provisions of chapter 12 of this Act or any other law or Executive order, all final findings

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shall be made available to the public, to the parties involved and to the courts. The Commission shall report to the Joint Committee by April 1, 1958, and every year thereafter on the operations under this section.

"j. In administering the provisions of this section, the Commission may make contracts in advance of appropriations and incur obligations without regard to section 3679 of the Re-

vised Statutes, as amended.

* * * * * * *

Approved September 2, 1957.

[p. 579]

1.1f(1) JOINT COMMITTEE ON ATOMIC ENERGY

S. REP. No. 296, 85th Cong., 1st Sess. (1957)

AMENDING THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

MAY 9, 1957.—Ordered to be printed

Mr. ANDERSON, from the Joint Committee on Atomic Energy, submitted the following

REPORT

[To accompany S. 2051]

The Joint Committee on Atomic Energy, having considered the subject matter of the amendment to the Atomic Energy Act of 1954 to protect the public by providing governmental indemnity and granting limitation of liability for persons in the atomic energy program, by establishing the Committee on Reactor Safeguards as a statutory committee, and by requiring publication of its safety reports and public hearings on certain facility license applications, report an original bill S. 2051 and recommend that the bill do pass.

BACKGROUND

When the Atomic Energy Act of 1954 was passed, it was the hope of Congress that the provisions in the laws liberalizing the statutory restrictions which had hitherto given the Government a monopoly in the atomic energy field would encourage the entrance of private industry into the program, and speed the further development of the peaceful uses of atomic energy.

It was brought to the attention of the Joint Committee in the 1956 hearings, which the Joint Committee is required to hold under section 202 of the Atomic Energy Act of 1954, that the prob-

lem of possible liability in connection with the operation of reactors is a major deterrent to further industrial participation in the program. While the 202 hearings held in 1957 indicate that it may not be the most important deterrent—that appears to be the current lack of economic incentive—the problem of liability has become a major roadblock.

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[p. 1]

Section 2 modifies the clause in the section of the Atomic Energy Act of 1954 relating to the conditions which are attached to the license for special nuclear material. Up to now, this clause required the licensee to hold the United States harmless from the use of the special nuclear material. Now there has been an exception written into the clause with respect to those portions of this bill, whereby the United States agrees to indemnify the licensee and permit limitation of liability proceedings. The exception was written in this manner since the provisions of the bill with respect to indemnity have a 10-year period of operation at this time. It was not intended by the language of this exception that the licensee would have to complete the limitation and indemnification of liability proceedings before this section applied.

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[p. 15]

1.1f(2) JOINT COMMITTEE ON ATOMIC ENERGY

S. REP. No. 435, 85th Cong., 1st Sess. (1957)

The Senate Report is the same as the House Report.

1.1f(3) CONGRESSIONAL RECORD, VOL. 103 (1957)

1.1f(3)(a) July 1: Passed House, p. 10725

The SPEAKER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed and read a third time and was read the third time.

The SPEAKER. The question is on the passage of the bill.

The bill was passed.

A motion to reconsider was laid on the table.

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[p. 10725]

1.1f(3)(b) Aug. 16: Passed Senate, p. 15059

[No Relevant Discussion on Pertinent Section]

1.1f(3)(c) Aug. 19: House concurred in Senate amendment, p. 15183

[No Relevant Discussion on Pertinent Section]

1.1g AMENDMENTS TO THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

September 4, 1957, P.L. 85–287, §4, 71 Stat. 613

SEC. 4. Section 161 d. of the Atomic Energy Act of 1954, as amended, is amended by inserting after the words "scientific and technical personnel" the words: "up to a limit of $19,000)".

Approved September 4, 1957.

1.1g(1) JOINT COMMITTEE ON ATOMIC ENERGY

H.R. REP. No. 977, 85th Cong., 1st Sess. (1957)

AMENDING THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

AUGUST 2, 1957.— Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. DURHAM, from the Joint Committee on Atomic Energy, submitted the following

REPORT

[To accompany H. R. 8994]

The Joint Committee on Atomic Energy, having considered H. R. 8994, an original committee bill, to amend the Atomic Energy Act of 1954, as amended, to increase the salaries of certain executives of the Atomic Energy Commission, and for other purposes, does report favorably thereon and recommends that the bill do pass.

PURPOSE

The purpose of this recommended legislation is to equalize the salaries of Atomic Energy Commission executives with those of other executives in the executive branch and in the independent agencies, as provided by the Federal Executive Pay Act of 1956 (Public Law 854, 84th Cong., 2d sess.).

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[p. 1]

Section 4 of the bill would amend section 161d of the Atomic Energy Act of 1954, as amended, to provide a limitation of $19,000 on the salaries payable to "scientific and technical personnel" under that section. In the past, the Commission has used this section to provide top salaries for such persons as the Deputy and Assistant General Manager, and the manager of certain field operations offices, and since such positions are receiving the requested increase in salaries as provided by sections 2 and 3 of this bill, the Joint Committee felt that a limitation could properly be put on the maximum salaries payable under section 161d. Although the committee recognizes that it is important to the successful operation of the Commission to be able to obtain first rate scientific and technical persons, the committee believes that such persons should not receive salaries in excess of that of the program division directors, whose salary is to be a maximum of $19,000.

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[p. 7]

1.1g(2) JOINT COMMITTEE ON ATOMIC ENERGY

S. REP. No. 790, 85th Cong., 1st Sess. (1957)

[No Relevant Discussion on Pertinent Section]

The Senate Report is the same as the House Report.

1.1g(3) CONGRESSIONAL RECORD, VOL. 103 (1957)

1.1g(3)(a) Aug. 26: Passed House, p. 15969

AMENDING ATOMIC ENERGY ACT

Mr. DURHAM. Mr. Speaker, I ask unanimous consent for the present consideration of the bill (H. R. 8994) to amend the Atomic Energy Act of 1954, as amended, to increase the salaries of certain executives of the Atomic Energy Commission, and for other purposes.

The Clerk read the title of the bill.

The SPEAKER. Is there objection to the present consideration of the bill?

Mr. COLE. Mr. Speaker, reserving the right to object, I assume the gentleman from North Carolina will, of course, explain the bill. There is no opposition to the bill from this side.

Mr. DURHAM. Mr. Speaker, the purpose of this bill, as set forth in the report of the Joint Committee on Atomic Energy—House Report No. 977—is to equalize the salaries of the Atomic Energy Commission executives with those of other executives in the executive branch and in the independent agencies.

Last year Congress enacted the Federal Executive Pay Act of 1956. This act raised the salaries of executives generally in the executive branch and in the independent agencies except for the Atomic Energy Commission.

The purpose of this bill is to provide equal treatment of the executives of the Atomic Energy Commission as has already been granted to other executives by the Federal Executive Pay Act of 1956.

The background of this bill is set forth in the committee report—House Report No. 977.

Last year the Joint Committee unanimously recommended a salary bill for AEC executives, contingent upon passage of the Federal Executive Pay Act, but that act passed late in the session, and the AEC salary bill was not considered by the Congress. This year the Joint Committee again considered the question and has recommended unanimously this legislation to bring the AEC executives up to the same salary levels as those of other executives.

This bill raises the salary of the Chairman of the Commission from $20,000 per annum to $22,500 per annum, which is on the same level as the Under Secretary of State and the Deputy Secretary of Defense. Prior to the Federal Executive Pay Act of 1956, the Chairman of the Commission was on the same level with those other offices, but he is now receiving a lesser salary. The purpose of this bill is to equalize this situation.

Other salaries of AEC executives are raised as follows:

The other four Commissioners of the Atomic Energy Commission, from $18,000 to $22,000; the general manager, who is the chief executive officer, from $20,000 to $22,000; the division directors from $16,000 to $19,000; the general counsel from $16,000 to $19,500. The bill also established the position of deputy general manager at maximum salary of $20,500; three assistant general managers or their equivalent at maximum salary of $20,000; and a maximum of six other executive manager positions at a salary not to exceed $19,000 per annum.

All of these increases are entirely consistent with the provisions of last year's Federal Executive Pay Act, and are only intended to provide fair and equal treatment to AEC executives.

I do not need to emphasize to the Members of the House the tremendous importance of the work of the Atomic Energy Commission. It must carry out enormous responsibilities for our military atomic and hydrogen weapons, and also in our expanding program for the peaceful uses of atomic energy, both at home and abroad. It is important that the Commission be able to obtain first rate executives and scientists to lead it. Some of its key employees, including the Director of the Division of Research, have left the Commission to respond to more attractive offers, from a financial standpoint, from private industry.

Also, the Commission is planning to move in about 6 months to new headquarters building near Germantown, Md., about 30 miles outside of Washington. I fear that they will lose many employees, including some of their top executives. In order to try to prevent this loss, and to provide fair treatment to AEC executives who are now receiving less than other executives in our Federal Government, I urge the House to favorably enact H. R. 8994, in ac-

cordance with the unanimous recommendation of the members of the Joint Committee on Atomic Energy.

The SPEAKER. Is there objection to the present consideration of the bill?

There being no objection, the Clerk read the bill, as follows:

* * * * *

SEC. 4. Section 161d. of the Atomic Energy Act of 1954, as amended, is amended by inserting after the words "scientific and technical personnel" the words: "up to a limit of $19,000)."

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

[p. 15969]

1.1g(3)(b) Aug. 29: Passed Senate, p. 16496

[No Relevant Discussion on Pertinent Section]

1.1h AMENDMENTS TO THE ATOMIC ENERGY ACT OF 1954, AS AMENDED, JULY 2, 1958

P.L. 85–479, §§3, 4, 72 Stat. 277

SEC. 3. Subsection 123 a. of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"SEC. 123. COOPERATION WITH OTHER NATIONS.—No cooperation with any nation or regional defense organization pursuant to section 54, 57, 64, 82, 91, 103, 104, or 144 shall be undertaken until—

"a. the Commission or, in the case of those agreements for cooperation arranged pursuant to subsection 91 c. or 144 b. which are to be implemented by the Department of Defense, the Department of Defense has submitted to the President the proposed agreement for cooperation, together with its recommendations thereon, which proposed agreement shall include (1) the terms, conditions, duration, nature, and scope of the cooperation; (2) a guaranty by the cooperating party that security safeguards and standards as set forth in the agreement for cooperation will be maintained; (3) except in the case of those agreements for cooperation arranged pursuant to subsection 91 c. a guaranty by the cooperating party that any material to be transferred pursuant to such agreement will not be used for atomic weapons, or for research on or development of atomic weapons or for any other military purpose; and (4) a guaranty by the cooperating party that any material or any Restricted Data to be transferred pursuant to the agreement for cooperation will not be transferred to unauthorized persons or beyond the jurisdiction of the cooperating party, except as specified in the agreement for cooperation;".

SEC. 4. Section 123 of the Atomic Energy Act of 1954, as amended, is amended in subsection b. by deleting the word "and" at the end thereof; in subsection c. by changing the period at the end thereof to a semicolon and inserting thereafter "and;"; and by adding the following new subsection:

"d. the proposed agreement for cooperation, together with the approval and determination of the President, if arranged pursuant to subsection 91 c., 144 b., or 144 c., has been submitted to the Congress and referred to the Joint Committee and a period of sixty days has elapsed while Congress is in session, but any such proposed agreement for cooperation shall not become effective if during such sixty-day period the Congress passes a concurrent resolution stating in substance that it does not favor the proposed agreement for cooperation: *Provided, however,* That during the Eighty-fifth Congress such period shall be thirty days (in computing such sixty days, or thirty days, as the case may be, there shall be excluded the days on which either House is not in session because of an adjournment of more than three days)."

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1.1h(1) JOINT COMMITTEE ON ATOMIC ENERGY

H.R. REP. No. 1849, 85th Cong., 2d Sess. (1958)

AMENDMENT TO THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

JUNE 5, 1958.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. DURHAM, from the Joint Committee on Atomic Energy, submitted the following

REPORT

[To accompany H. R. 12716]

The Joint Committee on Atomic Energy, having considered H. R. 12716, an original committee bill to amend the Atomic Energy Act of 1954, as amended, reports favorably thereon without amendment and recommends that the bill do pass.

SUMMARY OF PROPOSED LEGISLATION

The proposed legislation, as recommended by the Joint Committee, amends the Atomic Energy Act of 1954, as amended, to permit, subject to certain conditions, limitations, and procedures, greater exchange with military allies of information and materials as follows:

1. Material, including non-nuclear parts of weapons, military reactors, and nuclear materials for use in military reactors and weapons (sec. 91c);

2. Classified information (restricted data) of a nature to assist an individual nation or regional defense group such as NATO to improve its training and prepare for mutual defense (sec. 144b); and

3. Classified information (restricted data) of a nature to assist another individual nation to improve its atomic weapon design, development or fabrication capability, and concerning military reactors (sec. 144c).

Conditions, limitations and procedures.—The proposed legislation provides certain conditions, limitations, and procedures prior to and during such exchange of information and materials as follows:

1. Subsections 91c, 144b and 144c all provide that such cooperation can take place only after a Presidential determination that it

[p. 1]

will promote and will not constitute an unreasonable risk to the common defense and security;

2. Subsections 91c, 144b and 144c all provide that such cooperation can take place only while the cooperating nation or regional defense organization is participating with the United States pursuant to an international arrangement by substantial and material contributions to the mutual defense and security;

3. Subsections 91c, 144b and 144c all provide that such cooperation can be undertaken only pursuant to an agreement entered into in accordance with section 123 of the Atomic Energy Act of 1954, as amended.

Section 123b, in turn, requires Presidential approval before execution of any proposed agreement or amendment, and also the President's determination in writing that the performance of the proposed agreement will promote and will not constitute an unreasonable risk to the common defense and security.

New subsection 123d, added by section 4 of this bill, also pro-

vides that a proposed agreement arranged pursuant to subsection 91c, 144b or 144c must be submitted to the Congress and referred to the Joint Committee and not become effective if the Congress passes a concurrent resolution of disapproval within 60 days (30 days during the 85th Cong.).

The Congress and the Joint Committee will therefore have an opportunity to review each proposed agreement to implement the authority granted by this bill, and will furthermore have the opportunity to pass a concurrent resolution of disapproval to prevent such a proposed agreement from becoming effective if such is the will of the Congress.

In addition, under section 202 of the Atomic Energy Act, it is intended that the Joint Committee shall be kept fully and currently informed as to each step taken under an agreement after it is executed and becomes effective.

Other provisions.—The proposed legislation, in addition to the principal amendments to sections 91, 144b and c, and 123, as discussed above, contains technical or conforming amendments to the following sections of the Atomic Energy Act of 1954, as amended: Section 92 (sec. 2 of the bill); section 123a (sec. 3 of the bill); and section 144a (sec. 5 of the bill). It also adds a new subsection 144d to the Atomic Energy Act to permit the President to authorize another Government agency, in addition to the Atomic Energy Commission and the Department of Defense, to communicate restricted data to another nation, under certain conditions, limitations, and procedures.

A more detailed description of each section of the proposed legislation is contained in the section-by-section analysis, infra in this report.

BACKGROUND

On October 25, 1957, President Eisenhower and British Prime Minister Macmillan, having met in Washington, D. C., as representatives of their respective nations issued a joint communique in which they stated that their two countries will henceforth act in accordance with the following principle:

> The arrangements which the nations of the free world have made for collective defense and mutual help are
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> [p. 2]
>
> based on the recognition that the concept of nation self-sufficiency is now out of date. The countries of the free world are interdependent and only in genuine partnership, by combining their resources and sharing tasks in many fields, can progress and safety be found.

Among the various understandings reached by the Prime Minister and the President was that—

> The President of the United States will request the Congress to amend the Atomic Energy Act as may be necessary and desirable to permit of close and fruitful collaboration of scientists and engineers of Great Britain, the United States, and other friendly countries.

On January 9, 1958, the President of the United States in his state of the Union message to Congress, recognized the need for greater pooling of scientific talent among the nations of the free world and stated:

> It is of the highest importance that the Congress enact the necessary legislation to enable us to exchange appropriate scientific and technical information with friendly countries as part of our effort to achieve effective scientific cooperation.
>
> It is wasteful in the extreme for friendly allies to consume talent and money in solving problems that their friends have already solved—all because of artificial barriers to sharing. We cannot afford to cut ourselves off from the brilliant talents and minds of scientists in friendly countries. The task ahead will be hard enough without handcuffs of our own making.
>
> The groundwork for this kind of cooperation has already been laid in discussion among NATO countries. Promptness in following through with legislation will be the best possible evidence of American unity of purpose in cooperating with our friends.

On January 27, 1958, Mr. Lewis L. Strauss, Chairman of the Atomic Energy Commission, submitted to the Congress and to the Joint Committee on Atomic Energy proposed amendments to the Atomic Energy Act of 1954 to meet the objectives previously outlined by the President and recommended that they receive early consideration. (The full test of Chairman Strauss' letter explaining the proposed amendments and the reasons therefor is contained in appendix A.)

In view of the importance of the proposed legislation, Senator Pastore, on January 28, 1959, the day following receipt of the proposal, introduced, by request and without endorsement or criticism, S. 3165. On January 29, 1958, Congressman Durham introduced H. R. 10348, also by request and without endorsement or criticism. These two bills which were referred to the Joint Committee on Atomic Energy contained the specific proposed amendments recommended by the Chairman of the Atomic

Energy Commission. The Joint Committee on Atomic Energy chairman immediately referred the bills to the Subcommittee on Agreements for Cooperation, which began hearings in executive session on January 29, 1958.

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On the basis of discussions during the executive hearings the proposed amendment to section 55 of the Atomic Energy Act of 1954 was eliminated from consideration in this bill. This amendment would have permitted the AEC to set up a revolving fund of indefinite amount in excess of $200 million to finance long-term commitments for purchase of foreign special nuclear material. The Commission by letter dated March 7, 1958, notified the Joint Committee that it was withdrawing that proposal in view of the committee's opposition to it. Accordingly, Chairman Durham and Senator Pastore by request on March 13, 1958, introduced H. R. 11426 and S. 3474 in their respective Houses, which bills were identical with the proposed amendments originally requested by AEC Chairman Strauss in his January 27, 1958, letter, with the exception of the proposed amendment to section 55.

After extensive hearings in executive session and discussions between the committee members and staff with representatives from the Atomic Energy Commission, the Department of State, and the Department of Defense, and as a result of a meeting of the subcommittee on May 27, 1958 Senator Pastore and Senator Hickenlooper, on May 28, 1958, jointly introduced a clean bill S. 3912. An identical clean bill, H.R. 12716, was introduced on May 28, 1958, by Chairman Durham. Congressman Van Zandt, on May 28, 1958, also introduced an identical bill, H. R. 12727. After consideration by the Subcommittee on Agreements for Cooperation and the full Joint Committee on Atomic Energy, S. 3912 and H. R. 12716 were voted to be reported favorably with a recommendation that they be passed.

EXECUTIVE HEARINGS

Because of the highly classified nature of the subject matters involved in the proposed legislation and in order that the committee members would have the benefit of all possible information concerning the need for the proposed amendments, the Subcommittee, on Agreements for Cooperation, of necessity, held a major portion of its hearings in executive session. The Joint Committee members were thus able to discuss fully and completely with witnesses from the executive branch of the Government the sensitive information involved, which would not have been possible in open hearings.

Executive hearings commenced on January 29, 1958, 2 days after receipt of the original proposed amendments. As is customary with all subcommittees of the Joint Committee on Atomic Energy, all members of the full committee, whether or not members of the subcommittee, were invited to attend and participate in the subcommittee meetings. Witnesses and representatives from the interested executive department agencies testified in executive session on the following dates: January 29, 30, and 31; February 4, 5, and 27; March 15 and 27; May 15 and 28, 1958.

These hearings involved over 30 hours of oral testimony consisting of over 1,000 pages, which testimony is on file with the Joint Committee on Atomic Energy, under appropriate security safeguards.

In recognition of the importance of the matters discussed in executive session to the American public, as well as to all the peoples of the free world, the committee desired that to the maximum ex-

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tent possible consistent with national security, the testimony be made public. With this in mind, all testimony taken in executive session was submitted to the executive agencies concerned with a request that the testimony be reviewed for accuracy and for identification of classified matters. On completion of this review, all indicated classified information will be removed and the remainder published. The unclassified portions of the executive session hearings will thus be available to the public along with the record of the open hearings.

The list of witnesses who testified in executive session before the Subcommittee on Agreements for Cooperation or who participated in the executive hearings are as follows:

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COMMITTEE COMMENTS

The Joint Committee on Atomic Energy believes it is not only desirable but necessary that closer cooperation must exist between all nations of the free world in both the military and peaceful uses of atomic energy. Proposed legislation as contained in S. 3912 and H.R. 12716 has been recommended to achieve this purpose.

The original Atomic Energy Act of 1946, the McMahon Act, first by interpretation and then by specific amendment in 1951, prohibited the United States from exchanging with any other nation restricted data on design and fabrication of atomic weapons. It also prohibited the transfer by the United States to another nation of fissionable material. The Atomic Energy Act of 1954,

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recognizing the need for cooperation with our allies, amended the law to permit under appropriate safeguards, communication to another nation or to a regional defense organization certain information concerning atomic weapons necessary to the development of defense plans, the training of personnel and the evaluation of the nuclear weapon capabilities of potential enemies. Design or fabrication information concerning atomic weapons which could be communicated was limited to their external characteristics, effects, and the systems employed in their delivery or use, provided the data did not reveal important information concerning the design or fabrication of their nuclear components. The Atomic Energy Act of 1954 also prohibited the transfer to another nation of any nuclear material for military purposes.

Notwithstanding the limitations imposed by the Atomic Energy Acts of 1946 and 1954 on the degree to which the United States could cooperate with its allies, both laws contained provisions recognizing that future events might necessitate a greater degree of cooperation. Accordingly, the McMahon Act in section 8 (b) and the 1954 act in section 121 provided that—

> any provision of this Act or any action of the Commission to the extent and during the time that it conflicts with the provisions of any international arrangement made after the date of enactment of this Act shall be deemed to be of no force or effect.

It was therefore possible under both the present and the prior law for the United States by means of an international agreement approved by the Congress or by a treaty ratified by two-thirds of the Senate to cooperate to the fullest extent possible with an ally. Not only atomic weapon design information and nuclear material for use in weapons could thus have been made available to other nations but by this means the law would have permitted the transfer of atomic weapons by the United States to its allies.

When it recommended the Atomic Energy Act of 1954 to supersede the original McMahon Act, the Joint Committee on Atomic Energy recognized that changes in the world situation required revision of the basic law. In recommending the proposed amendments to the Atomic Energy Act of 1954, as contained in the recommended bills S. 3912 and H. R. 12716, the Joint Committee continues to recognize changes in world conditions. The committee supports the principle announced by President Eisenhower and British Prime Minister Macmillan on October 25, 1957, that—

> the arrangements which the nations of the free world have made for collective defense and mutual help are based on a recognition that the concept of nation self-

sufficiency is now out of date—

and that—

> the countries of the free world are interdependent and only in genuine partnership, by combining their resources and sharing tasks in many fields, can progress and safety be found.

[p. 8]

Today three nations in the world have achieved nuclear weapons capability. They are: the United States, Great Britain, and the Union of Soviet Socialist Republics. Throughout the hearings held by the Subcommittee on Agreements for Cooperation, testimony from representatives of the Atomic Energy Commission, the State Department and the Department of Defense made it clear that it is not the intent of the proposed amendments to the Atomic Energy Act of 1954 to encourage a "fourth nation" to achieve a nuclear weapons capability. The Joint Committee is favorably reporting and recommending S. 3912 and H. R. 12716, original committee bills, reaffirms the intent not to encourage additional nations to achieve nuclear weapons capability.

The cooperation between the United States and allies which will be made possible through the exchange of military information and material under the proposed amendments would be such as to conserve the scientific talent of the free world, strengthen our mutual security, and, it is hoped, would relieve our allies of the psychological desire to independently embark on their own atomic weapons program.

Information pertaining to atomic weapons would be exchanged with our allies under the safeguards contained in the proposed legislation to assist our allies in the training of their military personnel and the development of common defense plans. The proposed legislation will make it possible for the strengthening of NATO.

All cooperation to be undertaken with an ally, made possible by the recommended bills, requires that such nation must be making substantial and material contributions to the mutual defense and security. Before such cooperation can take place additional important requirements must also be met which are explained fully in the section-by-section analysis of the bill as set forth in this report.

The joint committee is of the opinion that closer collaboration should be had between the United States and Great Britain in the atomic weapons field. British and American scientists cooperated during World War II in developing the first atomic weapon. Subsequent to the war, both countries have been working independently of each other with resulting duplication of scarce scientific

talent. The proposed legislation will permit the United States, under appropriate safeguards, to exchange nuclear weapons information with the British Government in order that each may have the benefit of the other's knowledge.

The Atomic Energy Act of 1954, as amended to date, does not permit transfer of atomic weapons by the United States to another nation unless such action is taken pursuant to a treaty or by an international agreement specifically approved by the Congress. The recommended bills, S. 3912 and H. R. 12716, do not authorize the transfer of manufactured nuclear components of weapons. The recommended legislation would however permit greater cooperation with our allies so that while the United States maintains custody and control over the nuclear components, our allies will be able to have adequate training and knowledge of these weapons to effectively utilize them against a common enemy in the event it becomes necessary.

Throughout the hearings and in its deliberations, the joint committee was mindful of the fact that the amendments originally proposed by the Atomic Energy Commission might have been [p. 9] interpreted in such a way as to enable a "fourth nation" to achieve a nuclear weapons capability. It was primarily due to this possibility that the joint committee made certain changes in the language first recommended by the AEC.

In the proposed legislation submitted by the AEC, section 144c (1) would have authorized the United States to exchange with an allied nation restricted data concerning atomic weapons "provided the communication of such restricted data to that nation is necessary to improve its atomic weapon design, development or fabrication capability." An additional requirement was added by the Joint Committee in the form of a proviso that "that nation has made substantial progress in the development of atomic weapons." A similar requirement was added by the Joint Committee to subsection 91c (4) with regard to the transfer by the United States of nuclear material to another nation for research on, development of, or use in atomic weapons. To date only Great Britain can meet the standards set forth in the proposed subsections 144c (1) and 91c (4).

As an additional safeguard, the Joint Committee added a new subsection 123d to require all proposed agreements for cooperation involving transfer of military information or military material to be submitted to the Congress and referred to the Joint Committee. Such proposed agreement shall not become effective if the Congress passes a concurrent resolution of disapproval

within a period of 60 days. Thus, the Congress reserves to itself by this process a share in the responsibility of the dissemination of this important information and the distribution of this important material.

The Joint Committee on Atomic Energy in compliance with its duties to the Congress and to the peoples of the United States will closely and thoroughly review any and all proposed agreements for cooperation that will be submitted to it pursuant to the amendments contained in this bill. The members of the Joint Committee are keenly aware of their important responsibilities to the Congress and of the peoples of the United States.

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Taken together with the requirements of section 123, the normal sequence of events to implement a subsection 91c agreement would be as follows:

1. After negotiating a proposed agreement with a foreign nation, the Commission, or the Department of Defense, would submit to the President the proposed agreement for cooperation (or amendment to an existing agreement), together with its recommendation thereon, in accordance with subsection 123a;

2. The President would consider and approve or disapprove, and, in the event of approval, authorize the execution of the proposed agreement (or amendment) and, in the event of approval, he would also make a determination in writing that the performance of the proposed agreement will promote and will not constitute an unreasonable risk to the common defense and security, in accordance with subsection 123b;

3. The President would approve the terms and conditions of a program for transfer to the cooperating nation, as required by subsection 91c;

4. The proposed agreement, together with the approval and the determination of the President, would be submitted to the Congress and referred to the Joint Committee, and not become effective if the Congress passes a concurrent resolution of disapproval, in accordance with subsection 123d;

5. In implementing the agreement, and prior to transfer of any materials, the President would determine that the proposed cooperation and each proposed transfer arrangement will promote and will not constitute an unreasonable risk to the common defense and security, as required by subsection 91c (this determination may be delegated, under certain circumstances, by Executive order, as indicated below).

As explained in the letter dated January 27, 1958, forwarding the proposed legislation, it is expected, in the implementation of last provision referred to above in step (5), that the President personally will not consider each proposed action under an agreement for cooperation. Instead, an Executive order will be recommended to the President establishing procedures whereby the President would authorize proposed transfers only after joint review by the Department of Defense, the Commission and other interested agencies. The Executive order would authorize such transfers in the absence of the President's approval only where the Department of Defense and Commission agree that the proposed cooperation and the transfer of the material would promote and would not constitute an unreasonable risk to the common defense and security. In the event of a disagreement between the two agencies as to this determination, a proposed transfer could be made only after the express personal approval of the President.

If the Executive order procedure is to be followed, the Joint Committee wishes to emphasize that the determinations should not be made perfunctorily or as a matter of routine. Each determination (that the proposed cooperation and transfer will promote and will not constitute an unreasonable risk to the common defense and security) should be made only after due and careful deliberation both by the AEC and the Department of Defense, and with

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due consideration of the extreme importance which such materials bear directly to the defense and security of the United States.

Of course, the President would personally approve and authorize the execution of each new proposed agreement for cooperation or amendment thereto, and make a determination in writing that the performance of the proposed agreement will promote and will not constitute an unreasonable risk to the common defense and security before an agreement for cooperation can be executed, as required by existing section 123b of the act.

In connection with the scope of the Presidential determination the words "each proposed transfer arrangement" are not intended to make the Presidential determination nondelegable by Executive order. It is intended that a transfer arrangement may be approved providing for transfer over a limited period of time of certain materials and parts, and that the determination need not be made as to each item (a spare part, for example), transferred under the transfer arrangement. However, it should be emphasized again that the determination should not become a matter of routine, but should be made separately for each important or

significant transfer of nonnuclear parts, utilization facilities or materials.

It is intended that, under section 202 of the act, the Joint Committee should be kept fully and currently informed as to the scope and status of each "transfer arrangement" and the transfers made thereunder.

Participation in an international arrangement

It is provided in subsection 91c that transfers shall be made—

> while such other nation is participating with the United States pursuant to an international arrangement by substantial and material contributions to the mutual defense and security.

The term "international arrangement" is defined in section 11–l of the act. In other words, the other nation must be a close military ally. It should be emphasized that the receiving nation must be making *substantial and material* contributions to the mutual defense and security. If the nation is not making such contributions, any transfer to that nation would, of course, not be authorized.

Procedure under subsection 123c

All the authority granted by the Congress under subsection 91c is made subject to the proviso that the cooperation be undertaken pursuant to an agreement entered into in accordance with section 123. Under the new subsection 123d (to be added by sec. 4 of this bill) it is provided that each such proposed agreement for cooperation must be submitted to the Congress and referred to the Joint Committee for 60 days, and shall not become effective if during such 60-day period the Congress passes a concurrent resolution stating in substance that it does not favor the proposed agreement for cooperation. (During the 85th Cong. such period shall be 30 days rather than 60 days.)

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SECTION 8 OF BILL—AMENDMENT TO SECTION 123A OF THE ATOMIC ENERGY ACT

Section 3 of the bill amends subsection 123a of the Atomic Energy Act of 1954, as amended, in two respects:

First, as a technical amendment, it adds reference to the new subsection 91c and adds the words "which are to be implemented by the Department of Defense" to clarify the role of the Department of Defense as to agreements for cooperation under subsection 91c or 144b.

Secondly, and more importantly, it removes the requirement,

with respect to transfers under subsection 91c, that the receiving nation guarantee that materials furnished will not be used for atomic weapons or other military purposes. It accomplishes this by adding the words "except in the case of those agreements for cooperation arranged pursuant to subsection 91c" at the beginning of subsection 123a (3). In lieu of this guaranty by the cooperating party (which still must be obtained as to transfers under any section other than 91c), a safeguard is provided in 91c that the President will determine that the proposed cooperation and transfer "will promote and will not constitute an unreasonable risk to the common defense and security."

SECTION 4 OF BILL—NEW SUBSECTION 123D OF THE ATOMIC ENERGY ACT

Section 4 of the bill amends section 123 of the Atomic Energy Act of 1954, as amended, by making technical changes to subsections b and c by adding a new subsection d.

The new subsection 123d provides new procedures to be followed for proposed agreements for cooperation arranged pursuant to subsection 91c, 144b, or 144c. It provides that no cooperation with any nation or regional defense organization shall be undertaken under those subsections until the proposed agreement for cooperation, together with the approval and determination of the President, has been submitted to the Congress and referred to the Joint Committee and a period of 60 days has elapsed while Congress is in session. Section 123d further provides that any such proposed agreement for cooperation shall not become effective if during such 60-day period the Congress passes a concurrent resolution stating in substance that it does not favor the proposed agreement for cooperation. A proviso is added to subsection 123d, however, that during the 85th Congress, such period shall be 30 days rather than 60 days.

Parenthetically it is added that in computing 60 days, or 30 days, as the case may be, there shall be excluded the days on which either House is not in session because of an adjournment of more than 3 days. A similar provision is already found in subsection 123c as to other proposed agreements for cooperation to be submitted to the Joint Committee. In counting both the 60- and 30-day periods, it is intended that the first day to be counted shall be the day following receipt of the proposed agreement by the Joint Committee, after referral by the Congress.

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It should be noted that subsection 123d applies only to proposed agreements for cooperation arranged pursuant to subsection 91c,

144b or 144c, the subsections added or modified by this bill which pertain to military rather than peaceful uses of atomic energy. Proposed agreements for cooperation, or amendments thereto, arranged pursuant to any other section of the act, including 54, 57, 64, 82, 103, 104, or 144a, shall be submitted to the Joint Committee in accordance with past procedure and existing subsection 123c of the act, providing for a 30-day review period.

In considering the concurrent resolution procedure, the Joint Committee took cognizance of the provisions of the Reorganization Act of 1949, including section 6 thereof (5 U. S. C. A. sec. 133z–4, as amended). The Reorganization Act provides, in effect, that a reorganization plan submitted by the President to the Congress shall not take effect if within a 60-day period there has been passed by *either* of the two Houses a resolution stating in substance that that House does not favor the reorganization plan. Upon due consideration, however, the members of the Joint Committee concluded that proposed international agreements for cooperation should not be disapproved by the Congress unless *both* Houses should join in the concurrent resolution.

Moreover, the Joint Committee considered amending section 123c to provide that *all* future proposed agreements for cooperation or amendments thereto should follow the procedure of a 60-day review period, and be subject to a concurrent resolution expressing disapproval. However, the Joint Committee decided, after due consideration, that such procedure should be limited to agreements for cooperation pertaining to exchange of military information or materials, as under subsections 91c, 144b, or 144c, and therefore added a new subsection 123d applying only to those subsections.

The Joint Committee considered carefully many alternatives before finally deciding upon the language and procedure of subsection 123d. Without some method of close congressional review over the extraordinary and sensitive powers authorized to be carried out by the executive agencies elsewhere in the bill, the committee felt that it could not recommend the changes requested to sections 91 and 144, which are now incorporated in this bill.

In adding the proviso that during the 85th Congress such period shall be 30 days rather than 60 days, it was intended to make it possible for the executive branch to proceed expeditiously with the execution of an agreement with Great Britain prior to expiration of the 85th Congress.

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Proviso requiring section 123 procedure

As in subsections 91c and 144c, cooperation and communication can take place under subsection 144b only if the cooperation is undertaken pursuant to an agreement entered into in accordance with section 123. As indicated above, section 123b requires the President's approval and his determination in writing that the performance of the proposed agreement will promote and will not constitute an unreasonable risk to the common defense and security.

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B. Amendments to section 91 (secs. 92 and 123)

With respect to increased cooperation with our allies in the field of materials, it is recommended that a new section 91c be added to the act and that sections 92 and 123 be amended.

1. Under the recommended new section 91c, the President may authorize the transfer, by sale, lease, loan, or donation to a friendly nation of: (1) nonnuclear parts of atomic weapons to improve that nation's state of training or operational readiness; (2) utilization facilities for military applications; and (3) nuclear materials for military utilization facilities or atomic weapons.

Under this section nonnuclear parts of atomic weapons, military reactors and nuclear materials could be furnished to our allies when in accordance with the terms and conditions of a program approved by the President. It is anticipated that under this authority nonnuclear parts of atomic weapons might be furnished to selected allies where such transfer was necessary to improve their state of training and operational readiness. Nuclear components would be retained in the custody of the United States. Military reactors could be made available to our allies for both military propulsion and power purposes. In addition, materials for military reactors and for manufacture into atomic weapons could be made available to our allies. It is not intended that manufactured nuclear components of weapons could be transferred under this amendment, nor that we promote the entry of additional nations into the field of production of nuclear weapons.

2. The amendment to section 123 removes the requirement (with respect to transfers under sec. 91c) that the receiving nation guarantee that materials furnished not be used for weapons or other military purposes. However, a safeguard in connection with transfers of materials is provided in that portion of the recommended section 91c which states "whenever the President determines that the proposed cooperation and the transfer of the

proposed nonnuclear parts of atomic weapons, utilization facilities,

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or source, byproduct, or special nuclear material will promote and will not constitute an unreasonable risk to the common defense and security." In implementation of this provision it is not expected that the President personally will consider each proposed action under an agreement for cooperation. Instead, an Executive order will be recommended to the President establishing procedures whereby the President would authorize proposed transfers only after joint review by the Department of Defense, the Commission, and other interested agencies, and would authorize such transfers in the absence of the President's personal approval only where the Department of Defense and the Commission agree that the proposed cooperation and the transfer of the proposed nonnuclear parts of atomic weapons, utilization facilities, or source, byproduct, or special nuclear material will promote and will not constitute an unreasonable risk to the common defense and security.

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SEC. 3. Section 92 of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"SEC. 92. PROHIBITION.—It shall be unlawful, except as provided in section 91, for any person to transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, import, or export any atomic weapon. Nothing in this section shall be deemed to modify the provisions of subsection 31a or section 101."

SEC. 4. Section 123a of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"SEC. 123. COOPERATION WITH OTHER NATIONS.—No cooperation with any nation or regional defense organization pursuant to sections 54, 57, 64, 82, 91, 103, 104, or 144 shall be undertaken until—

"a. The Commission or, in the case of those agreements for cooperation arranged pursuant to subsection 91c or 144b and to be implemented by the Department of Defense, the Department of Defense has submitted to the President the proposed agreement for cooperation, together with its recommendations thereon, which proposed agreement shall include (1) the terms, conditions, duration, nature, and scope of the cooperation; (2) a guaranty by the cooperating party that security safeguards and standards as set forth in the agreement for cooperation will be maintained; (3) except in the case of those agreements for cooperation arranged

pursuant to subsection 91c a guaranty by the cooperating party that any material to be transferred pursuant to such agreement will not be used for atomic weapons, or for research on or development of atomic weapons or for any other military purpose; and (4) a guaranty by the cooperating party that any material or any restricted data to be transferred pursuant to the agreement for cooperation will not be transferred to unauthorized persons or beyond the jurisdiction of the cooperating party, except as specified in the agreement for cooperation;"

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1.1h(2) JOINT COMMITTEE ON ATOMIC ENERGY

S. REP. No. 1654, 85th Cong., 2d Sess. (1958)

AMENDMENT TO THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

JUNE 5, 1958.—Ordered to be printed

Mr. PASTORE, from the Joint Committee on Atomic Energy, submitted the following

REPORT

[To accompany S. 3912]

The Joint Committee on Atomic Energy, having considered S. 3912, an original committee bill to amend the Atomic Energy Act of 1954, as amended, reports favorably thereon without amendment and recommends that the bill do pass.

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[p. 1]

NOTE: The Senate Report is the same as the House Report.

1.1h(3) COMMITTEE OF CONFERENCE
H.R. REP. No. 2051, 85th Cong., 2d Sess. (1958)

AMENDING THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

JUNE 27, 1958.—Ordered to be printed

Mr. DURHAM, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H. R. 12716]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H. R. 12716) to amend the Atomic Energy Act of 1954, as amended, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its amendment numbered (1).

That the House recede from its disagreement to the amendment of the Senate numbered (2) and agree to the same with an amendment as follows:

On page 2 strike out lines 1, 2, and 3 and substitute in lieu thereof the following:

> "*(1) nonnuclear parts of atomic weapons provided that such nation has made substantial progress in the development of atomic weapons, and other nonnuclear parts of atomic weapons systems involving Restricted Data provided that such transfer will not contribute significantly to that nation's atomic weapon design, development, or fabrication capability; for the purpose of improving that nation's state of training and operational readiness;*

At page 2, line 18, after the word "weapons", strike out the comma and insert in lieu thereof *and atomic weapons systems,*

And the Senate agree to the same.

That the House recede from its disagreement to the amendments of the Senate numbered (3) and (4), and agree to the same.

CARL T. DURHAM,
CHET HOLIFIELD,
MELVIN PRICE,
JAMES E. VAN ZANDT,
CRAIG HOSMER,
Managers on the Part of the House.
CLINTON P. ANDERSON,
JOHN O. PASTORE,
ALBERT GORE,
BOURKE B. HICKENLOOPER,
JOHN W. BRICKER,
Managers on the Part of the Senate.

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1.1h(4) CONGRESSIONAL RECORD, VOL. 104 (1958)

1.1h(4)(a) June 19: Debated and passed House, pp. 11779, 11781–11782, 11784

Mr. DURHAM.

* * * * *

The next type of material involved under 91c (3) would be source, byproduct, or special nuclear material for research on, development of, production of, or use in utilization facilities for military applications. No. 3 thus would authorize the United States to make available to our allies nuclear material of a nature needed in connection with military reactors they would develop or receive from the United States. This amendment is necessary because the Atomic Energy Act, as it stands today under section 123, does not permit the transfer of any nuclear material for military purposes.

Each one of the first three types of material that might be transferred, as you can see, does not make it possible for the recipient nation to achieve an atomic weapon capability. Subject to certain conditions, limitations, and procedures, allied nations, in addition to Great Britain, individually, would be eligible to receive such material.

You will note, however, there is a fourth type of material coming under section 91c. Number (4) pertains to source, byproduct, or special nuclear material for research on, development of, or use in atomic weapons. This type of material is directly related to nuclear weapon capability. This is the material without which a nation does not have nuclear weapon capability. It is in subsection 91c (4), therefore, that the Joint Committee added two specific provisos which, in effect, limit transfer of this latter type of material to the one ally today that already has nuclear weapons of its own—Great Britain. The provisos are, (1) that the transfer of such material to that nation is necessary to improve its atomic weapon design, development, or fabrication capability; and (2) that such nation has made substantial progress in the development of atomic weapons. These

two provisos were added by the Joint Committee in order to assure that such transfer could not be made to enable additional nations to achieve atomic weapon capability. As you know, only three nations in the world today have this capability—the United States, Great Britain, and Russia. It is not the intent of the proposed legislation to encourage a "fourth or fifth nation" to enter this group. So you may understand the high standard that must be met before a nation would be eligible to receive nuclear material for use in a weapon, I refer you to page 12, paragraph 5, of the committee report, which states:

> With regard to the words "substantial progress" in the second proviso of subsection 91c (4) it is intended that the cooperating nation must have achieved considerably more than a mere theoretical knowledge of atomic-weapons design, or the testing of a limited number of atomic weapons. It is intended that the cooperating nation must have achieved a capability on its own of fabricating a variety of atomic weapons, and constructed and operated the necessary facilities, including weapons research and development laboratories, weapon-manufacturing facilities, a weapon-testing station, and trained personnel to operate each of these facilities It is intended that full information shall be provided the Joint Committee as to the basis of any such determination.

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[p. 11779]

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Mr. HOLIFIELD. Mr. Chairman, when the first draft of this legislation was presented to the committee in January I was constrained to take a position against the bill; but I am not opposing the bill as it is now written. I am supporting this bill. I think the committee has done a good job in revising the language. This is a clean bill. It is reported without objection from the committee. As I say, I am supporting the bill.

The present bill will give to the administration, in my judgment, the power to fulfill the objectives in the field of military cooperation with our allies which it needs to fulfill. At the same time we have written into this legislation safeguards which the Congress can use to scrutinize any type of international agreement involving the transfer of atomic weapon material or atomic weapon information for wartime purposes. In other words, the Congress retains in its hands the right of final decision now. In the McMahon Act and in the Atomic Energy Act of 1954 there were provisions whereby weapons could be transferred. There are two of these provisions. One was by treaty which would have required a two-thirds vote of the other body. The other was by international agreement, which would require affirmative majority approval by both Houses.

In the present bill we have retained both of these methods unchanged, but we have also added a third method which I will describe and which is found on page 4, beginning in line 20 and ending on page 5, line 14 of the bill. This language is most important as it is the key to Congressional control of the transfer of atomic weapons and restricted weapons information and delivery system in the atomic field. It is important because it provides that any agreement of this type shall lie before the Congress for 60 days, during which time if the Congress wishes to disapprove the resolution by concurrent resolution of disapproval of both Houses, this disapproval or this will of the Congress can be made known by a majority vote of both Houses. I stress the point if this is done the concurrent resolution does not have to be signed by the President and, therefore, there is no Presidential power to veto such a disapproving concurrent resolution.

It places on the Joint Committee a very grave responsibility, it places on the Congress a grave responsibility to the people of our Nation. Once an international agreement is proposed in this field by the executive branch and submitted to the Congress, in my opinion, it will be the responsibility of the Joint Committee to consider such an agreement and report to the Congress its findings. Any Member of Congress

then may file a concurrent resolution of disapproval. If this happens, in my opinion, it will be the duty of the Joint Committee to hold hearings on such a resolution. In my sober and considered judgment the Joint Committee must function in this instance promptly and expeditiously if such resolution is referred to it. The Joint Committee must give to the Congress, in my opinion, its best judgment on such agreement and I say that it should do this without regard as to whether a concurrent resolution of disapproval is filed by a Member of the House or not. I consider this is an important duty and responsibility of the Joint Committee and, as one member, I shall press for such action.

What would happen if we did not do this? Well, it would be possible for an agreement to be submitted to the committee, the committee could take no action upon it, the time of 60 days would run, and the membership would be denied the information which I think they should have on this very important matter. I do not think our committee would be guilty of inaction on such an important matter.

One of the reasons why I take this so seriously is that I believe we are dealing with matters which are so serious and so far reaching in their effect that it may decide the fate of mankind. We are dealing with the subject of custody and responsibility for the use of mass destruction nuclear weapons never imagined before by the mind of man. These weapons, if it is within our power as a Nation, must never fall into careless or irresponsible hands, and I stress at this point that there are nations with which we have mutual security alliances where those particular nations have unstable governments. In some instances these governments are permeated with Communist parliamentary representatives. The governments change from week to week. In my opinion, without naming names, it would be a tragic thing to put into the hands of that type of nation the terrible power of these atomic and hydrogen weapons. I think it would be an act of sheer irresponsibility for this Congress to do such a thing, and I pledge my own efforts, if I am alive at the time any such transfer is proposed, to do all in my power to prevent this from happening. I want peace in this world more than I want any other one thing, and I know my colleagues in the Chamber feel the same way. I believe it would be possible to obtain peace easier when there are only 3 nations in the world holding atomic weapons in their custody than it would be if there were 5 or 7 or 11.

Now, I do not know how long it will be before a fourth or fifth nation achieves these atomic weapons on their

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own scientific efforts and ability. That is something that we cannot control. We can hasten the day by giving them the scientific information or the nuclear parts that we have or transferring them weapons in peacetime. This would hasten the day when they would have these weapons. But, if we did this, we would bear upon our shoulders the burden of responsibility for creating a fourth or fifth nuclear-weapon-owning nation. This is a burden that we should not bear, in my opinion, at this time. An irresponsible or careless use of these weapons by an irresponsible nation might bring on a third world war, which would be a nuclear war, and which would have within it the capability of destroying civilization. Therefore, we have placed in section 4 of the bill an amendment to section 123 of the Atomic Act of 1954, which provides that in case such a proposal is made, this Congress can work its will upon that proposal and can either allow it to become effective by nonaction or prevent it becoming effective by the action of filing and passing a concurrent resolution of disapproval by both Houses. We can stop such a proposal if we, in the collective judgment of the two legislative bodies, believe it would

be an unwise transferrence of weapons at that particular time or of information or of delivery system for those weapons.

Regardless of the progress of science in these other nations towards the realization of these weapons, we owe our own responsibility to the people of the United States and the people of the world in this field, and this is the legislative consideration which we are taking today in discharging this resonsibility. The Congress must retain its statutory power and its authority to sit in judgment as the elected representatives of all the people so that we can control this important thing.

The transfer of atomic hydrogen weapon material or atomic hydrogen weapon information is too important a matter to rest in the hands of any one man regardless of who that man is, whether he be a Democrat or a Republican, and even though he may have the best intention in the world. This is so important that the Congress itself should work its will upon this particular matter.

Now, we have retained safeguards throughout this bill setting up standards of procedure and criteria through which the executive branch shall go in approaching a nation and in negotiating with a nation such a proposal to transfer all or part of the materials that are involved here. But, in addition to these safeguards that are written throughout the bill, there is the overriding safeguard of final decision by action of the Congress.

Now, I call the attention of the Members to the report which was reported without opposition by the Joint Committee. It is common knowledge that a committee report is a common expression of Congressional intent, and is frequently referred to for enlightenment or even for judicial interpretation. The report which accompanies this bill has been very carefully considered word by word and line by line. It has the approval of the committee, both Democratic and Republican, and it is therefore, in my opinion, very important that the report be considered with the bill as unusually vital in establishing Congressional intent. As I said when I began my talk, when the first draft came before us I was against it. It has been changed. The protection has been put in the bill, the Congressional authority to take final action has been maintained, and therefore I am glad that I am able to join my colleagues in supporting the bill.

In this difficult age in which we live, it is difficult to see through the veil of the future. It is difficult to know whether our decisions are wise or foolish. But those decisions must be made from day to day in this chamber and we make them as carefully and as prayerfully as we know how in a field so vital as this. It is with this attitude that I have approached this legislation and agreed to support it.

The important reason why I am willing and able to support this legislation is that, notwithstanding the language in the bill, which is complicated and difficult to understand, the real heart of the matter is this. In the last analysis, any proposal to transfer nuclear material for military purposes or classified atomic energy information for any military purpose must come before the Congress under an international agreement—such an agreement must be presented to the Congress for scrutiny for 60 days, except in one instance, which is in the remainder of the 85th Congress, because we are nearing the end of the Congress and have provided for a 30-day period only for this session.

We know that there will probably not be any agreements other than one agreement which may come up for certain types of exchange with Great Britain. I do not have the time to go into that now, but we shall go into it fully when the time comes.

Mr. Chairman, let me say further that we recognize that the fate of NATO and the fate of the Free World depend essentially upon the United

States and Great Britain standing shoulder-to-shoulder in the development of atomic energy and in the custody of these weapons at this particular time; that the great burden lies on those two nations in NATO to provide that particular atomic strength.

Mr. DURHAM. Mr. Chairman, will the gentleman yield?

Mr. HOLIFIELD. I am glad to yield to the gentleman from North Carolina.

Mr. DURHAM. Mr. Chairman, I would like to say to the committee that no member of this committee has taken this legislation more seriously than the gentleman in the well of the House at the present time. He did a fine piece of work in bringing to the committee some of the amendments that are in the bill and I want to compliment him on what he has done.

Mr. HOLIFIELD. I thank my chairman.

Mr. VAN ZANDT. Mr. Chairman, will the gentleman yield?

Mr. HOLIFIELD. I yield to the gentleman from Pennsylvania.

Mr. VAN ZANDT. Mr. Chairman, I would like to join the chairman of this committee in commending the gentleman from California. As our chairman has said, during the hearings on this bill, the gentleman indicated the great concern he has over the weapon itself and its possibilities of mass destruction in the event of a nuclear war. The contribution of the gentleman from California to the committee hearings, in my opinion, made possible the bill that we have before us today.

Mr. HOLIFIELD. Mr. Chairman, I want to thank my chairman and the gentleman from Pennsylvania for their kind remarks; also I want to thank the members of the committee for being patient with me and listening to my arguments.

I want to thank them also for the contributions they have made to this bill, because every member of the subcommittee and the main committee has had a part in this bill. It is not the product of any one man, it is the product of the committee. All of us have tried to bring before the House a responsible piece of legislation in this vital field.

ARGUMENT FOR TRANSFERRING NUCLEAR ARMS TO NATO ALLIES AND COUNTER-ARGUMENT

The argument has been made that we should transfer atomic weapons to our NATO allies in order that we strengthen our mutual alliance. Also, that we should not withhold any restricted data in the atomic field from our friends because the Soviets may possess such information.

This argument needs to be answered.

In the first place, our NATO alliance is not based on equality of ability nor contribution to the mutual security alliance. Each nation contributes according to its talents and respective ability. There are many different kinds of tasks to be performed. I regret to say that, up to this time, not one of our NATO allies have fulfilled their original NATO obligations.

The NATO shield, from the standpoint of planned military effectiveness, is full of holes. There is a grave question as to the stability of government in some of our NATO allies. There is a strong element of Communist participation in both the parliamentary bodies and the executive agencies of some of our NATO allies.

The problem of security in the field of highly secret atomic weapon design and fabrication in these countries is insoluble at this time. To transmit to these nations atomic weapons or weapon design information or other restricted data would be equivalent to transmission through the Communist transmission belt directly to the Soviets.

The arguments that the Soviets already know how to make atomic and hydrogen weapons anyway does not dispose of the need for security. It is entirely possible that degrees of knowledge, both as to materials and production techniques, are involved which are

of special value to our country.

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Mr. PATTERSON. Mr. Chairman, I want to commend our chairman, the gentleman from North Carolina, the entire committee membership and our staff for their diligence and their hard work and effort they have put into the writing of this piece of legislation. I want to assure the House that every possible safeguard was taken into consideration in the writing of this bill to protect all restricted data. There is contained in this bill safeguards dealing directly with NATO and for every possible or conceivable use of this information under this particular piece of legislation.

Mr. Chairman, my colleagues on the Joint Committee on Atomic Energy who preceded me this afternoon, have covered for you in detail the specific categories and types of information and material that could be transferred or exchanged with our allies under the proposed amendments, as contained in the bill before you.

I do not intend to duplicate those points already discussed but will address myself to the specific requirements and safeguards that are contained in this bill, and which must be met before such transfers or exchanges may take place and which, in my opinion, most effectively and most strongly protect the interests of the United States.

First, you will note, that any such cooperation, whether it be with regard to transfer of material or communication of classified information for military purposes, requires a determination by the President that it will promote and will not constitute an unreasonable risk to the common defense and security. A second requirement is that the cooperating nation or—in those cases under section 144b, where the recipient is a regional defense organization such as NATO, the organization must be participating with the United States pursuant to an international arrangement and making substantial and material contributions to the mutual defense and security.

A further requirement is that the cooperation must be undertaken pursuant to an agreement entered into and in accordance with section 123 of the Atomic Energy Act of 1954 as amended. Under section 123 of the Atomic Energy Act, as it exists now in the current law, additional limitations and conditions are outlined.

Specifically, the proposed agreement for cooperation must be submitted to the President together with the recommendations of the Atomic Energy Commission or, in certain cases, the Department of Defense with the necessary recommendations of that agency.

The proposed agreement must include (a) the terms, conditions, duration, nature, and scope of the cooperation; (b) a guaranty by the cooperating party that security safeguards and standards, as set forth in the agreement for cooperation, will be maintained; (c) a guaranty by the cooperating party that any material or any restricted data to be transferred pursuant to the agreement for cooperation will not be transferred to unauthorized persons or beyond the jurisdiction of the cooperating party, except as specified in the agreement for cooperation.

After receipt by the President, the proposed agreement for cooperation must be approved and its execution authorized with a determination in writing by the President that the performance of the proposed agreement "will promote and will not constitute an unreasonable risk to the common defense and security." Subsequent to this presidential approval, authorization, and determination in writing, the proposed agreement for cooperation together with the President's approval and determination must be submitted to the Congress and referred to the joint committee.

Under the current law, all such proposed agreements for cooperation cannot take effect until it has rested with

the joint committee 30 days, while Congress is in session. The purpose of this was to give Congress, through the joint committee, and opportunity to review the agreement before it went into effect.

H. R. 12716 would amend section 123 with regard to the period of time required for a proposed agreement for cooperation involving military information or material to lie before the joint committee. All proposed agreements for cooperation relative to the transfer or communication of military material or military information, through a new subsection 123d, would have to be submitted to the Congress and referred to the joint committee and a period of 60 days would have to elapse while Congress is in session before such proposed agreement could take effect. In addition, by the new subsection 123d, the proposed agreement would not become effective if during such 60-day period the Congress passes a concurrent resolution of disapproval. This new subsection 123d, therefore, adds two additional safeguards with regard to military information and military material that could be transferred to our allies.

First, it doubles the required time the proposed agreement must lie before the joint committee before it can take effect. This gives the joint committee additional time to carefully review and consider the proposal.

Second, it gives the Congress an opportunity to reject such agreement by concurrent resolution during this 60-day period.

In adding these two additional safeguards, the joint committee, in effect, reserves to the Congress a share in the responsibility for the dissemination of this important information and the distribution of this important material.

The various procedures and requirements which I have enumerated for you and which are set out in this bill apply to all military information and military material that the United States could or would transfer under the Atomic Energy Act. They are, in my opinion, firm, reliable, and satisfactory safeguards to insure the best interests of the United States will be served in any arrangements entered into pursuant to these amendments.

In addition, however, as previously explained to you by my colleagues, other conditions are contained in the bill with regard to those areas involving classified information or nuclear material of high sensitivity. Transfer of nuclear material for use in atomic weapons as permitted under subsection 91c (4) or communication of classified information pertaining to the detailed design and fabrication of atomic weapons permitted under subsection 144c (1) would first have to comply with two important provisos:

First. It must be necessary to improve atomic weapon design, development, or fabrication capability of the cooperating nation.

Second. Such nation must already have made substantial progress in the development of atomic weapons.

Paragraph 5 on page 12 of the committee report clearly explains what would constitute substantial progress.

As an added indication of our firm intent to safeguard United States interests in cooperative arrangements with other nations pursuant to these amendments, I refer you to the manner by which an ally may be authorized to purchase one utilization facility for military applications as explained in the committee report beginning on the last two lines of page 14 and continuing on page 15. You will note that while the cooperating nation may be authorized to purchase a nuclear submarine reactor, for example, from a private American firm, the agreement must provide due protection for patent and license rights in the United States Government, as well as an express provision that the United States Government will not provide warranty or indemnity for the materials or facilities transferred.

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1.1h(4)(b) June 23: Amended and passed Senate, pp. 11926–11928

AMENDMENT OF ATOMIC ENERGY ACT OF 1954

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the unfinished business be temporarily laid aside and that the Senate proceed to the consideration of Calendar No. 1685, S. 3912.

The PRESIDING OFFICER. The bill will be stated by title for the information of the Senate.

The LEGISLATIVE CLERK. A bill (S. 3912) to amend the Atomic Energy Act of 1954, as amended.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Montana?

There being no objection, the Senate proceeded to consider the bill.

Mr. PASTORE. Mr. President, S. 3912, the bill before the Senate, is an extremely important one. It is identical with H. R. 12716, which was passed by an overwhelming vote of the House of Representatives only last week.

At the appropriate time I shall ask that H. R. 12716 be substituted for S. 3912, and to have applied to the House bill any amendments which may be added to S. 3912. But I shall discuss, for the convenience of the Senate, the Senate bill, because it is referred to in the report. I think it will make it possible for Senators more intelligibly to follow the debate.

S. 3912 amends the present atomic energy law, the Atomic Energy Act of 1954, as amended, so as to permit a greater exchange of military information and material with our allies.

As I have already stated, a corresponding bill, H. R. 12716, identical in all its provisions with the Senate bill, was, on June 19, 1958, passed by the House of Representatives by the overwhelming vote of 345 to 12 and, accordingly, has been sent to the Senate and placed on the calendar as No. 1769.

S. 3912 was introduced jointly, on May 27, 1958, by the Senator from Iowa [Mr. HICKENLOOPER] and me.

The bill is designed to meet one of the major points referred to by the President in his January 9 state of the Union message to Congress when he stated:

> It is of the highest importance that the Congress enact the necessary legislation to enable us to exchange appropriate scientific and technical information with friendly countries as part of our effort to achieve effective scientific cooperation.

This bill is regarded by the Secretary of State as "indispensable, both to our collective security policy and to our disarmament policy"—hearings, page 446.

This is a bill the need for which is regarded as being urgent by Gen. Lauris Norstad, Supreme Commander of the Allied Powers in Europe. It has the strong endorsement of the Atomic Energy Commission, the Department of Defense, and the State Department.

This is a bill which, after detailed consideration by the Joint Committee on Atomic Energy, was reported favorably without amendment, with the recommendation that it be passed; and a report—Report No. 1654—was submitted thereon.

Senate bill 3912, as presently before the Senate, is the result of 4 months' continuous study and consideration by the Subcommittee on Agreements for Cooperation of the Joint Committee on Atomic Energy. During this period, the subcommittee, assisted by other members of the full committee, gave a great deal of thought and attention to the objectives and the detailed language of the proposed legislation.

Our studies began with the receipt of a letter on January 27, 1958, from the Chairman of the Atomic Energy Commission, recommending specific amendments to the Atomic Energy Act. The objectives were to permit "more eco-

nomical use of scientific and engineering talent and funds," and "to increase the collective preparedness of the United States and its allies." This letter, with the original recommended amendments, is set forth in Appendix A of the committee's report, pages 21 to 33.

In view of the importance of the proposed legislation, on January 28, 1958, I introduced, by request, and without endorsement or criticism, Senate bill 3165, containing the specific amendments recommended by Chairman Lewis Strauss of the Atomic Energy Commission. The bill was referred to the Joint Committee on Atomic Energy and, in turn, immediately was referred to the Subcommittee on Agreements for Cooperation, which began hearings in executive session on January 29, 1958.

During the months that have elapsed since the Joint Committee first began consideration of the proposed legislation, the subcommittee held numerous hearings, both in executive and in open sessions. The dates on which the hearings were held and the list of witnesses who participated are set forth on pages 5, 6, and 7 of the committee report. The testimony of these witnesses was most helpful to the Joint Committee in drafting the bill now before the Senate.

While the Joint Committee agreed in principle with the objectives of the legislation proposed by the AEC Chairman in his January 27 letter, the committee, after careful consideration and review, made certain changes in the original bill. First, with the concurrence of the Atomic Energy Commission, the committee eliminated a suggested amendment to section 55 of the Atomic Energy Act identical with

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the original Senate bill of 1954, which would have permitted the AEC to set up a revolving fund of indefinite amount in excess of $200 million to finance long-term commitments for the purchase of foreign special nuclear material. This change was reflected in Senate bill 3474, introduced by me, by request, on March 13, 1958, which was identical with the original Senate bill 3165 and the proposed legislation originally requested by the AEC Chairman, except for the elimination of the proposed amendment to section 55.

Senate bill 3912, which now is before the Senate, is an original committee bill, introduced on May 28, 1958. It is identical in objectives with the two previous bills, but is different in certain changes which were considered necessary by the committee. I can assure the Senate that the final proposed legislation is the result of diligent and careful consideration by the members of the Joint Committee.

A detailed section-by-section analysis of Senate bill 3912 begins on page 10 of the committee report. For a thorough understanding, I refer Senators to that analysis. In summary, the pending bill would amend the Atomic Energy Act of 1954, so as to permit—subject to specific conditions, limitations, and procedures—greater exchange of certain types of military information and material with our allies.

The current law requires that any material transferred to another nation must not be used for military purposes —section 123 a. (3).

Senate bill 3912, by amendment to sections 91 and 123 a., would permit the President to authorize the Commission or the Department of Defense, with the assistance of the other, to transfer to an ally nation, subject to specified safeguards:

(1) Nonnuclear parts of atomic weapons to improve that nation's state of training and operational readiness; (2) utilization facilities for military applications, (3) source, byproduct or special nuclear material for research on, development of, production of or use in utilization facilities for military applications; (4) source, byproduct, or special nuclear material for research on, development of, or use in atomic weapons.

Except for the specific types of material listed in the proposed new subsection 91 c. no other material for

military purposes would be authorized to be transferred. Hence, the nuclear component of atomic weapons could not be transferred. It will also be noted that the term "utilization facilities," by definition in the Atomic Energy Act of 1954, does not mean atomic weapons. It would include a nuclear reactor, such as in an atomic submarine.

Authorization to transfer material for research on, development of, or use in atomic weapons carries the proviso "that the transfer of such material to that nation is necessary to improve its atomic weapon design, development, or fabrication capability." It also carries the further proviso "that such nation has made substantial progress in the development of atomic weapons."

The two provisos were added by the Joint Committee to the original language suggested by the Commission, in order to assure that such transfer could not be made to assist a "fourth nation" to achieve atomic weapon capability.

To fully understand the high standard required, I refer Senators to page 12, paragraph 5, of the committee report, which states:

> With regard to the words "substantial progress" in the second proviso of subsection 91 c. (4) it is intended that the cooperating nation must have achieved considerably more than a mere theoretical knowledge of atomic weapons design, or the testing of a limited number of atomic weapons.
>
> It is intended that the cooperating nation must have achieved a capability on its own of fabricating a variety of atomic weapons, and constructed and operated the necessary facilities, including weapons research and development laboratories, weapon manufacturing facilities, a weapon-testing station, and trained personnel to operate each of these facilities.

As distinct from material, Senate bill 3912 also provides for greater exchange of military information. The Atomic Energy Act, as it stands today, permits, under section 144 b., the communication of certain type of restricted data to another nation or to a regional defense organization, such as NATO, for training and defense purposes. Information so transferable is specifically limited. Experience to date has reflected that section 144 b., as written, is too restrictive to meet the objectives for which it was written. Senate bill 3912 would amend section 144 b. in the form requested by the President and the executive agencies.

In category (2) of subsection 144 b. the words "and other military applications of atomic energy" are added in order that restricted data concerning other military applications of atomic energy, besides atomic weapons, may be transmitted to train personnel of our allies. This would include, for example, information on nuclear-powered submarines.

Similarly, the law would be changed to permit transfer of restricted data concerning the capabilities of potential enemies in the employment of these other military applications of atomic energy besides atomic weapons.

A very important area of information is also added to section 144 b. which would permit communication of restricted data to an ally or regional defense organization as is necessary to the development of compatible delivery systems for atomic weapons. This latter addition will make it possible for our allies to make necessary adjustments in their airplanes and missiles to be able to accommodate nuclear weapons furnished by the United States in the event of war.

This will make possible the immediate availability of allied weapons systems in the event of an emergency.

The proposed revision of section 144 b. removes an unduly restrictive proviso in the existing section to the effect that no information may be transmitted which will reveal important information concerning the design or fabrication of the nuclear components of an atomic weapon. Testimony was received from the Department of Defense, the Commission, and American representatives of the North Atlantic Treaty Organization that such language in the present act seriously im-

pedes their ability to transmit required information to our military allies for training and mutual defense purposes.

The additional areas in which restricted data could be communicated to another ally or regional defense organization under section 144 b. would not include information which would make it possible for the recipient to design or fabricate its own weapons.

This more sensitive type of information could not be transferred under section 144b. but is treated separately under a new subsection 144c.

S. 3912 would add a new subsection 144c to permit the President to authorize the Commission, with the assistance of the Department of Defense, to exchange with another nation restricted data pertaining to atomic weapons provided the communication of such restricted data to that nation "is necessary to improve its atomic weapon design, development, or fabrication capability and provided that nation has made substantial progress in the development of atomic weapons." It will be noted that, with regard to the relatively sensitive information transferrable under subsection 144c, the recipient nation must have already made substantial progress in the development of atomic weapons before it could qualify to receive the information. This additional proviso which was inserted by the Joint Committee is identical to the one previously described in subsection 91c (4). I refer Senators again to paragraph 5, on page 12 of the committee report, as to what constitutes "substantial progress."

Similar to subsection 91c (4), this new subsection 144c could not be used as a means of making possible the entry of additional nations in that small group which today have nuclear weapons capability.

I have covered the principal areas in which the proposed legislation would make possible the greater exchange of military information and material with our allies. Before these transfers could take place, however, specific requirements must first be met.

First, there must be a determination by the President that the proposed cooperation and proposed transfer of communication will promote and will not constitute an unreasonable risk to the common defense and security.

It is also required that the recipient nation or regional defense organization must be participating with the United States pursuant to an international arrangement by substantial and material contributions to the mutual defense and security.

A further requirement is that any such cooperation would have to be undertaken pursuant to an agreement entered into in accordance with section 123 of the Atomic Energy Act. Section 123 of the Atomic Energy Act, it will be found, is quite specific with regard to additional safeguards. Guaranties are required that specific security standards must be maintained and that the material or restricted data will not be transferred to unauthorized persons. The President must first approve

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and authorize the execution of the proposed agreement and make a determination in writing that it will promote, and will not constitute, an unreasonable risk to the common defense and security.

Under the current Atomic Energy Act, under section 123, all agreements for cooperation, together with the approval and the determination of the President, must be submitted to the Joint Committee on Atomic Energy for a period of 30 days while Congress is in session before they may take effect.

S. 3912 would amend section 123 with regard to agreements for cooperation involving the transfer of military material or exchange of military information. These military-type agreements, under a new subsection 123d, would have to be submitted to the Congress and referred to the Joint Committee for a period of 60 days while

Congress was in session, and such proposed agreements would not become effective if during that 60-day period Congress adopted a concurrent resolution of disapproval. This additional safeguard was added by the Joint Committee in order that Congress might reserve to itself a share in the responsibility of this important material. Special provision was made for the remainder of the 85th Congress in order that certain important agreements now under negotiation could be submitted to this Congress without being delayed until next year.

In short, the provision under section 123 d., for the passing or transferring of military material or military information, requires a delay of 60 days. A bilateral agreement can be sent to the Congress and the Joint Committee on Atomic Energy and remain there for 60 days, during which time the Congress of the United States, by concurrent resolution, can enter its sense of disapproval, which will vitiate and render inoperative any proposed agreement. But with reference to the present Congress, in order to make it convenient to act with regard to an agreement which may be under negotiation now, the term proposed is not 60 days, but, rather 30 days. That is the reason why I caution Members of the Senate to give this proposed legislation their expeditious consideration, so that there will be provided a period of 30 days intervening between the time the bill is enacted and the adjournment of this session of Congress.

The amendments to the Atomic Energy Act of 1954 as contained in S. 3912 constitute the first major revision to the basic law since 1954 with regard to exchange of military information and material.

These changes are not being recommended on the spur of the moment. They have received extensive and careful study by the Department of State, the Department of Defense, the Atomic Energy Commission, and finally, the Joint Committee on Atomic Energy.

I wish to say parenthetically at this juncture that it has been the practice in the Joint Committee on Atomic Energy to invite all the members to appear and participate whenever the committee has had important legislation pending before it which would be referred to a subcommittee, such as this bill, which was referred to the subcommittee of which I am chairman, to which position I was appointed by my colleague and former distinguished chairman of the Joint Committee, the Senator from New Mexico [Mr. ANDERSON]. It was quite refreshing to note that in the consideration of this proposed legislation we had a large contingent of the full committee in attendance and actively participating at all times.

The proposed changes are being recommended under the realization that changes in time and circumstances necessitate reevaluation of basic concepts. It is indeed foolish for the United States to keep from its allies information which would be helpful to them and to ourselves in our mutual defense, when such information is already known to our common enemies. As the President of the United States pointed out in his state of the Union message to Congress:

> It was wasteful in the extreme for friendly allies to consume talent and money in solving problems that their friends have already solved —all because of artificial barriers to sharing. We cannot afford to cut ourselves off from the brilliant talents and minds of scientists in friendly countries. The task ahead will be hard enough without handcuffs of our own making.

Mr. President and Members of the Senate, this is only a short résumé of the objectives of the proposed legislation. It is only a brief analysis of the provisions contained in the bill. I am sure the proposed legislation is sufficiently important to provoke the thinking and the conscientious study of all Members of the Senate. To the best of my ability I shall be ready to answer any questions about any provision of

the bill which may be of concern or interest to the Members of the Senate.

Mr. President, if there are no questions at this time, I yield the floor.

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1.1h(4)(c) June 27: Conference report submitted in House and agreed to, p. 12560

[No Relevant Discussion on Pertinent Section]

1.1h(4)(d) June 30: Conference report submitted in Senate and agreed to, p. 12587

[No Relevant Discussion on Pertinent Section]

1.1i GOVERNMENT EMPLOYEES TRAINING ACT

July 7, 1958, P.L. 85–507, §21(b)(1), 72 Stat. 337

REPEAL AND AMENDMENT OF EXISTING EMPLOYEE TRAINING LAWS

SEC. 21.

(b) The following provisions of law with respect to the following departments are repealed and amended, effective in the manner provided in subsection (a) of this section:

(1) Atomic Energy Commission: Paragraph n of section 161 of the Atomic Energy Act of 1954 (68 Stat. 950; 42 U.S.C. 2201 (n)) is repealed. Paragraphs o, p, q, r, and s of such section 161 are redesignated as paragraphs n, o, p, q, and r, respectively, of such section.

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1.1i(1) COMMITTEE ON POST OFFICE AND CIVIL SERVICE
S. REP. No. 213, 85th Cong., 1st Sess. (1957)

AUTHORIZING THE TRAINING OF FEDERAL EMPLOYEES AT PUBLIC OR PRIVATE FACILITIES

APRIL 8, 1957.—Ordered to be printed

Mr. CLARK, from the Committee on Post Office and Civil Service, submitted the following

REPORT

[To accompany S. 385]

The Committee on Post Office and Civil Service, to whom was referred the bill (S. 385), to authorize the training of Federal employees at public or private facilities, and for other purposes, having considered the same, report favorably thereon with an amendment, and recommend that the bill, as amended, do pass.

AMENDMENT

The committee amendment strikes out all of the bill after the enacting clause and substitutes therefor a new bill which appears in the reported bill in italic type.

STATEMENT

The purpose of this legislation is to authorize training of Federal employees at public or private facilities. The bill as amended is designed:

(1) To provide general statutory authority for employee training required to further Federal programs,

(2) To make it possible for all agencies to use whatever facilities can best and most economically serve their training needs,

(3) To provide the President a management tool essential to efficient operation of the departments and agencies,

(4) To establish a central point of responsibility for and control of employee training programs, and

(5) To consolidate a variety of existing training authorities of limited scope and applicability.

JUSTIFICATION

Employee training is a necessary and inseparable function of management. It is recognized as an essential element in all modern personnel programs. Yet, the Government, largest employer in the Nation, lacks positive general authority to utilize this indispensable management tool. Training, alone among major personnel functions, has yet to be provided for in overall enabling legislation.

Two Hoover Commissions, among other responsible groups, have pointed up the damaging effects of this situation and have strongly recommended legislative action to correct it.

It is abundantly clear that no organization so large and complex as the Federal Government, responsible for such diverse and highly specialized programs, can long exist nor effectively operate without training certain of its employees under special circumstances. These barriers to the Government's development of effective and comprehensive employee training programs should be removed as quickly as possible. The bill would accomplish this purpose.

PUBLIC HEARINGS

Public hearings on the bill were held March 8 and 12. Testimony favoring the bill was presented by the United States Civil Service Commission, Bureau of the Budget, Department of Defense, representatives of educational institutions and private industry, representatives of employee organizations and groups, and individual employees. There was no testimony in opposition to the bill.

COST

The administration testified that the relatively small cost of the measure could be absorbed by the departments and agencies and that no increase in appropriations would be necessary as a result of its enactment.

It is estimated that the total Federal-wide cost of the measure would be between eight and nine hundred thousand dollars a year.

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1.1i(2) COMMITTEE ON POST OFFICE AND CIVIL SERVICE
H.R. REP. No. 1951, 85th Cong., 2d Sess. (1958)

INCREASING EFFICIENCY AND ECONOMY IN THE GOVERNMENT BY PROVIDING FOR TRAINING PROGRAMS FOR CIVILIAN OFFICERS AND EMPLOYEES OF THE GOVERNMENT WITH RESPECT TO THE PERFORMANCE OF OFFICIAL DUTIES

JUNE 24, 1958.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. HEMPHILL, from the Committee on Post Office and Civil Service, submitted the following

REPORT

[To accompany S. 385]

The Committee on Post Office and Civil Service, to whom was referred the bill (S. 385) to authorize the training of Federal employees at public or private facilities, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

AMENDMENTS

The committee made two amendments to S. 385, as passed the Senate; an amendment to the text and an amendment to the title.

The amendment proposed by the committee to the text of the bill strikes out all after the enacting clause and inserts in lieu thereof a substitute text which appears in the reported bill in italic type.

The amendment proposed by the committee to the title of the bill is as follows:

Amend the title so as to read:

> AN ACT To increase efficiency and economy in the Government by providing for training programs for civilian officers and employees of the Government with respect to the performance of official duties.

PURPOSES OF AMENDMENTS

The purposes of the proposed amendment to the text of the bill are—

(1) to establish a clear and positive congressional policy for the promotion of efficiency and economy in all Government activities by providing for the training of Government employees to perform official duties more effectively;

(2) to provide guidelines, and designate the United States Civil Service Commission as the central point of responsibility and accountability, to insure that such congressional policy is carried out; and

(3) to require that expenditures for the training of employees are made from available funds, without additional appropriations, to the maximum practicable extent.

The purposes and effect of the proposed amendment to the text of the bill are discussed more fully in the section-by-section analysis of the bill, as reported by the committee.

The purpose of the proposed amendment to the title of the bill is to indicate more precisely the intent, scope, and coverage of the bill as reported.

COST

The Director of the Bureau of the Budget informed the committee that estimated additional expenditures resulting from the enactment of the bill as reported will not exceed $1 million annually, that so far as practicable such additional expenditures will be absorbed within available funds, and that savings to the Government derived from improved employee training authorized by the bill will be many times greater than the amount of such additional expenditures.

ADMINISTRATIVE RECOMMENDATIONS

The Bureau of the Budget, the Civil Service Commission, and the General Accounting Office have approved the bill as reported, have urged early enactment thereof, and are in full agreement that the bill will provide the means for substantial improvements in efficiency and economy in Government activities. The reported bill contains amendments proposed by the Bureau of the Budget relating to the overall supervision and control by the President of training activities, methods and types of intradepartment training, contributions and awards by nonprofit institutions furnishing training, expenses of attendance at meetings, and several minor technical points.

STATEMENT

NEED FOR THIS LEGISLATION

The committee's proposal to provide for training of employees on a governmentwide basis is based solely upon considerations of strengthening and improving the performance of essential Government functions. The bill will provide an effective new management tool to accomplish this objective. Early approval of the legislation is imperative to the full implementation of current legislation under which a new Space Agency is to be established to assure American leadership in the development and production of devices needed for space

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REPEAL AND AMENDMENT OF EXISTING EMPLOYEE TRAINING LAWS

Section 21 specifically repeals a number of provisions of law now authorizing training of employees of eight different departments, agencies, or bureaus, as follows: (1) Atomic Energy Commission,

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1.1i(3) CONGRESSIONAL RECORD, VOL. 103 (1957)

1.1i(3)(a) April 12: Objected to, amended and passed Senate, pp. 5580–5581, 5607

TRAINING OF FEDERAL EMPLOYESS—BILL PASSED OVER

The bill (S. 385) to authorize the training of Federal employees at public or private facilities, and for other purposes, was announced as next in order.

Mr. RUSSELL. Mr. President, I should like to have a statement made regarding how much the proposed general authorization for training will increase the cost of the Government.

Mr. CLARK. Mr. President, I am happy to advise the distinguished Senator from Georgia that the Bureau of the Budget, which has endorsed the bill——

Mr. RUSSELL. Mr. President, I must say that fact is not very persuasive to me.

Mr. CLARK. I am not suggesting that it is, Mr. President; I am merely endeavoring to supply the information the Senator from Georgia desires to have.

I was saying that the Bureau of the Budget, which has endorsed the bill, has indicated that the cost of the training can be absorbed by current appropriations. However, it is estimated that over a period of time the cost of the bill will run from $800,000 to $900,000.

Let me point out to my good friend,

the Senator from Georgia, that the method by which the bill will operate will be as follows: From time to time, members of the civil service will be sent to various training programs, which will be conducted perhaps for a few weeks in some instances and in other instances to perhaps as much as 9 or 10 months. Their places will not be filled while they are away, taking the training; instead, the remainder of the staff will absorb their work. When they return, they will be far better able to conduct the activities of the Government with which they are entrusted, than they were before they went away.

The bill has, among its many supporters, distinguished representatives of private industry, including the vice president in charge of training, of the Bell Telephone Company of Pennsylvania, who testified that similar procedures have been in effect in most of the large corporations of the United States for many a long year, and that the bill is merely for the purpose of modernizing the Government's procedures for the training of governmental employees, so as to enable them to keep up with the many technical and difficult problems which constantly confront them in this changing, modern world.

Mr. RUSSELL. It may be a highly desirable bill. Of course, it is interesting that the remainder of the staff of an agency will be able to absorb the work and carry on at a time a man is away from his job to acquire training. It would seem that the agency was over-staffed, if the staff was able to do the work while he was away being trained to do the work more

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efficiently and the same group were retained after he returned.

However, what concerns me is that the bill eliminates the limitations on the amount some of the agencies may expend for this purpose. We have had bills in the Senate from time to time to provide training, for example, for personnel in the Civil Aeronautics Administration. That training was very valuable, but there was a limitation on the amount which could be spent for that purpose. I have forgotten the exact amount. I think the amount the agency could spend for that purpose was $100,000 or $50,000. The same limitation was applied to other agencies that were permitted to participate in a training program. There was a limitation on the amount they could spend in any one year. This bill removes that limitation and leaves it to the discretion of the head of the agency. It is bound to result in increased spending.

Mr. CLARK. If the Senator will yield, it is understanding—and I trust the Senator from Georgia will correct me if I am wrong—that the training which is permitted by the bill has long been afforded to members of the Armed Forces, with which the Senator from Georgia, I am sure, is familiar, as he is chairman of the Committee on Armed Services. The bill will give to the civilian force of the United States Government the same privileges that are extended to the Armed Forces, as to which there is no limitation, as I understand. If I am wrong, I am willing to be corrected.

Mr. RUSSELL. I do not think there is any definite limitation on the amount to be expended to train a radar operator, for example, in the Armed Forces, or one who would operate a tank. However, I think there is some slight difference between such an operation and the blanket authorization here proposed for agencies to engage in training programs and to broaden and expand them.

It may be a desirable bill. We have a great many things in Government that are desirable but not necessary. I am somewhat dubious about taking away all of the limitation on the various agencies as to the amounts they may expend for this purpose.

We all talk about the $72 billion

budget and complain about it. I say we all complain about it; I do not suppose we all do, but there have been some complaints about it. The budget is composed of literally millions of small items. Everytime we remove restraints and limitations on spending, we are simply inviting agencies to increase their expenditures by a few thousand dollars here and a few thousand dollars there. It is the sum total of all those items that makes up the $72 billion budget.

Mr. AIKEN. Mr. President, will the Senator yield?

Mr. RUSSELL. I yield.

Mr. AIKEN. I was going to inquire whether training civil-service employees in private institutions will result in the reduction of personnel in Federal agencies. The reason I ask that question is that in times past Congress has said how fine it would be if private industry could take over some of the work being done by Government employees, do the work in a shorter time and have it over with, and we would not have to have so many Federal employees. We tried following that principle in some departments, but I am sorry to say that where work has been contracted for by private concerns it has not been accompanied with a corresponding reduction in Federal personnel. In some cases Federal personnel seemed to exercise so much unnecessary supervision over the private contractors that not only are some of the private contractors becoming reluctant to take on such work, but we have an added expense, that is, the amount which is paid to the private institution for carrying on the work without an accompanying reduction in Federal personnel.

The reasons for that are too complicated to go into at this time, but we ought to have some assurance that when work is transferred to private contractors it will be accompanied by a reduction of costs in the Federal agency involved.

Mr. CLARK. Mr. President, will the Senator yield?

Mr. RUSSELL. I yield.

Mr. CLARK. May I ask the Senator from Vermont whether the comments he has just made indicate that he has an objection to this particular bill, which, of course, has nothing to do with contracts with private industry for the doing of work which the Government would otherwise do itself?

Mr. AIKEN. I am not familiar with the provisions of the bill. I just came to it on the calendar. I have not studied the bill. I was simply remarking on the general situation that when we transfer work from the Federal Departments to private industry we ought to make sure that there will be a corresponding decrease in the payroll of the Federal department involved. I think there would be a great deal of merit in doing that.

I have particular reference to testimony which has been received in the Committee on Foreign Relations with regard to work done in foreign countries, in connection with some of our colleges and universities that have contracted to carry on some of our economic and technical assistance programs. There is much grumbling that the work of the contracting agency is supervised and directed by Federal employees, to such an extent that, since they are there, anyway, they might as well do the work and save additional expense. In other words, we have two sets of people doing the work, and they do not get along very well.

Mr. CLARK. I should like to assure the Senator from Vermont that the pending bill, in my judgment, does not hit the situation which he seems to have in mind. The bill would merely permit the Federal Government to give the same training to its employees, in technical schools, universities, and elsewhere, which is the current personnel practice in, I think I am safe in saying, the overwhelming majority of all of the large corporations of the United States, which feel, without dissent, that this type of training is in

the interest of their efficiency and profit-making opportunities and that the spending is justified.

Mr. AIKEN. I am not sufficiently familiar with the details of the bill to object to it at this time, but the calling of the bill on the calendar seemed to afford me a proper vehicle to express myself on another matter relating to Government employees, which I think ought to be called to the attention of the Congress and which the Congress ought to look into.

Mr. RUSSELL. I am reluctant to object to a bill which claims to promote more efficiency in Government. However, after some years of service in this body, I have become exceedingly wary of bills claiming to reduce the cost of Government by promoting efficiency in operation. If all of the bills we have supported that were supposed to decrease costs by promoting efficiency in operation had achieved the objectives which were claimed by their sponsors, in my opinion, the budget would be in the neighborhood of about $60 billion, instead of being $72 billion or $73 billion. We must have to hire a great many new people who have nothing to do except to chronicle and record the greatly increased efficiency of those already on the rolls, if those bills have really effectuated efficiency. The more legislation we pass to increase efficiency, the higher the total number of employees on the payroll.

I see in this bill the seed of a program that, by eliminating all the limitations which are in the existing law on the amount that can be spent, will be reflected in the budget in years to come by increased cost to the American taxpayer.

Mr. PURTELL. Mr. President, I think the colloquy on the floor points up what the minority calendar committee had decided, namely, that a measure such as this ought not to be passed on the Consent Calendar. Personally, I have no objection to the bill. It has the recommendation of two Hoover Commissions. It is a recommendation that will require the expenditure of eight or nine hundred thousand dollars. I think the bill should go over because I do not believe it is proper Consent Calendar business, and not because I object personally to the bill's being passed.

Mr. CLARK. Mr. President, will the Senator yield for a moment?

Mr. PURTELL. I am happy to yield.

Mr. CLARK. I ask the Senator to yield to permit me to state for the RECORD that the bill is not only sponsored by the administration, but that it received the unanimous approval of the majority and minority members of the Post Office and Civil Service Committee. I should like to have that fact made a matter of record.

Mr. PURTELL. Mr. President, I should like the RECORD to show a repetition of my statement that I have no objection to the bill. I am in favor of it; but I feel the bill ought not pass on the Consent Calendar.

The PRESIDING OFFICER. The bill will be passed over.

* * * * *

[p. 5581]

Mr. CLARK. Mr. President, the bill, which was sponsored by the administration, and was introduced by the chairman of the Committee on Post Office and Civil Service, provides, briefly, that the President of the United States may authorize the heads of Federal agencies to obtain at non-Federal facilities training for civilian officers and employees of their agencies when they find that such training will be in the interest of the Government and not inconsistent with the interest of national security, and will contribute to the more effective functioning of their agencies.

The remainder of the bill merely defines its terms; authorizes the President to make appropriate regulations for carrying out the provisions of the bill; provides that the appropriations or other funds available to other agen-

cies for salaries or expenses shall be available for the purpose of the bill; and provides that there shall be no training unless the head of the agency or another official designated by him for that purpose shall so direct.

In general, the purpose of the bill is to make available to employees in the Federal service the same opportunities for training which are now available to members of the armed services of the United States.

Two days of hearings were held on the bill by a subcommittee of the Committee on Post Office and Civil Service of which I had the honor to be the chairman.

Testimony in support of the bill was adduced from the Federal Bureau of the Budget, the Civil Service Commission, the Department of Defense, a number of civic agencies, a number of employee groups, and a large number of educators from educational institutions throughout the country.

No opposition was offered to the bill, which was reported by the Committee on Post Office and Civil Service, by the unanimous vote of both the majority and the minority members.

The bill, if enacted, will enable the executive arm of the Federal Government to provide the same kind of training for its employees, whether it be 2 or 3 weeks in a technical school or 8 or 9 months at an institution of higher learning, as it is almost the unanimous practice of private industry, among the larger corporations, to make available to their employees. I suggest that the large corporations which are interested in making a profit, meeting payrolls, and paying dividends to the stockholders have adopted such programs because they know that better training of personnel makes for the more efficient, economical carrying on of their business.

I trust that the bill will be approved by my colleagues.

Mr. President, I offer an amendment to the committee amendment, and ask that it be stated.

The PRESIDING OFFICER. The amendment will be stated for the information of the Senate.

The LEGISLATIVE CLERK. On page 6, line 14, after the word "Agency", it is proposed to insert "the Federal Bureau of Investigation."

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Pennsylvania [Mr. CLARK] to the committee amendment.

Mr. CLARK. Mr. President, I wish to state the reasons for the amendment. In section 2 of the bill a number of Federal agencies are listed, among them the Central Intelligence Agency, the Atomic Energy Commission, the Tennessee Valley Authority, and others, which are exempted from the terms of the bill because those agencies already have in effect training programs which are satisfactory, and they do not need the general protection provided by the bill.

Subsequent to the hearings, the Federal Bureau of Investigation communicated with me and requested that it be added as an exempt agency. I think all Senators are familiar with the splendid training program of the Federal Bureau of Investigation. I am happy, at its request, to include that agency among the exempted agencies.

The PRESIDING OFFICER. The question is on agreeing to the amendment offered by the Senator from Pennsylvania to the committee amendment.

The amendment to the amendment was agreed to.

The amendment, as amended, was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

[p. 5607]

1.1i(3)(b) Vol. 104 (1958), June 26: Amended and passed House, p. 12384

Mr. REES of Kansas.

I think there is general agreement on the overruling necessity for early enactment of legislation to provide a comprehensive, governmentwide program for training Federal civilian employees, to be applied uniformly to all departments and agencies to the extent that uniformity is consistent with individual needs and requirements and is in the public interest. This bill will provide for such a program to be placed in effect with a minimum of delay. This legislation was developed on the basis of the results of our committee studies over the past years and my personal consultation with administrative officials concerned.

One of the most serious problems resulting from the lack of a sound training program is that of recruiting and retaining topflight scientific, engineering, professional, and technical skills required in our critical defense effort and other essential Government functions. It is a fact that opportunity to continue and broaden knowledge and qualifications is one of the major objectives of professional personnel. Shortcomings in the Government's program in this respect have destroyed one of the finest incentives for outstanding scientists and other professional people to devote their careers to the public service. This bill will provide this incentive and help restore the high prestige which is desirable in professional assignments under our great Government programs. It represents a forward step that can be placed in effect promptly, with immediate benefits through development of the full potential of present employees as well as recruitment of high-caliber replacements. The added incentives of advanced professional training and opportunity for accomplishment will be a major factor in attracting and retaining qualified personnel.

My bill also emphasizes and reaffirms the desirability of aiding and encouraging self-training of employees and giving proper recognition to those who develop greater skill on their own initiative. Our studies show that this is an area that has been overlooked to a considerable extent.

Our national interest depends on maintaining our preeminence in scientific, technological, research, and professional fields in the face of tremendous strides by other nations. Scientific and professional excellence is a must in the development of complex instruments—the atomic reactors, electronic brains, thermonuclear devices, missiles, and other defensive arms we need—as well as in the conduct of the economic, agricultural, cultural, and social programs of our Government.

Briefly, the purpose of my Government employees training bill is, first, to improve performance and productivity in essential Government programs by providing for training of employees both in and outside the Government where it is in the public interest; second, to offer incentives for recruiting and retaining qualified employees; and third, to stimulate and encourage employee self-development directed toward a higher level of performance. This legislation will provide a governmentwide policy of employee training as a management tool, better coordination of various training programs, a centralized point of training responsibility, and a system of control and review of the administration of training programs.

The bill provides basic and general legislative authority for interagency, intra-agency, and outservice training of Federal employees when such training will promote efficiency, economy, and better service.

Government payment of all or any part of the expenses of such training

is authorized, with special controls on expenditures for outservice training, that is, training outside of the Government.

This training authority is granted to departments and agencies in the executive branch—with several necessary exceptions—the General Accounting Office, the Library of Congress, the Government Printing Office, and the District of Columbia government.

The President is authorized to exempt any department or agency—or any part thereof—or employees from any or all provisions of the bill, but he may not extend its coverage.

Agencies are directed to, first, review their training needs within 90 days after enactment and at least every 3 years thereafter; second, establish and maintain training programs to meet those needs; third, operate these programs in accordance with law and regulations; fourth, utilize their own resources, and other Government resources, so far as practicable; and, fifth, encourage and recognize employee self-training and self-development.

General responsibility for coordinating training programs and assisting the agencies is imposed on the Civil Service Commission. The Commission is directed to, first, promote, coordinate, and assist in agency training programs; second, issue necessary standards and regulations after consultation with the agencies as to their needs; third, review agency training programs and activities and report thereon to the President and the Congress; and fourth, enforce compliance with the law, regulations, and standards governing outservice training. It should be noted that certain items to be covered by the regulations are spelled out in the bill.

The bill provides an appropriate measure of legislative controls on outservice training, including provisions to the following effect:

First. Every trainee must agree, in advance, to remain with his agency for at least three times the length of his training period or repay the costs;

Second. Employees with less than 1 year of continuous service may not be assigned to outservice training;

Third. An individual may not receive more than 1 year of outservice training per 10 years of total service;

Fourth. Outservice training time by each agency may not exceed 1 percent of its authorized personnel strength;

Fifth. Outservice training may not be authorized for the sole purpose of an individual obtaining an academic degree; and

Sixth. No agency may authorize outservice training by an institution or individual advocating overthrow of our Government by force or violence or by an individual found to be of doubtful loyalty.

Provision is made for the Civil Service Commission to grant exceptions to the first four of these limitations when in the public interest.

The bill consolidates into one comprehensive law most of the special training authorities now in existence. It makes unnecessary, and will repeal, 10 separate laws which now authorize outservice training of employees. Also, it eliminates any need for yearly reenactment of outservice training authority presently granted five agencies and the District of Columbia government through appropriation language. It will eliminate the need for additional special legislation—the 11 pending bills which I mentioned—now being sought by other departments and agencies.

The bill does not apply to the Foreign Service, members of the uniformed forces, the President and the Vice President, persons appointed by the President—unless specifically designated by him—the Tennessee Valley Authority, and certain officers of corporations supervised by the Farm Credit Administration.

This legislation provides for a well-rounded and comprehensive Federal employee training program which will serve fully the present and foreseeable

training needs of our Government.

Mr. Speaker, the fact that we have before the House today such a complete and well rounded training bill is a tribute to the outstanding work of the subcommittee, headed by the gentleman from South Carolina [Mr. HEMPHILL], which was assigned the responsible task of holding hearings and developing a suitable bill. The members of the subcommittee are Mrs. GRANAHAN, Mr. YOUNG, Mr. SCOTT, Mr. BROYHILL, Mr. JOHANSEN, and Mr. DENNISON. Their thorough and comprehensive study of training needs is reflected in their presentation to the committee and to the House. I should like to express appreciation for the fine work of the subcommittee, both personally and on behalf of the departments and agencies and the many Federal employees who will benefit through training which will enable them to perform their duties more efficiently. In my judgment, this legislation will receive overwhelming public endorsement.

I strongly recommend the enactment of S. 385 as amended by the committee.

The SPEAKER. The question is on suspending the rules and passing the bill.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

Mr. MURRAY of Tennessee. Mr. Speaker, I ask unanimous consent that all Members may have the privilege of extending their remarks at this point in the RECORD on the bill just passed.

The SPEAKER. Is there objection to the request of the gentleman from Tennessee?

There was no objection.

[p. 12384]

1.1i(3)(c) Vol. 104 (1958), June 27: Senate concurs with House amendment, p. 12464

[No Relevant Discussion on Pertinent Section]

1.1j AMENDMENT TO ATOMIC ENERGY ACT OF 1954, AS AMENDED

August 8, 1958, P.L. 85–602, §§ 2, 2[3], 72 Stat. 525

AN ACT

To amend the Atomic Energy Act of 1954, as amended.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 11 o. of the Atomic Energy Act of 1954, as amended, is amended by substituting a colon for the period at the end thereof and adding the following: *"Provided, however,* That as the term is used in subsection 170 l., it shall mean any such occurrence outside of the United States rather than within the United States."

SEC. 2.

* * * * * * *

SEC. 2. Section 170 e. of the Atomic Energy act of 1954, as

amended, is amended by deleting the second sentence thereof and inserting in lieu thereof the following: "The Commission or any person indemnified may apply to the appropriate district court of the United States having venue in bankruptcy matters over the location of the nuclear incident, except that in the case of nuclear incidents caused by ships of the United States outside of the United States, the Commission or any person indemnified may apply to the appropriate district court of the United States having venue in bankruptcy matters over the location of the principal place of business of the shipping company owning or operating the ship, and upon a showing that the public liability from a single nuclear incident will probably exceed the limit of liability imposed by this section, shall be entitled to such orders as may be appropriate for enforcement of the provisions of this section, including an order limiting the liability of the persons indemnified, orders staying the payment of claims and the execution of court judgments, orders apportioning the payments to be made to claim-

[p. 525]

ants, orders permitting partial payments to be made before final determination of the total claims, and an order setting aside a part of the funds available for possible latent injuries not discovered until a later time."

Approved August 8, 1958.

[p. 526]

1.1j(1) JOINT COMMITTEE ON ATOMIC ENERGY

S. REP. No. 1883, 85th Cong., 2d Sess. (1958)

AMENDING THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

JULY 22, 1958.—Ordered to be printed

Mr. ANDERSON, from the Joint Committee on Atomic Energy, submitted the following

REPORT

[To accompany S. 4165]

The Joint Committee on Atomic Energy having considered S. 4165, to amend the Atomic Energy Act of 1954, as amended, re-

ports favorably thereon without amendment and recommends that the bill do pass.

SUMMARY OF PROPOSED LEGISLATION

This bill amends the Atomic Energy Act of 1954, by amending section 11–0, adding a new subsection 170–1, and amending section 170 e, to extend the provisions of the AEC Indemnity Act to the nuclearship *Savannah,* the United States first nuclear powered merchant ship. The bill is limited to the construction and operation of that ship, and extends to it the same type of insurance and indemnity protection as approved by the Congress in Public Law 85–256 last year. The present Atomic Energy Act would cover the ship while it is within the United States, and this bill is necessary in order to provide indemnity protection during its operations outside of the continental limits of the United States. The bill authorizes the Atomic Energy Commission to enter into agreements for indemnification similar to those now being processed by the Commission for domestic atomic energy licenses, and also provides for limitation of liability similar to, and in the same amount, provided in present section 170 e of the Atomic Energy Act.

BACKGROUND

The Joint Committee on Atomic Energy considered the problem posed by this bill at hearings on May 8, July 9, and July 17, 1958. Testimony was received from representatives of the Atomic Energy Commission and the Maritime Administration. On July 7,

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1958, Mr. Price introduced H.R. 13390, the predecessor to this bill, and similar to it except that the maximum amount of indemnity provided was $50 million rather than $500 million. The committee also considered S. 3106 referred to it by the Senate Committee on Interstate and Foreign Commerce, but concluded that an amendment to the Atomic Energy Act was preferable to an amendment to the Merchant Marine Act. The Atomic Energy Commission has had several years of experience in studying liability and indemnity aspects of nuclear incidents, and has published regulations on this subject. In addition, the Atomic Energy Commission must license the nuclearship *Savannah* to possess nuclear materials and operate the reactor. In the opinion of the Joint Committee it was therefore desirable to have the Atomic Energy Commission which has already accumulated experience in this field administer the indemnity provisions rather than the Maritime Administration. This would not necessarily constitute a precedent for future ships.

The bill provides that the maximum amount of indemnification

shall be in the same maximum amount provided by subsection e of section 170, which is $500 million. Inasmuch as the ship will be owned and operated under contract to the United States Government, it seemed advisable in the opinion of the committee to extend the same total indemnity as provided by existing law for domestic powerplants.

COMMITTEE COMMENTS

The Joint Committee on Atomic Energy was advised of the possible indemnity problems arising out of construction and operation of the nuclearship *Savannah*, the nuclear powered merchant ship now under construction and scheduled to commence operation in 1960. In order to remove any possible roadblocks in the operation of the ship and in order to provide adequate protection to the public, the Joint Committee recommends that the provisions of the AEC Indemnity Act be extended to cover this ship, and that the Atomic Energy Commission administer the provisions of this bill in the same manner as the other provisions of the AEC Indemnity Act enacted by the Congress in 1957.

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

The Atomic Energy Act of 1954 [Public Law 83–703, as amended by Public Law 84–256]:

"SEC. 11. DEFINITIONS.—The intent of Congress in the definitions as given in this section should be construed from the words or phrases used in the definitions. As used in this Act:

"o. The term 'nuclear incident' means any occurrence within the United States causing bodily injury, sickness, disease, or death, or loss of or damage to property, or for loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material: *Provided, however, That as the term is used in subsec-*

[p. 2]

tion 170 l., it shall mean any such occurrence outside of the United States rather than within the United States.

"SEC. 170. INDEMNIFICATION AND LIMITATION OF LIABILITY.[35]—

"a. Each license issued under section 103 or 104 and each

[35] Public Law 85–256 (71 Stat. 576) added sec 170.

construction permit issued under section 185 shall, and each license issued under section 53, 63, or 81 may, have as a condition of the license a requirement that the licensee have and maintain financial protection of such type and in such amounts as the Commission shall require in accordance with subsection 170 b. to cover public liability claims. Whenever such financial protection is required, it shall be a further condition of the license that the licensee execute and maintain an indemnification agreement in accordance with subsection 170 c. The Commission may require, as a further condition of issuing a license, that an applicant waive any immunity from public liability conferred by Federal or State law.

"b. The amount of financial protection required shall be the amount of liability insurance available from private sources, except that the Commission may establish a lesser amount on the basis of criteria set forth in writing, which it may revise from time to time, taking into consideration such factors as the following: (1) the cost and terms of private insurance, (2) the type, size, and location of the licensed activity and other factors pertaining to the hazard, and (3) the nature and purpose of the licensed activity: *Provided,* That for facilities designed for producing substantial amounts of electricity and having a rated capacity of 100,000 electrical kilowatts or more, the amount of financial protection required shall be the maximum amount available from private sources. Such financial protection may include private insurance, private contractual indemnities, self insurance, other proof of financial responsibility, or a combination of such measures.

"c. The Commission shall, with respect to licenses issued between August 30, 1954, and August 1, 1967, for which it requires financial protection, agree to indemnify and hold harmless the licensee and other persons indemnified, as their interest may appear, from public liability arising from nuclear incidents which is in excess of the level of financial protection required of the licensee. The aggregate indemnity for all persons indemnified in connection with each nuclear incident shall not exceed $500,000,000 including the reasonable costs of investigating and settling claims and defending suits for damage. Such a contract of indemnification shall cover public liability arising out of or in connection with the licensed activity.

"d. In addition to any other authority the Commission may have, the Commission is authorized until August 1, 1967, to

enter into agreements of indemnification with its contractors for the construction or operation of production or utilization facilities or other activities under contracts for the benefit of the United States involving activities under the risk of public liability for a substantial nuclear incident. In such agreements of indemnification the Commission may require its contractor to provide and maintain financial protection of [p. 3] such a type and in such amounts as the Commission shall determine to be appropriate to cover public liability arising out of or in connection with the contractual activity, and shall indemnify the persons indemnified against such claims above the amount of the financial protection required, in the amount of $500,000,000 including the reasonable costs of investigating and settling claims and defending suits for damage in the aggregate for all persons indemnified in connection with such contract and for each nuclear incident. The provisions of this subsection may be applicable to lump sum as well as cost type contracts and to contracts and projects financed in whole or in part by the Commission.

"e. The aggregate liability for a single nuclear incident of persons indemnified, including the reasonable costs of investigating and settling claims and defending suits for damage, shall not exceed the sum of $500,000,000 together with the amount of financial protection required of the licensee or contractor. [The Commission or any person indemnified may apply to the appropriate district court of the United States having venue in bankruptcy matters over the location of the nuclear incident, and upon a showing that the public liability from a single nuclear incident will probably exceed the limit of liability imposed by this section, shall be entitled to such orders as may be appropriate for enforcement of the provisions of this section, including an order limiting the liability of the persons indemnified, orders staying the payment of claims and the execution of court judgments, orders apportioning the payments to be made to claimants, orders permitting partial payments to be made before final determination of the total claims, and an order setting aside a part of the funds available for possible latent injuries not discovered until a later time.] *The Commission or any person indemnified may apply to the appropriate district court of the United States having venue in bankruptcy matters over the location of the nuclear incident, except that in the case of nuclear incidents caused by ships of the United States outside of*

the United States, the Commission or any person indemnified may apply to the appropriate district court of the United States having venue in bankruptcy matters over the location of the principal place of business of the shipping company owning or operating the ship, and upon a showing that the public liability from a single nuclear incident will probably exceed the limit of liability imposed by this section, shall be entitled to such orders as may be appropriate for enforcement of the provisions of this section, including an order limiting the liability of the persons indemnified, orders staying the payment of claims and the execution of court judgments, orders apportioning the payments to be made to claimants, orders permitting partial payments to be made before final determination of the total claims, and an order setting aside a part of the funds available for possible latent injuries not discovered until a later time.

"f. The Commission is authorized to collect a fee from all persons with whom an indemnification agreement is executed under this section. This fee shall be $30 per year per thousand kilowatts of thermal energy capacity for facilities licensed under section 103. For facilities licensed under section

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104, and for construction permits under section 185, the Commission is authorized to reduce the fee set forth above. The Commission shall establish criteria in writing for determination of the fee for facilities licensed under section 104, taking into consideration such factors as (1) the type, size, and location of facility involved, and other factors pertaining to the hazard, and (2) the nature and purpose of the facility. For other licenses, the Commission shall collect such nominal fees as it deems appropriate. No fee under this subsection shall be less than $100 per year.

"g. In administering the provisions of this section, the Commission shall use, to the maximum extent practicable, the facilities and services of private insurance organizations, and the Commission may contract to pay a reasonable compensation for such services. Any contract made under the provisions of this subsection may be made without regard to the provisions of section 3709 of the Revised Statutes, as amended, upon a showing by the Commission that advertising is not reasonably practicable and advance payments may be made.

"h. The agreement of indemnification may contain such terms as the Commission deems appropriate to carry out the

purposes of this section. Such agreement shall provide that when the Commission makes a determination that the United States will probably be required to make indemnity payments under this section, the Commission shall collaborate with any person indemnified and may approve the payment of any claim under the agreement of indemnification, appear through the Attorney General on behalf of the person indemnified, take charge of such action, and settle or defend any such action. The Commission shall have final authority on behalf of the United States to settle or approve the settlement of any such claim on a fair and reasonable basis with due regard for the purposes of this Act. Such settlement may include reasonable expenses in connection with the claim incurred by the person indemnified.

"i. After any nuclear incident which will probably require payments by the United States under this section, the Commission shall make a survey of the causes and extent of damage which shall forwith be reported to the Joint Committee, and, except as forbidden by the provisions of chapter 12 of this Act or any other law or Executive order, all final findings shall be made available to the public, to the parties involved and to the courts. The Commission shall report to the Joint Committee by April 1, 1958, and every year thereafter on the operations under this section.

"j. In administering the provisions of this section, the Commission may make contracts in advance of appropriations and incur obligations without regard to section 3679 of the Revised Statutes, as amended.

"k. [H.R. 13455, reported out by Joint Committee on Atomic Energy on July 22, 1958, recommends a new subsection k.]

"l. The Commission is authorized until August 1, 1967, to enter into an agreement of indemnification with any person engaged in the design, development, construction, operation, repair and maintenance or use of the nuclear-powered ship authorized by section 716 of the Merchant Marine Act, 1936, and designated the 'nuclear ship Savannah'. In any such

[p. 5]

agreement of indemnification the Commission may require such person to provide and maintain financial protection of such a type and in such amounts as the Commission shall determine to be appropriate to cover public liability arising from a nuclear incident in connection with such design, development, construction, operation, repair, maintenance or use

and shall indemnify the person against such claims above the amount of the financial protection required, in the maximum amount provided by subsection e including the reasonable costs of investigating and settling claims and defending suits for damage."

[p. 6]

1.1j(2) JOINT COMMITTEE ON ATOMIC ENERGY

H.R. REP. No. 2253, 85th Cong., 2d Sess. (1958)

AMENDING THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

JULY 22, 1958.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. PRICE, from the Joint Committee on Atomic Energy, submitted the following

REPORT

[To accompany H.R. 13456]

The Joint Committee on Atomic Energy having considered H.R. 13456, an original Committee bill to amend the Atomic Energy Act of 1954, as amended, reports favorably thereon without amendment and recommends that the bill do pass.

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[p. 1]

NOTE: The House Report is the same as the Senate Report.

1.1j(3) CONGRESSIONAL RECORD, VOL. 104 (1958)

1.1j(3)(a) July 28: Passed Senate, p. 15233

EXTENSION OF PROVISIONS OF AEC INDEMNITY ACT TO OPERATIONS OF NUCLEAR SHIP "SAVANNAH"

The Senate proceeded to consider the bill (S. 4165) to amend the Atomic Energy Act of 1954, as amended.

Mr. HRUSKA. Mr. President, may we have an explanation of the bill?

Mr. ANDERSON. Mr. President, S. 4165 is a bill to extend the provisions of the AEC Indemnity Act, the so-called Price-Anderson Act enacted by the Congress last year, to the operations of

the nuclear ship *Savannah*, which is the United States first nuclear-powered merchant ship and is now under construction.

As indicated by the committee report, Senate Report No. 1883, the committee considered both this approach and the approach of S. 3106, referred to it by the Senate Committee on Interstate and Foreign Commerce. The Joint Committee decided that it would be preferable, in the case of this first nuclear-powered merchant ship, to place responsibility for administering the indemnity provisions in the Atomic Energy Commission rather than in the Maritime Administration. The Atomic Energy Commission has been studying the problem of insurance and indemnity associated with nuclear incidents for 3 or 4 years, has had the benefit of a year of experience under the Price-Anderson Act, has had many meetings with the insurance industry, and has published regulations. For this first ship it was considered advisable to keep responsibility in the Atomic Energy Commission. As indicated in the committee report, this would not necessarily constitute a precedent for future ships.

I may say, Mr. President, we recognize that the Committee on Interstate and Foreign Commerce will want to have something to say in the future about these matters, and that is perfectly proper. The committee should have such jurisdiction. However, the ship is under way. It seemed desirable to go ahead in the only manner we are now able to proceed.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill (S. 4165) was ordered to be engrossed for a third reading, read the third time, and passed, as follows:

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[p. 15233]

1.1j(3)(b) July 29: Passed House, p. 15459

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Mr. PRICE. Mr. Speaker, S. 1465 is an identical bill to the bill H.R. 13456 to amend the Atomic Energy Act of 1954, as amended, to extend the provisions of the AEC Indemnity Act—the Price-Anderson Act passed by the Congress last year—to the nuclear ship *Savannah*, the United States first nuclear-powered merchant ship now under construction near Camden, N. J. The ship is now covered by the indemnity provisions in the present act so long as it is within the continental limits of the United States, and this legislation is necessary only in order to cover its operations outside of the United States. The bill extends to the *Savannah*, the same type of coverage, and in the same amount, as provided by Public Law 85—256, the AEC Indemnity Act.

The Joint Committee considered this matter at hearings on May 8, July 9, and July 17, 1958. Testimony was received from representatives of the Atomic Energy Commission and the Maritime Administration. The committee also considered S. 3106 referred to it by the Senate Committee on Interstate and Foreign Commerce. In summary, the Joint Committee decided that, for this first ship, it would be preferable to place administration of the indemnity provisions in the Atomic Energy Commission rather than in the Maritime Administration. The AEC has been studying problems of insurance and indemnity protection with respect to nuclear incidents for 3 or 4 years, and has had many studies of both reactor and insurance problems, and has had the benefit of a year of experience under the Price-Anderson Act. Therefore, for this first ship, it was considered advisable to place juris-

diction in the Atomic Energy Commission. However, as the committee report clearly states, this would not necessarily constitute a precedent for future ships.

In closing, Mr. Speaker, I would like to quote briefly from the comments of the Joint Committee at page 2 of the committee's report on this bill:

> The Joint Committee on Atomic Energy was advised of the possible indemnity problems arising out of construction and operation of the nuclear ship *Savannah*, the nuclear-powered merchant ship now under construction and scheduled to commence operation in 1960. In order to remove any possible roadblocks in the operation of the ship and in order to provide adequate protection to the public, the Joint Committee recommends that the provisions of the AEC Indemnity Act be extended to cover this ship, and that the Atomic Energy Commission administer the provisions of this bill in the same manner as the other provisions of the AEC Indemnity Act enacted by the Congress in 1957.

Mr. Speaker, I therefore urge the House to approve H.R. 13456.

Mr. VAN ZANDT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I join Mr. PRICE in urging the House to approve S. 4165, a bill to provide indemnity protection with respect to the nuclear ship *Savannah*. The Joint Committee gave this matter careful consideration, and this bill has the unanimous support of the Members of that committee, and the bill, S. 4165, passed the Senate yesterday. The bill merely extends the existing provisions of the AEC Indemnity Act to cover this ship in its operations both within and without the limits of the United States.

Mr. Speaker, as a member of the Joint Committee, I am very interested in the field of nuclear propulsion for merchant ships. The *Savannah* is the first nuclear-propelled merchant ship, and I hope that there will soon be more, especially a nuclear-propelled oil tanker. I believe that this bill should be enacted to protect the equipment manufacturers, the operators of the ship, and members of the public

I therefore join Mr. PRICE in urging all Members of the House to approve S. 4165.

Mr. GROSS. Mr. Speaker, will the gentleman yield?

Mr. VAN ZANDT. I yield to the gentleman from Iowa.

Mr. GROSS. Are there any similar ships being built by foreign countries, and, if so, are we equally protected against loss by foreign ships?

Mr. VAN ZANDT. In reply to the gentleman from Iowa, I would say that to the best of our knowledge we do not know of any foreign country that, at the moment, is constructing a nuclear-powered merchant ship.

Mr. GROSS. Only ice breakers, in the case of Russia.

Mr. VAN ZANDT. Russia is constructing an icebreaker, and so are we.

Mr. HOSMER. Mr. Speaker, will the gentleman yield?

Mr. VAN ZANDT. I yield to the gentleman from California.

Mr. HOSMER. I think the question asked by the gentleman from Iowa, however, has brought up a matter that we are going to have to deal with in the future as some of these ships do get on the line, and even in nuclear-powered stations on land. There is a need for some international standardization in connection with these liability and indemnity matters. The lack of that at the present time has a great deal of hampering effect on such things as the export of reactors and other atomic products.

The SPEAKER. The question is on suspending the rules and passing the bill.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

H. R. 13456 was laid on the table.

[p. 15459]

1.1k AMENDMENTS TO ATOMIC ENERGY ACT OF 1954, AS AMENDED

August 19, 1958, P.L. 85-681, §§ 2, 4, 6, 7, 72 Stat. 632

SEC. 2. That subsection c. of section 53 of the Atomic Energy Act of 1954, as amended, is amended by deleting in both the first and second sentences the words "subsection 53a (1) or subsection 53a (2)" and inserting in lieu thereof in both sentences "subsection 53a (1), (2) or (4)".

SEC. 4. Section 123c. of the Atomic Energy Act of 1954, as amended, is amended by substituting a colon for the period at the end thereof and adding the following: *"Provided, however,* That the Joint Committee, after having received such agreement for cooperation, may by resolution in writing waive the conditions of all or any portion of such thirty-day period."

[p. 632]

SEC. 6. Section 161 d. of the Atomic Energy Act of 1954, as amended, is amended by adding after the word "responsibility" the following sentence: "Such rates of compensation may be adopted by the Commission as may be authorized by the Classification Act of 1949, as amended, as of the same date such rates are authorized for positions subject to such Act."

SEC. 7. Section 161 of the Atomic Energy Act of 1954, as amended, is amended by adding the following new subsections:

"t. establish a plan for a succession of authority which will assure the continuity of direction of the Commission's operations in the event of a national disaster due to enemy activity. Notwithstanding any other provision of this Act, the person or persons succeeding to command in the event of disaster in accordance with the plan established pursuant to this subsection shall be vested with all of the authority of the Commission: *Provided,* That any such succession to authority, and vesting of authority shall be effective only in the event and as long as a quorum of three or more members of the Commission is unable to convene and exercise direction during the disaster period: *Provided further,* That the disaster period includes the period when attack on the United States is imminent and the post-attack period necessary to reestablish normal lines of command;

"u. enter into contracts for the processing, fabricating, separating, or refining in facilities owned by the Commission of source, byproduct or other material, or special nuclear material, in accordance with and within the period of an agreement for cooperation while comparable services are available to per-

sons licensed under section 103 or 104; *Provided,* That the prices for services under such contracts shall be no less than the prices currently charged by the Commission pursuant to section 161 m.;

"v. (1) enter into contracts for such periods of time as the Commission may deem necessary or desirable, but not to exceed five years from the date of execution of the contract, for the purchase or acquisition of reactor services or services related to or required by the operation of reactors;

"(2) (A) enter into contracts for such periods of time as the Commission may deem necessary or desirable for the purchase or acquisition of any supplies, equipment, materials, or services required by the Commission whenever the Commission determines that: (i) it is advantageous to the Government to make such purchase or acquisition from commercial sources; (ii) the furnishing of such supplies, equipment, materials, or services will require the construction or acquisition of special facilities by the vendors or suppliers thereof; (iii) the amortization chargeable to the Commission constitutes an appreciable portion of the cost of contract performance, excluding cost of materials; and (iv) the contract for such period is more advantageous to the Government than a similar contract not executed under the authority of this sub-

[p. 633]

section. Such contracts shall be entered into for periods not to exceed five years each from the date of initial delivery of such supplies, equipment, materials, or services or ten years from the date of execution of the contracts excluding periods of renewal under option.

"(B) In entering into such contracts the Commission shall be guided by the following principles: (i) the percentage of the total cost of special facilities devoted to contract performance and chargeable to the Commission should not exceed the ratio between the period of contract deliveries and the anticipated useful life of such special facilities; (ii) the desirability of obtaining options to renew the contract for reasonable periods at prices not to include charges for special facilities already amortized; and (iii) the desirability of reserving in the Commission the right to take title to the special facilities under appropriate circumstances; and

"(3) include in contracts made under this subsection provisions which limit the obligation of funds to estimated annual deliveries and services and the unamortized balance of such amounts due for special facilities as the parties shall

agree is chargeable to the performance of the contract. Any appropriation available at the time of termination or thereafter made available to the Comission for operating expenses shall be available for payment of such costs which may arise from termination as the contract may provide. The term 'special facilities' as used in this subsection means any land and any depreciable buildings, structures, utilities, machinery, equipment, and fixtures necessary for the production or furnishing of such supplies, equipment, materials, or services and not available to the vendors or suppliers for the performance of the contract."

[p. 634]

1.1k(1) JOINT COMMITTEE ON ATOMIC ENERGY

H.R. REP. No. 2272, 85th Cong., 2d Sess. (1958)

AMENDING THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

JULY 24, 1958.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. DURHAM, from the Joint Committee on Atomic Energy, submitted the following

REPORT

[To accompany H. R. 13482]

The Joint Committee on Atomic Energy having considered H. R. 13482, an original committee bill to amend the Atomic Energy Act of 1954, as amended, report favorably thereon without amendment, and recommend that the bill do pass.

SUMMARY OF BILL

This bill amends various sections of the Atomic Energy Act of 1954, as amended, as requested by the Atomic Energy Commission, and revised by the Joint Committee on Atomic Energy. Some of

the amendments are minor or technical in nature, and there is no necessary interrelationship between the various sections in the bill. Briefly, the bill amends the Atomic Energy Act in the following particulars:

Sections 1 and 2 amend section 53 of the act to authorize the Commission to issue licenses for the possession of special nuclear material within the United States for uses which do not fall expressly within the present provisions of section 53a, and to make a reasonable charge for such materials. Section 3 amends section 68 of the act to provide a general release of reservations of fissionable materials or source materials under acquired lands of the United States as well as public lands.

Section 4 of the bill amends section 123c of the act to provide that the Joint Committee may waive the normal 30-day waiting period for proposed international agreements for cooperation.

Section 5 of the bill amends section 145 of the act to authorize the Commission to grant security clearances prior to completion of investigation in the event of a state of war declared by the Congress or a national disaster due to enemy attack.

[p. 1]

Section 6 of the bill amends section 161d of the act to authorize the Commission to adopt compensation rates on a retroactive basis as may be authorized by the Classification Act for other Government employees.

Section 7 of the bill amends section 161 of the act by adding a new subsection t to authorize the Commission to establish a succession of authority within the Commission in the event of a national disaster due to enemy activities; a new subsection u to authorize the Commission to enter into contracts for reprocessing of materials under international agreements for cooperation; and a new subsection v to authorize the Commission to enter into long-term contracts in certain limited areas.

Section 8 amends section 166 of the act to authorize the Commission to dispose of contractor and subcontractor records in accordance with a records disposal schedule agreed upon by the Commission and the Government Accounting Office.

A more detailed explanation of the provisions of this bill is set forth in the section-by-section analysis of this report.

BACKGROUND

On June 17, 1958, the Joint Committee received the following letter from Mr. H. S. Vance, Acting Chairman of the Atomic Energy Commission to Chairman Durham of the Joint Committee:

UNITED STATES ATOMIC ENERGY COMMISSION,
Washington, D.C., June 17, 1958.

Hon. CARL T. DURHAM,
Chairman, Joint Committee on Atomic Energy,
Congress of the United States.

DEAR MR. DURHAM: There is transmitted herewith a Commission proposal in the form of a draft bill which would amend the Atomic Energy Act of 1954, as amended, in several particulars. The proposed legislation is attached as appendix A to this letter, and an analysis of the legislation is attached as appendix B. The proposals would provide the Commission with authority to—

(1) issue licenses for the possession of and to distribute special nuclear material within the United States for uses which do not expressly fall within the present provisions of section 53a.

(2) request the Joint Committee on Atomic Energy to waive the 30-day waiting period relating to proposed agreements for cooperation, as provided for in section 123c.

(3) grant security clearances prior to completion of investigation in the event of a national emergency.

(4) increase compensation rates on a retroactive basis as pay increases for Government employees subject to the Classification Act are increased on a retroactive basis.

(5) clarify the Commission's statutory authority to train employees.

(6) establish a succession of command within the Commission in the event of a national disaster.

(7) establish fixed charges under international arrangements for such periods of time as the Commission deems necessary or desirable for processing, fabricating, etc., of source, byproduct, special nuclear and other materials.

[p. 2]

(8) authorize the Commission to enter into long-term contracts in certain limited areas.

(9) dispose of contractor and subcontractor records in accordance with a records disposal schedule agreed upon between the Commission and the General Accounting Office.

Proposals numbered (1), (3), (6), (7), and (9) were forwarded to the Congress on July 25, 1957. These proposals are incorporated in the draft bill, attached, as a matter of convenience, inasmuch as they were not considered during the 1st session of the 85th Congress. In addition, the Commission has expanded its original long-term contract proposal, as set forth in proposal No. 8, which it submitted in a more limited form to the Congress last year.

By this letter, the Commission is requesting the withdrawal of two proposals submitted to the Congress in 1957. The first is a proposed amendment to section 55 which would have authorized the Commission to enter into long-term contracts for the purchase of special nuclear material outside of the United States. The second proposal is one which would have authorized the Commission to make long-term contracts in connection with cooperative arrangements, as described in section 261a (2). Our request for the withdrawal of these two amendments is being made, in the case of the first proposal, for the reason that the method of purchase of special nuclear material outside of the United States and the term of contract is now under further study, and, in the case of the second proposal, it would appear that the long-term contract authority can be requested, where appropriate, at the time the particular cooperative arrangements are brought before the Joint Committee on Atomic Energy for authorization pursuant to section 261a (2).

The Bureau of the Budget has advised that it has no objection to our submission of these proposals.

We shall be happy to discuss these matters with the Joint Committee at your earliest convenience.

Sincerely yours,

H. S. VANCE
(For the Chairman).

* * * * * * *

[p. 3]

COMMITTEE COMMENTS

The Joint Committee believes that it is a desirable practice for the Commission to submit and the committee to consider each year any proposed amendments to the Atomic Energy Act which the Commission deems desirable to provide the best possible framework for our atomic energy program. In 1957, the Atomic Energy Commission submitted a number of suggested amendments to the act but not until July, very late in the session, and the Joint Committee was unable because of the press of other business of the committee and the Congress to consider such proposals. In 1958 the committee was advised that the Commission was reconsidering its 1957 proposals, and that there would be some modifications in view of subsequent developments. However, the Joint Committee did not receive the Commission's recommendations until the letter, dated June 17, 1958, quoted earlier in this report. The committee strongly recommends that the Commission submit its legislative

proposals as early as possible each session of Congress, preferably on or before March 1 of each year. In this manner, the Joint Committee will thus be in a better position to give the proposals full consideration.

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In spite of the comparatively short time available, the Joint Committee was able to hold 3 days of hearings on the bills and to consider in detail the various provisions and changes recommended by the Atomic Energy Commission, and also the recommendations of the General Accounting Office. After due consideration, the Joint Committee decided upon the language of this bill. The purposes and intent of the various individual provisions are described below in the section-by-section analysis.

SECTION-BY-SECTION ANALYSIS

* * * * * * *

Section 2 of the bill, as a conforming amendment to section 1, amends subsection c of section 53 by providing that the Commission may make a reasonable charge for the use of such special nuclear material licensed and distributed under the new section 53a (4) added by section 1 of this bill. It is intended that when the material is being distributed for commercial uses, the Commission will make a reasonable charge therefor.

* * * * * * *

Section 4 of the bill amends section 123c of the Atomic Energy Act of 1954, as amended, by adding a proviso that the Joint Committee, after having received an agreement for cooperation, may by resolution in writing waive the conditions of all or any portion of the normal 30-day waiting period. Section 123c now provides that a proposed agreement for cooperation in the field of the peace-

[p. 5]

ful uses of atomic energy must be submitted to the Joint Committee for a period of 30 days while Congress is in session before it may become effective. The purpose of this proviso would be to permit the Joint Committee, in the closing days of the session, before adjourning to consider any pending proposed agreements and to waive the requirement of any further waiting period, or to permit waiver while Congress was not in session, if the Joint Committee deemed such waiver desirable.

If the Joint Committee does not waive the period, any proposed agreement must remain before it for the full 30 days while Congress is in session. This amendment does not, of course, affect

subsection 123d concerning agreements for cooperation to transfer military information or materials. These must be submitted to the Congress and the Joint Committee for a period of 60 days while Congress is in session (except the 85th Congress where the period is 30 days), and no provision for waiver is made in subsection 123d.

* * * * * * *

Section 6 of the bill amends section 161d of the Atomic Energy Act of 1954, as amended, by adding a sentence to the effect that the Commission may adopt rates of compensation as may be authorized by the Classification Act of 1949 as of the same date such rates are authorized for persons subject to the Classification Act. This sentence is necessary because Atomic Energy Commission employees are specifically exempted from the Classification Act, and in some instances in the past, have therefore not received raises made under the Classification Act as of the same date as most other Federal Government employees. The Joint Committee is, of course, anxious that the Commission continue to be able to obtain high caliber employees, and therefore recommends this provision requested by the Atomic Energy Commission.

Section 7 of the bill amends section 161 of the Atomic Energy Act by adding new subsections t, u, and v. Each of these will be briefly discussed below in turn. Subsection 161 of the Atomic Energy Act is the general authority section of the act and provides that in the performance of its functions the Commission shall be authorized to take various actions as provided in the various subsections of section 161.

New subsection 161 t would authorize the Commission to establish a plan for succession of authority to assure the continuity of direction of the Commission's operations in the event of a national disaster due to enemy activity. Because of the civilian nature of the Atomic Energy Commission, the Joint Committee changed the words in the bill as submitted by the Commission

[p. 6]

from "succession of command" to "succession of authority."

New subsection 161 u would authorize the Commission to enter into contracts for the reprocessing in AEC facilities of materials in accordance with the terms of an international agreement for cooperation while comparable services are available to domestic licensees, provided that the prices for services under such contracts shall be no less than the prices currently established by the Commission for domestic licensees under section 161 m. The original language submitted by the Commission for proposed new sub-

section 161 u did not provide that the period would be limited to the period of agreement for cooperation or to comparable periods offered to domestic users, and that the prices would be no less than the prices currently charged to domestic users. In response to a request made by the subcommittee at the hearing on July 10, 1958, the Commission, by letter dated July 16, 1958, suggested new language and the Joint Committee approved such revised language for subsection 161u.

Section 7 of the bill adds a new subsection v to section 161 of the act to authorize the Commission to enter into long-term contracts in certain limited areas. Subsection v contains clauses (1), (2), and (3) as described below.

Clause (1) pertains to contracts, not to exceed 5 years from the date of execution thereof, for the purpose of acquisition of reactor services or services related to or required by the operation of reactors. The Joint Committee after the hearing deleted from the bill the following additional language in the bill as originally submitted by the Commission:

> including but not limited to chemical processing or reprocessing of irradiated material or fission products * * *.

The most immediate urgency expressed by the Commission during the hearing was the need for more test reactor services. If additional authority is needed at a later date for long-term contract authority for reprocessing materials, a further amendment to the act to provide such authority can be requested by the Commission at that time.

Clause (2) of proposed new subsection 161v provides, in subparagraph (A) thereof, that the Commission is authorized to enter into contracts for such periods of time as the Commission may deem necessary or desirable (up to a maximum of 5 years of delivery as provided later in the paragraph) for the purchase or acquisition of any supplies, equipment, materials, or services required by the Commission whenever the Commission makes four determinations as follows:

> First, that it is advantageous to the Government to make such purchase or acquisition from commercial sources, rather than from AEC or other governmental facilities or sources;
>
> Second, that the furnishing of such supplies, equipment, materials, or services requires the construction or acquisition of "special facilities" by the vendors or suppliers thereof. The term "special facilities" as used in subsection v is defined in clause (3) of the subsection;
>
> Third, that the amortization chargeable to the Commission

constitutes an appreciable portion of the cost of contract performance, excluding cost of materials; and

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Fourth, that the contract for such period is more advantageous to the Government than a similar contract not executed under the authority of this subsection.

It is further provided that such contracts shall be entered into for periods not to exceed 5 years each from the date of initial delivery or 10 years from the date of execution, excluding periods of renewal under option.

The new authority of subsection v was requested by the Commission because of a decision of the Controller General in 1957 that, in the absence of specific statutory authority, the Commission's annual appropriations for operating expenses might be used only for payment of expenses properly incurred during the fiscal year or for payments under contracts "properly" made within that year. The Controller General's opinion further stated that, in the absence of special statutory authority, a contract was "properly" made only when it satisfied a bona fide need for services for that particular fiscal year.

The purpose of the new provision is to permit the Commission to enter into long-term contracts when it might be to the Government's advantage to contract on a long-term basis where special facilities are required rather than on a year-to-year basis for the needs of the Commission's program. Some materials, for example, initially have little commercial value outside the Commission's program and in some instances it would save the Government money to make such purchases on a long-term basis rather than on a year-to-year basis.

The purpose of the determinations is to require the AEC to explore the use of Government-owned facilities, and other means of short-term contracting, before adopting the procedure of long-term contracts whereby the Government pays the amortization for all or part of the privately owned facilities.

Subparagraph (B) of clause (2) of new subsection 161v provides that in entering into such contracts the Commission shall be guided by the following principles: First, the percentage of the total cost of special facilities devoted to contract performance and chargeable to the Commission should not exceed the ratio between the period of contract deliveries and the anticipated useful life of such special facilities. It is understood that "useful life" means useful commercial life of the facility for the product or services contracted for, including obsolescence, and for other purposes, rather than the physical life of the special facilities.

Second, the Commission should consider the desirability of obtaining options to renew the contract for reasonable periods at prices not to include charges for special facilities already amortized. In the normal instance, it would appear desirable, as a part of good contracting practice, to include such options in order to obtain the materials, if still needed in the Commission's program, or a similar additional period or periods after the special facility has been completely or partly amortized, and therefore normally at a lower price to the Commission.

Third, the desirability of reserving in the Commission the right to take title to the special facilities under appropriate circumstances, such as in the event of war, or for national defense purposes. In such event, the Commission would, of course, pay the contractor the value of the unamortized portion of the special facility.

In specifying these principles, the committee did not mean to negative other principles of good contracting, such as obtaining competitive proposals, etc.

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Clause (3) of new subsection 161v authorizes the Commission to include in contracts made under subsection v provisions which limit the obligation of funds as a maximum to estimated annual deliveries and services and the unamortized balance of such amounts due for special facilities as the parties shall agree is chargeable to the performance of the contract.

Clause (3) also provides that any appropriation available at the time of termination or thereafter made available to the Commission for operating expenses shall be available for payment of such costs which may arise from termination as the contract may provide. Under this authority it will not be necessary for the Commission to obligate or set aside the total termination charges at the time of entering into the contract under subsection v.

Clause (3) also defines the term "special facilities" as used in clauses (1) and (3) of the subsection.

* * * * * * *

CHANGES IN EXISTING LAW

In accordance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law recommended by the bill accompanying this report are shown as follows (new matter is printed in italic, deleted matter is enclosed in black brackets):

ATOMIC ENERGY ACT OF 1954, AS AMENDED

* * * * * * *

"SEC. 53. DOMESTIC DISTRIBUTION OF SPECIAL NUCLEAR MATERIAL.—

"a. The Commission is authorized to issue licenses for the possession of, to make available for the period of the license, and to distribute special nuclear material within the United States to qualified applicants requesting such material—

"(1) for the conduct of research and development activities of the types specified in section 31;

"(2) for use in the conduct of research and development activities or in medical therapy under a license issued pursuant to section 104; [or]

"(3) for use under a license issued pursuant to section 103 [.];

"*(4) for such other uses as the Commission determines to be appropriate to carry out the purposes of this Act.*

"b. The Commission shall establish, by rule, minimum criteria for the issuance of specific or general licenses for the distribution of special nuclear material depending upon the degree of im-

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portance to the common defense and security or to the health and safety of the public of—

"(1) the physical characteristics of the special nuclear material to be distributed;

"(2) the quantities of special nuclear material to be distributed; and

"(3) the intended use of the special nuclear material to be distributed.

"c. The Commission may make a reasonable charge, determined pursuant to this section, for the use of special nuclear material licensed and distributed under [subsection 53 a. (1) or subsection 53 a. (2)] *subsections 53 a. (1), (2) or (4)* and shall make a reasonable charge determined pursuant to this section for the use of special nuclear material licensed and distributed under subsection 53 a. (3). The Commission shall establish criteria in writing for the determination of whether a charge will be made for the use of special nuclear material licensed and distributed under [subsection 53 a. (1) or subsection 53 a. (2)] *subsection 53 a. (1) (2) or (4)*, considering, among other things, whether the licensee is a nonprofit or eleemosynary institution and the purposes for which the special nuclear material will be used.

* * * * * * *

[p. 10]

"SEC. 123. COOPERATION WITH OTHER NATIONS.—No cooperation with any nation or regional defense organization pursuant to sections 54, 57, 64, 82, 103, 104, or 144 shall be undertaken until—

"a. the Commission or, in the case of those agreements for cooperation arranged pursuant to subsection 144 b., the Department of Defense has submitted to the President the proposed agreement for cooperation, together with its recommendation thereon, which proposed agreement shall include (1) the terms, conditions, duration, nature, and scope of the cooperation; (2) a guaranty by the cooperating party that security safeguards and standards as set forth in the agreement for cooperation will be maintained; (3) a guaranty by the cooperating party that any material to be transferred pursuant to such agreement will not be used for atomic weapons, or for research on or development of atomic weapons, or for any other military purpose; and (4) a guaranty by the cooperating party that any material or any Restricted Data to be transferred pursuant to the agreement for cooperation will not be transferred to unauthorized persons or beyond the jurisdiction of the cooperating party, except as specified in the agreement for cooperation;

"b. the President has approved and authorized the execution of the proposed agreement for cooperation, and has made a determination in writing that the performance of the proposed agreement will promote and will not constitute an unreasonable risk to the common defense and security; and

"c. the proposed agreement for cooperation, together with the approval and the determination of the President, has been submitted to the Joint Committee and a period of thirty days has elapsed while Congress is in session (in computing such thirty days, there shall be excluded the days on which either House is not in session because of an adjournment of more than three days) [.]; *Provided, however, That the Joint Committee, after having received such agreement for cooperation, may by resolution in writing waive the conditions of all or any portion of such thirty-day period.*

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[p. 11]

"SEC. 161. GENERAL PROVISIONS.—In the performance of its functions the Commission is authorized to—

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"d. appoint and fix the compensation of such officers and

employees as may be necessary to carry out the functions of the Commission. Such officers and employees shall be appointed in accordance with the civil-service laws and their compensation fixed in accordance with the Classification Act of 1949, as amended, except that, to the extent the Commission deems such action necessary to the discharge of its responsibilities, personnel may be employed and their compensation fixed without regard to such laws: *Provided, however,* That no officer or employee (except such officers and employees whose compensation is fixed by law, and scientific and technical personnel up to a limit of $19,000 [28]) whose position would be subject to the Classification Act of 1949, as amended, if such Act were applicable to such position, shall be paid a salary at a rate in excess of the rate payable under such Act for positions of equivalent difficulty or responsibility. *Such rates of compensation may be adopted by the Commission as may be authorized by the Classification Act of 1949, as amended, as of the same date such rates are authorized for positions subject to such Act.* The Commission shall make adequate provision for administrative review of any determination to dismiss any employee,

* * * * * * *

"t. establish a plan for succession of authority which will assure the continuity of direction of the Commission's operations in the event of a national disaster due to enemy activity. Notwithstanding any other provision of this Act, the person or persons succeeding to command in the event of disaster in accordance with the plan established pursuant to this subsection shall be vested with all of the authority of the Commission: Provided, That any such succession to authority, and vesting of authority shall be effective only in the event and as long as a quorum of three or more members of the Commission is unable to convene and exercise direction during the disaster period: Provided further, That the disaster period includes the period when attack on the United States is imminent and the post-attack period necessary to reestablish normal lines of command;

"u. enter into contracts for the processing, fabricating, separating, or refining in facilities owned by the Commission of source, byproduct or other material, or special nuclear material, in accordance with and within the period of an agreement for cooperation while comparable services are available to persons licensed under section 103 or 104: Provided, That the prices for services under such contracts shall be no less

than the prices currently charged by the Commission pursuant to section 161 m.;

"v. (1) enter into contracts for such periods of time as the Commission may deem necessary or desirable, but not to exceed five years from the date of execution of the contract, for the purchase or acquisition of reactor services or services related to or required by the operation of reactors;

"(2) (A) enter into contracts for such periods of time as the Commission may deem necessary or desirable for the purchase or acquisition of any supplies, equipment, materials, or services required by the Commission whenever the Commission determines that: (i) it is advantageous to the Government to make such purchase or acquisition from commercial sources; (ii) the furnishing of such supplies, equipment, ma-

[p. 13]

terials, or services will require the construction or acquisition of special facilities by the vendors or suppliers thereof; (iii) the amortization chargeable to the Commission constitutes an appreciable portion of the cost of contract performance, excluding cost of materials; and (iv) the contract for such period is more advantageous to the Government than a similar contract not executed under the authority of this subsection. Such contracts shall be entered into for periods not to exceed five years each from the date of initial delivery of such supplies, equipment, materials, or services or ten years from the date of execution of the contracts excluding periods of renewal under option.

"(B) In entering into such contracts the Commission shall be guided by the following principles: (i) the percentage of the total cost of special facilities devoted to contract performance and chargeable to the Commission should not exceed the ratio between the period of contract deliveries and the anticipated useful life of such special facilities; (ii) the desirability of obtaining options to renew the contract for reasonable periods at prices not to include charges for special facilities already amortized; and (iii) the desirability of reserving in the Commission the right to take title to the special facilities under appropriate circumstances; and

"(3) include in contracts made under this subsection provisions which limit the obligation of funds to estimated annual delveries and services and the unamortized balance of such amounts due for special facilities as the parties shall agree is chargeable to the performance of the contract. Any appropriation available at the time of termination or thereafter

made available to the Commission for operating expenses shall be available for payment of such costs which may arise from termination as the contract may provide. The term "special facilities" as used in this subsection means any land and any depreciable buildings, structures, utilities, machinery, equipment, and fixtures necessary for the production or furnishing of such supplies, equipment, materials, or services and not available to the vendors or suppliers for the performance of the contract.

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1.1k(2) JOINT COMMITTEE ON ATOMIC ENERGY

S. REP. No. 1944, 85th Cong., 2d Sess. (1958)

NOTE: The Senate Report is the same as the House Report.

AMENDING THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

JULY 24 (legislative day, JULY 23), 1958.—Ordered to be printed

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Mr. ANDERSON, from the Joint Committee on Atomic Energy, submitted the following

REPORT

[To accompany S. 4166]

The Joint Committee on Atomic Energy having considered S. 4166, a bill to amend the Atomic Energy Act of 1954, as amended, reports favorably thereon without amendment, and recommends that the bill do pass.

SUMMARY OF BILL

This bill amends various sections of the Atomic Energy Act of 1954, as amended, as requested by the Atomic Energy Commission, and revised by the Joint Committee on Atomic Energy. Some of the amendments are minor or technical in nature, and there is no necessary interrelationship between the various sections in the bill.

Briefly, the bill amends the Atomic Energy Act in the following particulars:

Sections 1 and 2 amend section 53 of the act to authorize the Commission to issue licenses for the possession of special nuclear material within the United States for uses which do not fall expressly within the present provisions of section 53a, and to make a reasonable charge for such materials. Section 3 amends section 68 of the act to provide a general release of reservations of fissionable materials or source materials under acquired lands of the United States as well as public lands.

Section 4 of the bill amends section 123c of the act to provide that the Joint Committee may waive the normal 30-day waiting period for proposed international agreements for cooperation.

Section 5 of the bill amends section 145 of the act to authorize the Commission to grant security clearances prior to completion of investigation in the event of a state of war declared by the Congress or a national disaster due to enemy attack.

Section 6 of the bill amends section 161d of the act to authorize the Commission to adopt compensation rates on a retroactive basis as

1.1k(3) CONGRESSIONAL RECORD, VOL. 104 (1958)

1.1k(3)(a) July 29: Passed House, p. 15488

Mr. KEOGH.

* * * * *

My colleague, Congressman JOHN F. BALDWIN, JR., of California, had one of these problems in his district and he testified in support of this bill during the public hearing. In addition, the committee was advised that this provision received the support of the Atomic Energy Commission and the Department of Interior, and was approved by the Bureau of the Budget. Also, the committee received letters from the chairman of both the Senate and House Committees on Government Operations recommending that this provision be passed as general legislation to correct a problem which had necessitated numerous individual bills referred to those committees.

I would like also to say a few words about section 7 of this bill, which amends section 161 of the Atomic Energy Act—the general authority section of the act—by adding three new subsections, t, u, and v. Of these, subsection v authorizes the Commission to enter into long-term contracts in certain limited areas. The Subcommittee on Legislation considered this matter very carefully, and received testimony from representatives of the General Accounting Office as well as the Atomic Energy Commission. The subcommittee modified the language originally requested by the Atomic Energy Commission in certain respects in order to incorporate the suggestions of the GAO, and also to add certain determinations which the Commission must

make, and certain principles which the Commission should follow in entering into these contracts. The Joint Committee report states as follows at page 8:

> The purpose of the determinations is to require the AEC to explore the use of Government-owned facilities, and other means of short-term contracting, before adopting the procedure of long-term contracts whereby the Government pays the amortization for all or part of the privately owned facilities.
>
> * * * * *
>
> In specifying these principles, the committee did not mean to negative other principles of good contracting, such as obtaining competitive proposals, etc.

Mr. Speaker, I have attempted to describe only two of the sections of the bill. The other sections are mostly minor or technical in nature and are described in the committee report. This bill has the unanimous support of the Joint Committee, and was requested by the Atomic Energy Commission and the administration, and I therefore urge all Members to support H.R. 13482.

Mr. VAN ZANDT. Mr. Speaker, I yield 2 minutes to the gentleman from California [Mr. BALDWIN].

Mr. BALDWIN. Mr. Speaker, I would like to express my appreciation to the gentleman from California [Mr. HOLIFIELD] and members of the Joint Committee on Atomic Energy for including section 3 in this bill, which amends section 68 of the act to provide a general release of reservations of fissionable materials, or source materials, under acquired lands of the United States, as well as public lands.

I happen to have one of those situations in my district in the city of Richmond, Calif. The redevelopment agency of the city of Richmond has found the reservation of fissionable materials a material obstacle in disposing of the land involved, for redevelopment purposes. This action by the Joint Committee will clarify the situation and they will appreciate a great deal the action being taken today.

Mr. HOLIFIELD. The gentleman is correct. This will also take care of several matters throughout the United States that have been brought to the attention of the committee.

Mr. VAN ZANDT. Mr. Speaker, I yield myself 1 minute.

Mr. Speaker, I join my colleague [Mr. HOLIFIELD], the distinguished chairman of the Subcommittee on Legislation of the Joint Committee, in supporting H.R. 13482.

This bill is the so-called AEC omnibus bill and contains various amendments to the Atomic Energy Act, most of them minor or technical in nature, which are necessary in order to keep the act up to date and capable of providing a framework for our growing atomic energy program. The provisions of this bill follow closely the recommendations of the Atomic Energy Commission and draft bills which were submitted by the AEC with approval by the Bureau of the Budget.

This bill will assist the Atomic Energy Commission to carry out its many important responsibilities, and I therefore urge all Members to approve H.R. 13482.

Mr. Speaker, I have no further requests for time.

The SPEAKER. The question is on suspending the rules and passing the bill.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

[p. 15488]

1.1k(3)(b) Aug. 5: Passed Senate, p. 16189

[No Relevant Discussion on Pertinent Section]

1.1*l* AMENDMENTS TO THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

August 23, 1958, P.L. 85–744, 72 Stat. 837

AN ACT

To amend the Atomic Energy Act of 1954, as amended.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 170 of the Atomic Energy Act of 1954, as amended, is amended by adding at the end thereof the following new subsection:

"k. With respect to any license issued pursuant to section 53, 63, 81, 104a., or 104c. for the conduct of educational activities to a person found by the Commission to be a nonprofit educational institution, the Commission shall exempt such licensee from the financial protection requirement of subsection 170 a. With respect to licenses issued between August 30, 1954, and August 1, 1967, for which the Commission grants such exemption:

"(1) the Commission shall agree to indemnify and hold harmless the licensee and other persons indemnified, as their interests may appear, from public liability in excess of $250,000 arising from nuclear incidents. The aggregate indemnity for all persons indemnified in connection with each nuclear incident shall not exceed $500,000,000, including the reasonable cost of investigating and settling claims and defending suits for damage;

[p. 837]

"(2) such contracts of indemnification shall cover public liability arising out of or in connection with the licensed activity; and shall include damage to property of persons indemnified, except property which is located at the site of and used in connection with the activity where the nuclear incident occurs; and

"(3) such contracts of indemnification, when entered into with a licensee having immunity from public liability because it is a State agency, shall provide also that the Commission shall make payments under the contract on account of activities of the licensee in the same manner and to the same

extent as the Commission would be required to do if the licensee were not such a State agency.

Any licensee may waive an exemption to which it is entitled under this subsection."

Approved August 23, 1958.

[p. 838]

1.1*l*(1) JOINT COMMITTEE ON ATOMIC ENERGY

H.R. REP. No. 2250, 85th Cong., 2d Sess. (1958)

AMENDING THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

JULY 22, 1958.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. PRICE, from the Joint Committee on Atomic Energy, submitted the following

REPORT

[To accompany H.R. 13455]

The Joint Committee on Atomic Energy, having considered H.R. 13455, an original committee bill to amend the Atomic Energy Act of 1954, as amended, report favorably thereon without amendment, and recommend that the bill do pass.

SUMMARY OF PROPOSED LEGISLATION

This bill adds a new subsection k to section 170 of the Atomic Energy Act of 1954 concerning indemnification and limitation of liability. The new subsection k provides that with respect to any license for the conduct of educational activities issued pursuant to certain sections of the act to a person found by the Commission to be a nonprofit educational institution, the Commission shall exempt such licensee from the financial protection requirement of subsection 170a. Subsection 170 now provides that each such license shall have as a condition a requirement that the licensee have and maintain "financial protection" of such type and in such amounts as the Commission shall require. However, numerous

State-owned educational institutions indicated that requirements of State law granted them immunity from tort liability and forbade them from paying premiums for liability insurance protection, and therefore that they might not be able to obtain licenses and participate in the program. It is the purpose of this legislation to authorize the Commission to exempt nonprofit educational activities from the normal requirement of obtaining "financial protection" in order to receive the benefits of section 170 of the act.

[p. 1]

Clauses 1, 2, and 3 of subsection k, in substance, make applicable to the exempted licensee the same type of indemnity and procedures as are now applicable to other persons indemnified under section 170 of the act.

Finally, the bill provides that any licensee may waive the exemption to which it is entitled under this subsection.

BACKGROUND

The problems which made necessary this bill were first brought to the attention of the Joint Committee at a public hearing held on May 8, 1958, concerning the operations of the AEC Indemnity Act. During this hearing the following representatives of the Atomic Energy Commission testified on this subject:

Mr. Harold L. Price, Director, Division of Licensing and Regulations, AEC

Mr. Edward Diamond, Associate General Counsel, AEC

Following this hearing the Joint Committee received communications from a number of representatives of educational institutions and from the National Association of Attorneys General indicating the need for corrective legislation to make possible the exemption of State-owned agencies from the financial protection requirement of subsection 170a of the Atomic Energy Act of 1954. In addition, the Joint Committee received letters or statements of opposition to the proposed legislation from two insurance groups.

On June 27, 1958, Mr. Price introduced H.R. 13190, and Senator Anderson introduced S. 4069, identical bills, the predecessors of this bill.

On July 9, 1958, the Subcommittee on Research and Development held a public hearing at which the following witnesses testified concerning H.R. 13190 and S. 4069:

Mr. Harold L. Price, Director, Division of Licensing and Regulations, AEC.

Mr. Paul M. Peterson, general counsel, University of Missouri.

Subsequently, on July 17, 1958, after receipt of the letters from the insurance companies, a further public hearing was held and testimony was received concerning these bills as well as others.

On July 18, 1958, Mr. Price filed a clean bill, H.R. 13455, which was identical to H.R. 13190 except that licenses issued under sections 53, 63, and 81 of the act were included in subsection 170k as well as licensees issued under 104a or 104c.

On July 21, 1958, Senator Anderson introduced a bill, S. 4164, which was identical to H.R. 13455.

At a meeting of the Joint Committee on July 22, 1958, the committee voted to report this bill favorably to the Congress with the recommendation that it be passed.

COMMITTEE COMMENTS

The Joint Committee believes that this legislation is necessary in order to encourage and make possible continuing and increasing contributions by nonprofit educational institutions in the atomic

[p. 2]

energy research and training program. Without this legislation, many State institutions might be forced to withdraw from the program or discontinue their plans to obtain and operate research and training reactors. The Joint Committee believes that such institutions are in a position to make a tremendous contribution in this important field and believes that this legislation is therefore necessary.

The Joint Committee recognized that the most acute problem is faced by State agencies because of provisions of State law which make it impossible for them to make payments for liability insurance premiums.

However, the Joint Committee believed that the bill should apply to all nonprofit educational institutions, including privately owned and sponsored nonprofit educational institutions, because such institutions are also participating in the program. It is recognized that the Commission is making educational grants to such institutions and it would seem inconsistent not to extend to them the same benefits as to State-owned agencies. The Joint Committee did not consider this to be a serious inroad in the coverage of the act and insofar as the insurance companies are concerned. Nor does the committee regard it as a necessary precedent for other exclusions.

It is recognized that within the scope of "educational activities" could be included incidental nonprofit research conducted in reactors for outside organizations and industries.

During the hearings it was suggested that the bill should specify that it apply to each construction permit issued under section 185 as well as to any license issued pursuant to section 104a or 104c. However, the committee decided that this was unnecessary in view of the last sentence of section 185 which reads as follows:

> For all other purposes of this Act, a construction permit is deemed to be a "license".

It is therefore intended that the Commission shall take cognizance of the above-quoted sentence and that the bill will apply to construction permits for facilities under 104a and 104c as well as for operating licenses under section 104a or 104c.

In addition, during the hearing the definition of "state agency" was discussed, and it is understood that this term includes municipally owned agencies as well as State-owned agencies.

CHANGES IN EXISTING LAW

In accordance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill as reported are shown as follows (new matter is printed in italic):

The Atomic Energy Act of 1954 (Public Law 83–703, as amended by Public Law 84–256):

"SEC. 170. INDEMNIFICATION AND LIMITATION OF LIABILITY.—

"a. Each license issued under section 103 or 104 and each construction permit issued under section 185 shall, and each license issued under section 53, 63, or 81 may, have as a condition of the license a requirement that the licensee have and maintain financial protection of such type and in such amounts as the Commission shall require in accordance with subsection 170 b. to cover public liability claims. Whenever such financial protection is required, it shall be a further con-

[p. 3]

dition of the license that the licensee execute and maintain an indemnification agreement in accordance with subsection 170 c. The Commission may require, as a further condition of issuing a license, that an applicant waive any immunity from public liability conferred by Federal or State law.

"b. The amount of financial protection required shall be the amount of liability insurance available from private sources, except that the Commission may establish a lesser amount on the basis of criteria set forth in writing, which it may revise from time to time, taking into consideration such factors as the following: (1) the cost and terms of private insurance,

(2) the type, size, and location of the licensed activity and other factors pertaining to the hazard, and (3) the nature and purpose of the licensed activity: *Provided,* That for facilities designed for producing substantial amounts of electricity and having a rated capacity of 100,000 electrical kilowatts or more, the amount of financial protection required shall be the maximum amount available from private sources. Such financial protection may include private insurance, private contractual indemnities, self insurance, other proof of financial responsibility, or a combination of such measures.

"c. The Commission shall, with respect to licenses issued between August 30, 1954, and August 1, 1967, for which it requires financial protection, agree to indemnify and hold harmless the licensee and other persons indemnified, as their interest may appear, from public liability arising from nuclear incidents which is in excess of the level of financial protection required of the licensee. The aggregate indemnity for all persons indemnified in connection with each nuclear incident shall not exceed $500,000,000 including the reasonable costs of investigating and settling claims and defending suits for damage. Such a contract of indemnification shall cover public liability arising out of or in connection with the licensed activity.

"d. In addition to any other authority the Commission may have, the Commission is authorized until August 1, 1967, to enter into agreements of indemnification with its contractors for the construction or operation of production or utilization facilities or other activities under contracts for the benefit of the United States involving activities under the risk of public liability for a substantial nuclear incident. In such agreements of indemnification the Commission may require its contractor to provide and maintain financial protection of such a type and in such amounts as the Commission shall determine to be appropriate to cover public liability arising out of or in connection with the contractual activity, and shall indemnify the persons indemnified against such claims above the amount of the financial protection required, in the amount of $500,000,000 including the reasonable costs of investigating and settling claims and defending suits for damage in the aggregate for all persons indemnified in connection with such contract and for each nuclear incident. The provisions of this subsection may be applicable to lump sum as well as cost type contracts and to contracts and projects financed in whole or in part by the Commission. [p. 4]

"e. The aggregate liability for a single nuclear incident of persons indemnified, including the reasonable costs of investigating and settling claims and defending suits for damage, shall not exceed the sum of $500,000,000 together with the amount of financial protection required of the licensee or contractor. The Commission or any person indemnified may apply to the appropriate district court of the United States having venue in bankruptcy matters over the location of the nuclear incident, and upon a showing that the public liability from a single nuclear incident will probably exceed the limit of liability imposed by this section, shall be entitled to such orders as may be appropriate for enforcement of the provisions of this section, including an order limiting the liability of the persons indemnified, orders staying the payment of claims and the execution of court judgments, orders apportioning the payments to be made to claimants, orders permitting partial payments to be made before final determination of the total claims, and an order setting aside a part of the funds available for possible latent injuries not discovered until a later time.

"f. The Commission is authorized to collect a fee from all persons with whom an indemnification agreement is executed under this section. This fee shall be $30 per year per thousand kilowatts of thermal energy capacity for facilities licensed under section 103. For facilities licensed under section 104, and for construction permits under section 185, the Commission is authorized to reduce the fee set forth above. The Commission shall establish criteria in writing for determination of the fee for facilities licensed under section 104, taking into consideration such factors as (1) the type, size, and location of facility involved, and other factors pertaining to the hazard, and (2) the nature and purpose of the facility. For other licenses, the Commission shall collect such nominal fees as it deems appropriate. No fee under this subsection shall be less than $100 per year.

"g. In administering the provisions of this section, the Commission shall use, to the maximum extent practicable, the facilities and services of private insurance organizations, and the Commission may contract to pay a reasonable compensation for such services. Any contract made under the provisions of this subsection may be made without regard to the provisions of section 3709 of the Revised Statutes, as amended, upon a showing by the Commission that advertising is not reasonably practicable and advance payments may be

made.

"h. The agreement of indemnification may contain such terms as the Commission deems appropriate to carry out the purposes of this section. Such agreement shall provide that, when the Commission makes a determination that the United States will probably be required to make indemnity payments under this section, the Commission shall collaborate with any person indemnified and may approve the payment of any claim under the agreement of indemnification, appear through the Attorney General on behalf of the person indemnified, take charge of such action, and settle or defend any such action. The Commission shall have final authority on behalf of the

[p. 5]

United States to settle or approve the settlement of any such claim on a fair and reasonable basis with due regard for the purposes of this Act. Such settlement may include reasonable expenses in connection with the claim incurred by the person indemnified.

"i. After any nuclear incident which will probably require payments by the United States under this section, the Commission shall make a survey of the causes and extent of damage which shall forthwith be reported to the Joint Committee, and except as forbidden by the provisions of chapter 12 of this Act or any other law or Executive order, all final findings shall be made available to the public, to the parties involved and to the courts. The Commission shall report to the Joint Committee by April 1, 1958, and every year thereafter on the operations under this section.

"j. In administering the provisions of this section, the Commission may make contracts in advance of appropriations and incur obligations without regard to section 3679 of the Revised Statutes, as amended.

"k. With respect to any license issued pursuant to section 53, 63, 81, 104 a., or 104 c., for the conduct of educational activities to a person found by the Commission to be a nonprofit educational institution, the Commission shall exempt such licensee from the financial protection requirement of subsection 170 a. With respect to licenses issued between August 30, 1954, and August 1, 1967, for which the Commission grants such exemption:

> *"(1) the Commission shall agree to indemnify and hold harmless the licensee and other persons indemnified, as their interests may appear, from public liability arising from nuclear incidents. The aggregate indemnity for*

all persons indemnified in connection with each nuclear incident shall not exceed $500,000,000, including the reasonable costs of investigating and settling claims and defending suits for damage;

"(2) such contracts of indemnification shall cover public liability arising out of or in connection with the licensed activity; and shall include damage to property of persons indemnified, except property which is located at the site of and used in connection with the activity where the nuclear incident occurs; and

"(3) such contracts of indemnification, when entered into with a licensee having immunity from public liability because it is a State agency, shall provide also that the Commission shall make payments under the contract on account of activities of the licensee in the same manner and to the same extent as the Commission would be required to do if the licensee were not such a State agency. Any licensee may waive an exemption to which it is entitled under this subsection."

[p. 6]

1.11(2) JOINT COMMITTEE ON ATOMIC ENERGY

S. REP. No. 1882, 85th Cong., 2d Sess. (1958)

AMENDING THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

JULY 22, 1958.—Ordered to be printed

Mr. ANDERSON, from the Joint Committee on Atomic Energy, submitted the following

REPORT

[To accompany S. 4164]

The Joint Committee on Atomic Energy, having considered S. 4164, to amend the Atomic Energy Act of 1954, as amended, reports favorably thereon without amendment, and recommends that the bill do pass.

SUMMARY OF PROPOSED LEGISLATION

This bill adds a new subsection k to section 170 of the Atomic Energy Act of 1954 concerning indemnification and limitation of liability. The new subsection k provides that with respect to any license for the conduct of educational activities issued pursuant to certain sections of the act to a person found by the Commission to be a nonprofit educational institution, the Commission shall exempt such licensee from the financial protection requirement of subsection 170a. Subsection 170 now provides that each such license shall have as a condition a requirement that the licensee have and maintain "financial protection" of such type and in such amounts as the Commission shall require. However, numerous State-owned educational institutions indicated that requirements of State law granted them immunity from tort liability and forbade them from paying premiums for liability insurance protection, and therefore that they might not be able to obtain licenses and participate in the program. It is the purpose of this legislation to authorize the Commission to exempt nonprofit educational activities from the normal requirement of obtaining "financial protection" in order to receive the benefits of section 170 of the act.

[p. 1]

1.1*l*(3) COMMITTEE OF CONFERENCE

H.R. REP. No. 2585, 85th Cong., 2d Sess. (1958)

ATOMIC ENERGY ACT OF 1958, AS AMENDED

AUGUST 13, 1958.—Ordered to be printed

Mr. DURHAM, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 13455]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 13455) to amend the Atomic Energy Act of 1954, as amended, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

That section 170 of the Atomic Energy Act of 1954; as amended, is amended by adding at the end thereof the following new subsection:

"k. With respect to any license issued pursuant to section 53, 63, 81, 104a., or 104c. for the conduct of educational activities to a person found by the Commission to be a nonprofit educational institution, the Commission shall exempt such licensee from the financial protection requirement of subsection 170a. With respect to licenses issued between August 30, 1954, and August 1, 1967, for which the Commission grants such exemption:

"(1) the Commission shall agree to indemnify and hold harmless the licensee and other persons indemnified, as their interests may appear, from public liability in excess of $250,000 arising from nuclear incidents. The aggregate indemnity for all persons indemnified in connection with each nuclear incident shall not exceed $500,000,000, including the reasonable cost of investigating and settling claims and defending suits for damage;

"(2) such contracts of indemnification shall cover public liability arising out of or in connection with the licensed activity; and shall include damage to property of persons indemnified, except property which is located at the site of and used in connection with the activity where the nuclear incident occurs; and

[p. 1]

"(3) such contracts of indemnification, when entered into with a licensee having immunity from public liability because it is a State agency, shall provide also that the Commission shall make payments under the contract on account of activities of the licensee in the same manner and to the same extent as the Commission would be required to do if the licensee were not such a State agency.

Any licensee may waive an exemption to which it is entitled under this subsection."

CARL T. DURHAM,
CHET HOLIFIELD,
MELVIN PRICE,
JAMES E. VAN ZANDT,
CRAIG HOSMER,
Managers on the part of the House.
CLINTON P. ANDERSON,
JOHN O. PASTORE,
HENRY M. JACKSON,
BOURKE B. HICKENLOOPER,
Managers on the part of the Senate.

[p. 2]

STATEMENT OF THE MANAGERS ON THE PART OF THE HOUSE

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 13455) to amend the Atomic Energy Act of 1954, as amended, submit the following statement in explanation of the effect of the action agreed upon by the conferees and recommended in the accompanying conference report:

The Senate struck out all of the House bill after the enacting clause and inserted a substitute amendment. The committee of conference has agreed to substitute for both the House bill and the Senate amendment. The following statement explains the differences between the House bill and the substitute agreed to in conference.

The bill, as agreed to by the conferees, is identical to the House version, except for certain additional words added to clause (1) of subsection k. as indicated by the italics below:

> (1) The Commission shall agree to indemnify and hold harmless the licensee and other persons indemnified, as their interests may appear, for public liability *in excess of $250,000* arising from nuclear incidents. The aggregate indemnity for all persons indemnified in connection with each nuclear incident shall not exceed $500,000,000 including the reasonable cost of investigating and settling claims and defending suits for damage;

The other provisions in the bill are identical to the bill approved by the House.

Under the language agreed to in conference, all nonprofit educational institutions would be exempted, under the first sentence of subsection k. in the bill, from the financial protection requirement

of subsection 170a. They would also receive the benefit of a Commission indemnity agreement but only in excess of $250,000. This language was intended to keep the Commission out of the small-claims business and to preserve the basic pattern of Public Law 85–256 in that the Commission indemnity would begin only above a certain minimum level.

The conferees wished to emphasize their belief that the universities can make an important contribution to our atomic energy research and training program, and that they should be encouraged to do so. The conferees desired also not to discriminate in the Federal statute between different types of universities on the basis of State law or type of sponsorship, but to treat all nonprofit educational institutions on the same basis. Therefore, under the language of the conference, it will be left up to the individual institution, on the basis of its own State law, or its own decision, to determine the type of protection, if any, it will provide for the first $250,000 liability prior to commencement of the Commission indemnity. Either private insurance, suppliers' liability insurance, or special State procedures may be utilized to provide the

[p. 3]

basis for meeting possible claims in this field in the same manner as other claims against the university arising out of its usual activities.

The $250,000 division of responsibility between the licensee and the Commission is made applicable to those licensees having immunity from public liability because it is a State agency by clause (3) of the bill. Clause (3) provides that the Commission shall make payments under the contract on account of activities of such a licensee in the same manner and to the same extent as the Commission would be required to do if the licensee were not such a State agency.

After weighing carefully several possible alternatives, the conferees decided that the recommended language would best reconcile the difficult problems of State and local law presented, and would at the same time accomplish the desired objective of encouraging nonprofit educational institutions to participate in our atomic energy research and training program.

CARL T. DURHAM,
CHET HOLIFIELD,
MELVIN PRICE,
JAMES E. VAN ZANDT,
CRAIG HOSMER,
Managers on the Part of the House.

[p. 4]

1.1*l*(4) CONGRESSIONAL RECORD, VOL. 104 (1958)

1.1*l*(4)(a) July 29: Passed House, p. 15457

[No Relevant Discussion on Pertinent Section]

1.1*l*(4)(b) Aug. 5: Amended and passed Senate, p. 16188

Mr. HICKENLOOPER.

* * * * *

I have been perfectly willing to go along with the Government in carrying on overriding policy, as is done in other cases of large reactors in the program, over and above a certain amount of original assumption of liability by the institution.

Unfortunately, there are institutions in the United States today which simply cannot be licensed to go forward with research in their engineering and scientific schools because they cannot meet the prerequisite or the requirement, at present in the law, that they must have insurance to cover a specific amount of liability. They are prohibited by State law or constitution from making such provision.

I do not in any way wish to bar these very excellent, outstanding institutions from participating in the research program. I do not want to deny the atomic energy program of the benefits of their research. Therefore, while I have some objections to certain provisions in these amendments, I shall not raise the objections now. I think the amendments go a long way toward solving the problem which is involved. I think there is perfect agreement that we can now, with these amendments, take the bill to conference.

I think the feeling of the members of the Joint Committee is such that we can prepare suitable language. We may have to compromise a little here or there, but we can work out language which will be reasonable and will properly solve the problem, but still permit the institutions to go forward and make arrangements for meeting equitably the proposition of insuring the public against possible danger from nuclear incidents which might happen, even though the likelihood of such incidents is very, very remote.

[p. 16188]

1.1*l*(4)(c) Aug. 14: Conference report submitted in House and agreed to, p. 17641

[No Relevant Discussion on Pertinent Section]

1.1*l*(4)(d) Aug. 14: Conference report submitted in Senate and agreed to, p. 17569

[No Relevant Discussion on Pertinent Section]

1.1m AMENDMENTS TO THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

September 21, 1959, P.L. 86-300 § 1, 73 Stat. 574

AN ACT

To amend the Atomic Energy Act of 1954, as amended

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection 161m. of the Atomic Energy Act of 1954, as amended, is amended by striking out "Section 103 or 104" and inserting in lieu thereof "Section 103, 104, 53a. (4), or 63a. (4)."

SEC. 2. Section 163 of the Atomic Energy Act of 1954, as amended, is amended by inserting after the words "from receiving compensation" the following words "from a source other than a nonprofit educational institution."

Approved September 21, 1959.

[p. 574]

1.1m(1) JOINT COMMITTEE ON ATOMIC ENERGY

S. REP. No. 871, 86th Cong., 1st Sess. (1959)

AMENDMENTS TO THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

SEPTEMBER 1 (legislative day, AUGUST 31), 1959.—Ordered to be printed

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Mr. ANDERSON, from the Joint Committee on Atomic Energy, submitted the following

REPORT

[To accompany S. 2569]

The Joint Committee on Atomic Energy, having considered S. 2569, an original committee bill to amend the Atomic Energy Act of 1954, as amended, report favorably thereon with an amendment, and recommend that the bill, as amended, do pass.

The amendment to the bill adopted by the Joint Committee is as follows:

On page 1, line 3, strike out all after the word "That", and strike out all of lines 4 through 11; and on page 2, strike out all of lines 1 through 6, and on line 7, strike out the words "SEC. 2."; and on page 2, line 11, renumber "SEC. 3." as "SEC. 2.".

EXPLANATION OF COMMITTEE AMENDMENT

The committee amendment deletes section 1 of the bill which would have amended section 91 of the Atomic Energy Act of 1954, as amended, by adding a new subsection d. Former section 2 of the bill thus becomes the first section and section 3 is renumbered as section 2.

SUMMARY OF BILL

This bill, as reported out by the Joint Committee on Atomic Energy, amends sections 161 and 163 of the Atomic Energy Act of 1954, as amended.

Section 1 of the bill amends subsection 161m. of the Atomic Energy Act of 1954, as amended, to authorize the Commission to enter into agreements for the performance of certain services by the Commission, including the reprocessing of irradiated fuel elements with material licensees (reactor manufacturers and fuel suppliers), as well as facility licensees (reactor operators or utilities), as presently authorized by the act.

[p. 1]

Section 2 of the bill amends section 163 of the act to provide, in substance, that the members of the General Advisory Committee and other AEC advisory committees will not be subject to certain conflict-of-interest statutes solely because of compensation received from nonprofit educational institutions.

COMMENTS BY THE JOINT COMMITTEE

The Joint Committee, after carefully considering several alternatives to the language to section 1 of the bill, concluded that more consideration is needed by the Atomic Energy Commission and the Department of Defense on the subject of respective responsibilities for safety of nuclear materials, atomic weapons, and military reactors under the control of the Department of Defense. The committee has therefore requested the AEC and the Department of Defense to review this subject thoroughly and to present reports to the Joint Committee for further consideration during the next session of the Congress.

Each year the Joint Committee reviews the provisions of the Atomic Energy Act of 1954, as amended, in order to make sure

that the act is up to date and capable of dealing with new problems emerging in the developing atomic energy field. The two amendments incorporated into this bill are those which the committee recommends that the Congress consider and enact this session. Certain other proposed amendments to the act which are now pending before the Joint Committee are considered less urgent and will be considered further during the next session of the Congress.

Certain amendments to chapter 13 of the Atomic Energy Act pertaining to patents and inventions were proposed by the AEC this year. The Joint Committee held hearings on this subject in April, 1959. Subsequently, in Public Law 86–50, the committee incorporated the proposed amendment to section 153 of the act, to extend the so-called "compulsory licensing" section of the act for another 5 years, because of the proximity of the expiration date of September 1, 1959. The committee has been informed that the Commission is still reviewing atomic energy patent matters, particularly in the international field, and the committee will therefore review this subject again next year.

SECTION-BY-SECTION ANALYSIS

Section 1 of the bill amends subsection 161m. by making it applicable to licensees under subsections 53a. (4) and 63a. (4) as well as sections 103 and 104. As indicated in the AEC statement in appendix I, this amendment would facilitate development of the atomic energy industry in some cases, and might result in lower charges to the industry in certain instances.

Section 2 of the bill, as amended, amends section 163 of the Atomic Energy Act of 1954, as amended, so as to enable certain members of AEC advisory committees who might receive compensation from nonprofit educational institutions to serve without regard to certain of the conflict-of-interest statutes if the conflict arises out of compensation received from such an institution.

[p. 2]

It is intended that the Commission shall exercise judgment in the selection of persons for its advisory committees, and would not, for example, select to the General Advisory Committee persons having direct responsibility for phases of the program, such as directors of national laboratories.

CHANGES IN EXISTING LAW

In accordance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law recommended by the

bill accompanying this report are shown as follows (deleted matter is shown in black brackets, and new matter is printed in italic):

PUBLIC LAW 83–703

THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

SEC. 161. GENERAL PROVISIONS.—In the performance of its functions the Commission is authorized to * * *

"m. enter into agreements with persons licensed under [section 103 or 104] *Section 103, 104, 53a. (4), or 63a. (4)* for such periods of time as the Commission may deem necessary or desirable (1) to provide for the processing, fabricating, separating, or refining in facilities owned by the Commission of source, byproduct, or other material or special nuclear material owned by or made available to such licensees and which is utilized or produced in the conduct of the licensed activity, and (2) to sell, lease, or otherwise make available to such licensees such quantities of source or byproduct material, and other material not defined as special nuclear material pursuant to this Act, as may be necessary for the conduct of the licensed activity: *Provided, however,* That any such agreement may be canceled by the licensee at any time upon payment of such reasonable cancellation charges as may be agreed upon by the licensee and the Commission: *And provided further,* That the Commission shall establish prices to be paid by licensees for material or services to be furnished by the Commission pursuant to this subsection, which prices shall be established on such a nondiscriminatory basis as, in the opinion of the Commission, will provide reasonable compensation to the Government for such material or services and will not discourage the development of sources of supply independent of the Commission."

* * * * * * *

SEC. 163. ADVISORY COMMITTEES.—The members of the General Advisory Committee established pursuant to section 26 and the members of advisory boards established pursuant to section 161a. may serve as such without regard to the provisions of sections 281, 283, or 284 of Title 18 of the United States Code, except insofar as such sections may prohibit any such member from receiving compensation *from a source other than a nonprofit educational institution* in respect of any particular matter which directly involves the Commission or in which the Commission is directly interested."

APPENDIX I

EXCERPT FROM STATEMENT OF AEC CHAIRMAN MCCONE BEFORE JOINT COMMITTEE DURING HEARING ON AUGUST 26, 1959

Section 2 (sec. 1 in amended bill)

This section of the proposed bill is directed toward another problem which we would like to have solved by this session of Congress.

At present we are authorized to contract only with licensed reactor owners to perform services for them, such as chemical processing of their irradiated fuels. These services are not available from commercial suppliers.

This limited authority is interfering with the pattern of doing business preferred by reactor operators. For example, one large utility has told us that they prefer to contract with a fuel supplier who would not only furnish fuel ready to insert into their reactor but who would also cart away the irradiated fuel, and arrange for having it processed. The utility cannot do this at present because the authority we now have in section 161m. of the act disenables the Commission from contracting with such a fuel supplier to perform the necessary reprocessing. It would be a convenience to both the utility and to the Commission if we could do business with such a fuel supplier. Therefore, we ask that section 161m. be amended to give us the long-term authority to make such contracts.

Another example of where a change in this section of the law would help is in the area of handling fuel for research reactors. These reactors use such a small amount of fuel that they run up against our minimum charge for processing. The result is a relatively high charge. This charge could be lowered for an individual reactor operator if he could turn his irradiated fuel over to a fuel company which would collect fuel from several such small reactors and offer all of it to us to reprocess as a single batch. The result could be a substantially lower charge to each reactor operator and thus a direct benefit to research.

Several companies are exploring the field and at least one fuel element manufacturer is eager to provide a complete fuel service.

Section 2 of the bill contains language which will accomplish these purposes and I urge passage of this amendment at this session of Congress.

Section 3 (sec. 2 of amended bill)

Section 3 of S. 2569 and H.R. 8754 would amend 163 of the Atomic Energy Act so as to enable GAC members who are from the university world to serve without regard to certain of the conflict of interests statutes. The bill also covers members of other

advisory boards established by the Commission under section 161(a) of the act.

Members of the GAC are presently subject to technical conflict of interest problems under a possible construction of the statutes (18 U.S.C. 281, 283, and 284) from which section 163 provides a

[p. 4]

partial exemption. Most troublesome of the statutes is 18 U.S.C. 281 which, as modified by section 163, prohibits an AEC employee from receiving compensation for any services rendered in relation to any matter which is before the agency and in which the AEC is directly involved or interested. The crime is the receipt of compensation, regardless of the type of services rendered.

The Commission's interest in a broadened exemption is occasioned not so much by the fear of any actual prosecution of a GAC member for these technical conflicts than by a desire to clarify what is undoubtedly a hazy area. We want to be able to assure men from private life that they are violating neither the letter nor the spirit of these laws.

In reference to the specific proposal contained in section 3 of your bill, we feel that it is extremely salutary and we support it fully. We have no doubt that the receipt of compensation from nonprofit educational institutions, whose basic motivation is the public interest, is not incompatible with service on the General Advisory Committee and other advisory boards.

[p. 5]

1.1m(2) JOINT COMMITTEE ON ATOMIC ENERGY

H.R. REP. No. 1124, 86th Cong., 1st Sess. (1959)

AMENDMENTS TO THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

SEPTEMBER 2, 1959.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. DURHAM, from the Joint Committee on Atomic Energy, submitted the following

REPORT

[To accompany H.R. 8754]

The Joint Committee on Atomic Energy, having considered H.R. 8754, an original committee bill to amend the Atomic Energy Act of 1954, as amended, report favorably thereon with an amendment, and recommend that the bill, as amended, do pass.

The amendment to the bill adopted by the Joint Committee is as follows:

On page 1, line 3, strike out all after the word "That", and strike out all of lines 4 through 11; and on page 2, strike out all of lines 1 through 6, and on line 7, strike out the words "SEC. 2."; and on page 2, line 11, renumber "SEC. 3." as "SEC. 2."

EXPLANATION OF COMMITTEE AMENDMENT

The committee amendment deletes section 1 of the bill which would have amended section 91 of the Atomic Energy Act of 1954, as amended, by adding a new subsection d. Former section 2 of the bill thus becomes the first section and section 3 is reunmbered as section 2.

SUMMARY OF BILL

This bill, as reported out by the Joint Committee on Atomic Energy, amends sections 161 and 163 of the Atomic Energy Act of 1954, as amended.

Section 1 of the bill amends subsection 161m. of the Atomic Energy Act of 1954, as amended, to authorize the Commission to enter into agreements for the performance of certain services by the Commission, including the reprocessing of irradiated fuel elements with material licensees (reactor manufacturers and fuel

suppliers), as well as facility licensees (reactor manufacturers and fuel suppliers), as well as facility licensees (reactor operators or utilities), as presently authorized by the act.

[p. 1]

Section 2 of the bill amends section 163 of the act to provide, in substance, that the members of the General Advisory Committee and other AEC advisory committees will not be subject to certain conflict-of-interest statutes solely because of compensation received from nonprofit educational institutions.

COMMENTS BY THE JOINT COMMITTEE

The Joint Committee, after carefully considering several alternatives to the language to section 1 of the bill, concluded that more consideration is needed by the Atomic Energy Commission and the Department of Defense on the subject of respective responsibilities for safety of nuclear materials, atomic weapons, and military reactors under the control of the Department of Defense. The committee has therefore requested the AEC and the Department of Defense to review this subject thoroughly and to present reports to the Joint Committee for further consideration during the next session of the Congress.

Each year the Joint Committee reviews the provisions of the Atomic Energy Act of 1954, as amended, in order to make sure that the act is up to date and capable of dealing with new problems emerging in the developing atomic energy field. The two amendments incorporated into this bill are those which the committee recommends that the Congress consider and enact this session. Certain other proposed amendments to the act which are now pending before the Joint Committee are considered less urgent and will be considered further during the next session of the Congress.

Certain amendments to chapter 13 of the Atomic Energy Act pertaining to patents and inventions were proposed by the AEC this year. The Joint Committee held hearings on this subject in April, 1959. Subsequently, in Public Law 86–50, the committee incorporated the proposed amendment to section 153 of the act, to extend the so-called "compulsory licensing" section of the act for another 5 years, because of the proximity of the expiration date of September 1, 1959. The committee has been informed that the Commission is still reviewing atomic energy patent matters, particularly in the international field, and the committee will therefore review this subject again next year.

SECTION-BY-SECTION ANALYSIS

Section 1 of the bill amends subsection 161 m. by making it applicable to licensees under subsections 53 a. (4) and 63 a. (4) as well as sections 103 and 104. As indicated in the AEC statement in appendix I, this amendment would facilitate development of the atomic energy industry in some cases, and might result in lower charges to the industry in certain instances.

Section 2 of the bill, as amended, amends section 163 of the Atomic Energy Act of 1954, as amended, so as to enable certain members of AEC advisory committees who might receive compensation from non-profit educational institutions to serve without regard to certain of the conflict-of-interest statutes if the conflict arises out of compensation received from such an institution.

[p. 2]

It is intended that the Commission shall exercise judgment in the selection of persons for its advisory committees, and would not, for example, select to the General Advisory Committee persons having direct responsibility for phases of the program, such as directors of national laboratories.

CHANGES IN EXISTING LAW

In accordance with clause (3) of rule XIII of the Rules of the House of Representatives, changes in existing law recommended by the bill accompanying this report are shown as follows (deleted matter is shown in black brackets, and new matter is printed in italic):

PUBLIC LAW 83–703

THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

SEC. 161. GENERAL PROVISIONS.—In the performance of its functions the Commission is authorized to * * *

"m. enter into agreements with persons licensed under [section 103 or 104] *Section 103, 104, 53a.(4), or 63a. (4)* for such periods of time as the Commission may deem necessary or desirable (1) to provide for the processing, fabricating, separating, or refining in facilities owned by the Commission of source, byproduct, or other material or special nuclear material owned by or made available to such licensees and which is utilized or produced in the conduct of the licensed activity, and (2) to sell, lease, or otherwise make available to such licensees such quantities of source or byproduct material, and other material not defined as special nuclear material pursuant to this Act, as may be necessary for the conduct of the licensed activity: *Provided, however,* That any such agree-

ment may be canceled by the licensee at any time upon payment of such reasonable cancellation charges as may be agreed upon by the licensee and the Commission: *And provided further,* That the Commission shall establish prices to be paid by licensees for material or services to be furnished by the Commission pursuant to this subsection, which prices shall be established on such a nondiscriminatory basis as, in the opinion of the Commission, will provide reasonable compensation to the Government for such material or services and will not discourage the development of sources of supply independent of the Commission."

* * * * * * *

"SEC. 163. ADVISORY COMMITTEES.—The members of the General Advisory Committee established pursuant to section 26 and the members of advisory boards established pursuant to section 161 a. may serve as such without regard to the provisions of sections 281, 283, or 284 of Title 18 of the United States Code, except insofar as such sections may prohibit any such member from receiving compensation *from a source other than a nonprofit educational institution* in respect of any particular matter which directly involves the Commission or in which the Commission is directly interested."

[p. 3]

1.1m(3) CONGRESSIONAL RECORD, VOL. 105 (1959)

1.1m(3)(a) Sept. 9: Passed Senate, p. 18732

[No Relevant Discussion on Pertinent Section]

1.1m(3)(b) Sept. 11: Passed House, p. 19169

[No Relevant Discussion on Pertinent Section]

1.1n AMENDMENTS TO ATOMIC ENERGY ACT OF 1954,

September 23, 1959, P.L. 86-373, § 1, 73 Stat. 688

To amend the Atomic Energy Act of 1954, as amended, with respect to cooperation with States.

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

ing section be added to the Atomic Energy Act of 1954, as amended:

"SEC. 274. COOPERATION WITH STATES.—

"a. It is the purpose of this section—

"(1) to recognize the interests of the States in the peaceful uses of atomic energy, and to clarify the respective responsibilities under this Act of the States and the Commission with respect to the regulation of byproduct, source, and special nuclear materials;

"(2) to recognize the need, and establish programs for, cooperation between the States and the Commission with respect to control of radiation hazards associated with use of such materials;

"(3) to promote an orderly regulatory pattern between the Commission and State governments with respect to nuclear development and use and regulation of byproduct, source, and special nuclear materials;

"(4) to establish procedures and criteria for discontinuance of certain of the Commission's regulatory responsibilities with respect to byproduct, source, and special nuclear materials, and the assumption thereof by the States;

[p. 688]

"(5) to provide for coordination of the development of radiation standards for the guidance of Federal agencies and cooperation with the States; and

"(6) to recognize that, as the States improve their capabilities to regulate effectively such materials, additional legislation may be desirable.

"b. Except as provided in subsection c., the Commission is authorized to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission under chapters 6, 7, and 8, and section 161 of this Act, with respect to any one or more of the following materials within the State—

"(1) byproduct materials;

"(2) source materials;

"(3) special nuclear materials in quantities not sufficient to form a critical mass.

During the duration of such an agreement it is recognized that the State shall have authority to regulate the materials covered by the agreement for the protection of the public health and safety from radiation hazards.

"c. No agreement entered into pursuant to subsection b. shall provide for discontinuance of any authority and the Commission

shall retain authority and responsibility with respect to regulation of—

"(1) the construction and operation of any production or utilization facility;

"(2) the export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;

"(3) the disposal into the ocean or sea of byproduct, source, or special nuclear waste materials as defined in regulations or orders of the Commission;

"(4) the disposal of such other byproduct, source, or special nuclear material as the Commission determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed of without a license from the Commission.

Notwithstanding any agreement between the Commission and any State pursuant to subsection b., the Commission is authorized by rule, regulation, or order to require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license issued by the Commission.

"d. The Commission shall enter into an agreement under subsection b. of this section with any State if—

"(1) The Governor of that State certifies that the State has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by the proposed agreement, and that the State desires to assume regulatory responsibility for such materials; and

"(2) the Commission finds that the State program is compatible with the Commission's program for the regulation of such materials, and that the State program is adequate to protect the public health and safety with respect to the materials covered by the proposed agreement.

"e. (1) Before any agreement under subsection b. is signed by the Commission, the terms of the proposed agreement and of proposed exemptions pursuant to subsection f. shall be published once

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each week for four consecutive weeks in the Federal Register; and such opportunity for comment by interested persons on the proposed agreement and exemptions shall be allowed as the Commission determines by regulation or order to be appropriate.

"(2) Each proposed agreement shall include the proposed ef-

fective date of such proposed agreement or exemptions. The agreement and exemptions shall be published in the Federal Register within thirty days after signature by the Commission and the Governor.

"f. The Commission is authorized and directed, by regulation or order, to grant such exemptions from the licensing requirements contained in chapters 6, 7, and 8, and from its regulations applicable to licensees as the Commission finds necessary or appropriate to carry out any agreement entered into pursuant to subsection b. of this section.

"g. The Commission is authorized and directed to cooperate with the States in the formulation of standards for protection against hazards of radiation to assure that State and Commission programs for protection against hazards of radiation will be coordinated and compatible.

"h. There is hereby established a Federal Radiation Council, consisting of the Secretary of Health, Education, and Welfare, the Chairman of the Atomic Energy Commission, the Secretary of Defense, the Secretary of Commerce, the Secretary of Labor, or their designees, and such other members as shall be appointed by the President. The Council shall consult qualified scientists and experts in radiation matters, including the President of the National Academy of Sciences, the Chairman of the National Committee on Radiation Protection and Measurement, and qualified experts in the field of biology and medicine and in the field of health physics. The Special Assistant to the President for Science and Technology, or his designee, is authorized to attend meetings, participate in the deliberations of, and to advise the Council. The Chairman of the Council shall be designated by the President, from time to time, from among the members of the Council. The Council shall advise the President with respect to radiation matters, directly or indirectly affecting health, including guidance for all Federal agencies in the formulation of radiation standards and in the establishment and execution of programs of cooperation with States. The Council shall also perform such other functions as the President may assign to it by Executive order.

"i. The Commission in carrying out its licensing and regulatory responsibilities under this Act is authorized to enter into agreements with any State, or group of States, to perform inspections or other functions on a cooperative basis as the Commission deems appropriate. The Commission is also authorized to provide training, with or without charge, to employees of, and such other assistance to, any State or political subdivision thereof or group of States as the Commission deems appropriate. Any such provision

or assistance by the Commission shall take into account the additional expenses that may be incurred by a State as a consequence of the State's entering into an agreement with the Commission pursuant to subsection b.

"j. The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State with which an agreement under subsection b. has become effective, or upon request of the Governor of such State, may terminate or suspend its agreement with the State and reassert the licensing and regulatory authority vested in it under this Act, if the Commission finds that such termination or suspension is required to protect the public health and safety.

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"k. Nothing in this section shall be construed to affect the authority of any State or local agency to regulate activities for purposes other than protection against radiation hazards.

"l. With respect to each application for Commission license authorizing an activity as to which the Commission's authority is continued purusant to subsection c., the Commission shall give prompt notice to the State or States in which the activity will be conducted of the filing of the license application; and shall afford reasonable opportunity for State representatives to offer evidence, interrogate witnesses, and advise the Commission as to the application, without requiring such representatives to take a position for or against the granting of the application.

"m. No agreement entered into under subsection b., and no exemption granted pursuant to subsection f., shall affect the authority of the Commission under subsection 161 b. or i. to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data or to guard against the loss or diversion of special nuclear material. For purposes of subsection 161i., activities covered by exemptions granted pursuant to subsection f. shall be deemed to constitute activities authorized pursuant to this Act; and special nuclear material acquired by any person pursuant to such an exemption shall be deemed to have been acquired pursuant to section 53.

"n. As used in this section, the term 'State' means any State, Territory, or possession of the United States, the Canal Zone, Puerto Rico, and the District of Columbia."

SEC. 2. Section 108 of the Atomic Energy Act of 1954 is amended by deleting the phrase "distributed under the provisions of subsection 53a.," from the second sentence.

Approved September 23, 1959.

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1.1n(1) JOINT COMMITTEE ON ATOMIC ENERGY

S. REP. No. 870, 86th Cong., 1st Sess. (1959)

AMENDMENTS TO THE ATOMIC ENERGY ACT OF 1954, AS AMENDED, WITH RESPECT TO COOPERATION WITH STATES

SEPTEMBER 1 (legislative day, AUGUST 31), 1959.—Ordered to be printed

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Mr. ANDERSON, from the Joint Committee on Atomic Energy submitted the following

REPORT

[To accompany S. 2568]

The Joint Committee on Atomic Energy, having considered S. 2568, an original committee bill to amend the Atomic Energy Act of 1954, as amended, with respect to cooperation with States, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments to the bill adopted by the Joint Committee are as follows:

1. On page 3, line 6, strike out the words "and license".

2. On page 3, line 17, after the word "production", strike out the word "of" and insert in lieu thereof the word "or".

3. On page 5, line 1, strike out the word "three" and insert in lieu thereof the word "four".

4. On page 5, strike out all of lines 6 through 17, and on line 18 renumber clause (3) as clause (2).

5. On page 6, line 10, strike out all after "h.", strike out all of lines 11 through 20, and in line 21, strike out the words "radiation hazards and standards" and the period, and insert in lieu thereof the following words:

> There is hereby established a Federal Radiation Council, consisting of the Secretary of Health, Education, and Welfare, the Chairman of the Atomic Energy Commission, the Secretary of Defense, the Secretary of Commerce, the Secretary of Labor, or their designees, and such other members as shall be appointed by the President. The Council shall consult qualified scientists and experts in radiation matters, including the President of the National Academy of Sciences, the Chairman of the

National Committee on Radiation Protection and Measurement, and qualified experts in the field of biology and medicine and in the field of health physics.

6. On page 8, line 6, strike out all after "k.", strike out all of lines 7 through 13, and in line 14 strike out the word "regulations" and the period.

EXPLANATION OF COMMITTEE AMENDMENTS

The amendments adopted by the committee are all minor or technical in nature, and are not intended to change the basic purposes and objectives of the bill as proposed by the Atomic Energy Commission.

Amendment No. 1, in subsection b., strikes out the words "and license" after the word "regulate". The words "and license" were not considered necessary because, as used elsewhere in the bill, the word "regulate" includes the licensing function. Thus, for reasons of consistency, the words "and license" in this subsection were deleted as being unnecessary.

Amendment No. 2 corrects a typographical error in changing the word "of" to the word "or".

Amendment No. 3, in clause (1) of subsection e., requires that the terms of a proposed agreement and proposed exemptions shall be published in the Federal Register each week for 4 consecutive weeks, rather than 3, in order that all interested persons, including State officials and the general public, may be fully informed and have opportunity to comment to the Commission.

Amendment No. 4 deleted clause (2) of subsection e., which would have provided a 45-day review period by the Joint Committee on Atomic Energy of any proposed agreement or amendment. The Commission has the responsibility, under section 202 of the Atomic Energy Act, of keeping the Joint Committee "fully and currently informed." Under section 202, it is intended that the Commission shall inform the committee of all pending agreements with individual States, including the proposed certifications and findings under subsection d. as to the adequacy of State programs, as well as operations under agreements after they may become effective. The Joint Committee does not consider it necessary to provide for formal review of each individual proposed agreement or amendment, but does believe it important that the committee be kept fully informed by the Commission of the operations under the provisions of this bill.

Amendment No. 5 in subsection h. amends the composition of the Federal Radiation Council in the bill, as introduced, in certain respects. First, it substitutes the Secretary of Health, Education,

and Welfare for the Surgeon General as a member of the Council. The Department of Health, Education, and Welfare includes both the Public Health Service, under the Surgeon General, and the Federal Food and Drug Administration, which also has an interest in radiation matters. It is intended that the Secretary will receive advice from both of these agencies. The Secretary may, of course, if he so desires, designate the Surgeon General to serve on the Council as his designee.

As amended, subsection h. names five members of the Council; namely, the Secretary of Health, Education, and Welfare, the Chairman of the Atomic Energy Commission, the Secretary of Defense, the Secretary of Commerce, and the Secretary of Labor, or their designees, and such other members as shall be appointed

[p. 2]

by the President. It provides that the Council shall consult qualified scientists and experts in radiation matters, including the President of the National Academy of Sciences, the Chairman of the National Committee on Radiation Protection and Measurement, and qualified experts in the field of biology and medicine and in the field of health physics. In this manner, persons named in the statute are all appointees of the President, and members of the President's official family, and the President may appoint additional members, including representatives of the public, and State or local agencies. The bill emphasizes that the Council shall consult qualified scientists and obtain their advice before advising the President on radiation matters.

The Joint Committee was informed that subsection h., as amended, would meet with no objections by the Director of the Bureau of the Budget or the Secretary of the Department of Health, Education, and Welfare.

Amendment No. 6 deletes the first sentence of subsection k. as unnecessary. As explained in more detail subsequently in this report, the Commission now regulates and licenses the materials covered by the Atomic Energy Act (byproduct, source, and special nuclear materials) to protect against radiation hazards. With or without this sentence, in order for a State to so regulate or license such materials, it must first establish an adequate program for this purpose and enter into an agreement with the Commission.

SUMMARY OF BILL

This bill, including the minor amendments approved by the Joint Committee, contains the principal provisions of its predecessor, S. 1987, as proposed by the Atomic Energy Commission, and intro-

duced by Senator Anderson (by request) on May 19, 1959. The objectives of the predecessor bill were explained by the letter dated May 13, 1959, to Chairman Anderson from A. R. Luedecke, General Manager of the AEC, as follows:

> Essentially, the objectives of this proposed bill are to provide procedures and criteria whereby the Commission may "turn over" to individual States, as they become ready, certain defined areas of regulatory jurisdiction. Certain areas, as to which interstate, national, or international considerations may be paramount, would be excluded. In addition, certain areas would be excluded because the technical safety considerations are of such complexity that it is not likely that any State would be prepared to deal with them during the foreseeable future.
>
> To assist the States to prepare themselves for assuming independent regulatory jurisdiction, the new bill (like the 1957 bill) specifically authorizes the Commission to provide training and other services to State officials and employees and to enter into agreements with the States under which the latter may perform inspections and other functions cooperatively with the Commission.
>
> The bill includes criteria which would need to be met before the Commission could turn over any of its responsibilities to a State; and provisions pursuant to which the Commission might reassert its authority. The bill provides that the Commission may, upon request of the Governor or upon its own initiative, terminate or suspend its [p. 3] agreement with the State and reassert its regulatory authority if the Commission finds that such termination or suspension is required to protect public health and safety. Opportunity for hearing is provided.
>
> The bill also contains specific provisions designed to remove doubt as to the relative responsibilities of the Commission and the States * * *.

In summary, the principal provisions of the bill authorize the Commission to withdraw its responsibility for regulation of certain materials—principally radioisotopes—but not over more hazardous activities such as the licensing and regulation of reactors. The bill requires compatibility of Federal and State radiation standards, and authorizes programs to assist the States to assume independent regulatory jurisdiction.

This bill, as amended by the Joint Committee, contains all the principal provisions, and is intended to accomplish the objectives

of the bill proposed by the Commission. In addition, it contains certain revisions made by the Joint Committee as follows:

First, the bill has been redrafted by the Joint Committee to make it clear that it does not attempt to regulate materials which the AEC does not now regulate under the Atomic Energy Act of 1954. Such other sources such as X-ray machines and radium also present substantial radiation hazards, but have been for many years the responsibility of the States, the Public Health Service, or other agencies.

Secondly, as a drafting change, subsection b. in the bill as originally proposed by AEC (S. 1987) contained two clauses—(1) and (2). Because of their substantive importance, these clauses were redrafted as subsections b. and c., and certain other subsections renumbered accordingly.

Thirdly, subsection h., added by this bill, establishes a Federal Radiation Council to advise the President on radiation matters, similar to the Council recently established by Executive order. It does modify the basic functions of the Council, but increases its membership from four to five members, including the Secretary of Labor, and provides that the Council shall consult qualified scientists and experts in radiation matters.

Fourth, a sentence was added by the Joint Committee in new subsection i., pertaining to training and assistance, that in providing assistance to the States, the Commission shall take into account the additional expenses that may be incurred by the State as a consequence of the State's entering into an agreement with the Commission.

In summary, this bill provides the basic authorization requested by the Commission, and also incorporates certain additional features considered desirable by the committee, after hearings and careful consideration of all the provisions of the bill.

BACKGROUND

The need for an amendment to the Atomic Energy Act of 1954 with respect to Federal-State cooperation, and to permit increased participation by the States, has been a subject of concern to the members of the Joint Committee since passage of that act in 1954. In 1956 and 1957, bills were introduced by Senator Anderson and

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Congressman Durham, and the AEC also submitted to the Joint Committee in 1957 a proposed bill to amend the Atomic Energy Act of 1954 with respect to Federal-State cooperation. S. 4298, 84th Congress, 2d session, introduced by Senator Anderson in 1956, would have authorized the Commission to enter into com-

pacts or agreements "delineating the separate responsibilities" of the AEC and the States with respect to the health and safety aspects of activities licensed under the act, and to transfer to States such regulatory authority as it finds them competent to assume. H.R. 8676, 84th Congress, 2d session, introduced by Congressman Durham in 1956, would have directed the AEC to transfer jurisdiction over health and safety in areas in which a Governor certifies that his State has a competent agency, within 6 months after receiving such certification.

The AEC-proposed bill, forwarded to the Joint Committee in late June 1957, would have authorized concurrent radiation safety standards to be enforced by the States "not in conflict" with those of the AEC. It provided that the States might adopt, inspect against, and enforce radiation standards for the protection of health and safety in areas regulated by AEC. Thus, the bill proposed by the AEC in 1957 would have permitted dual regulation by both Federal and State Governments of byproduct, source, and special nuclear materials for protection against radiation hazards.

At the conclusion of the 85th Congress, the chairman and the vice chairman of the Joint Committee instructed the staff to make a study of existing laws and regulations, at the Federal, State, and local level in the atomic energy field in preparation for hearings by the Joint Committee on Federal-State Cooperation in the spring of 1959. Accordingly, the Joint Committee staff, with the assistance of an informal advisory panel, studied the matter thoroughly and collected materials published in March 1959 as a 520-page Joint Committee print entitled "Selected Materials on Federal-State Cooperation in the Atomic Energy Field." The committee print included special reports requested by Senator Anderson from various Federal agencies, summaries of the activities of State and local governments, and certain nongovernmental organizations. It also reprinted excerpts from articles and materials on Federal-State relationships in the atomic energy field, including a report prepared by the Council of State Governments entitled "Intergovernmental Relationships in the Fields Other Than Atomic Energy."

As background for the hearings on Federal-State cooperation, the Joint Committee held two prior sets of hearings as follows:

1. From January 28 to February 3, 1959, the Special Subcommittee on Radiation of the Joint Committee held public hearings on industrial radioactive waste disposal. Representatives from both Federal and State agencies presented statements on their activities in regulating or handling radioactive waste materials.

2. From March 10 to 18, 1959, the Subcommittee on Research

and Development held public hearings on employee radiation hazards and workmen's compensation. Witnesses from Federal and State agencies, as well as nongovernmental organizations, testified during these hearings.

In order to inform all State Governors of the plans of the Joint Committee and the hearings which led to this bill, Chairman Anderson and Vice Chairman Durham, and three other ranking [p. 5] members of the committee (Senator Hickenlooper, Congressman Van Zandt, and Congressman Holifield as chairman of the Subcommittee on Legislation) sent a letter on February 11, 1959, to each Governor of the then 49 States. Subsequently, copies of the Joint Committee print on "Selected Materials on Federal-State Cooperation in the Atomic Energy Field" and "Selected Materials on Employee Radiation Hazards and Workmen's Compensation" were also sent to each Governor, as well as to all other persons on the Joint Committee mailing list, and other interested persons.

At the request of the Joint Committee, the Commission, on March 5, 1959, forwarded to the Joint Committee a proposed bill for the purposes of inclusion in the Joint Committee print, and the Joint Committee scheduled hearings to be held in May 1959. On May 13, 1959, the Commission formally transmitted its proposal to amend the Atomic Energy Act with respect to cooperation with States, which was identical to the March 5 version, except for minor revisions. This bill was introduced (by request) by Senator Anderson as S. 1987 and by Congressman Durham as H.R. 7214.

From May 19 to 22, 1959, the Joint Committee held hearings, as summarized below in the next session of this report. Thereafter, it was announced that the Bureau of the Budget was coordinating a study within the executive branch concerning allocation of radiation control responsibilities among Federal agencies and transfer of functions to States, and the committee deemed it advisable to take no further action on the bills until the results of such study were announced. On August 14, the White House issued a press release announcing establishment of a Federal Radiation Council, and stating, in addition, as follows:

> In addition, the President approved a series of recommendations to be carried out upon enactment of proposed legislation endorsed by the administration (S. 1987 and H.R. 7214) under which certain regulatory responsibilities of the Atomic Energy Commission will be transferred to the States by agreement with the Commission as the States equip themselves to assume them. The recommendations were that—

(*a*) The Atomic Energy Commission have the principal Federal responsibility for preparing the States for the proposed transfer of certain of its regulatory responsibilities.

(*b*) The training programs necessary for such transfer be financed and planned by the Commission, and in order to make maximum use of existing facilities and competence, such programs be conducted under cooperative arrangements between the Atomic Energy Commission and the Department of Health, Education, and Welfare.

(*c*) At the termination of this special training program any training of State personnel be conducted within the continuing programs of the Department of Health, Education, and Welfare and other Federal agencies.

(*d*) The Department of Health, Education, and Welfare continue as the Federal focal point for guidance and assistance to the States with respect to contamination by and biological effects from radiation sources not now under control of the Commission.

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After announcement of the August 14, 1959, Executive order which established the Federal Radiation Council, and reaffirmed the administration's support of S. 1987 and H.R. 7214, Senator Anderson introduced on August 19, 1959, this bill as S. 2568, to incorporate the principal provisions of S. 1987, plus certain other provisions, including recognition of the Federal Radiation Council. On the next day, August 20, 1959, Congressman Durham introduced an identical bill as H.R. 8755. On August 26, 1959, the committee received comments from the AEC on S. 2568 and H.R. 8755. The committee met to consider the bills in executive meetings on August 26 and 31, 1959, and voted to report the bills out, with certain minor amendments as summarized in this report.

HEARINGS

From May 19 to 22, 1959, the Joint Committee held public hearings on the bills proposed by AEC, and on the subject of Federal-State cooperation in the atomic energy field. Testimony was received from the following persons and organizations:

May 19, 1959

Dr. G. Hoyt Whipple, University of Michigan

Dr. Lauriston Taylor, chairman, National Committee on Radiation Protection and Measurement

Commissioner John S. Graham, U.S. Atomic Energy Commission

Dr. Charles H. Dunham, U.S. Atomic Energy Commission
Dr. Joseph Lieberman, U.S. Atomic Energy Commission
Mr. Oscar S. Smith, U.S. Atomic Energy Commission
Mr. Curtis A. Nelson, U.S. Atomic Energy Commission
Mr. Harold Price, U.S. Atomic Energy Commission
Dr. Clifford Beck, U.S. Atomic Energy Commission
Dr. David Price, U.S. Public Health Service
Dr. Francis J. Weber, U.S. Public Health Service

May 20, 1959

Gov. Robert E. Smylie of Idaho
Mr. Lee Hydeman, University of Michigan Law School
Dr. W. L. Wilson, State of Texas
Dr. Morris Kleinfeld, State of New York
Mr. P. W. Jacoe, State of Colorado
Dr. Maurice B. Visscher, State of Minnesota
Mr. Harold Sandbank, American Municipal Association

May 21, 1959

Commissioner John S. Graham, U.S. Atomic Energy Commission
Mr. Robert Lowenstein, U.S. Atomic Energy Commission
Dr. John D. Porterfield, U.S. Public Health Service
Dr. Francis J. Weber, U.S. Public Health Service
Mr. Jo M. Ferguson, Association of Attorneys General
Mr. Charles F. Schwan, Council of State Governments
Mr. Frank Norton, Southern Governors Conference
Mr. Raymond I. Rigney, representing the Governor of Massachusetts
Mr. Clement R. Bassett, representing the Governor of West Virginia
Mr. Karl R. Allen and Mr. George Kinsman, representing the Governor of the State of Florida

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May 22, 1959

Mr. John Curran, AFL–CIO
Mr. Leonard English, Firefighters Union
Mr. Frank Norton, Southern Governors Conference
Mr. William McAdams, U.S. Chamber of Commerce
Mr. Oliver Townsend, Atomic Energy Coordinator, State of New York
Mr. William Berman and Mr. Lee Hydeman, University of Michigan
Mr. Otto Christenson, Conference of State Manufacturers Association
Prof. George Frampton, University of Illinois Law School

Dr. Roy Cleere, Colorado Department of Health
Mr. Leo Goodman, United Automobile Workers

In addition the Joint Committee received comments from the AEC concerning possible revisions to the bill at a hearing on August 26, 1959.

COMMENTS BY THE JOINT COMMITTEE

1. This proposed legislation is intended to clarify the responsibilities of the Federal Government, on the one hand, and State and local governments, on the other, with respect to the regulation of byproduct, source, and special nuclear materials, as defined in the Atomic Energy Act, in order to protect the public health and safety from radiation hazards. It is also intended to increase programs of assistance and cooperation between the Commission and the States so as to make it possible for the States to participate in regulating the hazards associated with such materials.

2. The approach of the bill is considered appropriate, in the opinion of the Joint Committee, for several reasons:

(*a*) The approach is on a State-by-State basis. It authorizes the Commission to enter into agreements with Governors of individual States, after proper certifications and findings by both the Governor and the Commission as to the adequacy of the State's program. A few States have indicated they will be ready in the near future to begin discussions leading to an agreement to assume regulatory responsibility for such materials. Others will not be ready without more effort, more assistance, and more experience for several, or perhaps many, years. The bill does not authorize a wholesale relinquishment or abdication by the Commission of its regulatory responsibilities but only a gradual, carefully considered turnover, on a State-by-State basis, as individual States may become qualified.

(*b*) The bill applies to some, but not all, atomic energy activities now regulated exclusively by AEC. It applies principally to radioisotopes, whose use and present licensing by AEC is widespread, but whose hazard is local and limited. Moreover, the radiation hazard from radioisotopes has similarities to that from other radiation sources already regulated by States—such as X-ray machines and radium. Licensing and regulation of more dangerous activities—such as nuclear reactors—will remain the exclusive responsibility of the Commission. Thus a line is drawn between types of activities deemed appropriate for regulation by individual States at this time, and other activities where continued AEC regulation is necessary.

(*c*) The bill authorizes increased training and assistance to

States, and thus enhances the protection of the public health and [p. 8] safety, because most citizens look to their local health officers for advice and protection against hazardous materials used in the community. The capacity of such officials to control hazards from byproduct, source, and special nuclear materials would be increased by the training and programs of assistance authorized under this bill. Presumably the capacity of such officials to deal with other materials already under their responsibility—such as X-ray machines and radium—would also be increased, thus further protecting the public health and safety.

3. It is not intended to leave any room for the exercise of dual or concurrent jurisdiction by States to control radiation hazards by regulating byproduct, source, or special nuclear materials. The intent is to have the material regulated and licensed either by the Commission, or by the State and local governments, but not by both. The bill is intended to encourage States to increase their knowledge and capacities, and to enter into agreements to assume regulatory responsibilities over such materials.

4. The bill authorizes the Commission to provide training and other services to State officials and employees and to enter into agreements with the State under which the latter may perform inspections and other functions cooperatively with the Commission. By these means, it is intended to assist the States to prepare themselves for assuming independent regulatory jurisdiction.

5. The Joint Committee believes it important to emphasize that the radiation standards adopted by States under the agreements of this bill should either be identical or compatible with those of the Federal Government. For this reason the committee removed the language "to the extent feasible" in subsection g. of the original AEC bill considered at hearings from May 19 to 22, 1959. The committee recognizes the importance of the testimony before it by numerous witnesses of the dangers of conflicting, overlapping, and inconsistent standards in different jurisdictions, to the hindrance of industry and jeopardy of public safety.

6. The bill establishes, in subsection h., a Federal Radiation Council to advise the President with respect to radiation matters. It is hoped that this Council will assist in obtaining uniformity of basic standards among Federal agencies, as well as in programs of cooperation with States. The Council, as established in the bill, increases the membership from four to five, including the original four members and the Secretary of Labor, or their designees, and such other members as shall be appointed by the President. The President, if he deems it appropriate, may appoint representatives

of the public, or State or local agencies. The bill provides that the Council shall consult qualified scientists and experts in radiation matters, including the President of the National Academy of Sciences, the Chairman of the National Committee on Radiation Protection and Measurement, and qualified experts in the field of biology and medicine, and in the field of health physics.

7. The bill recognizes that this is interim legislation. The committee believes that the uses of atomic energy will be so widespread in future years that States should continue to prepare themselves for increased responsibilities.

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SECTION-BY-SECTION ANALYSIS

Section 1 of this bill adds a new section 274 to the Atomic Energy Act of 1954, as amended, with respect to cooperation with States. The recommended new section 274 consists of subsections a. through n., each of which will be briefly summarized below.

Subsection a. sets forth the purpose of the new section 274. As redrafted by the committee, the purpose is clearly limited to the materials already regulated by the Commission under the Atomic Energy Act of 1954; namely, byproduct, source, and special nuclear materials. The purpose, as redrafted by the committee, also provides for coordination of the development of radiation standards for the guidance of Federal agencies and cooperation with States, and recognizes that this is interim legislation in that, as the States improve their capabilities, additional legislation may be needed, perhaps in approximately 5 years.

Subsection b. is the principal substantive section of the bill. It authorizes the Commission to enter into agreements with Governors of individual States providing for discontinuance of the regulatory source material, and special nuclear materials, in quantities not sufficient to form a critical mass. During the duration of such an agreement, it is recognized that the State shall have the authority to regulate such materials for the protection of the public health and safety from radiation hazards. Prior to such an agreement, the Commission has the responsibility for the regulation of such materials. Subsection b. permits the Commission to discontinue its authority and encourages States, when qualified, to assume the responsibility. The hazards from the types of materials encompass by far the greatest part of the Commission's present licensing and regulatory activities. They are areas which are susceptible to regulation by the States, after the State has established a program for the control of radiation hazards. Subsection b. provides that so long as the agreement is in effect the State shall

have regulatory authority over these materials.

Subsection c. of the bill excludes certain areas from an agreement under subsection b. between the Commission and the Governor of a State. These are areas which, because of their special hazards, or for reasons of Federal responsibility, are believed desirable for continued responsibility by the Commission. They include the construction and operation of production or utilization facilities, including reactors: the export or import of such materials or facilities; the disposal into the ocean or sea of such materials; and the disposal of such other materials as the Commission determines because of hazards or potential hazards should not be disposed of without a license from the Commission. The last sentence of subsection c. provides that the Commission, notwithstanding any agreement under subsection b., is authorized to require that the manufacturer, processor, or producer of any equipment device, commodity, or other product containing such materials shall not transfer possession or control of such products, except pursuant to an AEC license. The Commission, in its section-by-section analysis of the bill, forwarded by the May 13, 1959 letter, explained the purpose of this sentence as follows:

> The controls which would be exercised by the Commission under this provision would apply only to "transfer of possession or control" by the "manufacturer, processor, or [p. 10] producer." The Commission would not be authorized under this provision to regulate any radiation hazards which might arise during manufacture, transportation, or use of a product.
>
> Under the provision, the Commission will be in a position to assure that articles containing byproduct, source, or special nuclear material will not be distributed unless they meet the Commission's minimum safety requirements, including appropriate manufacturing and processing specifications and labeling requirements. Manufacturers of such devices as gages, luminous markers, radiograph and teletherapy devices, electronic tubes, and so forth sell their products throughout the United States and in many foreign countries. It is important to assure that controls with respect to such products should be uniform and should be uniformly applied.
>
> There is an additional reason why it is important for the Commission to continue the exercise of control over the distribution of articles containing source, byproduct, or special nuclear material. As the supply of such radioactive materials, particularly byproduct materials, increases, there may be increasing proposals by manufacturers and processors to

incorporate such materials in articles (such as consumer products) that receive widespread distribution. Although it is not a present problem, the extent to which the widespread distribution of radioactive materials should be permitted in this country may in the foreseeable future present questions of public policy which can be resolved, and the hazards controlled, only at the Federal level.

Subsection d. provides for certification by the Governor, and a finding by the Commission, before any agreement may be entered into. It is intended to protect the public health and safety by assuring that the State program is adequate before the Commission may withdraw its regulatory responsibilities.

Subsection e. provides for publication in the Federal Register of such proposed agreements or exemptions, and provides an opportunity for comment by interested persons.

Subsection f. authorizes the Commission to grant exemptions from the licensing requirements.

Subsection g. provides that the Commission is authorized and directed to cooperate with the States in the formulation of standards for the protection of public health and safety from radiation hazards and to assure that State and Commission programs for protection against radiation hazards will be coordinated and compatible. In most cases, it is intended that State and local standards should be the same as Federal standards in order to avoid conflict, duplication, or gaps.

Subsection h. establishes a Federal Radiation Council, consisting of nine members. The first seven are identified in the bill. By the use of the words "or their designees," it is indicated that qualified subordinates, particularly those with technical competence, may serve on the Council. The Federal Radiation Council was recently established by Executive order of the President. It is not intended to interfere with the functions of the Council as established, but to recognize it by statute, add the Secretary of Labor, provide for

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consultation with scientific experts, and authorize it to advise as to programs of cooperation with States. As in the Executive order, it provides that the Council shall advise the President with respect to certain radiation matters, including guidance for all Federal agencies in the formulation of basic radiation standards and in the establishment and execution of programs of cooperation with States. It is provided that the Council shall also perform such other functions as the President may assign to it by Executive order.

Subsection i. provides that the Commission is authorized to pro-

vide training with or without charge, and such other assistance to employees of any State or political subdivision thereof, or groups of States, as the Commission deems appropriate. The last sentence added by the Joint Committee, after hearings, provides that any such assistance shall take into account the additional expenses that may be incurred by the State as the consequence of the State entering into an agreement with the Commission. It is not intended that a cash grant shall be provided to pay for the administration of State regulatory programs. It is anticipated that training, consulting, and similar arrangements may be made by the Commission to reimburse State or State employees for expenses, or pay salaries of such employees while associated with the AEC.

Subsection j. of the bill provides that the Commission, upon its own initiative after reasonable notice and opportunity for hearings, or upon request of the Governor of a State, may terminate or suspend its agreement with the State and reassert the licensing and regulatory authority vested in the Commission under the Atomic Energy Act, if the Commission finds that such termination or suspension is required to protect the public health and safety. This provision represents a reserve power, to be exercised only under extraordinary circumstances.

Subsection k. provides that nothing in the new section 274 shall be construed to affect the authority of any State or local agency to regulate activities for purposes other than protection against radiation hazards. This subsection is intended to make it clear that the bill does not impair the State authority to regulate activities of AEC licensees for the manifold health, safety, and economic purposes other than radiation protection. As indicated elsewhere, the Commission has exclusive authority to regulate for protection against radiation hazards until such time as the State enters into an agreement with the Commission to assume such responsibility.

Subsection l. provides appropriate recognition of the interest of the States in activities which are continued under Commission authority. Thus, the Commission is required to give prompt notice to the States of the filing of license applications and to afford reasonable opportunity for State representatives to offer evidence, interrogate witnesses, and advise the Commission as to the application.

Subsection m. of the bill is the same as subsection c. of the original AEC bill and is designed to make it clear that the bill does not affect the Commission's authority under the Atomic Energy Act to issue appropriate rules, regulations, or orders to protect the common defense and security, to protect restricted data, and to guard

against the loss or diversion of special nuclear materials.

Subsection n. defines the term "State" as meaning any State, Territory, or possession of the United States, the Canal Zone, Puerto Rico, and the District of Columbia. In addition, it is under-

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stood that the term "Governor" means the chief executive officer of any such entity.

Section 2 of the bill amends section 108 of the Atomic Energy Act of 1954, by deleting the phrase "distributed under the provisions of subsection 53a." from the second sentence. The purpose of this amendment is to assure that the authority of the Commission to recapture special nuclear material whenever the Congress declares that a state of war or national emergency exists, shall not be impaired by reason of the Commission's having entered into an agreement with the Governor of any State.

CHANGES IN EXISTING LAW

In accordance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law recommended by the bill accompanying this report are shown as follows (deleted matter is shown in black brackets and new matter is printed in italic):

PUBLIC LAW 83–703

THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

* * * * * * *

"SEC. 108. WAR OR NATIONAL EMERGENGY.—Whenever the Congress declares that a state of war or national emergency exists, the Commission is authorized to suspend any licenses granted under this Act if in its judgment such action is necessary to the common defense and security. The Commission is authorized during such period, if the Commission finds it necessary to the common defense and security, to order the recapture of any special nuclear material [distributed under the provisions of subsection 53a.,] or to order the operation of any facility licensed under section 103 or 104, and is authorized to order the entry into any plant or facility in order to recapture such material, or to operate such facility. Just compensation shall be paid for any damages caused by the recapture of any special nuclear material or by the operation of any such facility.

* * * * * * *

"SEC. *274. Cooperation With States.*—

"*a. It is the purpose of this section*—

"(1) to recognize the interests of the States in the peaceful uses of atomic energy, and to clarify the respective responsibilities under this Act of the States and the Commission with respect to the regulation of byproduct, source, and special nuclear materials;

"(2) to recognize the need, and establish programs for, cooperation between the States and the Commission with respect to control of radiation hazards associated with use of such materials;

"(3) to promote an orderly regulatory pattern between the Commission and State governments with respect to nuclear development and use and regulation of byproduct, source, and special nuclear materials;

"(4) to establish procedures and criteria for discontinuance of certain of the Commission's regulatory responsibilities with respect to byproduct, source, and special nuclear materials, and the assumption thereof by the States;

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"(5) to provide for coordination of the development of radiation standards for the guidance of Federal agencies and cooperation with the States; and

"(6) to recognize that, as the States improve their capabilities to regulate effectively such materials, additional legislation may be desirable.

"b. Except as provided in subsection c., the Commission is authorized to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission under chapters 6, 7, and 8, and section 161 of this Act, with respect to any one or more of the following materials within the State—

"(1) byproduct materials;

"(2) source materials;

"(3) special nuclear materials in quantities not sufficient to form a critical mass.

During the duration of such an agreement it is recognized that the State shall have authority to regulate the materials covered by the agreement for the protection of the public health and safety from radiation hazards.

"c. No agreement entered into pursuant to subsection b. shall provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to regulation of—

"(1) the construction and operation of any production or utilization facility;

"(2) the export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;

"(3) the disposal into the ocean or sea of byproduct, source, or special nuclear waste materials as defined in regulations or orders of the Commission;

"(4) the disposal of such other byproduct, source, or special nuclear material as the Commission determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed of without a license from the Commission. Notwithstanding any agreement between the Commission and any State pursuant to subsection b., the Commission is authorized by rule, regulation, or order to require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license issued by the Commission.

"d. The Commission shall enter into an agreement under subsection b. of this section with any State if—

"(1) the Governor of that State certifies that the State has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by the proposed agreement, and that the State desires to assume regulatory responsibility for such materials; and

"(2) the Commission finds that the State program is compatible with the Commission's program for the regulation of such materials, and that the State program is adequate to protect the public health and safety with respect to the materials covered by the proposed agreement.

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"e. (1) Before any agreement under subsection b. is signed by the Commission, the terms of the proposed agreement and of proposed exemptions pursuant to subsection f. shall be published once each week for four consecutive weeks in the Federal Register; and such opportunity for comment by interested persons on the proposed agreement and exemptions shall be allowed as the Commission determines by regulation or order to be appropriate.

"(2) Each proposed agreement shall include the proposed effective date of such proposed agreement or exemptions. The agreement and exemptions shall be published in the Federal Register within thirty days after signature by the Commission and the Governor.

"f. The Commission is authorized and directed, by regulation or order, to grant such exemptions from the licensing requirements contained in chapters 6, 7, and 8, and from its regulations applicable to licensees as the Commission finds necessary or appropriate to carry out any agreement entered into pursuant to subsection b. of this section.

"g. The Commission is authorized and directed to cooperate with the States in the formulation of standards for protection against hazards of radiation to assure that State and Commission programs for protection against hazards of radiation will be coordinated and compatible.

"h. There is hereby established a Federal Radiation Council, consisting of the Secretary of Health, Education, and Welfare, the Chairman of the Atomic Energy Commission, the Secretary of Defense, the Secretary of Commerce, the Secretary of Labor, or their designees, and such other members as shall be appointed by the President. The Council shall consult qualified scientists and experts in radiation matters, including the President of the National Academy of Sciences, the Chairman of the National Committee on Radiation Protection and Measurement, and qualified experts in the field of biology and medicine and in the field of health physics. The Special Assistant to the President for Science and Technology, or his designee, is authorized to attend meetings, participate in the deliberations of, and to advise the Council. The Chairman of the Council shall be designated by the President, from time to time, from among the members of the Council. The Council shall advise the President with respect to radiation matters, directly or indirectly affecting health, including guidance for all Federal agencies in the formulation of radiation standards and in the establishment and execution of programs of cooperation with States. The Council shall also perform such other functions as the President may assign to it by Executive order.

"i. The Commission in carrying out its licensing and regulatory responsibilities under this Act is authorized to enter into agreements with any State, or group of States, to perform inspections or other functions on a cooperative basis as the Commission deems appropriate. The Commission is also authorized to provide training, with or without charge, to employees of, and such other assistance to, any State or political subdivision thereof or group of States as the Commission deems appropriate. Any such provision or assistance by the Commission shall take into account the additional expenses that may be incurred by a State as a consequence of the State's entering into an agreement with the Commission pursuant to subsection b. [p. 15]

"j. The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State with which an agreement under subsection b. has become effective, or upon request of the Governor of such State, may terminate or suspend its agreement with the State and reassert the licensing and regulatory authority vested in it under this Act, if the Commission finds that such termination or suspension is required to protect the public health and safety.

"k. Nothing in this section shall be construed to affect the authority of any State or local agency to regulate activities for purposes other than protection against radiation hazards.

"l. With respect to each application for Commission license authorizing an activity as to which the Commission's authority is continued pursuant to subsection c., the Commission shall give prompt notice to the State or States in which the activity will be conducted of the filing of the license application; and shall afford reasonable opportunity for State representatives to offer evidence, interrogate witnesses, and advise the Commission as to the application without requiring such representatives to take a position for or against the granting of the application.

"m. No agreement entered into under subsection b., and no exemption granted pursuant to subsection f., shall affect the authority of the Commission under subsection 161b. or i. to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data or to guard against the loss or diversion of special nuclear material. For purposes of subsection 161i., activities covered by exemptions granted pursuant to subsection f. shall be deemed to constitute activities authorized pursuant to this Act; and special nuclear material acquired by any person pursuant to such an exemption shall be deemed to have been acquired pursuant to section 53.

"n. As used in this section, the term 'State' means any State, Territory, or possession of the United States, the Canal Zone, Puerto Rico, and the District of Columbia."

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1.1n(2) JOINT COMMITTEE ON ATOMIC ENERGY

H.R. REP. No. 1125, 86th Cong., 1st Sess. (1959)

AMENDMENTS TO THE ATOMIC ENERGY ACT OF 1954, AS AMENDED, WITH RESPECT TO COOPERATION WITH STATES

SEPTEMBER 2, 1959.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. DURHAM, from the Joint Committee on Atomic Energy submitted the following

REPORT

[To accompany H.R. 8755]

The Joint Committee on Atomic Energy, having considered H.R. 8755, an original committee bill to amend the Atomic Energy Act of 1954, as amended, with respect to cooperation with States, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments to the bill adopted by the Joint Committee are as follows:

1. On page 3, line 6, strike out the words "and license".

2. On page 3, line 17, after the word "production", strike out the word "of" and insert in lieu thereof the word "or".

3. On page 5, line 1, strike out the word "three" and insert in lieu thereof the word "four".

4. On page 5, strike out all of lines 6 through 17, and on line 18 renumber clause (3) as clause (2).

5. On page 6, line 10, strike out all after "h.", strike out all of lines 11 through 20, and in line 21, strike out the words "radiation hazards and standards" and the period, and insert in lieu thereof the following words:

> There is hereby established a Federal Radiation Council, consisting of the Secretary of Health, Education, and Welfare, the Chairman of the Atomic Energy Commission, the Secretary of Defense, the Secretary of Commerce, the Secretary of Labor, or their designees, and such other members as shall be appointed by the President. The Council shall consult qualified scientists and experts in radiation matters,

including the President of the National Academy of Sciences, the Chairman of the National Committee on Radiation Pro-

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tection and Measurement, and qualified experts in the field of biology and medicine and in the field of health physics.

6. On page 8, line 6, strike out all after "k.", strike out all of lines 7 through 13, and in line 14 strike out the word "regulations" and the period.

EXPLANATION OF COMMITTEE AMENDMENTS

The amendments adopted by the committee are all minor or technical in nature, and are not intended to change the basic purposes and objectives of the bill as proposed by the Atomic Energy Commission.

Amendment No. 1, in subsection b., strikes out the words "and license" after the word "regulate". The words "and license" were not considered necessary because, as used elsewhere in the bill, the word "regulate" includes the licensing function. Thus, for reasons of consistency, the words "and license" in this subsection were deleted as being unnecessary.

Amendment No. 2 corrects a typographical error in changing the word "of" to the word "or".

Amendment No. 3, in clause (1) of subsection e., requires that the terms of a proposed agreement and proposed exemptions shall be published in the Federal Register each week for 4 consecutive weeks, rather than 3, in order that all interested persons, including State officials and the general public, may be fully informed and have opportunity to comment to the Commission.

Amendment No. 4 deleted clause (2) of subsection e., which would have provided a 45-day review period by the Joint Committee on Atomic Energy of any proposed agreement or amendment. The Commission has the responsibility, under section 202 of the Atomic Energy Act, of keeping the Joint Committee "fully and currently informed." Under section 202, it is intended that the Commission shall inform the committee of all pending agreements with individual States, including the proposed certifications and findings under subsection d. as to the adequacy of State programs, as well as operations under agreements after they may become effective. The Joint Committee does not consider it necessary to provide for formal review of each individual proposed agreement or amendment, but does believe it important that the committee be kept fully informed by the Commission of the operations under the provisions of this bill.

Amendment No. 5 in subsection h. amends the composition of the Federal Radiation Council in the bill, as introduced, in certain respects. First, it substitutes the Secretary of Health, Education, and Welfare for the Surgeon General as a member of the Council. The Department of Health, Education, and Welfare includes both the Public Health Service, under the Surgeon General, and the Federal Food and Drug Administration, which also has an interest in radiation matters. It is intended that the Secretary will receive advice from both of these agencies. The Secretary may, of course, if he so desires, designate the Surgeon General to serve on the Council as his designee.

As amended, subsection h. names five members of the Council; namely, the Secretary of Health, Education, and Welfare, the Chairman of the Atomic Energy Commission, the Secretary of Defense, the Secretary of Commerce, and the Secretary of Labor, or their designees, and such other members as shall be appointed by the President. It provides that the Council shall consult qualified

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scientists and experts in radiation matters, including the President of the National Academy of Sciences, the Chairman of the National Committee on Radiation Protection and Measurement, and qualified experts in the field of biology and medicine and in the field of health physics. In this manner, persons named in the statute are all appointees of the President, and members of the President's official family, and the President may appoint additional members, including representatives of the public, and State or local agencies. The bill emphasizes that the Council shall consult qualified scientists and obtain their advice before advising the President on radiation matters.

The Joint Committee was informed that subsection h., as amended, would meet with no objections by the Director of the Bureau of the Budget or the Secretary of the Department of Health, Education, and Welfare.

Amendment No. 6 deletes the first sentence of subsection k. as unnecessary. As explained in more detail subsequently in this report, the Commission now regulates and licenses the materials covered by the Atomic Energy Act (byproduct, source, and special nuclear materials) to protect against radiation hazards. With or without this sentence, in order for a State to so regulate or license such materials, it must first establish an adequate program for this purpose and enter into an agreement with the Commission.

SUMMARY OF BILL

This bill, including the minor amendments approved by the Joint Committee, contains the principal provisions of its predecessor, H.R. 7214, as proposed by the Atomic Energy Commission, and introduced by Congressman Durham (by request) on May 18, 1959. The objectives of the predecessor bill were explained by the letter dated May 13, 1959, to Chairman Anderson from A. R. Luedecke, General Manager of the AEC, as follows:

> Essentially, the objectives of this proposed bill are to provide procedures and criteria whereby the Commission may "turn over" to individual States, as they become ready, certain defined areas of regulatory jurisdiction. Certain areas, as to which interstate, national, or international considerations may be paramount, would be excluded. In addition, certain areas would be excluded because the technical safety considerations are of such complexity that it is not likely that any State would be prepared to deal with them during the foreseeable future.
>
> To assist the States to prepare themselves for assuming independent regulatory jurisdiction, the new bill (like the 1957 bill) specifically authorizes the Commission to provide training and other services to State officials and employees and to enter into agreements with the States under which the latter may perform inspections and other functions cooperatively with the Commission.
>
> The bill includes criteria which would need to be met before the Commission could turn over any of its responsibilities to a State; and provisions pursuant to which the Commission might reassert its authority. The bill provides that the Commission may, upon request of the Governor or upon its own initiative, terminate or

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> suspend its agreement with the State and reassert its regulatory authority if the Commission finds that such termination or suspension is required to protect public health and safety. Opportunity for hearing is provided.
>
> The bill also contains specific provisions designed to remove doubt as to the relative responsibilities of the Commission and the States * * *.

In summary, the principal provisions of the bill authorize the Commission to withdraw its responsibility for regulation of certain materials—principally radioisotopes—but not over more hazardous activities such as the licensing and regulation of reactors.

The bill requires compatibility of Federal and State radiation standards, and authorizes programs to assist the States to assume independent regulatory jurisdiction.

This bill, as amended by the Joint Committee, contains all the principal provisions, and is intended to accomplish the objectives of the bill proposed by the Commission. In addition, it contains certain revisions made by the Joint Committee as follows:

First, the bill has been redrafted by the Joint Committee to make it clear that it does not attempt to regulate materials which the AEC does not now regulate under the Atomic Energy Act of 1954. Such other sources such as X-ray machines and radium also present substantial radiation hazards, but have been for many years the responsibility of the States, the Public Health Service, or other agencies.

Secondly, as a drafting change, subsection b. in the bill as originally proposed by AEC (S. 1987) contained two clauses—(1) and (2). Because of their substantive importance, these clauses were redrafted as subsections b. and c., and certain other subsections renumbered accordingly.

Thirdly, subsection h., added by this bill, establishes a Federal Radiation Council to advise the President on radiation matters, similar to the Council recently established by Executive order. It does not modify the basic functions of the Council, but increases its membership from four to five members, including the Secretary of Labor, and provides that the Council shall consult qualified Scientists and experts in radiation matters.

Fourth, a sentence was added by the Joint Committee in new subsection i., pertaining to training and assistance, that in providing assistance to the States, the Commission shall take into account the additional expenses that may be incurred by the State as a consequence of the State's entering into an agreement with the Commission.

In summary, this bill provides the basic authorization requested by the Commission, and also incorporates certain additional features considered desirable by the committee, after hearings and careful consideration of all the provisions of the bill.

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COMMENTS BY THE JOINT COMMITTEE

1. This proposed legislation is intended to clarify the responsibilities of the Federal Government, on the one hand, and State and local governments, on the other, with respect to the regulation of byproduct, source, and special nuclear materials, as defined in the Atomic Energy Act, in order to protect the public health and

safety from radiation hazards. It is also intended to increase programs of assistance and cooperation between the Commission and the States so as to make it possible for the States to participate in regulating the hazards associated with such materials.

2. The approach of the bill is considered appropriate, in the opinion of the Joint Committee, for several reasons:

(*a*) The approach is on a State-by-State basis. It authorizes the Commission to enter into agreements with Governors of individual States, after proper certifications and findings by both the Governor and the Commission as to the adequacy of the State's program. A few States have indicated they will be ready in the near future to begin discussions leading to an agreement to assume regulatory responsibility for such materials. Others will not be ready without more effort, more assistance, and more experience for several, or perhaps many, years. The bill does not authorize a wholesale relinquishment or abdication by the Commission of its regulatory responsibilities but only a gradual, carefully considered turnover, on a State-by-State basis, as individual States may become qualified.

(*b*) The bill applies to some, but not all, atomic energy activities now regulated exclusively by AEC. It applies principally to radioisotopes, whose use and present licensing by AEC is widespread, but whose hazard is local and limited. Moreover, the radiation hazard from radioisotopes has similarities to that from other radiation sources already regulated by States—such as X-ray machines and radium. Licensing and regulation of more dangerous activities—such as nuclear reactors—will remain the exclusive responsibility of the Commission. Thus a line is drawn between types of activities deemed appropriate for regulation by individual States at this time, and other activities where continued AEC regulation is necessary.

(*c*) The bill authorizes increased training and assistance to States, and thus enhances the protection of the public health and

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safety, because most citizens look to their local health officers for advice and protection against hazardous materials used in the community. The capacity of such officials to control hazards from byproduct, source, and special nuclear materials would be increased by the training and programs of assistance authorized under this bill. Presumably the capacity of such officials to deal with other materials already under their responsibility—such as X-ray machines and radium—would also be increased, thus further protecting the public health and safety.

3. It is not intended to leave any room for the exercise of dual

or concurrent jurisdiction by States to control radiation hazards by regulating byproduct, source, or special nuclear materials. The intent is to have the material regulated and licensed either by the Commission, or by the State and local governments, but not by both. The bill is intended to encourage States to increase their knowledge and capacities, and to enter into agreements to assume regulatory responsibilities over such materials.

4. The bill authorizes the Commission to provide training and other services to State officials and employees and to enter into agreements with the State under which the latter may perform inspections and other functions cooperatively with the Commission. By these means, it is intended to assist the States to prepare themselves for assuming independent regulatory jurisdiction.

5. The Joint Committee believes it important to emphasize that the radiation standards adopted by States under the agreements of this bill should either be identical or compatible with those of the Federal Government. For this reason the committee removed the language "to the extent feasible" in subsection g. of the original AEC bill considered at hearings from May 19 to 22, 1959. The committee recognizes the importance of the testimony before it by numerous witnesses of the dangers of conflicting, overlapping, and inconsistent standards in different jurisdictions, to the hindrance of industry and jeopardy of public safety.

6. The bill establishes, in subsection h., a Federal Radiation Council to advise the President with respect to radiation matters. It is hoped that this Council will assist in obtaining uniformity of basic standards among Federal agencies, as well as in programs of cooperation with States. The Council, as established in the bill, increases the membership from four to five, including the original four members and the Secretary of Labor, or their designees, and such other members as shall be appointed by the President. The President, if he deems it appropriate, may appoint representatives of the public, or State or local agencies. The bill provides that the Council shall consult qualified scientists and experts in radiation matters, including the President of the National Academy of Sciences, the Chairman of the National Committee on Radiation Protection and Measurement, and qualified experts in the field of biology and medicine, and in the field of health physics.

7. The bill recognizes that this is interim legislation. The committee believes that the uses of atomic energy will be so widespread in future years that States should continue to prepare themselves for increased responsibilities.

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SECTION-BY-SECTION ANALYSIS

Section 1 of this bill adds a new section 274 to the Atomic Energy Act of 1954, as amended, with respect to cooperation with States. The recommended new section 274 consists of subsections a. through n., each of which will be briefly summarized below.

Subsection a. sets forth the purpose of the new section 274. As redrafted by the committee, the purpose is clearly limited to the materials already regulated by the Commission under the Atomic Energy Act of 1954; namely, byproduct, source, and special nuclear materials. The purpose, as redrafted by the committee, also provides for coordination of the development of radiation standards for the guidance of Federal agencies and cooperation with States, and recognizes that this is interim legislation in that, as the States improve their capabilities, additional legislation may be needed, perhaps in approximately 5 years.

Subsection b. is the principal substantive section of the bill. It authorizes the Commission to enter into agreements with Governors of individual States providing for discontinuance of the regulatory source material, and special nuclear materials, in quantities not sufficient to form a critical mass. During the duration of such an agreement, it is recognized that the State shall have the authority to regulate such materials for the protection of the public health and safety from radiation hazards. Prior to such an agreement, the Commission has the responsibility for the regulation of such materials. Subsection b. permits the Commission to discontinue its authority and encourages States, when qualified, to assume the responsibility. The hazards from the types of materials encompass by far the greatest part of the Commission's present licensing and regulatory activities. They are areas which are susceptible to regulation by the States, after the State has established a program for the control of radiation hazards. Subsection b. provides that so long as the agreement is in effect the State shall have regulatory authority over these materials.

Subsection c. of the bill excludes certain areas from an agreement under subsection b. between the Commission and the Governor of a State. These are areas which, because of their special hazards, or for reasons of Federal responsibility, are believed desirable for continued responsibility by the Commission. They include the construction and operation of production or utilization facilities, including reactors; the export or import of such materials or facilities; the disposal into the ocean or sea of such materials; and the disposal of such other materials as the Commission determines because of hazards or potential hazards should

not be disposed of without a license from the Commission. The last sentence of subsection c. provides that the Commission, notwithstanding any agreement under subsection b., is authorized to require that the manufacturer, processor, or producer of any equipment device, commodity, or other product containing such materials shall not transfer possession or control of such products, except pursuant to an AEC license. The Commission, in its section-by-section analysis of the bill, forwarded by the May 13, 1959 letter, explained the purpose of this sentence as follows:

> The controls which would be exercised by the Commission under this provision would apply only to "transfer of possession or control" by the "manufacturer, processor, [p. 10] or producer." The Commission would not be authorized under this provision to regulate any radiation hazards which might arise during manufacture, transportation, or use of a product.
>
> Under the provision, the Commission will be in a position to assure that articles containing byproduct, source, or special nuclear material will not be distributed unless they meet the Commission's minimum safety requirements, including appropriate manufacturing and processing specifications and labeling requirements. Manufacturers of such devices as gages, luminous markers, radiograph and teletherapy devices, electronic tubes, and so forth sell their products throughout the United States and in many foreign countries. It is important to assure that controls with respect to such products should be uniform and should be uniformly applied.
>
> There is an additional reason why it is important for the Commission to continue the exercise of control over the distribution of articles containing source, byproduct, or special nuclear material. As the supply of such radioactive materials, particularly byproduct materials, increases, there may be increasing proposals by manufacturers and processors to incorporate such materials in articles (such as consumer products) that receive widespread distribution. Although it is not a present problem, the extent to which the widespread distribution of radioactive materials should be permitted in this country may in the foreseeable future present questions of public policy which can be resolved, and the hazards controlled, only at the Federal level.

Subsection d. provides for certification by the Governor, and a

finding by the Commission, before any agreement may be entered into. It is intended to protect the public health and safety by assuring that the State program is adequate before the Commission may withdraw its regulatory responsibilities.

Subsection e. provides for publication in the Federal Register of such proposed agreements or exemptions, and provides an opportunity for comment by interested persons.

Subsection f. authorizes the Commission to grant exemptions from the licensing requirements.

Subsection g. provides that the Commission is authorized and directed to cooperate with the States in the formulation of standards for the protection of public health and safety from radiation hazards and to assure that State and Commission programs for protection against radiation hazards will be coordinated and compatible. In most cases, it is intended that State and local standards should be the same as Federal standards in order to avoid conflict, duplication, or gaps.

Subsection h. establishes a Federal Radiation Council, consisting of five members, and such others as may be appointed by the President. By the use of the words "or their designees," it is indicated that qualified subordinates, particularly those with technical competence, may serve on the Council. The Federal Radiation Council was recently established by Executive order of the President. It is not intended to interfere with the functions of the Council as established, but to recognize it by statute, add the Secretary of

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Labor, provide for consultation with scientific experts, and authorize it to advise as to programs of cooperation with States. As in the Executive order, it provides that the Council shall advise the President with respect to certain radiation matters, including guidance for all Federal agencies in the formulation of basic radiation standards and in the establishment and execution of programs of cooperation with States. It is provided that the Council shall also perform such other functions as the President may assign to it by Executive order.

Subsection i. provides that the Commission is authorized to provide training with or without charge, and such other assistance to employees of any State or political subdivision thereof, or groups of States, as the Commission deems appropriate. The last sentence added by the Joint Committee, after hearings, provides that any such assistance shall take into account the additional expenses that may be incurred by the State as the consequence of the State entering into an agreement with the Commission. It is not intended that a cash grant shall be provided to pay for the ad-

ministration of State regulatory programs. It is anticipated that training, consulting, and similar arrangements may be made by the Commission to reimburse State or State employees for expenses, or pay salaries of such employees while associated with the AEC.

Subsection j. of the bill provides that the Commission, upon its own initiative after reasonable notice and opportunity for hearings, or upon request of the Governor of a State, may terminate or suspend its agreement with the State and reassert the licensing and regulatory authority vested in the Commission under the Atomic Energy Act, if the Commission finds that such termination or suspension is required to protect the public health and safety. This provision represents a reserve power, to be exercised only under extraordinary circumstances.

Subsection k. provides that nothing in the new section 274 shall be construed to affect the authority of any State or local agency to regulate activities for purposes other than protection against radiation hazards. This subsection is intended to make it clear that the bill does not impair the State authority to regulate activities of AEC licensees for the manifold health, safety, and economic purposes other than radiation protection. As indicated elsewhere, the Commission has exclusive authority to regulate for protection against radiation hazards until such time as the State enters into an agreement with the Commission to assume such responsibility.

Subsection l. provides appropriate recognition of the interest of the States in activities which are continued under Commission authority. Thus, the Commission is required to give prompt notice to the States of the filing of license applications and to afford reasonable opportunity for State representatives to offer evidence, interrogate witnesses, and advise the Commission as to the application.

Subsection m. of the bill is the same as subsection c. of the original AEC bill and is designed to make it clear that the bill does not affect the Commission's authority under the Atomic Energy Act to issue appropriate rules, regulations, or orders to protect the common defense and security, to protect restricted data, and to guard against the loss or diversion of special nuclear materials.

Subsection n. defines the term "State" as meaning any State, Territory, or possession of the United States, the Canal Zone, Puerto Rico, and the District of Columbia. In addition, it is

understood that the term "Governor" means the chief executive officer of any such entity.

Section 2 of the bill amends section 108 of the Atomic Energy Act of 1954, by deleting the phrase "distributed under the provisions of subsection 53a." from the second sentence. The purpose of this amendment is to assure that the authority of the Commission to recapture special nuclear material whenever the Congress declares that a state of war or national emergency exists, shall not be impaired by reason of the Commission's having entered into an agreement with the Governor of any State.

CHANGES IN EXISTING LAW

In accordance with clause (3) of rule XIII of the Rules of the House of Representatives, changes in existing law recommended by the bill accompanying this report are shown as follows (deleted matter is shown in black brackets and new matter is printed in italic):

PUBLIC LAW 83–703
THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

* * * * * * *

"SEC. 108. WAR OR NATIONAL EMERGENCY.—Whenever the Congress declares that a state of war or national emergency exists, the Commission is authorized to suspend any licenses granted under this Act if in its judgment such action is necessary to the common defense and security. The Commission is authorized during such period, if the Commission finds it necessary to the common defense and security, to order the recapture of any special nuclear material [distributed under the provisions of subsection 53 a.,] or to order the operation of any facility licensed under section 103 or 104, and is authorized to order the entry into any plant or facility in order to recapture such material, or to operate such facility. Just compensation shall be paid for any damages caused by the recapture of any special nuclear material or by the operation of any such facility.

* * * * * * *

"SEC. *274. Cooperation With States.*—

"*a. It is the purpose of this section*—

"*(1) to recognize the interests of the States in the peaceful uses of atomic energy, and to clarify the respective responsibilities under this Act of the States and the Commission with respect to the regulation of byproduct, source, and special nuclear materials;*

"*(2) to recognize the need, and establish programs for, cooperation between the States and the Commission with*

respect to control of radiation hazards associated with use of such materials;

"(3) to promote an orderly regulatory pattern between the Commission and State governments with respect to nuclear development and use and regulation of byproduct, source, and special nuclear materials;

"(4) to establish procedures and criteria for discontinuance of certain of the Commission's regulatory responsibilities with respect to byproduct, source, and special nuclear materials, and the assumption thereof by the States;

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"(5) to provide for coordination of the development of radiation standards for the guidance of Federal agencies and cooperation with the States; and

"(6) to recognize that, as the States improve their capabilities to regulate effectively such materials, additional legislation may be desirable.

"b. Except as provided in subsection c., the Commission is authorized to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission under chapters 6, 7 and 8, and section 161 of this Act, with respect to any one or more of the following materials within the State—

"(1) byproduct materials;

"(2) source materials;

"(3) special nuclear materials in quantities not sufficient to form a critical mass.

During the duration of such an agreement it is recognized that the State shall have authority to regulate the materials, covered by the agreement for the protection of the public health and safety from radiation hazards.

"c. No agreement entered into pursuant to subsection b. shall provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to regulation of—

"(1) the construction and operation of any production or utilization facility;

"(2) the export from or import into the United States of byproduct, source, or special nuclear material, or of any production or utilization facility;

"(3) the disposal into the ocean or sea of byproduct, source, or special nuclear waste materials as defined in regulations or orders of the Commission;

"(4) the disposal of such other byproduct, source, or spe-

cial nuclear material as the Commission determines by regulation or order should, because of the hazards or potential hazards thereof, not be so disposed of without a license from the Commission.

Notwithstanding any agreement between the Commission and any State pursuant to subsection b., the Commission is authorized by rule, regulation, or order to require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license issued by the Commission.

"d. The Commission shall enter into an agreement under subsection b. of this section with any State if—

"(1) the Governor of that State certifies that the State has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by the proposed agreement, and that the State desires to assume regulatory responsibility for such materials; and

"(2) the Commission finds that the State program is compatible with the Commission's program for the regulation of such materials, and that the State program is adequate to protect the public health and safety with respect to the materials covered by the proposed agreement.

"e. (1) Before any agreement under subsection b. is signed by the Commission, the terms of the proposed agreement and of pro-

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posed exemptions pursuant to subsection f. shall be published once each week for four consecutive weeks in the Federal Register; and such opportunity for comment by interested persons on the proposed agreement and exemptions shall be allowed as the Commission determines by regulation or order to be appropriate.

"(2) Each proposed agreement shall include the proposed effective date of such proposed agreement or exemptions. The agreement and exemptions shall be published in the Federal Register within thirty days after signature by the Commission and the Governor.

"f. The Commission is authorized and directed, by regulation or order, to grant such exemptions from the licensing requirements contained in chapters 6, 7, and 8, and from its regulations applicable to licensees as the Commission finds necessary or appropriate to carry out any agreement entered into pursuant to subsection b. of this section.

"g. The Commission is authorized and directed to cooperate

with the States in the formulation of standards for protection against hazards of radiation to assure that State and Commission programs for protection against hazards of radiation will be coordinated and compatible.

"h. There is hereby established a Federal Radiation Council, consisting of the Secretary of Health, Education, and Welfare, the Chairman of the Atomic Energy Commission, the Secretary of Defense, the Secretary of Commerce, the Secretary of Labor, or their designees, and such other members as shall be appointed by the President. The Council shall consult qualified scientists and experts in radiation matters, including the President of the National Academy of Sciences, the Chairman of the National Committee on Radiation Protection and Measurement, and qualified experts in the field of biology and medicine and in the field of health physics. The Special Assistant to the President for Science and Technology, or his designee, is authorized to attend meetings, participate in the deliberations of, and to advise the Council. The Chairman of the Council shall be designated by the President, from time to time, from among the members of the Council. The Council shall advise the President with respect to radiation matters, directly or indirectly affecting health, including guidance for all Federal agencies in the formulation of radiation standards and in the establishment and execution of programs of cooperation with States. The Council shall also perform such other functions as the President may assign to it by Executive order.

"i. The Commission in carrying out its licensing and regulatory responsibilities under this Act is authorized to enter into agreements with any State, or group of States, to perform inspections or other functions on a cooperative basis as the Commission deems appropriate. The Commission is also authorized to provide training, with or without charge, to employees of, and such other assistance to, any State or political subdivision thereof or group of States as the Commission deems appropriate. Any such provision or assistance by the Commission shall take into account the additional expenses that may be incurred by a State as a consequence of the State's entering into an agreement with the Commission pursuant to subsection b.

"j. The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State with which an agreement under subsection b. has become effective, or upon request of the Governor of such State, may terminate or suspend its agreement with the State and reassert the licensing and regulatory

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authority vested in it under this Act, if the Commission finds that

such termination or suspension is required to protect the public health and safety.

"k. Nothing in this section shall be construed to affect the authority of any State or local agency to regulate activities for purposes other than protection against radiation hazards.

"l. With respect to each application for Commission license authorizing an activity as to which the Commission's authority is continued pursuant to subsection c., the Commission shall give prompt notice to the State or States in which the activity will be conducted of the filing of the license application; and shall afford reasonable opportunity for State representatives to offer evidence, interrogate witnesses, and advise the Commission as to the application without requiring such representatives to take a position for or against the granting of the application.

"m. No agreement entered into under subsection b., and no exemption granted pursuant to subsection f., shall affect the authority of the Commission under subsection 161 b. or i. to issue rules, regulations, or orders to protect the common defense and security, to protect restricted data or to guard against the loss or diversion of special nuclear material. For purposes of subsection 161i., activities covered by exemptions granted pursuant to subsection f. shall be deemed to constitute activities authorized pursuant to this Act; and special nuclear material acquired by any person pursuant to such an exemption shall be deemed to have been acquired pursuant to section 53.

"n. As used in this section, the term 'State' means any State, Territory, or possession of the United States, the Canal Zone, Puerto Rico, and the District of Columbia."

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1.1n(3) CONGRESSIONAL RECORD, VOL. 105 (1959)

1.1n(3)(a) Sept. 11: Passed Senate, pp. 19042–19046

AMENDMENT OF ATOMIC ENERGY ACT OF 1954 WITH RESPECT TO COOPERATION WITH STATES

The PRESIDING OFFICER. The Chair lays before the Senate the unfinished business, S. 2568.

The Senate resumed the consideration of the bill (S. 2568) to amend the Atomic Energy Act of 1954, as amended, with respect to cooperation with States.

Mr. ANDERSON. Mr. President, S. 2568, as amended, is recommended unanimously by the Joint Committee on Atomic Energy, and is a bill to amend the Atomic Energy Act of 1954,

as amended, with respect to cooperation with States.

This bill was originally requested by the AEC, and the Joint Committee then held extensive public hearings from May 19 through 22, 1959, and received testimony from representatives of Federal agencies, State agencies, scientific and health experts, and other interested groups. This bill is supported by all of the major State organizations, including the Council of State Governments, and Governors' Conference, the National Association of Attorneys General, and the Southern Regional Advisory Council on Nuclear Energy, and representatives of various individual States. After the hearings, the Joint Committee made certain proposed revisions to the bill and then received comments from the AEC on this bill, S. 2568, on August 15, 1959. The hearings have now been published and are available to Members of Congress and the public under the title of "Federal-State Relationships in the Atomic Energy Field," consisting of 504 pages.

I believe it is important that Congress enact this amendment to the Atomic Energy Act this year in order to clarify the respective responsibilities of the Federal Government, on one hand, and the State and local governments, on the other, with respect to regulation of the radioactive materials defined in the Atomic Energy Act. At the present time, the Federal Government has exclusive responsibility for the licensing and basic regulation of these materials, although States may require registration and inspection. The Atomic Energy Act of 1954 is silent as to the regulatory role of the States; and if this silence is allowed to continue, I believe that there will be confusion and possible conflict between Federal and State regulations and uncertainty on the part of industry and possible jeopardy to the public health and safety. In order to clarify this situation and indicate clearly which materials and activities should be the responsibility of the Federal Government and which materials—less dan-

[p. 19042]

gerous and hazardous—might be gradually turned over to the States, this bill would be helpful this year. In addition, since it will take the AEC a matter of 6 months or more to promulgate regulations under this legislation and to enter into discussions with certain States, it would be advisable to pass this bill now rather than postpone it until the next session of Congress.

The bill authorizes the Commission to enter into agreements with State Governors providing for discontinuance of certain of the Commission's regulatory authority, after proper certification by the Governor and findings by the Commission that the State program is adequate. The withdrawal by the Commission and the corresponding assumption of responsibility by States, will be on a State-by-State basis, beginning with those States most advanced in the atomic energy field and eager to assume their responsibilities.

The Joint Committee believed that this State-by-State approach was wise and appropriate, and it stated as follows on page 8 of the committee report:

> A few States have indicated they will be ready in the near future to begin discussions leading to an agreement to assume regulatory responsibility for such materials. Others will not be ready without more effort, more assistance, and more experience for several, or perhaps many, years. The bill does not authorize a wholesale relinquishment or abdication by the Commission of its regulatory responsibilities but only a gradual, carefully considered turnover, on a State-by-State basis, as individual States may become qualified.

This bill draws a line between the types of materials where continued exclusive Federal regulation and licensing is deemed necessary—such as in licensing of reactors, and disposal of radioactive wastes into the ocean—and those other materials and activities which are considered less hazardous and capable of State regulation, such as radioisotopes. Here again the committee report states at page 8, as follows:

Thus a line is drawn between types of activities deemed appropriate for regulation by individual States at this time, and other activities where continued AEC regulation is necessary.

This bill provides and is intended to encourage additional programs of assistance and encouragement to State and local governments in order that they may assume and carry out these responsibilities. Such assistance should be available not only to State officials, but also to local and municipal officials. The public health will thus be better protected because, in the words of the Joint Committee report, "most citizens look to their local health officers for advice and protection against hazardous materials used in the community."

The Joint Committee amended this bill in certain respects to emphasize the importance of uniformity of standards at all levels of government and to establish by statute a Federal Radiation Council. The Director of the Bureau of the Budget and the Secretary of the Department of Health, Education, and Welfare originally objected to the provisions concerning this Council. However, after further revisions, the Joint Committee was informed that the present provisions in the bill meet with no objections from the Director of the Bureau of the Budget or the Secretary of the Department of Health, Education, and Welfare.

The bill as amended has several advantages over the present Executive order with respect to the Council. First it adds the Secretary of Labor to the Council, because of the active interest of that Department in employee radiation problems. Second, it authorizes the members of the Council to designate officials to act in their stead, thereby permitting busy Cabinet members to make qualified technical officials responsible members of the Council. Third, it authorizes the President to appoint additional members of the Council and the committee report points out that such members could represent the public and State and local agencies. I believe it is of great importance that some qualified representatives of the lay public actively participate on this Council.

There are three minor matters in connection with the printing of this bill and report which I would like to draw to the attention of the Senate. First, on page 3, line 25, the last sentence beginning with the word "Notwithstanding" should be printed flush with the margin rather than as a part of clause (4). Without objection, it is requested that if this bill be passed, this printing correction be made at the time of the printing of the public law. Second, there are two errors in the committee report which I would like to mention to all Senators. On page 4, in the fifth full paragraph, second sentence, the word "not" should be inserted so that the sentence reads as follows:

It does not modify the basic functions of the Council, but increases its membership from four to five members, including the Secretary of Labor, and provides that the Council shall consult qualified scientists and experts in radiation matters.

Also on page 11 in the last paragraph on the page, the first two sentences should be modified and consolidated into one sentence to read as follows:

Subsection (h) establishes a Federal Radiation Council consisting of five members, and such other members as shall be appointed by the President.

These errors in the committee report are being corrected by an errata sheet, and have been corrected in the corresponding House report, but I wanted to mention them to all Senators at this time.

Mr. President, in summary, this bill has been requested by the AEC, is supported by the administration, has been recommended unanimously by the Joint Committee after full and complete public hearings, and will serve a useful purpose in clarifying the act and encouraging assumption of responsibility by States in this field. I hope the Senate will pass this bill, in the form rec-

ommended by the Joint Committee on Atomic Energy.

Mr. President, I ask unanimous consent that the amendments, six in number, may be approved en bloc.

[p. 19043]

Mr. HUMPHREY. Mr. President, I have discussed certain aspects of this very important proposed legislation with the distinguished Senator from New Mexico, the chairman of the Joint Committee on Atomic Energy. There are some questions which I have prepared, questions, by the way, which I have discussed in part with the chairman of the committee, and I should like to ask for his indulgence and cooperation while I propound these questions and seek his answers.

As I understand, first, there is apparently nothing in the bill which vests authority in any specific agency for the establishment of radiation standards. There is likewise nothing in the President's Executive order which determines who is the responsible agent or which is the responsible agency in the matter of the establishment of radiation standards. At the present time the standards are recommended by a private nongovernmental group known as the National Committee on Radiation Protection and Measurement.

The pending bill, or the bill introduced by the Senator from Alabama [Mr. HILL], or some bill should vest responsibility in some agency for the establishment of standards.

During the past week at the first meeting of the Federal Radiation Council, it decided to continue to rely for standards on the private nongovernmental group known as the National Committee on Radiation Protection and Measurement.

[p. 19044]

My questions of the chairman of the Joint Committee are as follows:

Under the Executive order and the bill, in what ways are the responsibilities of the Atomic Energy Commission changed and in what ways are the responsibilities of the Department of Health, Education and Welfare changed?

Mr. ANDERSON. The responsibilities of the AEC are not changed under this bill until such time as the Commission may enter into an agreement with the Governor of a State, and at that time certain responsibilities now exercised by the Commission would be turned over from the Commission to qualified State governments, on a State by State basis.

Responsibilities of the Department of Health, Education, and Welfare are not changed by this bill except that the Secretary of that Department is designated as a member of the Federal Radiation Council. The Council shall advise the President with respect to radiation matters, directly or indirectly affecting health, including guidance by the President for all Federal agencies in the formulation of radiation standards and the establishment and execution of programs for cooperation with States. Therefore, the Department of Health, Education, and Welfare will have an active role in the formulation of standards and policies by the Council and in coordinating responsibilities at the Federal level and at the State level.

Mr. HUMPHREY. While the Council, then, will not establish Federal radiation standards immediately, the Council will advise the President on these matters and will, through the cooperation of the Atomic Energy Commission and the Department of Health, Education, and Welfare, lay the groundwork for the establishment of such standards. Is that correct?

Mr. ANDERSON. The Senator is correct. The President will establish policies, but the situation laid down by the Senator is correct.

Mr. HUMPHREY. Does the Executive order or the bill deal with the question as to what agency, or group, or person is responsible for setting radia-

tion standards?

Mr. ANDERSON. The bill provides that the Council shall advise the President with respect to radiation matters, directly or indirectly affecting health, including guidance by the President for all Federal agencies in the formulation of radiation standards. Under the bill, as well as under the Executive order, the President shall have the final responsibility for establishing policies with respect to radiation standards. The President will receive his recommendations from the Council, which in turn, will receive advice from qualified technical experts.

Mr. HUMPHREY. May I preface my third question by a comment which should have been made prior to question No. 1. It is a fact, is it not, that the bill as now reported and as amended in no way appears to conflict with the Executive order of the President, which also establishes a Radiation Council?

Mr. ANDERSON. Yes. It is in somewhat different language. It permits the addition of people from the outside, but it does not conflict with the original establishment of the Council by the President, and has been carefully cleared with the Bureau of the Budget and with the various agencies involved.

Mr. HUMPHREY. I thought it was important to get that clarified since there has been a recent Executive order on the matter.

Question No. 3: Under the bill or the Executive order is there any way in which the public will be guaranteed continuous and objective information on levels of fallout and other potential radiation hazards?

Mr. ANDERSON. I say to the able Senator that this is an extremely important question because it is essential that the public get the information. As chairman of the Joint Committee on Atomic Energy, I received a letter dated August 21, 1959, from Maurice H. Stans, Director of the Bureau of the Budget, concerning the functions of the Council. This letter states that the President has approved certain recommendations, including No. 3, as follows:

> The Department of Health, Education, and Welfare shall intensify its radiological health efforts and have primary responsibility within the executive branch for the collation, analysis and interpretation of data on environmental radiation levels such as * * * fallout, so that the Secretary of Health, Education, and Welfare may advise the President and the general public.

Thus it would appear that under the Executive order the Department of Health, Education, and Welfare—which is separate, of course, from AEC—will have primary responsibility for advising the general public as to the radiation levels of the fallout.

I might add, in line with the question of the able Senator from Minnesota, that the Joint Committee has just published a summary analysis of its hearings on "Fallout From Nuclear Weapons Tests," in which it pledges also that the Joint Committee will follow this matter as vigorously as it can in order to see that this material gets into the hands of the general public.

The hearings, which lasted several days, coupled with the exhibits and the comments which were supplied, and other hearings by the Joint Committee on radiation matters, involved thousands of pages of text. Along with reports such as this, these hearings are all being released in an effort to keep the general public informed to the greatest extent possible.

Mr. HUMPHREY. I am sure the Senator will agree with me that it is important there be a continuous and objective flow of information on this important subject of the effects of radiation and the degree of fallout. I know that the Joint Committee has emphasized these effects at its recent hearings; and, as I understand, not only will the Joint Committee continue its activities, and not only will the AEC continue to study the problem, but the responsibility concerning the technical and scientific aspects of health, education, and welfare will be that of the Department of Health, Education, and

Welfare, which will also have the responsibility of advising the President and the general public on the radiation levels of fallout.

Mr. ANDERSON. The Senator is completely correct. That feature is what I think is the best part about it. Someone may say the AEC would not do the work completely, and that the Joint Committee will not fully inform the Congress as it is supposed to do, but here is a third agency which is supposed to report to the public, and I can assure the Senator through the work of these three agencies I am confident the public will receive all proper information on it.

Mr. HUMPHREY. I imagine when we say, "H.E.W.," the Department of Health, Education, and Welfare, we are referring in fact to the U.S. Public Health Service office of the Department, which would have primary responsibility in this field.

Mr. ANDERSON. Yes; but I would not want to limit it, because there has been a great deal of work by the Food and Drug Administration, which has a responsibility with reference to foods, particularly. There is also statistical work which must constantly be done. It may be done outside the Public Health Service. The overall responsibility of the Department is well established, and I think it will render a very complete service.

Mr. HUMPHREY. The Senator knows that the whole problem of radiation hazards affects the food supply, and therefore is of interest to agriculture as a whole. As I understand, there is nothing exclusive, under the Executive order, which, for example, would prevent information on the radiation problem from reaching the agricultural areas through the established services of the land-grant colleges and the agricultural schools.

Mr. ANDERSON. That is correct. In addition, it should be pointed out that the bill permits the President to add to the Council he now has such persons as he may deem important. He could, if he wished, appoint the Secretary of Agriculture as a member for the particular purpose of having him survey the situation with respect to food. We have had some problems in connection with milk. We have had some problems in connection with radioactive grain. Any time the President wishes to dip into another department and select a particular person, or his nominee from that department, the bill permits him to do so.

Mr. HUMPHREY. The Senator speaks of a representative of the department "or his nominee." I am sure the Senator contemplates someone of professional stature who could make a genuine contribution in this very important technical field.

Mr. ANDERSON. Yes. For example, the Secretary of Agriculture might not have special knowledge of the workings of the various departments under him in a particular field. He might have a specialist in that particular field. At one time I had a problem in connection with sugar, and I found in the Department of Agriculture a specialist who had devoted his entire life-

[p. 19045]

time to a study of certain plant diseases with reference to sugar. He would have been a more valuable member of the council than the then Secretary, and he would have been the nominee for that purpose.

If on the other hand, the problem related to a particular type of grain, he might wish to reach over to the Grain Branch for an expert in that area, or he might wish to turn to the Plant Pathology Section and find an expert, who would be his nominee for a specific time, to consider a specific question.

Mr. HUMPHREY. My fourth question is: Who is responsible for doing research and determining standards on the total ingestion of radioactive material into the human body?

Mr. ANDERSON. Both the AEC and the Public Health Service will continue their research efforts into the na-

ture of fallout and other radiation hazards and its effect on man. To date, the AEC has been doing most of this research work, and last year the Division of Biology and Medicine of the AEC spent $18,500,000 supporting research work in this field. The Public Health Service is building up its capacity and the recent Executive order provides that the Public Health Service should "intensify its efforts."

As for the determination of standards, the President will have final responsibility for providing guidance to the agencies for the formulation of standards. The agencies would then establish operating standards under their respective statutory authorities following the guidance given by the President.

Mr. HUMPHREY. By the way, I hope the emphasis in the Executive order on the intensification of efforts by the Public Health Service will be followed. I hope this is not mere oratory, but is an actual directive and a policy statement, which will be followed by requests in the budget, as well as emphasis on the research establishments of the Public Health Service.

Mr. ANDERSON. I reassure the Senator from Minnesota by pointing out that additional money has already been appropriated for this very special work, and that there is every evidence on the part of the Public Health Service that it intends to go ahead; and I am very confident that it will go ahead.

Mr. HUMPHREY. I thank the Senator. This information should be reassuring to the American people. There is great concern on the part of the public as to what is done. We are bringing out today the things that have been done, and the things that are contemplated.

My next question is: Since the Executive order designates the Secretary of the Department of Health, Education, and Welfare as Chairman of the Radiation Council to advise the President, does this mean that the President will designate the standards?

Mr. ANDERSON. As I stated earlier, the President could designate the standards, or more probably the policies for the formulation of standards. Presumably, the Council will, with the best possible technical advice, adopt basic standards, and the various agencies will then adopt operating standards consistent with the basic standards.

Mr. HUMPHREY. My next question is: Does the bill in any way lessen the need for legislation along the lines stated in the bill introduced by the Senator from Alabama [Mr. HILL], S. 1228?

Mr. ANDERSON. I am very happy to say to the Senator from Minnesota that it does not. This bill has been redrafted, as stated in the committee report, to make certain that it applies only to materials now regulated by the AEC. It is not intended to prejudice in any way the bill introduced by the Senator from Alabama [Mr. HILL], S. 1228; and if at a later date Congress should decide to enact the policies or provisions of Senator HILL's bill, that would be within the power of Congress at that time.

Mr. HUMPHREY. In other words, the bill introduced by the Senator from Alabama [Mr. HILL], if acted upon, would be a corollary or a supplementary bill; it would not in any way be contradictory?

Mr. ANDERSON. It would be a corollary, but it would also more clearly define where authority is and probably might set aside portions of existing law as those functions are taken over.

Mr. HUMPHREY. I thank the Chairman for his cooperation, and my final question is: What is the role of the Department of Health, Education, and Welfare and the Atomic Energy Commission in terms of controlling radiation hazards in the States?

Mr. ANDERSON. It is intended that the Department of Health, Education, and Welfare, including the Public Health Service, intensify its radiologi-

cal health efforts, including the training of State health officers. The Commission now regulates certain radiation hazards in the States, but as the States become qualified, it is intended that the control of hazards from certain materials will be turned over to State officers. The White House press release accompanying the Executive order stated that upon the enactment of this legislation, the Atomic Energy Commission would have the principal Federal responsibility for preparing the States for the proposed transfer of certain regulatory responsibilities from the Commission to the States. Therefore, the Public Health Service should continue to train State and local health officers, and the Atomic Energy Commission will be gradually turning over certain responsibilities to those State health and other officers as they become qualified.

Mr. HUMPHREY. I thank the Senator from New Mexico. I hope the colloquy has been helpful in terms of developing a more comprehensive and detailed legislative history of the bill. I believe it has. I feel that the new legislation in itself is a very constructive, forward step. I congratulate the Senator from New Mexico.

Mr. ANDERSON. The members of the Joint Committee on Atomic Energy who attended the hearings made substantial contributions, too. The work of trying to draft a bill inside the committee was particularly difficult, because this is a whole new field. We very much appreciate the support we had from the ranking minority members of the committee and the House members.

Representative DURHAM and Representative VAN ZANDT were especially helpful. I desire to compliment, particularly, the able senior Senator from Iowa [Mr. HICKENLOOPER] for his contributions in drafting this bill to take the needed first step in this direction.

The PRESIDING OFFICER. The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment and third reading of the bill.

The amendments were ordered to be engrossed, and the bill to be read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

Mr. HICKENLOOPER. Mr. President, I think the bill has resolved itself into a very excellent bill on the very difficult question of Federal-State relationship in connection with nuclear activities. A very delicate ground exists between the jurisdiction of the Federal Government and the sovereign jurisdiction of the States in many fields. This one is no exception.

This matter was considered and discussed by the Joint Committee on Atomic Energy at considerable length, and I believe the problem has been resolved in the most satisfactory way which is open to us at present. I think the bill clarifies the responsibilities. I think it is an essential bill.

Certainly the Senator from New Mexico [Mr. ANDERSON], while he was very complimentary to me just a moment ago about my contribution, has himself been the very active and moving force in the development and prosecution of the legislation to this point. He has devoted a great deal of time and thought toward bringing this situation to the point of cooperation in a statute which I think is a substantial step forward in the development and handling of atomic energy in the United States.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

The bill (S. 2568) was passed.

[p. 19046]

1.1n(3)(b) Sept. 11: Passed House, pp. 19169–19170

COOPERATION WITH STATES, ATOMIC ENERGY COMMISSION

Mr. PRICE. Mr. Speaker, I ask unanimous consent for the immediate consideration of the bill (S. 2568) to amend the Atomic Energy Act, as amended, with respect to cooperation with States.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

Mr. GROSS. Mr. Speaker, reserving the right to object, will the gentleman explain this bill?

Mr. PRICE. This is a bill reported unanimously from the Joint Committee on Atomic Energy which would amend the Atomic Energy Act with regard to setting up procedures under which there would be greater participation at the State and local level.

Lengthy hearings were held on this bill. It has been supported by the principal State organizations, including the Council of State Governments, the Governors Conference, the National Association of Attorneys General, and the Southern Governors Conference.

The bill represents months of effort to bring this program a little closer to the States and to have greater participation at the State level.

Mr. GROSS. Does this provide for an increase in Federal spending?

Mr. PRICE. No, it does not.

Mr. GROSS. Nor an increase in personnel?

Mr. PRICE. No.

Mr. GROSS. It does not open the door to more spending by the States or the setting up of a program that will eventually call for more spending on the part of the Federal Government?

Mr. PRICE. I do not see how it could open the door to any large-scale spending.

Mr. VAN ZANDT. Mr. Speaker, will the gentleman yield?

Mr. GROSS. I yield to the gentleman from Pennsylvania.

Mr. PRICE. Permit me to say to the gentleman from Iowa, who mentioned additional personnel, that it could eventually involve some expenditure for training and inspection of personnel who would work with and for State and local governments as they set up their programs, but it would be a negligible amount.

Mr. VAN ZANDT. All we are trying to do here is to authorize the AEC to prepare a set of regulations that will assist the several States and communities in administering their affairs in the peaceful use of the atom.

There might be some expenses in training personnel and in administering such a program, but it would be minute, compared to the AEC budget as a whole.

Mr. PRICE. Yes, this is the type of legislation sought by some State governments.

Mr. GROSS. Mr. Speaker, further reserving the right to object, will this provide any program comparable with civil defense attempts to expand in municipalities and other local subdivisions of government?

Mr. PRICE. No; it would not. The most you could anticipate would be inspectors or licensing personnel or people who might be called upon to assist the State government in training inspectors.

Mr. VAN ZANDT. Mr. Speaker, will the gentleman yield?

Mr. GROSS. I yield.

Mr. VAN ZANDT. All this would do is this: It would permit the Federal Government to eventually withdraw from the area where the States and local communities would have jurisdiction over certain types of materials and give them the right of administering their affairs. It applies principally to the use of radioactive isotopes.

Mr. GROSS. Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the present consideration of the Senate bill?

There was no objection.

The Clerk read the bill, as follows:

* * * * *

[p. 19169]

Mr. PRICE. Mr. Speaker, S. 2568 is a bill to amend the Atomic Energy Act of 1954 by adding a new section 274 to that act with respect to cooperation with States. It is recommended unanimously by the Joint Committee on Atomic Energy, with certain amendments, and was passed by the Senate on September 11, 1959.

After receiving a proposed bill from the AEC, the Joint Committee held extensive public hearings and received many valuable comments. The bill is supported by the principal State organizations, including the Council of State Governments, the Governors' conference, the National Association of Attorneys General, and the southern Governors' conference. In addition, representatives of individual States testified in support of the bill. The Atomic Energy Act is now silent as to the role of State governments, and this bill is needed to clarify the situation because some confusion is beginning to develop.

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[p. 19070]

Under this legislation, the Commission could gradually turn over to qualified State governments the responsibility for regulation and supervision of some, but not all, activities. In the case of isotopes, eight States—New York, California, Pennsylvania, Illinois, Texas, Ohio, New Jersey, and Minnesota—have 55 percent of the AEC licenses, and transfer to the State government could ease the AEC licensing load. The licensing and regulation of more hazardous types of activities —such as nuclear reactors—would remain the exclusive responsibility of the AEC.

The bill provides for programs of training and assistance in order to help State and local employees prepare to assume these contemplated new responsibilities. I would like to emphasize that local and municipal government employees are to receive the benefits of this AEC assistance as well as State employees.

In order to avoid overlapping, conflicting, or duplicating standards, the Joint Committee tightened up subsection g. of the bill relating to standards and provided that they should be compatible with the AEC standards. In most cases when a State assumes the responsibility, it is hoped that the State will adopt the AEC standards so that their standards will be identical.

The bill also establishes a Federal Radiation Council consisting of five members, and such other members as shall be appointed by the President. This Council shall receive the advice of technical experts, and shall then advise the President. The President will then provide guidance to all Federal agencies in the formulation of radiation standards in order to encourage uniformity of standards at the Federal level, and thus subsequently at the State level.

Insofar as local governments and municipalities are concerned, the bill provides in subsection i that the Commission is authorized to provide training and assistance to such groups as well as to State governments. Local and municipal officials are also to be encouraged to participate in inspection and to work closely with AEC officials. The promulgation of standards and licensing will be done on a statewide basis, but the bill intends that local and municipal officials also will participate in carrying out the purposes of this bill.

In summary, Mr. Speaker, the Joint Committee has considered this bill carefully, made certain revisions, and then reported out the bill unanimously. It has been passed by the Senate, and I urge all Members of the House to vote for S. 2568, in the form recommended

by the Joint Committee on Atomic Energy.

Mr. VAN ZANDT. Mr. Speaker, I rise in support of H.R. 8755 (S. 2568), as recommended by the Joint Committee on Atomic Energy, to amend the Atomic Energy Act of 1954, with respect to cooperation with States.

This bill contains the essential provisions requested by the AEC and is supported by the administration. During the lengthy hearings held by the Joint Committee on this subject, representatives from many States testified in favor of the bill, and also the following organizations: Council of State Governments, National Association of Attorneys General, the Governors Conference and the Joint Federal-State Action Committee, and the Southern Governors Conference.

Since the hearings, the American Bar Association has approved a report in favor of the principles of this bill.

In addition, we have received statements from the States of New York, California, and other States in support of the bill.

At the present time, the Atomic Energy Act requires the Federal Government to license and regulate radiation hazards from the materials defined in the Atomic Energy Act, namely, by-product, source, and special nuclear materials. The States have many laws protecting the health and safety of their citizens from conventional hazards, and some States also have laws requiring registration of these materials, or permitting inspection and adoption of standards concerning these materials. But the basic licensing and regulations for radiation hazards is done by the Federal Government. This bill would permit the States, on a gradual basis, to assume responsibility for regulation of these materials, and the Commission to withdraw its authority under agreement with the Governor of a State.

The Joint Committee has gone into this subject thoroughly, as indicated by the committee report. The Joint Committee considers the approach of the bill wise and appropriate in several respects, and I would like to quote in part from the report of the Joint Committee at page 8:

> 2. The approach of the bill is considered appropriate, in the opinion of the Joint Committee, for several reasons:
>
> (a) The approach is on a State-by-State basis. It authorizes the Commission to enter into agreements with Governors of individual States, after proper certifications and findings by both the Governor and the Commission as to the adequacy of the State's program. A few States have indicated they will be ready in the near future to begin discussions leading to an agreement to assume regulatory responsibility for such materials. Others will not be ready without more effort, more assistance, and more experience for several, or perhaps many years. The bill does not authorize a wholesale relinquishment or abdication by the Commission of its regulatory responsibilities but only a gradual, carefully considered turnover, on a State-by-State basis, as individual States may become qualified.

In summary, Mr. Speaker, this bill would help the States assume independent regulatory jurisdiction in areas which are now regulated exclusively by the Federal Government under the provisions of the Atomic Energy Act. It would assist the States to prepare themselves for assuming such responsibility by increased training and programs of assistance for the States. As pointed out in the Joint Committee report, this would increase the protection of the public health and safety "because most citizens look to their local health officers for advice and protection against hazardous materials used in the community"—page 9 of the committee report.

This bill would allow States and local health officers, as they become qualified, to assume regulatory responsibility over materials which until now have been the responsibility of the AEC under the Atomic Energy Act.

Mr. Speaker, I urge the House to approve H.R. 8755 in the form recommended by the Joint Committee.

[p. 19071]

1.1o AMENDMENT TO ATOMIC ENERGY ACT OF 1954, AS AMENDED

September 6, 1961, P.L. 87–206, §§13, 15, 75 Stat. 478

SEC. 13. Subsections 161 t., u., and v. of the Atomic Energy Act of 1954, as amended, are hereby redesignated respectively as subsections 161 s., t., and u.

[p. 478]

SEC. 15. Subsection d. of section 170 of the Atomic Energy Act of 1954, as amended, is amended by adding at the end thereof the following new sentence: "A contractor with whom an agreement of indemnification has been executed and who is engaged in activities connected with the underground detonation of a nuclear explosive device shall be liable, to the extent so indemnified under this section, for injuries or damage sustained as a result of such detonation in the same manner and to the same extent as would a private person acting as principal, and no immunity or defense founded in the Federal, State, or municipal character of the contractor or of the work to be performed under the contract shall be effective to bar such liability."

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1.1o(1) JOINT COMMITTEE ON ATOMIC ENERGY

H.R. REP. No. 963, 87th Cong., 1st Sess. (1961)

AMENDMENTS TO THE ATOMIC ENERGY ACH OF 1954 AS AMENDED, AND THE EURATOM COOPERATION ACT OF 1958

AUGUST 16, 1961.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. HOLIFIELD, from the Joint Committee on Atomic Energy, submitted the following

REPORT

[To accompany H.R. 8599]

The Joint Committee on Atomic Energy, having considered H.R. 8599, to amend the Atomic Energy Act of 1954, as amended, and

the Euratom Cooperation Act of 1958, report favorably thereon, with an amendment, and recommend that the bill do pass.

The amendment to the bill adopted by the Joint Committee is as follows:

On page 3, line 8, after the word "at" insert the word "the."

This amendment adopted by the Joint Committee is a technical amendment.

SUMMARY OF BILL

This bill, as recommended by the Joint Committee on Atomic Energy, makes miscellaneous amendments to existing atomic energy legislation. Section 1 retrocedes jurisdiction over the Livermore site to the State of California. Sections 2 through 17 of the bill amend the Atomic Energy Act of 1954, as amended. Sections 18 through 20 amend the Euratom Cooperation Act of 1958.

Section 1 of the bill would retrocede to the State of California the exclusive jurisdiction which the United States presently holds over certain portions of the Atomic Energy Commission's Livermore site.

Section 2 of the bill is a technical amendment, and amends the definition of "agreement for cooperation" in subsection 11 b. of the Atomic Energy Act of 1954, as amended, in order to conform that section to the amendment of section 91 made by Public Law 85–479 in 1958.

[p. 1]

Section 3 of the bill amends subsection 11 u. of the Atomic Energy Act of 1954, as amended, to exclude from Atomic Energy Commission indemnity coverage, under section 170 of the act, any liability for damage to property which is at the site of, and used in connection with, a licensed activity.

Section 4 of the bill amends section 54 of the Atomic Energy Act of 1954, as amended, to authorize the transfer of 3 kilograms of plutonium and 500 grams of uranium 233 to the International Atomic Energy Agency.

Section 5 of the bill is a technical amendment to permit individuals who are granted access to restricted data under the provisions of section 6 of this bill to exchange restricted data with Department of Defense personnel under the provisions of section 143 of the Atomic Energy Act of 1954, as amended.

Section 6 of the bill provides that the Commission may grant access to restricted data to employees of another Government agency who possess a security clearance granted by that other agency on the basis of an investigative report which is satisfactory to the Atomic Energy Commission.

Section 7 of the bill amends the title of section 151 of the Atomic Energy Act of 1954, as amended, from "Military Utilization" to the more accurate title of "Inventions Relating to Atomic Weapons, and Filing of Reports."

Section 8 of the bill amends subsection 151 c. of the Atomic Energy Act of 1954, as amended, by deleting certain superfluous language and by changing the period for filing of reports of inventions from 90 days to 180 days after the inventor first discovers or has reason to believe that his invention is useful in the production or utilization of special nuclear material or atomic energy.

Section 9 of the bill adds a new subsection e. to section 151 of the Atomic Energy Act of 1954, as amended, to provide express statutory sanction for the Atomic Energy Commission's practice of treating reports of inventions as confidential business documents.

Section 10 of the bill amends section 152 of the Atomic Energy Act of 1954, as amended, to clarify the language concerning the Commission's patent rights on inventions made or conceived under contract, subcontract, or arrangement with the Commission.

Section 11 of the bill amends section 157 of the Atomic Energy Act of 1954, as amended, by adding a new subsection d. which places a 6-year statute of limitation on suits for patent royalties, compensation, and awards.

Section 12 of the bill amends section 158 of the Atomic Energy Act of 1954, as amended, to make it discretionary, rather than mandatory, for a court to require payment of royalties by a licensee to the owner of a patent who is found guilty of using that patent in violation of the antitrust laws.

Section 13 of the bill is a technical amendment to reletter certain subsections of section 161 of the Atomic Energy Act of 1954, as amended. These subsections were erroneously designated in Public Law 85–681.

Section 14 of the bill amends section 167 of the Atomic Energy Act of 1954, as amended, to permit the Atomic Energy Commission to settle claims up to $5,000 for damages arising out of programs such as the seismic improvement and plowshare programs.

[p. 2]

This authority is in addition to the Commission's existing authority with respect to the weapons testing program. The Commission would also have authority to recommend meritorious claims in excess of $5,000 to the Congress.

Section 15 of the bill amends subsection d. of section 170 of the Atomic Energy Act of 1954, as amended, by adding a new sentence which has the effect, in specified circumstances, of removing certain affirmative defenses based upon the relationship between the

contractor and the Commission or sovereign immunity which may otherwise be available to a contractor engaged in activities connected with the underground detonation of a nuclear explosive device.

Section 16 of the bill adds a new section 190 to the Atomic Energy Act of 1954, as amended, to provide that reports of incidents by licensees, made pursuant to any requirement of the Commission, shall not be admitted as evidence in a subsequent suit or action for damages.

Section 17 of the bill amends section 202 of the Atomic Energy Act of 1954, as amended, by extending the period for holding annual hearings on the "Development, Growth, and State of the Atomic Energy Industry" (202 hearings) from 60 to 90 days following the beginning of each session of Congress.

Section 18 of the bill amends subsection 4(c) of the Euratom Cooperation Act of 1958 with respect to criteria for computing the maximum fuel element cost and minimum fuel element life under the Euratom fuel element guarantee program.

Section 19 of the bill amends section 5 of the Euratom Cooperation Act to authorize the transfer of 8 additional kilograms of plutonium and 30 kilograms of uranium 233 to Euratom.

Section 20 of the bill amends section 7 of the Euratom Cooperation Act of 1958 to exempt U.S. research and development contracts from the requirement of disclaimer or indemnity arrangements in favor of the U.S. Government.

A more complete explanation of the provisions of this bill is contained in the "section-by-section analysis."

BACKGROUND

On April 22, 1961, the Joint Committee received the following letter from A. R. Luedecke, General Manager of the Atomic Energy Commission, to Chairman Chet Holifield of the Joint Committee:

U.S. ATOMIC ENERGY COMMISSION,
April 22, 1961.

HON. CHET HOLIFIELD,
Chairman, Joint Committee on Atomic Energy,
Congress of the United States.

DEAR MR. HOLIFIELD: By letter dated March 15, 1961, you requested that the Commission submit to you by April 15, 1961, in one proposed bill, the legislative proposals which the Commission desires the Joint Committee to consider during this session of Congress.

We have transmitted today to the Speaker of the House of

Representatives and the President of the Senate, Commission proposals in the form of a draft bill which would amend the Atomic Energy Act of 1954, as amended, and the Euratom Cooperation Act of 1958, in several particulars. The proposed legislation is attached as appendix A, an analysis of the legislation is attached as appendix B, and a

[p. 3]

instituted under section 157 of the Atomic Energy Act of 1954, as amended.

This amendment codifies the 6-year statute of limitations which the Commission has, in fact, been following under the authority of section 157 c. (1) (B) and section 157 c. (2) of the Atomic Energy Act, as amended.

Section 12 of the bill amends section 158 of the Atomic Energy Act of 1954, as amended, to make it discretionary rather than mandatory for a court to require the payment of royalties by a licensee to the owner of a patent who is found guilty of using that patent in violation of the antitrust laws.

Section 13 of the bill is a technical amendment to reletter certain subsections of section 161.

Section 14 amends section 167 of the Atomic Energy Act of 1954, as amended. Under the existing terms of section 167, the Commission is authorized to settle claims up to $5,000 for damages resulting from "any detonation explosion or radiation produced in the conduct of the Commission's program for testing atomic weapons." This amendment will broaden the Commission's authority so as to permit the Commission to settle claims up to $5,000 arising out of the conduct of such programs as the seismic improvement and plowshare programs, whether the resulting damage be caused by a nuclear or nonnuclear explosive device. In addition, the Commission is given new authority to recommend to the Congress meritorious claims in excess of $5,000.

Section 15 of the bill amends subsection d. of section 170 of the Atomic Energy Act of 1954, as amended, by adding a new sentence which has the effect of removing certain defenses based upon the relationship between the Commission and the contractor or sovereign immunity, which may otherwise be available to a contractor engaged in activities connected with the underground detonation of a nuclear explosive device. To the extent that such a contractor is indemnified under the provisions of an agreement of indemnification entered into pursuant to the provisions of section 170 d. he will be liable in the same manner as a private person acting as principal. Such a contractor, therefore, to the extent so indemnified will not be able to bar liability with defenses grounded upon

his agency relationship with the U.S. Government, his sovereign immunity, or the Federal, State, or municipal character of the work performed under the contract. This amendment will not reduce in any way the indemnity protection provided a contractor by the indemnity provisions in his contract whether those provisions are based on section 170 d. or other authority.

Section 16 of the bill adds a new section 190 to the Atomic Energy Act of 1954, as amended. Under the terms of this new section, no report by a licensee of any incident arising out of or in connection with a licensed activity, which is made pursuant to any Commission requirement, shall be admitted as evidence in a suit of action for damages growing out of any matter mentioned in such report. The purpose of this amendment is to encourage the free and uninhibited disclosure of the facts surrounding accidents at licensed facilities. Such report may not be used to prove the truth of the facts asserted in the report, but may be used for other purposes in a civil action.

Section 17 of the bill amends section 202 of the Atomic Energy Act of 1954, as amended, by extending the period for holding annual hearings on the "Development, Growth, and State of the Atomic

[p. 13]

"SEC. 161. GENERAL PROVISIONS.—In the performance of its functions the Commission is authorized to—

* * * * * * *

["*t.*] "*s.* establish a plan for a succession of authority which will assure the continuity of direction of the Commission's operations in the event of a national disaster due to enemy activity. * * *

["u.] "*t.* enter into contracts for the processing, fabricating, separating, or refining in facilities owned by the Commission of source, byproduct or other material, or special nuclear material, in accordance with and within the period of an agreement for cooperation while comparable services are available to persons licensed under section 103 or 104; * * *

["v.] "*u.* (1) enter into contracts for such periods of time as the Commission may deem necessary or desirable, but not to exceed five years from the date of execution of the contract, for the purchase or acquisition of reactor services or services related to or required by the operation of reactors; * * *

[p. 20]

"SEC. 170. INDEMNIFICATION AND LIMITATION OF LIABILITY.—

* * * * * * *

"d. In addition to any other authority the Commission may have, the Commission is authorized until August 1, 1967, to enter into agreements of indemnification with its contractors for the construction or operation of production or utilization facilities or other activities under contracts for the benefit of the United States involving activities under the risk of public liability for a substantial nuclear incident. In such agreements of indemnification the Commission may require its contractor to provide and maintain financial protection of such a type and in such amounts as the Commission shall determine to be appropriate to cover public liability arising out of or in connection with the contractual activity, and shall indemnify the persons indemnified against such claims above the amount of the financial protection required, in the amount of $500,000,000 including the reasonable costs of investigating and settling claims and defending suits for damage in the aggregate for all persons indemnified in connection with such contract and for each nuclear incident. The provisions of this subsection may be applicable to lump sum as well as cost type contracts and to contracts and projects financed in whole or in part by the Commission. *A contractor with whom an agreement of indemnification has been executed and who is engaged in activities connected with the underground detonation of a nuclear explosive device shall be liable, to the extent so indemnified under this section, for injuries or damage sustained as a result of such detonation in the same manner and to the same extent as would a private person acting as principal, and to immunity or defense founded in the Federal, State, or municipal character of the contractor or of the work to be performed under the contract shall be effective to bar such liability.*"

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1.1o(2) JOINT COMMITTEE ON ATOMIC ENERGY

S. REP. No. 746, 87th Cong., 1st Sess. (1961)

AMENDMENTS TO THE ATOMIC ENERGY ACT OF 1954 AS AMENDED, AND THE EURATOM COOPERATION ACT OF 1958

AUGUST 16, 1961.—Ordered to be printed

Mr. PASTORE, from the Joint Committee on Atomic Energy, submitted the following

REPORT

[To accompany S. 2391]

The Joint Committee on Atomic Energy, having considered S. 2391, to amend the Atomic Energy Act of 1954, as amended, and the Euratom Cooperation Act of 1958, report favorably thereon, with an amendment, and recommend that the bill do pass.

The amendment to the bill adopted by the Joint Committee is as follows:

On page 10, line 24, strike the word "of" and insert in lieu thereof the word "to."

This amendment adopted by the Joint Committee is a technical amendment.

SUMMARY OF BILL

This bill, as recommended by the Joint Committee on Atomic Energy, makes miscellaneous amendments to existing atomic energy legislation. Section 1 retrocedes jurisdiction over the Livermore site to the State of California. Sections 2 through 17 of the bill amend the Atomic Energy Act of 1954, as amended. Sections 18 through 20 amend the Euratom Cooperation Act of 1958.

Section 1 of the bill would retrocede to the State of California the exclusive jurisdiction which the United States presently holds over certain portions of the Atomic Energy Commission's Livermore site.

Section 2 of the bill is a technical amendment, and amends the definition of "agreement for cooperation" in subsection 11 b. of the Atomic Energy Act of 1954, as amended, in order to conform that

section to the amendment of section 91 made by Public Law 85–479 in 1958.

[p. 1]

1.1o(3) CONGRESSIONAL RECORD, VOL. 107 (1961)

1.1o(3)(a) Aug. 22: Passed House, p. 16611

[No Relevant Discussion on Pertinent Section]

1.1o(3)(b) Aug. 24: Passed Senate, p. 16957

[No Relevant Discussion on Pertinent Section]

1.1p TO AMEND THE TARIFF ACT OF 1930, AND CERTAIN RELATED LAWS

May 24, 1962, P.L. 87–456, Title III §§303(c), 76 Stat. 78

SEC. 303.

* * * * * * *

(c) The following provisions are hereby repealed: Act of January 9, 1883 (ch. 17, 22 Stat. 402; 19 U.S.C. 193); Act of May 18, 1896 (ch. 195, 29 Stat. 122; 19 U.S.C. 194); Act of March 3, 1899 (ch. 454, 30 Stat. 1372; 19 U.S.C. 195); section 1, Act of August 27, 1949 (ch. 517, 63 Stat. 666; 19 U.S.C. 196a); section 11, Act of June 16, 1951 (ch. 141, 65 Stat. 75; 19 U.S.C. 1367); section 2951, Revised Statutes (19 U.S.C. 420); section 206(b), Act of May 28, 1956 (ch. 327, 70 Stat. 200; 7 U.S.C. 1856); Act of August 10, 1956 (ch. 1041, 70A Stat. 137; 10 U.S.C. 2383); and section 161(1), Act of August 30, 1954 (ch. 1073, 68 Stat. 950; 42 U.S.C. 2201(1)).

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1.1p(1) HOUSE COMMITTEE ON WAYS AND MEANS

H.R. REP. No. 1415, 87th Cong., 2d Sess. (1962)

TARIFF CLASSIFICATION ACT OF 1962

MARCH 10, 1962.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. MILLS, from the Committee on Ways and Means, submitted the following

REPORT

[To accompany H.R. 10607]

The Committee on Ways and Means, to whom was referred the bill (H.R. 10607) to amend the Tariff Act of 1930 and certain related laws to provide for the restatement of the tariff classification provisions, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

I. PURPOSE

The purpose of H.R. 10607 is to provide for the adoption and implementation of revised tariff schedules proposed pursuant to law by the U.S. Tariff Commission and to make certain amendments in existing law necessitated by the adoption of such revised schedules.

[p. 1]

* * * * * * *

Section 303 of the bill provides for other amendments and repeals, none of which involves a change of substance.

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[p. 12]

1.1p(2) SENATE COMMITTEE ON FINANCE

S. REP. No. 1317, 87th Cong., 2d Sess. (1962)

TARIFF CLASSIFICATION ACT OF 1962

APRIL 2, 1962.—Ordered to be printed

Mr. BYRD of Virginia, from the Committee on Finance, submitted the following

REPORT

[To accompany H.R. 10607]

The Committee on Finance, to whom was referred the bill (H.R. 10607) to amend the Tariff Act of 1930 and certain related laws to provide for the restatement of the tariff classification provisions, and for other purposes, having considered the same, report favorably thereon without amendment, and recommend that the bill do pass.

I. PURPOSE

The purpose of H.R. 10607 is to provide for the adoption and implementation of revised tariff schedules and to make certain amendments in existing law necessitated by the adoption of such revised schedules.

[No Relevant Discussion on Pertinent Section]

[p. 1]

1.1p(3) CONGRESSIONAL RECORD, VOL. 108 (1962)

1.1p(3)(a) March 14: Passed House, p. 4067

[No Relevant Discussion on Pertinent Section]

1.1p(3)(b) April 17: Amended and passed Senate, p. 6794

[No Relevant Discussion on Pertinent Section]

1.1p(3)(c) May 9: House concurs with Senate Amendment, p. 8010

[No Relevant Discussion on Pertinent Section]

1.1q TO AMEND THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

August 29, 1962, P.L. 87–615, §§6, 7, 9, 12, 76 Stat. 410

SEC. 6. Subsection 170d. of the Atomic Energy Act of 1954 is amended by adding before the period at the end of the second sentence thereof the following proviso: ": *Provided,* That in the case of nuclear incidents occurring outside the United States, the amount of the indemnity provided by the Commission shall not exceed $100,000,000."

SEC. 7. Subsection 170e. of the Atomic Energy Act of 1954 is amended to read as follows:

"e. The aggregate liability for a single nuclear incident of persons indemnified, including the reasonable costs of investigating and settling claims and defending suits for damage, shall not exceed the sum of $500,000,000 together with the amount of financial protection required of the licensee or contractor: *Provided, however,* That with respect to any nuclear incident occurring outside of the United States to which an agreement of indemnification entered into under the provisions of subsection 170d. is applicable, such aggregate liability shall not exceed the amount of $100,000,000 together with the amount of financial protection required of the contractor. The Commission or any person indemnified may apply to the appropriate district court of the United States having venue in bankruptcy matters over the location of the nuclear incident, except that in the case of nuclear incidents occurring outside the United States, the Commission or any person indemnified may apply to the United States District Court for the District of Columbia, and upon a showing that the public liability from a single nuclear incident will probably exceed the limit of liability imposed by this section, shall be entitled to such orders as may be appropriate for enforcement of the provisions of this section,

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including an order limiting the liability of the persons indemnified, orders staying the payment of claims and the execution of court judgments, orders apportioning the payments to be made to claimants, orders permitting partial payments to be made before final determination of the total claims, and an order setting aside a part of the funds available for possible latent injuries not discovered until a later time."

* * * * * * *

SEC. 9. Section 109 of the Atomic Energy Act of 1954 is amended by striking out the words "11p.(2) or 11v.(2)" and substituting therefore the words "11t.(2) or 11aa.(2)".

* * * * * * *

SEC. 12. Subsection 161n. of the Atomic Energy Act of 1954 is amended by striking out the words "145e." and substituting therefor the words "145f.".

Approved August 29, 1962.

[p. 411]

1.1q(1) JOINT COMMITTEE ON ATOMIC ENERGY

S. REP. No. 1677, 87th Cong., 2d Sess. (1962)

AMENDMENTS TO THE ATOMIC ENERGY ACT OF 1954

JULY 5, 1962.—Ordered to be printed

Mr. PASTORE, from the Joint Committee on Atomic Energy, submitted the following

REPORT

[To accompany S. 3491]

The Joint Committee on Atomic Energy, having considered S. 3491, to amend the Atomic Energy Act of 1954, reports favorably thereon and recommends that the bill do pass.

SUMMARY OF BILL

The bill, as recommended by the Joint Committee on Atomic Energy, makes miscellaneous amendments to the Atomic Energy Act of 1954, which can be grouped into four general categories:

(1) *Regulatory amendments.*—Sections 1 through 3 of the bill amend the regulatory provisions of the act by authorizing the establishment of one or more Atomic Safety and Licensing Boards and modifying AEC regulatory procedures in other respects.

(2) *Indemnity amendments.*—Sections 4 through 7 of the bill amend the indemnity provisions of the act to extend Government

indemnity to contractors of the U.S. Government for incidents occurring outside the United States.

(3) *Standard authorization language.*—Section 8 of the bill incorporates into permanent law the boilerplate clauses on "advance planning and design," "restoration and replacement" and "substitutions" which in the past have appeared each year in the annual AEC authorization acts.

(4) *Minor drafting changes.*—Sections 9 through 12 make certain minor changes in several sections of the act to correct minor drafting errors or omissions.

[p. 1]

Section 6 of the bill adds a proviso to section 170d. of the Atomic Energy Act of 1954, providing that in the case of incidents occurring outside the United States, the amount of indemnity provided by the Commission shall not exceed $100 million.

Section 7 of the bill adds a proviso to section 170e. of the Atomic Energy Act of 1954, limiting the liability of contractors of the United States for incidents occurring outside the United States to $100 million.

Section 7 also amends section 170 e. of the Atomic Energy Act of 1954 to establish a single place of venue over all applications for limitation of liability and related orders in connection with incidents occurring outside the United States. The place of venue established is the U.S. District Court for the District of Columbia.

[p. 14]

Section 170e. now provides that, in connection with the *Savannah,* applications for limitation of liability and related orders must be filed in the district court "having venue in bankruptcy matters over the location of the principal place of business of the shipping company owning or operating the ship." This amendment would bring the *Savannah* under the venue provisions established for all foreign nuclear incidents.

* * * * * * *

Section 9 of the bill amends section 109 of the Atomic Energy Act of 1954 by deleting the words "11p.(2) or 11v.(2)" and substituting therefor the words "11t.(2) or 11aa.(2)".

* * * * * * *

Section 12 of the bill amends section 161 n. of the Atomic Energy Act of 1954 by deleting the reference to section 145 e. and substituting a reference to section 145 f. Section 145 was amended and relettered by amendments in Public Law 87–206 in 1961. Section 161 was not appropriately amended at that time.

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SEC. 170. INDEMNIFICATION AND LIMITATION OF LIABILITY.—

* * * * * * *

"d. In addition to any other authority the Commission may have, the Commission is authorized until August 1, 1967, to enter into agreements of indemnification with its contractors for the construction or operation of production or utilization facilities or other activities under contracts for the benefit of the United States involving activities under the risk of public liability for a substantial nuclear incident. In such agreements of indemnification the Commission may require its contractor to provide and maintain financial protection of such a type and in such amounts as the Commission shall determine to be appropriate to cover public liability arising out of or in connection with the contractual activity, and shall indemnify the persons indemnified against such claims above the amount of the financial protection required, in the amount of $500,000,000 including the reasonable costs of investigating and settling claims and defending suits for damages in the aggregate for all persons indemnified in connection with such contract and for each nuclear incident[.]: *Provided, however, That in the case of nuclear incidents occurring outside the United States, the amount of the indemnity provided by the Commission shall not exceed $100,000,000.* The provisions of this subsection may be applicable to lump sum as well as cost type contracts and to contracts and projects financed in whole or in part by the Commission."

e. The aggregate liability for a single nuclear incident of persons indemnified, including the reasonable costs of investigating and settling claims and defending suits for damage, shall not exceed the sum of $500,000,000 together with the amount of financial protection required of the licensee or contractor:[.] *Provided, however, That with respect to any nuclear incident occurring outside of the United States to which an agreement of indemnification entered into under the provisions of subsection 170 d. is applicable, such aggregate liability shall not exceed the amount of $100,000,000 together with the amount of financial protection required of the contractor.* The Commission or any person indemnified may apply to the appropriate district court of the United States having venue in bankruptcy matters over the location of the nuclear incident; except that in the case of nuclear incidents [caused by ships of the United States outside of the United States, the Commission or any person indemnified may apply to the appropriate district court of the United States having venue in bankruptcy matters over the location of the principal place of business of the shipping company

owning or operating the ship,] *occurring outside the United States, the Commission or any person indemnified may apply to the United States District Court for the District of Columbia,* and upon a showing that the public liability from a single nuclear incident will probably exceed the limit of liability imposed by this section, shall be entitled to such orders as may be appropriate for enforcement of the provisions of this section, including an order limited the liability of the persons indemnified, orders staying the payment of claims and the execution of court judgments, orders apportioning the payments to be made to claimants, orders permitting partial payments to be made before final determination of the total claims, and an order setting aside a part of the funds available for possible latent injuries not discovered until a later time.

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SEC. 261. APPROPRIATIONS.—

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"c. *Funds are hereby authorized to be appropriated for advance planning, construction design, and architectural services in connection with any plant or facility not otherwise authorized, and for the restoration or replacement of any plant or facility destroyed or otherwise seriously damaged, and the Commission is authorized to use available funds for such purposes.*

"d. *Funds hereafter authorized to be appropriated for any project to be used in connection with the development or production of special nuclear material or atomic weapons may be used to start another project not otherwise authorized if the substituted project is within the limit of cost of the project for which substitution is to be made, and the Commission certifies that—*

"(1) *the substituted project is essential to the common defense and security;*

"(2) *the substituted project is required by changes in weapon characteristics or weapon logistic operations; and*

"(3) *the Commission is unable to enter into a contract with any person on terms satisfactory to it to furnish from a privately owned plant or facility the product or services to be provided by the new project.*"

"SEC. 109. COMPONENT PARTS OF FACILITIES.—With respect to those utilization and production facilities which are so determined by the Commission pursuant to subsection [11 p. (2) or 11 v. (2)] *11 b. (2) or 11 aa. (2)* the Commission may (a) issue general licenses for activities required to be licensed under section 101, if the Commission determines in writing that such general licensing

will not constitute an unreasonable risk to the common defense and security, and (b) issue licenses for the export of such facilities, if the Commission determines in writing that each export will not constitute an unreasonable risk to the common defense and security."

* * * * * * *

"SEC. 145. RESTRICTIONS.—

* * * * * * *

"f. Notwithstanding the provisions of subsections a., b., and c. of this section, a majority of the members of the Commission shall certify those specific positions which are of a high degree of importance or sensitivity, and upon such certification, the investigation **[,]** and reports required by such provisions shall be made by the Federal Bureau of Investigation."

* * * * * * *

"SEC. 152. INVENTIONS MADE OR CONCEIVED DURING COMMISSION CONTRACTS.—Any invention or discovery, useful in the production or utilization of special nuclear material or atomic energy, made or conceived in the course of or under any contract, subcontract, or arrangement entered into with or for the benefit of the Commission, regardless of whether the contract, subcontract, or arrangement involved the expenditure of funds by the Commission, shall be vested in, and be the property of the Commission, except that the Commission may waive its claim to any such in-

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vention or discovery under such circumstances as the Commission may deem appropriate, consistent with the policy of this section. No patent for any invention or discovery, useful in the production or utilization of special nuclear material or atomic energy, shall be issued unless the applicant files with the application, or within thirty days after request therefor by the Commissioner of Patents (unless the Commission advises the Commissioner of Patents that its rights have been determined and that accordingly no statement is necessary) a statement under oath setting forth the full facts surrounding the making or conception of the invention or discovery described in the application and whether the invention or discovery was made or conceived in the course of or under any contract, subcontract, or arrangement entered into with or for the benefit of the Commission, regardless of whether the contract, subcontract, or arrangement involved the expenditure of funds by the Commission. The Commissioner of Patents shall as soon as the application is otherwise in condition for **[**allowances**]** *allowance*

forward copies of the application and the statement to the Commission. * * *."

* * * * * * *

"SEC. 161. GENERAL PROVISIONS.—

* * * * * * *

"n. delegate to the General Manager or other officers of the Commission any of those functions assigned to it under this Act except those specified in sections 51, 57a.(3), 61, 102 (with respect to the finding of practical value), 108, 123, 145b. (with respect to the determination of those persons to whom the Commission may reveal Restricted Data in the national interest), [145e.,] *145f.*, and 161a.;"

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1.1q(2) JOINT COMMITTEE ON ATOMIC ENERGY

H.R. REP. No. 1966, 87th Cong., 2d Sess. (1962)

AMENDMENTS TO THE ATOMIC ENERGY ACT OF 1954

JULY 5, 1962.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. HOLIFIELD, from the Joint Committee on Atomic Energy, submitted the following

REPORT

[To accompany H.R. 12336]

The Joint Committee on Atomic Energy, having considered H.R. 12336, to amend the Atomic Energy Act of 1954, reports favorably thereon and recommends that the bill do pass.

SUMMARY OF BILL

The bill, as recommended by the Joint Committee on Atomic Energy, makes miscellaneous amendments to the Atomic Energy Act of 1954, which can be grouped into four general categories:

(1) *Regulatory amendments.*—Sections 1 through 3 of the bill

amend the regulatory provisions of the act by authorizing the establishment of one or more Atomic Safety and Licensing Boards and modifying AEC regulatory procedures in other respects.

(2) *Indemnity amendments.*—Sections 4 through 7 of the bill amend the indemnity provisions of the act to extend Government indemnity to contractors of the U.S. Government for incidents occurring outside the United States.

(3) *Standard authorization language.*—Section 8 of the bill incorporates into permanent law the boilerplate clauses on "advance planning and design," "restoration and replacement" and "substitutions" which in the past have appeared each year in the annual AEC authorization acts.

(4) *Minor drafting changes.*—Sections 9 through 12 make certain minor changes in several sections of the act to correct minor drafting errors or omissions.

[p. 1]

1.1q(3) CONGRESSIONAL RECORD, VOL. 108 (1962)

1.1q(3)(a) Aug. 7: Passed Senate, p. 15746

AMENDMENT OF THE ATOMIC ENERGY ACT OF 1954

Mr. MANSFIELD. Mr. President, I move that the pending business be temporarily laid aside, and that the Senate proceed to the consideration of Calendar No. 1639, Senate bill 3491.

The motion was agreed to; and the Senate proceeded to the consideration of the bill (S. 3491) to amend the Atomic Energy Act of 1954, as amended, and for other purposes.

Mr. MANSFIELD. Mr. President, I may say that this bill is being taken up after its clearance by both sides and with the members of the Joint Committee on Atomic Energy.

Mr. PASTORE. Mr. President, so far as I know, there is no objection to the bill. It is noncontroversial. We have held considerable hearings, and I think the bill is satisfactory to both the Republican members and the Democratic members of the Joint Committee.

Mr. President, Senate bill 3491 is a Joint Committee omnibus bill which makes miscellaneous amendments to the Atomic Energy Act of 1954. The amendments may be grouped into four general categories.

First. Sections 1 through 3 of the bill amend the regulatory provisions of the Atomic Energy Act by authorizing the establishment of one or more Atomic Safety and Licensing Boards, and by modifying the AEC regulatory procedures in other respects.

Second. Sections 4 through 7 of the bill amend the indemnity provisions of the Atomic Energy Act, so as to extend Government indemnity to contractors of the U.S. Government for incidents occurring outside the United States.

Third. Section 8 of the bill incorporates into permanent law the boilerplate clauses on "advanced planning and design," "restoration and replacement," and "substitutions," which in

the past have appeared each year in the annual AEC authorization acts.

Fourth. Sections 9 through 12 of the bill make minor changes in several sections of the act, to correct certain drafting errors or omissions.

Under section 1, the Commission is authorized to use an Atomic Safety and Licensing Board in lieu of a hearing examiner to conduct hearings and make decisions in atomic-energy licensing cases. The licensing of atomic reactors involves very complicated technical and scientific determinations. A study by the staff of the Joint Committee on Atomic Energy in 1960–61 pointing up the need for technical expertise in making these determinations, and the committee considered the problem during hearings in 1961 and again in 1962. The Atomic Safety and Licensing Board will consist of two persons with technical backgrounds and one person "skilled in the conduct of administrative proceedings." The Commission is given wide flexibility in selecting members for the Board, in deciding in which cases to use the Board, and in deciding on the amount of authority to be delegated to it. The Commission may also utilize the Board in an advisory capacity on rulemaking and other regulatory functions. It is the belief of the Joint Committee on Atomic Energy that the use of an Atomic Safety and Licensing Board, if properly implemented by AEC, will further improve the AEC regulatory process.

Section 2 of the bill relaxes the mandatory hearing requirement in section 189 of the Atomic Energy Act. Under existing law, a hearing must be held on the application for a construction permit and on the application for an operating license. Under the terms of the committee's amendment, a hearing will be required only on the construction permit, which is really the critical point in reactor licensing—the point at which the suitability of the reactor site is determined. This amendment in no way limits the right of an interested party to intervene and request a hearing at some later stage, nor does it affect the right of the Commission to hold a hearing on its own motion.

Section 3 of the bill relaxes the requirement for referral of license amendments to the Commission's Advisory Committee on Reactor Safeguards. It is the committee's hope that by relieving the very capable Advisory Committee on Reactor Safeguards of the responsibility for reviewing minor amendments, this distinguished group may be able to devote its full attention to safety questions of more far-reaching importance.

Sections 4 through 7 will extend the indemnity provisions of the Atomic Energy Act to cover contractors of the United States who are engaged in activities outside the continental limits of the country. The primary purpose of these amendments is to protect contractors of the AEC who are engaged in the nuclear submarine, nuclear rocket, and remote military reactors program. Under the terms of the amendment these contractors will be eligible for $100 million of Government indemnity, with a comparable limitation of liability for incidents occurring outside the United States. This is in contrast to the $500 million indemnity which the AEC now makes available to licensees and contractors of the Commission for incidents occurring within the United States.

Section 8 of the bill incorporates into permanent law a number of standard provisions which appear each year in the AEC authorization act.

Sections 9 through 12 merely correct minor drafting omissions, and are not intended to have any substantive effect on the Atomic Energy Act.

In connection with section 9 of the bill, Mr. President, on page 8, line 4, where the words "11b.(2)" appear, the reference should, instead, be to "11v.(2)." This is an error in the bill as prepared for printing, and the proper reference should be included in the bill as passed by the Senate. I ask unan-

imous consent for this purpose.

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

Mr. PASTORE. Mr. President, this bill is in keeping with the Joint Committee's continuing effort to keep the Atomic Energy Act up to date with new developments in the field of atomic energy. The bill has been reported from the Joint Committee without any dissenting vote, and I urge its passage by the Senate.

The PRESIDING OFFICER. The bill is open to amendment. If there be no amendment to be proposed, the question is on the engrossment and third reading of the bill.

The bill (S. 3491) was ordered to be engrossed for a third reading, read the third time, and passed, as follows:

* * * * *

[p. 15746]

1.1q(b) Aug. 15: Passed House, p. 16551

[No Relevant Discussion on Pertinent Section]

1.1r TO ADJUST POSTAL RATES

October 11, 1962, P.L. 87–793, §1001(g), 76 Stat. 864

SEC. 1001.

(g) That part of the proviso in section 161d. of the Atomic Energy Act of 1954, as amended (71 Stat. 613; 42 U.S.C. 2201), fixing a limit of $19,000 on the compensation of scientific and technical personnel, is amended by striking out the words "up to a limit of $19,000)" and inserting in lieu thereof "up to a limit of the highest rate of grade 18 of the General Schedule of the Classification Act of 1949, as amended)".

[p. 864]

1.1r(1) HOUSE COMMITTEE ON POST OFFICE AND CIVIL SERVICE

H.R. REP. No. 1155, 87th Cong., 1st Sess. (1961)

POSTAGE REVISION ACT OF 1961

SEPTEMBER 7, 1961.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. MURRAY, from the Committee on Post Office and Civil Service, submitted the following

REPORT

[To accompany H.R. 7927]

The Committe on Post Office and Civil Service, to whom was referred the bill (H.R. 7927) to adjust postal rates, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

AMENDMENTS

* * * * * * *

[p. 1]

1.1r(2) SENATE COMMITTEE ON POST OFFICE AND CIVIL SERVICE

S. REP. No. 2120, 87th Cong., 2d Sess. (1962)

POSTAL SERVICE AND FEDERAL EMPLOYEES SALARY

SEPTEMBER 24, 1962.—Ordered to be printed

Mr. JOHNSTON, from the Committee on Post Office and Civil Service, submitted the following

REPORT

Together with
INDIVIDUAL VIEWS

[To accompany H.R. 7927]

The Committee on Post Office and Civil Service, to whom was referred the bill (H.R. 7927) to adjust postal rates, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

AMENDMENT

The committee amendment strikes out all of the bill after the enacting clause and substitutes therefor a new bill which appears in the reported bill in italic type.

STATEMENT

This is one of the most far-reaching, comprehensive and complex measures ever reported by the Committee on Post Office and Civil Service. It will have an effect on every user of the mails, the future of the postal service and the welfare of every Federal employee both at home and abroad.

The postal provisions of the bill, as reported, have as a background years of committee work aided by an extensive study and report by an Advisory Council appointed pursuant to Senate Resolution 49 by Senator Carlson (83d Cong., 1st sess.) and a further study by a Citizens' Advisory Council under Senator Johnston during the 85th Congress in addition to months of public hearings

held by the full committee during the current session of the 87th Congress.

[p. 1]

TITLE VI—MISCELLANEOUS SALARY PROVISIONS

* * * * * * *

Section 1001

* * * * * * *

Subsection (g) amends the proviso in section 161(d) of the Atomic Energy Act of 1954, as amended, to permit the fixing of salaries of scientific and technical personnel up to a limit of the pay of grade GS 18 of the General Schedule of the Classification Act. The present limit is $19,000.

[p. 32]

1.1r(3) COMMITTEE OF CONFERENCE

H.R. REP. No. 2525, 87th Cong., 2d Sess. (1962)

POSTAL SERVICE AND FEDERAL EMPLOYEES SALARY ACT OF 1962

OCTOBER 3, 1962.—Ordered to be printed

Mr. MURRAY, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 7927]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 7927) to adjust postal rates, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:
That this Act may be cited as the "Postal Service and Federal Employees Salary Act of 1962."

* * * * * * *

[p. 1]

(g) That part of the proviso in section 161d. of the Atomic Energy Act of 1954, as amended (71 Stat. 613; 42 U.S.C. 2201), fixing a limit of $19,000 on the compensation of scientific and technical personnel, is amended by striking out the words "up to a limit of $19,000)" and inserting in lieu thereof "up to a limit of the highest rate of grade 18 of the General Schedule of the Classification Act of 1949, as amended)".

[p. 36]

1.1r(4) COMMITTEE OF CONFERENCE

H.R. REP. No. 2532, 87th Cong., 2d Sess. (1962)

POSTAL SERVICE AND FEDERAL EMPLOYEES SALARY ACT OF 1962

OCTOBER 4, 1962.—Ordered to be printed

Mr. MURRAY, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 7927]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 7927) to adjust postal rates, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment insert the following:
That this Act may be cited as the "Postal Service and Federal Employees Salary Act of 1962".

[p. 1]

1.1r(5) CONGRESSIONAL RECORD, VOL. 108 (1962)

1.1r(5)(a) Jan. 24: Passed House, p. 827

[No Relevant Discussion on Pertinent Section]

1.1r(5)(b) Sept. 27: Amended and passed Senate, p. 21014

[No Relevant Discussion on Pertinent Section]

1.1r(5)(c) Oct. 3: Senate agrees to Conference Report, p. 22027

[No Relevant Discussion on Pertinent Section]

1.1r(5)(d) Oct. 4: Senate agrees to Conference Report, p. 22232

[No Relevant Discussion on Pertinent Section]

1.1r(5)(e) Oct. 5: House agrees to Conference Report, p. 22602

POSTAL SERVICE AND FEDERAL EMPLOYEES SALARY ACT OF 1962

Mr. MURRAY. Mr. Speaker, I yield 4 minutes to the gentleman from Montana [Mr. OLSEN].

Mr. OLSEN. Mr. Speaker, as has already been said and repeated, this is not a perfect bill. But it is the best that we can get accomplished at this session. I regret that we have not been able to meet the new standards that we have attempted to meet, which would be comparability. I regret that in the lower brackets and in the higher brackets we have in every instance failed to raise the Federal pay and the postal pay schedules to that comparable paid to employees in private industry who have similar responsibilities and who perform similar work.

We are indeed, with the figures at which we have arrived, at least 3 years late—at least 3 years late. So, we are not even catching up in our responsibilities to pay Federal employees and postal employees comparable to what they should be paid, if their responsibilities and their chores are compared with private industry.

Mr. Speaker, in the lower grades I have always contended that Uncle Sam should be the best kind of an employer. He should not pay any better than, but he should pay as good as the better

wages and the better salaries of industry. In the higher brackets, of course, we cannot expect the Government to pay the same type of compensation which is paid in the higher brackets of industry. But in this bill, as has been said, we have done the best we can and I think it is a good job. But I do regret that we have been so tardy in increasing the annuities payable to retirees. I think that the increase should have been a good deal more. I regret, too, that of all the people who are to realize some increase in benefits or increase in pay in this bill, the people who least can afford to wait are having to wait the longest and they are the retirees. Indeed, the retirees will get an increase, but they will not get it until next year. They will not get their increase until the Committee on Appropriations can meet and can vote that increase. I assume that the Committee on Appropriations will vote the increased appropriation to apply as of the effective date of the bill, January 1, 1963.

Finally, Mr. Speaker, as my dear friend, the gentleman from Louisiana has said a few days ago, this is our only opportunity. If we are in favor of paying just wages and just salaries to Federal employees and postal employees, and somewhere near a rightful annunity to the Federal employees, this is our only opportunity. If we are in favor of improving these standards, we will vote for this bill. If we are against an improvement in these benefits and these standards, we will vote against this bill. This is our only opportunity. I shall vote for the bill and I recommend to my colleagues that you vote for the bill.

I hope that next year we can provide a more adequate increase of annuities for the widows, especially those who are receiving less than $50 per month.

Now let us pass this bill today.

Mr. MURRAY. Mr. Speaker, I yield 2 minutes to the gentleman from Louisiana [Mr. MORRISON].

Mr. MORRISON. Mr. Speaker and Members of the House, we have now come to the final decision on this pay raise legislation. Those who are opposed to this legislation have tried to bring up confusion as a reason to be against this bill and argue about the way the hearings were held and the way the bill was reported out.

Mr. Speaker, I do not know of any bill that has been before this House at this session where there were more witnesses or more hearings or where the entire subject was gone into to the fullest extent, than this bill which was reported by the Committee on Post Office and Civil Service. The same thing applies to the other body.

The other body passed this bill out of its committee by an overwhelming majority of the members of that committee. This bill is just about the same bill in the form that you find it now as the Senate passed it. The House bill which was passed out of our committee by an overwhelming majority is about 90 to 95 percent of the bill in conference and the compromise which is now before the House. So I say this: The Senate has passed the bill; those who are for giving the Federal employees equal pay as compared to those in like jobs in private industry will vote for this conference report. If you are for giving the Federal employees a fair and reasonable wage as compared to similar jobs in private industry, then you are for this bill. If you are not, then you should vote against the bill.

[p. 22602]

1.1s TO AMEND THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

August 1, 1964, P.L. 88–394, §§2, 3, 78 Stat. 376

AN ACT

To amend the Atomic Energy Act of 1954, as amended, the Atomic Energy Community Act of 1955, as amended, and the EURATOM Cooperation Act of 1958, as amended.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection 153(h) of the Atomic Energy Act of 1954, as amended, is amended by striking out the date "September 1, 1964" and inserting in lieu thereof the date "September 1, 1969".

SEC. 2. Subsection 170 c. of the Atomic Energy Act of 1954, as amended, is amended by adding at the end thereof the following new sentence: "With respect to any production or utilization facility for which a construction permit is issued between August 30, 1954, and August 1, 1967, the requirements of this subsection shall apply to any license issued for such facility subsequent to August 1, 1967."

SEC. 3. Subsection 170 k. of the Atomic Energy Act of 1954, as amended, is amended by adding at the end thereof the following new sentence: "With respect to any production or utilization facility for which a construction permit is issued between August 30, 1954, and August 1, 1967, the requirements of this subsection shall apply to any license issued for such facility subsequent to August 1, 1967".

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1.1s(1) JOINT COMMITTEE ON ATOMIC ENERGY

S. REP. No. 1128, 88th Cong., 2d Sess. (1964)

AMENDMENTS TO THE ATOMIC ENERGY ACT OF 1954, AS AMENDED, THE ATOMIC ENERGY COMMUNITY ACT OF 1955, AS AMENDED, AND THE EURATOM COOPERATION ACT OF 1958, AS AMENDED

JUNE 30, 1964.—Ordered to be printed

Mr. PASTORE, from the Joint Committee on Atomic Energy, submitted the following

REPORT

[To accompany S. 2963]

The Joint Committee on Atomic Energy, having considered S. 2963 to amend the Atomic Energy Act of 1954, as amended, the Atomic Energy Community Act of 1955, as amended, and the Euratom Cooperation Act of 1958, as amended, report favorably thereon and recommend that the bill do pass.

SUMMARY OF THE BILL

Section 1 of the bill would amend subsection 153 h. of the Atomic Energy Act of 1954, as amended, by extending for an additional 5 years the Atomic Energy Commission's authority to require the licensing of atomic energy patents. The Commission's current authority expires on September 1, 1964. The amendment would extend the authority to September 1, 1969.

Section 2 of the bill would clarify the Price-Anderson indemnity provisions of the Atomic Energy Act of 1954. Specifically, subsection 170 c. would be amended to make it clear that a production or utilization facility for which the Commission issues a construction permit prior to August 1, 1967, will be afforded Price-Anderson indemnity coverage extending through the period of its operation, without regard to whether or not the operating license for the facility is issued prior to August 1, 1967.

Section 3 of the bill would amend subsection 170 k. of the Atomic Energy Act of 1954 in order to similarly clarify the Price-Anderson indemnity provisions with respect to facilities used for

educational activities and operated by nonprofit educational institutions.

Section 4 of the bill would amend the Atomic Energy Community Act of 1955 by adding a new section 120. This section

[p. 1]

would authorize the Commission to lease land and to sell, lease (including leases with options to purchase), or otherwise dispose of improvements and personal property located in the Commission's project area in or near Richland, Wash. One of the Atomic Energy Commission's major facilities, the Hanford Works, is located near the city. Action by the AEC under this new section would be contingent upon a determination by the Commission that such property dispositions would serve to prevent or reduce the adverse economic impact of actual or anticipated reductions in AEC programs in the Richland area. Property to be sold or leased under this authority would be disposed of at its estimated fair market or fair rental value, as appropriate.

Section 5 of the bill would amend section 5 of the Euratom Cooperation Act of 1958, as amended, by authorizing the Commission to transfer to the European Atomic Energy Community (Euratom) up to 70,000 kilograms of contained uranium 235 and up to 500 kilograms of plutonium. The amendment would add 40,000 kilograms of uranium 235 and 491 kilograms of plutonium to the amounts presently authorized for sale or lease to Euratom. Virtually all of the additional uranium 235 and all of the plutonium authorized for transfer to Euratom by this amendment will be transferred on a straight sale basis.

A more complete explanation of the provisions in this bill is contained in sections of this report entitled "Committee Comments" and "Section-by-Section Analysis."

BACKGROUND

On June 24, 1963, the Atomic Energy Commission transmitted to the Congress a proposed 1963 omnibus bill containing an amendment to the Atomic Energy Act of 1954 and an amendment to the Euratom Cooperation Act of 1958. The proposed bill was introduced by Chairman Pastore (by request) as S. 1795 on June 26 and by Vice Chairman Holifield (by request) as H.R. 7300 on the same date. Hearings were held on this legislation on July 17, 1963, by the Subcommittee on Legislation.

The subcommittee met on September 10, 1963, and voted to approve H.R. 7300 and S. 1795 with the deletion of section 1, relating to bonding requirements for radioactive waste disposal licensees. The full committee, however, deferred legislative action because

financial arrangements to implement the sale of special nuclear materials to Euratom, authorized by the bill, had not been established. The record of the 1963 hearings, however, provided a valuable guide to the committee in its consideration of the omnibus legislation.

On May 6, 1964, the Atomic Energy Commission transmitted to the Congress a proposed 1964 omnibus bill containing four amendments to the Atomic Energy Act of 1954, as amended. The proposed bill was introduced by Chairman Pastore (by request) on May 7, 1964, as S. 2816, and by Vice Chairman Holifield (by request) on May 7, 1964, as H.R. 11180.

On June 24, 1964, the Subcommittee on Legislation met to consider H.R. 11180 and S. 2816 and after full discussion voted to approve these bills with certain modifications.

On June 24 and 26, 1964, the full Joint Committee met and voted to approve and combine the 1963 and 1964 omnibus bills as rec-

[p. 2]

ommended by the Subcommittee on Legislation with certain modifications; file clean bills (S. 2963 and H.R. 11892) and adopt this report thereon.

HEARINGS

On July 17, 1963, the Subcommittee on Legislation of the Joint Committee held hearings on H.R. 7300 and S. 1795, the 1963 omnibus bills submitted to the Congress by the Atomic Energy Commission. The following witnesses testified at the hearings on behalf of the Atomic Energy Commission: Hon. James T. Ramey, Commissioner; Mr. A. A. Wells, Director, Division of International Affairs; Mr. Harold L. Price, Director of Regulation; and Mr. Bertram H. Schur, Office of the General Counsel.

In addition, the committee received testimony from Mr. H. Glasser, representing Radiological Service Co., Inc.

On May 19, 1964, the Subcommittee on Legislation held hearings on H.R. 11180 and S. 2816, the 1964 omnibus bills submitted to the Congress by the Atomic Energy Commission.

The following witnesses testified at the hearings on behalf of the Atomic Energy Commission:

Hon. James T. Ramey, Commissioner
Mr. Joseph Hennessey, General Counsel

The committee also received testimony from—

Hon. John Saylor, U.S. Representative from the State of Pennsylvania
Mr. Oliver Townsend, chairman, New York State Atomic Research and Development Authority

Mr. A. F. Tegen, president, General Public Utilities Corp.
Mr. Joseph Moody, president, National Coal Policy Conference
Mr. Brice O'Brien, general counsel, National Coal Association

The foregoing hearings were published by the Joint Committee under the title "AEC Omnibus Bills for 1963 and 1964."

COMMITTEE COMMENTS

Introduction

The Joint Committee believes that it is a desirable practice for the Commission to submit each year, and the committee to consider, any proposed amendments to the Atomic Energy Act of 1954 and related atomic energy legislation. In this manner, the Congress is able to provide the best possible legislative framework for the national atomic energy program and keep this framework current with emerging developments in the nuclear field.

The committee believes that the amendments proposed in this bill are in keeping with the objectives set forth above, and accordingly urges enactment of the bill (S. 2963) in the form reported by the committee.

[p. 3]

II. Sections 2 and 3.—Price-Anderson indemnity amendments

Section 170 of the Atomic Energy Act of 1954, generally known as the Price-Anderson amendment, was added to the act in 1957 (Public Law 85–256). The primary purpose of the legislation was to afford financial protection to the public against personal injuries and property damage resulting from reactor accidents. The amendment was also designed to stimulate the development and construction of nuclear powerplants by directing the Atomic Energy Commission, for a limited period, to enter into agreements of indemnification with licenses, constructing and operating nuclear reactors, and other defined facilities under the act.

Under the terms of these agreements, the Commission contracts to indemnify the reactor operator against public liability resulting from nuclear incidents in the amount of $500 million, over and above the amount of private insurance or other form of financial protection that the Commission may require of the operator.

The basic approach of the bill was to provide a 10-year trial period—until 1967—during which more information could be gathered on the safety of nuclear powerplants and the ability of the insurance industry to provide adequate insurance coverage. It was hoped that the information gathered during this period would

provide a more reliable basis for the utility and insurance industries to evaluate the safety and insurability of nuclear reactors.

The committee, in the future, will begin preliminary consideration of the experience thus far under the Price-Anderson legislation; the future need for such legislation, and the terms and conditions under which it might be extended, if extension proves desirable.

In the interim, a question involving the interpretation of the existing legislation has arisen, which it is the purpose of this bill to clarify.

It was clearly the intent of Congress and this committee in writing the Price-Anderson Act that the Commission's authority would be effective for the full 10-year period to 1967. Moreover, it was similarly the intent of Congress that Price-Anderson protection, once afforded, would continue in effect throughout the entire period of the license. In this respect, the committee's report on the Price-Anderson legislation (H. Rept. No. 435, 85th Cong., 1st sess.) states:

> The provisions of this bill provides governmental indemnifications to those licensees who obtain their licenses within the next 10 years. The indemnification agreement is to run for the life of the license.

There is no doubt that the term "license" as used in the act clearly includes the term "construction permit." The act specifically so provides in section 185.

An extensive legal opinion by the General Counsel of the Atomic Energy Commission concludes that the Commission is authorized under the present law to offer Price-Anderson indemnity coverage for the operation of a facility for which a construction permit is issued prior to August 1, 1967, even if the license to operate the facility is not

[p. 5]

issued until after that date. This view is shared by the Joint Committee.

Nevertheless, the possibility of doubt on this point has been raised by at least one utility company. Fundamentally, the doubt arises out of the following sentence in subsection 170 c.:

> Such a contract of indemnification shall cover public liability arising out of or in connection with the *licensed activity.* [Emphasis added.]

Two interpretations of this language are possible. The first—and the one clearly supported by the legislative history of the

amendment—is that "licensed activity" covers all activities to be carried on at the facility which are subject to licensing. Under this interpretation, all licensed activities at the facility would be covered by indemnity protection, notwithstanding the fact that the operating license is not issued until after August 1, 1967.

The second interpretation is that "licensed activity" narrowly refers only to that activity which has been actually licensed as of any given point in time. Thus, under this interpretation, if only a construction permit had been issued prior to August 1, 1967, only the construction of the facility could be indemnified.

To resolve any doubt on this matter, the Commission proposed, and this committee supports, the clarifying amendments which appear in sections 2 and 3 of this bill. Section 2 of the bill clarifies this situation with respect to power reactors and other defined facilities under subsection 170 c. of the Atomic Energy Act. Section 3 would similarly clarify subsection 170 k. which is applicable to facilities operated for educational purposes by nonprofit educational institutions.

In both cases the amendments will make it clear that Price-Anderson indemnity protection may be extended to any facility for which a construction permit is issued between August 30, 1954, and August 1, 1967, notwithstanding that the operating license for the facility is issued after August 1, 1967.

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CHANGES IN EXISTING LAW

In accordance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law recommended by the bill accompanying this report are shown as follows (deleted matter is shown in black brackets and new matter is printed in italic):

PUBLIC LAW 83–703

[Atomic Energy Act of 1954]

AN ACT To amend the Atomic Energy Act of 1946, as amended, and for other purposes

* * * * * * *

SEC. 153. NONMILITARY UTILIZATION.—

"h. The provisions of this section shall apply to any patent the application for which shall have been filed before [September 1, 1964] *September 1, 1969.*"

* * * * * * *

SEC. 170. INDEMNIFICATION AND LIMITATION OF LIABILITY.—

"c. The Commission shall, with respect to licenses issued between August 30, 1954, and August 1, 1967, for which it requires

financial protection, agree to indemnify and hold harmless the licensee and

[p. 11]

other persons indemnified, as their interest may appear, from public liability arising from nuclear incidents which is in excess of the level of financial protection required of the licensee. The aggregate indemnity for all persons indemnified in connection with each nuclear incident shall not exceed $500,000,000 including the reasonable costs of investigating and settling claims and defending suits for damage. Such a contract of indemnification shall cover public liability arising out of or in connection with the licensed activity. *With respect to any production or utilization facility for which a construction permit is issued between August 30, 1954, and August 1, 1967, the requirements of this subsection shall apply to any license issued for such facility subsequent to August 1, 1967.*"

"k. With respect to any license issued pursuant to section 53, 63, 81, 104 a., or 104 c. for the conduct of educational activities to a person found by the Commission to be a non-profit educational institution, the Commission shall exempt such licensee from the financial protection requirement of subsection 170 a. With respect to licenses issued between August 30, 1954, and August 1, 1967, for which the Commission grants such exemption:

"(1) * * *

"(2) * * *

"(3) * * *

Any licensee may waive an exemption to which it is entitled under this subsection. *With respect to any production or utilization facility for which a construction permit is issued between August 30, 1954, and August 1, 1967, the requirements of this subsection shall apply to any license issued for such facility subsequent to August 1, 1967.*"

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1.1s(2) JOINT COMMITTEE ON ATOMIC ENERGY

H.R. REP. No. 1525, 88th Cong., 2d Sess. (1964)

AMENDMENTS TO THE ATOMIC ENERGY ACT OF 1954, AS AMENDED, THE ATOMIC ENERGY COMMUNITY ACT OF 1955, AS AMENDED, AND THE EURATOM COOPERATION ACT OF 1958, AS AMENDED

JUNE 30, 1964.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. HOLIFIELD, from the Joint Committee on Atomic Energy, submitted the following

REPORT

[To accompany H.R. 11832]

The Joint Committee on Atomic Energy, having considered H.R. 11832 to amend the Atomic Energy Act of 1954, as amended, the Atomic Energy Community Act of 1955, as amended, and the Euratom Cooperation Act of 1958, as amended, report favorably thereon without amendment and recommend that the bill do pass.

SUMMARY OF THE BILL

Section 1 of the bill would amend subsection 153 h. of the Atomic Energy Act of 1954, as amended, by extending for an additional 5 years the Atomic Energy Commission's authority to require the licensing of atomic energy patents. The Commission's current authority expires on September 1, 1964. The amendment would extend the authority to September 1, 1969.

Section 2 of the bill would clarify the Price-Anderson indemnity provisions of the Atomic Energy Act of 1954. Specifically, subsection 170 c. would be amended to make it clear that a production or utilization facility for which the Commission issues a construction permit prior to August 1, 1967, will be afforded Price-Anderson indemnity coverage extending through the period of its operation, without regard to whether or not the operating license for the facility is issued prior to August 1, 1967.

Section 3 of the bill would amend subsection 170 k. of the Atomic Energy Act of 1954 in order to similarly clarify the Price-Anderson indemnity provisions with respect to facilities used for

educational activities and operated by nonprofit educational institutions.

[p. 1]

II. Sections 2 and 3.—Price-Anderson indemnity amendments

Section 170 of the Atomic Energy Act of 1954, generally known as the Price-Anderson amendment, was added to the act in 1957 (Public Law 85–256). The primary purpose of the legislation was to afford financial protection to the public against personal injuries and property damage resulting from reactor accidents. The amendment was also designed to stimulate the development and construction of nuclear powerplants by directing the Atomic Energy Commission, for a limited period, to enter into agreements of indemnification with licensees constructing and operating nuclear reactors, and other defined facilities under the act.

Under the terms of these agreements, the Commission contracts to indemnify the reactor operator against public liability resulting from nuclear incidents in the amount of $500 million, over and above the amount of private insurance or other form of financial protection that the Commission may require of the operator.

The basic approach of the bill was to provide a 10-year trial period—until 1967—during which more information could be gathered on the safety of nuclear powerplants and the ability of the insurance industry to provide adequate insurance coverage. It was hoped that the information gathered during this period would provide a more reliable basis for the utility and insurance industries to evaluate the safety and insurability of nuclear reactors.

The committee, in the future, will begin preliminary consideration of the experience thus far under the Price-Anderson legislation; the future need for such legislation, and the terms and conditions under which it might be extended, if extension proves desirable.

In the interim, a question involving the interpretation of the existing legislation has arisen, which it is the purpose of this bill to clarify.

It was clearly the intent of Congress and this committee in writing the Price-Anderson Act that the Commission's authority would be effective for the full 10-year period to 1967. Moreover, it was similarly the intent of Congress that Price-Anderson protection, once afforded, would continue in effect throughout the entire period of the license. In this respect, the committee's report on the Price-Anderson legislation (H. Rept. No. 435, 85th Cong., 1st sess.) states:

> The provisions of this bill provides governmental indemnifications to those licensees who obtain their licenses within the next 10 years. The indemnification agreement is to run for the life of the license.

There is no doubt that the term "license" as used in the act clearly includes the term "construction permit." The act specifically so provides in section 185.

An extensive legal opinion by the General Counsel of the Atomic Energy Commission concludes that the Commission is authorized

[p. 5]

under the present law to offer Price-Anderson indemnity coverage for the operation of a facility for which a construction permit is issued prior to August 1, 1967, even if the license to operate the facility is not issued until after that date. This view is shared by the Joint Committee.

Nevertheless, the possibility of doubt on this point has been raised by at least one utility company. Fundamentally, the doubt arises out of the following sentence in subsection 170 c.:

> Such a contract of indemnification shall cover public liability arising out of or in connection with the *licensed activity.* [Emphasis added.]

Two interpretations of this language are possible. The first—and the one clearly supported by the legislative history of the amendment—is that "licensed activity" covers all activities to be carried on at the facility which are subject to licensing. Under this interpretation, all licensed activities at the facility would be covered by indemnity protection, notwithstanding the fact that the operating license is not issued until after August 1, 1967.

The second interpretation is that "licensed activity" narrowly refers only to that activity which has been actually licensed as of any given point in time. Thus, under this interpretation, if only a construction permit had been issued prior to August 1, 1967, only the construction of the facility could be indemnified.

To resolve any doubt on this matter, the Commission proposed, and this committee supports, the clarifying amendments which appear in sections 2 and 3 of this bill. Section 2 of the bill clarifies this situation with respect to power reactors and other defined facilities under subsection 170 c. of the Atomic Energy Act. Section 3 would similarly clarify subsection 170 k. which is applicable to facilities operated for educational purposes by nonprofit educational institutions.

In both cases the amendments will make it clear that Price-An-

derson indemnity protection may be extended to any facility for which a construction permit is issued between August 30, 1954, and August 1, 1967, notwithstanding that the operating license for the facility is issued after August 1, 1967.

[p. 6]

SECTION-BY-SECTION ANALYSIS

* * * * * * *

Section 2 of the bill would amend subsection 170 c. of the Atomic Energy Act of 1954, as amended, by the addition of the following sentence at the end thereof:

> With respect to any production or utilization facility for which a construction permit is issued between August 30, 1954, and August 1, 1967, the requirements of this subsection shall apply to any license issued for such facility subsequent to August 1, 1967.

This amendment clarifies the Price-Anderson Act by giving full expression to the intent of Congress at the time of its enactment in 1957. The amendment will make it clear that Price-Anderson indemnity protection may be extended to any facility for which a construction permit is issued between August 30, 1954, and August 1, 1967, notwithstanding that the operating license for the facility is issued after August 1, 1967. Moreover, such protection, once extended, will remain in force for the entire period of the license granted for the operation of the facility.

The amendment is not intended to either extend or modify the Commission's existing authority under section 170 of the Atomic Energy Act. It merely clarifies the act so as to specifically effectuate the intent of Congress. As such, the amendment does not require that a second indemnity agreement be executed for a facility for which an indemnity agreement is already in effect. In addition, subsection 170 e., which limits the liability for each nuclear incident to $500 million, together with the amount of financial protection, would, of course, continue to apply to incidents occurring during the period for which an indemnification agreement is in effect.

Section 3 of the bill would amend subsection 170 k. of the Atomic Energy Act by adding the same sentence added to subsection 170 c. by section 2 of this bill. The amendment would accomplish the same purpose with respect to facilities operated for the conduct of educational activities by nonprofit educational institutions.

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1.1.s(3) CONGRESSIONAL RECORD, VOL. 110 (1964)
1.1s(3)(a) July 8: Debated, passed Senate, pp. 16100–16101

AMENDMENT OF ATOMIC ENERGY ACT OF 1954, ATOMIC ENERGY COMMUNITY ACT OF 1955, AND EURATOM COOPERATION ACT OF 1958

The Senate resumed the consideration of the bill (S. 2963) to amend the Atomic Energy Act of 1954, as amended, the Atomic Energy Community Act of 1955, as amended, and the EURATOM Cooperation act of 1958, as amended.

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. BREWSTER in the chair). Without objection, it is so ordered.

Mr. ANDERSON. Mr. President, what is the parliamentary situation?

The PRESIDING OFFICER. The bill (S. 2963) to amend the Atomic Energy Act of 1954, as amended; the Atomic Energy Community Act of 1955, as amended; and the EURATOM Cooperation Act of 1958, as amended, is before the Senate.

Mr. ANDERSON. Mr. President, the bill now before the Senate, S. 2963, is the AEC omnibus bill for 1964.

It contains a number of noncontroversial amendments to several basic laws in the atomic energy field. The amendments are intended to clarify and modify this legislation in order to keep our atomic energy laws current with new developments in the nuclear field.

Section 1 of the bill is a simple 5-year extension of the AEC's authority to compel the licensing of certain patents in the atomic energy field. This authority first appeared in the Atomic Energy Act of 1954 with a 5-year limitation. It was extended for another 5-year period in 1959 and expires on September 1 of this year. The amendment will allow this authority to continue until 1969.

The authority to compel the licensing of atomic energy patents is a reserve power. It has never been utilized by the Commission in the past 10 years. But, it is a useful reserve power because it prevents the creation of patent monopolies in the formative period of this new industry.

Sections 2 and 3 of the bill clarify the Price-Anderson indemnity provisions of the Atomic Energy Act of 1954.

The amendments would make it clear that a nuclear reactor, for which the Commission issues a construction permit prior to August 1, 1967, will be afforded Price-Anderson indemnity coverage extending through the period of its operation, even if the operating license for the facility is not issued until after that date. The AEC's authority under the Indemnity Act expires on August 1, 1967. If it were held that an operating license had to be in effect on this cutoff date then, because of the leadtime involved in the construction of new reactors, no facility built between now and 1967 would be eligible for indemnity coverage—the Indemnity Act would be prematurely terminated.

It was clearly the intent of Congress, when the Price-Anderson Act was enacted in 1957 that the Commission's authority under this act would be effective for a full 10-year period to 1967. Every witness who testified before our committee stated that this was the proper and preferred interpretation of the Price-Anderson Act. There is no doubt on this point in the mind of any member of the Joint Committee on Atomic Energy. The General Counsel of the AEC has rendered an opinion to

this effect.

Nevertheless, doubt on this point has been raised by at least one utility company. In our view this matter should be clarified and accordingly the committee recommends the approval of sections 2 and 3 of S. 2963.

These amendments will not modify, alter or extend any aspect of the indemnity authority. It is only a clarifying amendment and is so regarded by the committee.

Section 4 of the bill adds a new section 120 to the Atomic Energy Community Act of 1955. Under this authority the Commission could make real and personal property available in its Hanford project, located near Richland, Wash., for the conduct of activities in that area which do not relate to atomic energy. The Commission could lease land, and could sell or lease personal property, related to the land, in the Commission's project area near Richland.

This amendment is intended to confer upon AEC the authority to dispose of property for purposes not related to the development and utilization of atomic energy. The Commission, in requesting this amendment, asserted that it now has the authority, under the Atomic Energy Act of 1954, to dispose of Government property for use by the transferees for purposes related to the development and utilization of atomic energy. This amendment neither adds to, nor detracts from, whatever authority the Commission may now have to dispose of property for nuclear-related purposes. The matter of the Commission's existing authority is thus not germane to the consideration of this amendment.

Mr. JAVITS. Mr. President, will the Senator yield?

Mr. ANDERSON. I yield.

Mr. JAVITS. This particular paragraph was of great interest to the New

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York State Atomic and Research Development Authority. Based upon its inclusion as a part of the legislative history, I have withdrawn an objection to consideration of the bill.

May I point out that in the statement which the Senator made, perhaps inadvertently, he used the words "atomic power" instead of "atomic energy" at the end of the sentence reading:

> The Commission, in requesting this amendment, asserted that it now has the authority, under the Atomic Energy Act of 1954, to dispose of Government property for use by the transferees for purposes related to the development and utilization of atomic energy.

Mr. ANDERSON. "Atomic energy" are the correct words. Those are the words I had intended to use. If I used the word "power," it was inadvertent. As the Senator knows, I spent a little time considering the question of atomic power. I thank the Senator.

Mr. JAVITS. I thank the Senator. His courtesy and cooperation in this matter is typical of my colleague, with whom I have cooperated so closely in other matters.

Mr. ANDERSON. The Senator's request was a reasonable one, and one that was fair; it should have been included.

Mr. JAVITS. I thank the Senator.

Disposals of property under this amendment would depend upon a determination by the Commission that the action would help to reduce the adverse economic impact of reductions in the Commission's activities in the Richland area.

The reduction in the production of plutonium announced by the President in his state of the Union message in January 1964, will have its greatest impact at the Commission's Hanford works near Richland, Wash. Beginning with the 6-month period starting January 1, 1965, about 2,000 positions, or about 24 percent of the present employment level of some 8,300, will be affected. A vigorous effort by Richland community leaders over the past few years has been directed at attract-

ing new, diversified industry to the Richland community. This effort has had the sympathetic support of the AEC. The additional authority in section 4 would permit the Commission to further assist the Richland community leadership in its economic and industrial development efforts.

It is important to keep in mind that the production cutbacks do not imply an end to Richland's usefulness in the atomic energy program. To the contrary, the community remains of continuing importance to the national atomic energy program. Many activities involving both the military and peaceful aspects of atomic energy are conducted at the Hanford works. It is vital that, as the Government's program for the production of special nuclear materials is lessened, the community remain viable to serve the Commission's continuing requirements.

In our view, this legislation will serve the objective of broadening the economic base of the Richland community by creating new opportunities for private initiative and private enterprise.

All dispositions of property under this legislation would be at the estimated fair market value or fair rental value. Furthermore, all proposed dispositions would have to be submitted to the Joint Committee on Atomic Energy in order to assure that the terms and conditions of the dispositions are in the national interest.

Finally, section 5 of the bill would amend section 5 of the EURATOM Cooperation Act of 1958 by adding 40,000 kilograms of uranium 235 and 491 kilograms of plutonium to the amounts of these materials presently authorized for transfer to Euratom.

The bulk of the 40,000 kilograms of uranium 235 added by this amendment would be used for civilian power applications in the European Atomic Energy Community. These amounts would be sold to Euratom on a straight-sale basis, at the same charges made for similar material distributed domestically. Euratom will pay all shipping charges from the AEC plant site. Although firm supply contracts have not yet been executed, if the entire 40,000 kilograms were sold to Euratom the return to the United States would be on the order of $300 million.

Return of this magnitude would, of course, help in alleviating our balance-of-payments problem.

Moreover, the assurance of long-term supply of enriched uranium should be of assistance in encouraging the sale of U.S.-developed enriched uranium reactors abroad.

With respect to the 491 additional kilograms of plutonium authorized by this amendment, this material will similarly be sold to Euratom on a straight sale basis at a base sales price of approximately $43 per gram.

Euratom has already agreed to purchase 350 kilograms of plutonium which will be used in its fast breeder reactor research and development program. The return to the United States from the sale of this amount of plutonium is estimated at approximately $15 million, of which $11 million is expected to be received during fiscal year 1965. Payment for the plutonium will be made in U.S. dollars.

All material transferred to Euratom is subject to the multination Euratom safeguards system, in order to insure against diversion to military purposes.

I should like to note, Mr. President, that there are several minor printing errors in connection with the punctuation at the end of lines 23, 24, and 25 on page 3. I ask unanimous consent for the clerk to correct these errors, prior to engrossment.

The PRESIDING OFFICER. (Mr. BREWSTER in the chair). Without objection, it is so ordered.

Mr. ANDERSON. Mr. President, there is nothing controversial in this bill. It is a sound bill, and I urge its prompt enactment.

The PRESIDING OFFICER. The bill is open to amendment.

If there be no amendment to be

proposed, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading.

The bill was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

The bill (S. 2963) was passed, as follows:

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[p. 16101]

1.1s(3)(b) July 21: Debated, passed House, pp. 16474–16476; 16478–16479

Mr. HOLIFIELD. Mr. Speaker, I yield myself such time as I may require.

Mr. Speaker, the bill now before the House, S. 2963, is the AEC omnibus bill for 1964.

The bill contains several amendments to basic laws in the atomic energy field. The amendments are not controversial. This bill was reported without dissent from the Joint Committee on Atomic Energy. It was approved by the other body several weeks ago by voice vote.

This bill is in keeping with past AEC omnibus bills. Its function is to clarify and modify our atomic energy legislation in order to keep our laws current with new developments in the nuclear field.

Section 1 of the bill extends the Atomic Energy Commission's authority to require the licensing of certain patents for a 5-year period. This authority was initially included in the Atomic Energy Act of 1954 with a 5-year limitation. In 1959 the Congress approved an extension until September 1 of this year and the amendment now before us would continue this authority until September 1, 1969.

Even though the authority to compel the licensing of atomic energy patents has never been used, the committee believes that this authority is important. This "reserve" power can be a useful tool in preventing the creation of patent monopolies during the formative period of this young and expanding industry.

Turning briefly to sections 2 and 3 of the bill. These sections would clarify the Price-Anderson indemnity provisions of the Atomic Energy Act of 1954. The amendments would make it clear that a nuclear reactor for which the Commission issues a construction permit prior to August 1, 1967, will be afforded Price-Anderson indemnity coverage extending through the period of its operation even if the operating license for the facility is not issued until after that date.

I believe my colleague the gentleman from California [Mr. HOSMER] intends to discuss these amendments in greater detail. I would only stress that these amendments are simply for purposes of clarification and do not extend, alter, or modify in any way, the AEC's authority under the Price-Anderson Act.

The question of whether the Price-Anderson Act should be extended, and if so, under what conditions is a separate matter to be considered by the committee in the near future.

[p. 16474]

Mr. HOSMER.

* * * * *

Mr. Speaker, I would like to go back now to sections 2 and 3 of this bill which will clarify the Price-Anderson Act.

The Price-Anderson indemnity amendment was added to the Atomic Energy Act in 1957. The purpose of the legislation was to provide financial protection for the public against injuries from nuclear reactor accidents.

It was also the purpose of the amendment to help stimulate the development and construction of nuclear powerplants. The Price-Anderson Act authorized the Atomic Energy Commission to enter into contracts to indemnify reactor operators against public liability in the amount of $500 million over and above private insurance required by the Commission.

The approach of Price-Anderson was to provide a 10-year trial period—until 1967—during which more information could be gathered on the safety of nuclear powerplants and the ability of the insurance industry to provide adequate coverage.

As my colleague has already pointed out, the committee plans in the future to consider whether legislation of this type is needed any more and, if it is needed, the terms and conditions under which it might be extended.

In the meantime, a question has been raised concerning an interpretation of the Price-Anderson Act which we hope to clarify by the amendments in sections 2 and 3 of this bill.

There is absolutely no doubt on the part of any person who has examined the Price-Anderson Act that it was the intent of Congress that the Commission's authority would be effective for a full 10-year period to 1967. It was also the intent of Congress that Price-Anderson protection, once afforded, would continue in effect throughout the entire period of a reactor license. This was the conclusion of an extensive legal opinion by the General Counsel of the Atomic Energy Commission and it is also the view of the Joint Committee. Nevertheless, a doubt on this point has been raised by at least one utility company. It has been pointed out that section 170(c) of the Atomic Energy Act says that:

> A contract of indemnification shall cover public liability arising out of or in connection with the licensed activity.

People who are concerned about this question point out that "licensed activity" might only refer to that activity which has been licensed as of any given point in time. Following this interpretation, if only a construction permit had been issued prior to the 1967 cutoff date, then only the construction—and not the operation of the plant—could be indemnified.

As a practical matter this interpretation would mean that the reactor operator would have to have an operating license before August 1, 1967, in order to

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be eligible for full Price-Anderson coverage. In view of the leadtime involved in building a nuclear reactor, under this interpretation, the Price-Anderson Act, for practical purposes, would be terminated now.

This interpretation frustrates the intent of Congress. The amendments in sections 2 and 3 of this bill will give full expression to the true intent of Congress by making it clear that Price-Anderson indemnity protection will be extended to any facility for which a construction permit is issued between August 30, 1954, and August 1, 1967, notwithstanding that the operating license for the facility is issued after August 1, 1967.

With respect to section 1 of the bill, I believe we are in agreement that the compulsory patent licensing provisions of the Atomic Energy Act should be extended for another 5 years.

As my colleague has noted, this is a reserve power but it should be kept on the books until the atomic energy industry is more fully developed.

Section 4 of the bill concerning the disposition of property at Richland, Wash., has been tightened up very substantially by the committee. Although the Commission had requested authority to sell real property in addition to the authority to lease such property, the committee deleted the authority to sell. It was our view that the Commission would be in a better position to control the use and disposition of real property through the lease mechanism.

Long-term leases will satisfactorily meet the Commission's requirements under this authority.

Second. Although the Atomic Energy Commission requested authority to dispose of property at less than fair market or fair rental value in special circumstances, the committee felt that this would be a departure from general Government policy which could not be justified. We rewrote the bill to require that sales of property would be at the fair market value while leases of property would be at the estimated fair rental value.

Finally the committee added a requirement that all dispositions of property under this section would have to be reported to the Joint Committee on Atomic Energy. In this way the Congress, through the Joint Committee, will have an opportunity to review the terms and conditions of each property disposition to assure that it is fair and in the national interest.

Mrs. MAY.

* * * * *

I am sure that our colleagues know that although the Commission presently has the authority to dispose of property for activities relating to atomic energy, it does not have authority to dispose of property for purposes unrelated to atomic energy. It is felt essential, as the gentleman from California has pointed out, that if the AEC is to provide effective assistance in the economical stabilization of the Richland area, where there can be an adverse economic impact because of actual or probable reductions in the AEC program, that we must have the right to handle our land and property problems in a way that is made possible under the provisions of this bill. I thank the committee very much because we have needed this help and we are all very grateful for their very wise judgment and decisions in this matter.

Mr. HOSMER. Mr. Speaker, I thank the gentlelady for her comments. I think that it is a matter of record that the gentlelady has been of great assistance herself to the committee in producing the kind of legislation that will, as we all believe, operate most effectively in the area she represents.

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Mr. GONZALEZ.

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Still there is more. There are sections 2 and 3, the Price-Anderson indemnity amendments. These amendments involve Federal subsidies to private industry as well as limitations on the ability of the public to be compensated in the event of a nuclear disaster at an atomic energy plant. And there is section 4, to authorize the AEC to sell or lease property owned by the Federal Government in and near Richland, Wash., known as the Hanford project. By this section the AEC will be permitted to dispose of this public property to private industry at less than its fair market value. I would think that these matters are important enough to be brought up on the floor of this representative body in a manner that would insure a fair and thorough debate.

A fair and thorough debate of all these separate and diverse matters is impossible with this bill. Everyone of us would need to have more ears than a field of corn in order to lend one ear to each of the different matters brought up in this single bill. That impossible prospect is no less absurd than S. 2963.

Mr. O'BRIEN of New York. Mr. Speaker, will the gentleman yield?

Mr. *HOLIFIELD*. I yield to the gentleman.

Mr. O'BRIEN of New York. Mr. Speaker, I have asked for this brief time, and I am grateful to the gentleman for yielding, so that I may address a question to the chairman of the committee.

Did I understand the gentleman from California [Mr. HOLIFIELD] to say that with regard to section 4 of H. R. 11832, which would amend the

Atomic Energy Community Act of 1955 to authorize disposals of property at the Commission's Hanford project in the State of Washington for non-nuclear-related purposes, I would like to emphasize the following sentences from the statement of the gentleman from California [Mr. HOLIFIELD]:

> This amendment neither adds to, nor detracts from, whatever authority the Commission may now have to dispose of property for nuclear-related purposes. The matter of the Commission's existing authority is thus not germane to the consideration of this amendment.

Mr. HOLIFIELD. Those were my exact words except the word "thus" that you used, whereas I used the word "therefore." In other words, I said "The matter of the Commission's existing authority is therefore not germane to the consideration of this amendment." But otherwise it is verbatim.

Mr. O'BRIEN of New York. Mr. Speaker, in view of the remarks made by the distinguished gentlewoman from Washington, I would like the RECORD to reflect that doubts exist as to the Commission's interpretation of the scope of its authority to dispose of property for nuclear-related purposes under existing provisions of the Atomic Energy Act of 1954, as amended. I will assure that documentation of these doubts is submitted to the Joint Committee on Atomic Energy.

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The SPEAKER pro tempore (Mr. KASTENMEIER). The question is on suspending the rules and passing the bill.

The question was taken; and (two-thirds having voted in favor thereof), the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

A similar House bill (H.R. 11832) was laid on the table.

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1.1t 1964 AMENDMENTS TO THE ATOMIC ENERGY ACT OF 1954

August 26, 1964, P.L. 88–489, §§3, 5–8, 15, 16, 78 Stat. 602

AN ACT

To amend the Atomic Energy Act of 1954, as amended, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection 2 b. of the Atomic Energy Act of 1954, as amended, is deleted.

SEC. 2. Subsection 2 h. of the Atomic Energy Act of 1954, as amended, is deleted.

SEC. 3. Subsection 3 c. of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

> "c. a program for Government control of the possession, use, and production of atomic energy and special nuclear material, whether owned by the Government or others, so directed as to make the maximum contribution to the common defense and secu-

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SEC. 5. Subsection 53 a. of the Atomic Energy Act of 1954, as amended, between the words "The Commission" and "such material" is amended to read as follows:

"a. The Commission is authorized (i) to issue licenses to transfer or receive in interstate commerce, transfer, deliver, acquire, possess, own, receive possession of or title to, import, or export under the terms of an agreement for cooperation arranged pursuant to section 123, special nuclear material, (ii) to make special nuclear material available for the period of the license, and, (iii) to distribute special nuclear material within the United States to qualified applicants requesting such material—"

SEC. 6. Subsection 53 c. of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"c. (1) The Commission may distribute special nuclear material licensed under this section by sale, lease, lease with option to buy, or grant: *Provided, however,* That unless otherwise authorized by law, the Commission shall not after December 31, 1970, distribute special nuclear material except by sale to any person who possesses or operates a utilization facility under a license issued pursuant to section 103 or 104 b. for use in the course of activities under such license; nor shall the Commission permit any such person after June 30, 1973, to continue leasing for use in the course of such activities special nuclear material previously leased to such person by the Commission.

"(2) The Commission shall establish reasonable sales prices for the special nuclear material licensed and distributed by sale under this section. Such sales prices shall be established on a nondiscriminatory basis which, in the opinion of the Commission, will provide reasonable compensation to the Government for such special nuclear material.

"(3) The Commission is authorized to enter into agreements with licensees for such period of time as the Commission may deem necessary or desirable to distribute to such licensees such quantities of special nuclear material as may be necessary for the conduct of the licensed activity. In such agreements, the Commission may agree to repurchase any special nuclear material licensed and distributed by sale which is not consumed in the course of the licensed activity, or any uranium remaining after irradiation of such special nuclear material, at a repurchase price not to exceed the Commission's sale price for comparable special nuclear material or uranium in effect at the time of delivery of such material to the Commission.

"(4) The Commission may make a reasonable charge, determined pursuant to this section, for the use of special nuclear mate-

rial licensed and distributed by lease under subsection 53 a. (1), (2) or (4) and shall make a reasonable charge determined pursuant to this section for the use of special nuclear material licensed and distributed by lease under subsection 53 a. (3). The Commission shall establish criteria in writing for the determination of whether special nuclear

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material will be distributed by grant and for the determination of whether a charge will be made for the use of special nuclear material licensed and distributed by lease under subsection 53 a. (1), (2) or (4), considering, among other things, whether the licensee is a nonprofit or eleemosynary institution and the purposes for which the special nuclear material will be used."

SEC. 7. Subsection 53 d. of the Atomic Energy Act of 1954, as amended, is amended by adding the words "by lease" after the word "distributed", and by amending subsection d. (5) to read as follows:

> "(5) with respect to special nuclear material consumed in a facility licensed pursuant to section 103, the Commission shall make a further charge equivalent to the sale price for similar special nuclear material established by the Commission in accordance with subsection 53 c. (2), and the Commission may make such a charge with respect to such material consumed in a facility licensed pursuant to section 104."

SEC. 8. Subsection 53 e. of the Atomic Energy Act of 1954, as amended, is amended by deleting subsection 53 e. (1).

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SEC. 15. Section 123 of the Atomic Energy Act of 1954, as amended, is amended by adding "53," after the word "sections" in the first sentence.

SEC. 16. Section 161 of the Atomic Energy Act of 1954, as amended, is amended by adding thereto the following new subsection:

> "(A) enter into contracts with persons licensed under sections 53, 63, 103 or 104 for such periods of time as the Commission may deem necessary or desirable to provide, after December 31, 1968, for the producing or enriching of special nuclear material in facilities owned by the Commission; and
>
> "(B) enter into contracts to provide, after December 31, 1968, for the producing or enriching of special nuclear material in facilities owned by the Commission in accordance with and within the period of an agreement for cooperation arranged pursuant to section 123 while comparable services are made available pursuant to paragraph (A) of this subsection:

Provided, That (i) prices for services under paragraph (A) of this subsection shall be established on a nondiscriminatory basis; (ii) prices for services under paragraph (B) of this subsection shall be no less than prices under paragraph (A) of this subsection; and (iii) any prices established under this subsection shall be on a basis which will provide reasonable compensation to the Government: *And provided further,* That the Commission, to the extent necessary to assure the maintenance of a viable domestic uranium industry, shall not offer such services for source or special nuclear materials of foreign origin intended for use in a utilization facility within or under the jurisdiction of the United States. The Commission shall establish criteria in writing setting forth the terms and conditions under which services provided under this subsection shall be made available including the extent to which such services will be made available for source or special nuclear material of foreign origin intended for use in a utilization facility within or under the jurisdiction of the United States: *Provided,* That before the Commission establishes such criteria, the proposed criteria shall be submitted to the Joint Committee, and a period of forty-five days shall elapse while Congress is in session (in computing the forty-five days there shall be excluded the days in which either House is not in session because of adjournment for more than three days) unless the Joint Committee by resolution in writing waives the conditions of, or all or any portion of, such forty-five-day period."

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1.1t(1) JOINT COMMITTEE ON ATOMIC ENERGY

S. REP. No. 1325, 88th Cong., 2d Sess. (1964)

AMENDING THE ATOMIC ENERGY ACT OF 1954 TO PROVIDE FOR PRIVATE OWNERSHIP OF SPECIAL NUCLEAR MATERIALS

AUGUST 5, 1964.—Ordered to be printed

Mr. PASTORE, from the Joint Committee on Atomic Energy, submitted the following

REPORT

[To accompany S. 3075]

The Joint Committee on Atomic Energy, having considered S. 3075, an original committee bill to amend the Atomic Energy Act of 1954, as amended, and for other purposes, report favorably thereon without amendment and recommend that the bill do pass.

SUMMARY OF BILL

This bill, as reported by the Joint Committee on Atomic Energy, would amend the Atomic Energy Act of 1954 to accomplish the following principal purposes:

1. *Termination of Mandatory Government Ownership of Special Nuclear Materials (sec. 4).*—The bill would repeal section 52 of the Atomic Energy Act of 1954 which requires mandatory Government ownership of all special nuclear material within or under the jurisdiction of the United States. Provision for the continued effective regulation and control of such materials is assured in other sections of the Atomic Energy Act of 1954 as amended by this bill.

2. *Mandatory Private Ownership (sec. 6).*—The bill would authorize the Atomic Energy Commission to lease, sell, or grant special nuclear material. However, unless otherwise authorized by law, the Commission could not, after December 31, 1970, distribute special nuclear material except by sale to a person owning or operating a nuclear power reactor if the material is intended for use in such reactor. After June 30, 1973, unless otherwise authorized by law, all special nuclear material previously leased to a person owning or operating a nuclear power reactor for use in such reactor, would have to be converted to private ownership, unless otherwise authorized by law. [p. 1]

Section 3 of the bill amends subsection 3c. of the Atomic Energy Act of 1954 (the expression of the purposes of the act) to emphasize that the elimination of the requirement for mandatory Government ownership of special nuclear material has no impact on either the authority or the responsibility of the Atomic Energy Commission to regulate the domestic use of special nuclear material.

The amendment also emphasizes that the elimination of the requirement for mandatory Government ownership will have no impact on the Government's ability to enter into and enforce agreements with nations or groups of nations for the control of special nuclear materials and atomic weapons. The bill is not intended to make any change in the act in this respect.

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Section 5 of the bill, which deals with the authority of the Commission to license and distribute special nuclear material domestically, amends section 53 of the Atomic Energy Act of 1954. The amendment clarifies the authority of the Commission to license ownership, possession, and use of special nuclear material and brings this authority into conformity with the Commission's authority to license source and byproduct material, and production and utilization facilities.

In view of the elimination of mandatory Government ownership, and consistent with the amendment to section 57 of the act made by section 12 of this bill, it is necessary to authorize the Commission to license imports and exports of special nuclear material. Exports must be in accordance with agreements for cooperation arranged pursuant to section 123. The authority to license the export of

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special nuclear material is stated in terms substantially the same as the authority now vested in the Commission to license the export of utilization or production facilities.

Section 6 of the bill would amend subsection 53c. of the Atomic Energy Act of 1954 to accomplish the following:

(1) Authorize the Commission to distribute special nuclear material by sale, lease, lease with option to buy, or grant;

(2) Direct the Commission not to distribute special nuclear material except by sale after December 31, 1970, to certain classes of licensees if the material is for use in the course of activities so licensed;

(3) Direct the Commission not to permit the continued

leasing of special nuclear material by certain classes of licensees after June 30, 1973, if such material is for use in the course of activities so licensed;

(4) Direct the Commission to establish reasonable sales prices for special nuclear material distributed by sale;

(5) Authorize the Commission to enter into long-term contracts to distribute special nuclear material to licensees and to agree to repurchase special nuclear material sold but not consumed in the conduct of the licensed activity, and any uranium remaining after irradiation of such special nuclear material.

(6) Direct the Commission to establish criteria in writing for the determination of whether special nuclear material will be distributed by grant.

The new subsection 53c.(1) added by section 6 of this bill would authorize the Commission to distribute special nuclear material by sale, lease, lease with option to buy, or grant. The subsection directs the Commission, unless otherwise authorized by law, not to distribute special nuclear material after December 31, 1970, except by sale, to any person possessing or operating a utilization facility licensed under section 103 or 104b. if the material is for use in the course of activities so licensed.

Subsection 53c.(1) thus gives the AEC authority to lease special nuclear material to licensees engaged in the conversion and fabrication of special nuclear material except in those circumstances where the converter or fabricator is also a person licensed under section 103 or 104b. and the material involved is intended for use in such person's activities licensed under section 103 or 104b.

This subsection would not, however, permit the Commission, after December 31, 1970, to approve or allow the assignment or transfer of a lease or the sublease of Government-owned special nuclear material to a person possessing or operating a nuclear reactor under a section 103 or 104b. license for use in the course of activities under such license. Thus, in circumstances where the initial distribution of special nuclear material is by lease to a fuel fabricator or converter, as permitted by this bill, the transfer of such material, in its fabricated form, to the 103 or 104b. license would have to be by sale. It is not the intent of the committee that the Commission lease special nuclear material to a person whose sole or principal function is to hold title to special nuclear material (e.g., financial institutions) in circumstances where the user of such material would otherwise be required to purchase such mate-

rial by the provisions of this bill.

Subsection 53c.(1) would also require a person who possesses or operates a utilization facility licensed under section 103 or 104b. to

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purchase by June 30, 1973, all special nuclear material previously leased to such person by the Commission for use in the course of the licensed activities. Any lease agreements in effect with such licensees would, unless otherwise authorized by law, terminate on the aforementioned date.

The Commission possesses authority under existing law to permit licensees to pay on an installment or deferred payment basis for special nuclear material purchased from the Commission. It is expected that the Commission would permit persons licensed under section 103 or 104b., who purchased special nuclear material previously leased to them by the Commission to pay for such material in installment payments, over a period of up to 5 years, with a rate of interest equal to the rate of the charge established by the Commission pursuant to subsection 53c.(4), in effect at the time of the sale, for the use of special nuclear material distributed by lease. The Government would retain a lien on the material sold, and would require periodic payments of principal and interest on the amounts due.

It is also expected that if the Commission elects to require licensees engaged in conversion and/or fabrication of special nuclear material to purchase such material after December 31, 1970, the Commission would make available a deferred payment plan. The deferred payment arrangements could assist in the maintenance of a fair competitive situation among fuel fabricators insofar as the financing of special nuclear material inventories is concerned. These arrangements would require the purchaser to pay in full for the material purchased upon transfer of the material to the ultimate user or within some specified period of time, such as one year, from the date of the sale by the Commission. In general, it is contemplated that the Commission would permit the deferral of payments on principal for the entire period of fabrication. Interest on the deferred liability would be paid by the purchaser at a rate not in excess of the rate of the charge established by the Commission pursuant to subsection 53c.(4), in effect at the time of the sale, for special nuclear material distributed by lease. Finally, it is contemplated that, in connection with any such plan, the Commission would accept, for appropriate credit against the deferred liability, any unused material returned to the Commission by the converter or fabricator.

It will be noted that the phrase "unless otherwise authorized by

law" appears in the new subsection 53c.(1). The phrase would apply to exceptions which might be authorized by law subsequent to the enactment of the bill. It would also make clear that the Commission's contractual commitments executed prior to the enactment of the bill will not be disturbed nor will the conduct of the Commission's programs authorized under section 261 of the act prior to the enactment of this bill be affected. Examples of the latter categories would be the Commission's contracts entered into, or to be entered into, under the third round or supplemental third round of the Commission's cooperative power reactor demonstration program. Under these contracts the Commission undertakes to lease without use charge the fuel materials required during the term of the cooperative arrangement. In some cases, this time may extend beyond June 30, 1973. Moreover, the Commission's authority to furnish special nuclear material to its contractors and subcontractors for the performance of work for the Commission, under appropriate terms and conditions, would not be changed by the proposed legislation.

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Subsection 53c.(2) directs the Commission to establish reasonable sales prices for special nuclear material licensed and distributed by sale under section 53. The Commission could, of course, establish different sales prices for different types of special nuclear material, or different chemical forms or isotopic compositions of the same material. In the establishment of reasonable sales prices for special nuclear material, it is expected that the Commission will follow, to the extent feasible, the principles of full cost recovery. The sales price for special nuclear material sold pursuant to any lease with option to buy would not be less than the Commission's sale price for comparable special nuclear material in effect at the time of the sale of the special nuclear material pursuant to the option.

Subsection 53c.(3) authorizes the Commission to enter into long-term contracts to distribute special nuclear material to licensees, to repurchase special nuclear material purchased by licensees and partially consumed (including special nuclear material purchased by fabricators and converters of special nuclear material, which is no longer needed by them or is in excess of their needs), and any uranium remaining after irradiation of special nuclear material licensed and distributed by sale. The exercise of this authority will assure licensees of the long-term availability of special nuclear material. The authority will also authorize the AEC, where necessary, to provide a market for unused or unconsumed special nuclear material, since only a part of the fuel for a

nuclear reactor is consumed through fuel fabrication or conversion or operation of the reactor. It is expected that this repurchase authority would not be exercised generally once toll enrichment services, as authorized by section 16 of this bill, become available. The Commission would be authorized to repurchase special nuclear material or uranium remaining after irradiation only if the special nuclear material, of which the unconsumed material is a part, had been distributed by the Commission under a contract of sale providing for payment of the Commission's full sale price for the special nuclear material. The Commission would not be authorized to repurchase special nuclear material obtained from the Commission through a toll enrichment arrangement of the type authorized by section 16 of this bill.

Such long-term contracts will constitute a commitment on the Commission's part to produce and deliver special nuclear material in the future, subject to such conditions as the Commission might impose in the interests of the common defense and security or otherwise. Such contracts will be subject to Presidential determinations of the quantity of special nuclear material to be available for distribution by the Commission pursuant to section 53, in accordance with section 41b. The obligations of the Commission under these long-term contracts would be taken into account in the Commission's annual recommendation to the President, pursuant to section 41b., as to the quantities of special nuclear material to be produced in Commission facilities that year.

Section 6 would also amend section 53 by designating the present subsection 53c. as 53c.(4) and by adding the words "by lease" after "distributed". This amendment would make it clear that subsection 53c.(4) does not apply to special nuclear material distributed by sale. The subsection would also be amended to require that the Commission establish criteria in writing for the determination of whether special nuclear material will be distributed by grant.

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Section 7 of the bill would amend subsection 53c. of the Atomic Energy Act of 1954 which relates to the basis for determining reasonable charges for the use of special nuclear material. The amendment would make it clear, consonant with other amendments to the act made by this bill, that subsection 53d. applies only to special nuclear material distributed to licensees by lease.

Section 7 would also amend paragraph (5) of subsection 53d. to provide that, for leased material consumed in a licensed facility, the charge, if any, would be equivalent to the Commission's established sales price for similar material. This subsection now bases

the consumption or "burnup" charge upon the cost of the material to the Commission or the "average fair price" paid for the production of such material, whichever is lower. This change is necessary because of the amendments in section 11 of this bill which would eliminate the requirement for payment of a "fair price" for material produced by licensees as it now appears in section 56 of the Atomic Energy Act of 1954.

Section 8 of the bill amends subsection 53e. by eliminating subsection 53e.(1) which states that "title to all special nuclear material shall at all times be in the United States." This amendment follows from the elimination by section 4 of the bill of the requirement of mandatory Government ownership of any special nuclear material within the United States.

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COMPARISON OF JOINT COMMITTEE BILL WITH BILL AS SUBMITTED BY AEC

AEC BILL	JOINT COMMITTEE BILL
Section 1 Section 2 of the Atomic Energy Act of 1954, as amended, is amended by deleting subsection 2b.	*Section 1* Same as section 1, AEC bill.
Section 2 Subsection h. of section 2 of the Atomic Energy Act of 1954, as amended, is deleted.	*Section 2* Same as section 2, AEC bill.
Section 3 Subsection c. of section 3 of the Atomic Energy Act of 1954, as amended, is amended to read as follows: "c. a program for Government control of the possession, use, and production of atomic energy and special nuclear material, whether owned by the Government or others, so directed as to make the maximum contribution to the common defense and security and the national welfare, and to provide continued assurance of the Government's ability to enter into and enforce agreements with nations or groups of nations for the control of special nuclear materials and atomic weapons."	*Section 3* Same as section 3, AEC bill.

Section 4

Section 52 of the Atomic Energy Act of 1954, as amended, is repealed. All rights, title, and interest in and to any special nuclear material vested in the United States solely by virtue of the provisions of the first sentence of such section 52, and not by any other transaction authorized by the Atomic Energy Act of 1954, as amended, or other applicable law, are hereby extinguished.

Section 4

Same as section 4, AEC bill.

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"(5) with respect to special nuclear material consumed in a facility licensed pursuant to section 103, the Commission shall make a further charge equivalent to the sale price for similar special nuclear material established by the Commission in accordance with subsection 53c.(1), and the Commission may make such a charge with respect to such material consumed in a facility licensed pursuant to section 104."

Section 8

Subsection e. of section 53 of the Atomic Energy Act of 1954, as amended, is amended by deleting subsection 53e.(1).

Section 8

Same as section 8, AEC bill.

Section 9

Section 54 of the Atomic Energy Act of 1954, as amended, is amended by adding the following sentences at the end of section 54:

"The Commission may agree to repurchase any special nuclear material distributed under a sale arrangement pursuant to this section which is not consumed in the course of the activities conducted in accordance with the agreement for cooperation, or any uranium remaining after irradiation of such special nuclear material, at a repurchase price not to exceed the Commission's sale price for comparable special nuclear material or uranium in effect at the time of delivery of such material to the Commission. The

Section 9

Same as section 9, AEC bill, except for deletion of reference to section 103 in the last sentence. Also, the phrase "through use of special nuclear material" changed to "through the use of special nuclear material".

Commission may also agree to purchase, consistent with and within the period of the agreement for cooperation, special nuclear material produced in a nuclear reactor located outside the United States through use of special nuclear material distributed pursuant to this section.***

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1.1t(2) JOINT COMMITTEE ON ATOMIC ENERGY

H.R. REP. No. 1702, 88th Cong., 2d Sess. (1964)

AMENDING THE ATOMIC ENERGY ACT OF 1954 TO PROVIDE FOR PRIVATE OWNERSHIP OF SPECIAL NUCLEAR MATERIALS

AUGUST 5, 1964.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. HOLIFIELD, from the Joint Committee on Atomic Energy, submitted the following

REPORT

[To accompany H.R. 12228]

The Joint Committee on Atomic Energy, having considered H.R. 12228, an original committee bill to amend the Atomic Energy Act of 1954, as amended, and for other purposes, report favorably thereon without amendment and recommend that the bill do pass.

SUMMARY OF BILL

This bill, as reported by the Joint Committee on Atomic Energy, would amend the Atomic Energy Act of 1954 to accomplish the following principal purposes:

1. *Termination of Mandatory Government Ownership of Special Nuclear Materials (sec. 4).*—The bill would repeal section 52 of the Atomic Energy Act of 1954 which requires mandatory Government ownership of all special nuclear material within or under the jurisdiction of the United States. Provision for the continued

effective regulation and control of such materials is assured in other sections of the Atomic Energy Act of 1954 as amended by this bill.

2. *Mandatory Private Ownership (sec. 6).*—The bill would authorize the Atomic Energy Commission to lease, sell, or grant special nuclear material. However, unless otherwise authorized by law, the Commission could not, after December 31, 1970, distribute special nuclear material except by sale to a person owning or operating a nuclear power reactor if the material is intended for use in such reactor. After June 30, 1973, unless otherwise authorized by law, all special nuclear material previously leased to a person owning or operating a nuclear power reactor for use in such reactor, would have to be converted to private ownership, unless otherwise authorized by law.

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Section 3 of the bill amends subsection 3c. of the Atomic Energy Act of 1954 (the expression of the purposes of the act) to emphasize that the elimination of the requirement for mandatory Government ownership of special nuclear material has no impact on either the authority or the responsibility of the Atomic Energy Commission to regulate the domestic use of special nuclear material.

The amendment also emphasizes that the elimination of the requirement for mandatory Government ownership will have no impact on the Government's ability to enter into and enforce agreements with nations or groups of nations for the control of special nuclear materials and atomic weapons. The bill is not intended to make any change in the act in this respect.

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Section 7 of the bill would amend subsection 53c. of the Atomic Energy Act of 1954 which relates to the basis for determining reasonable charges for the use of special nuclear material. The amendment would make it clear, consonant with other amendments to the act made by this bill, that subsection 53d. applies only to special nuclear material distributed to licensees by lease.

Section 7 would also amend paragraph (5) of subsection 53d. to provide that, for leased material consumed in a licensed facility, the charge, if any, would be equivalent to the Commission's established sales price for similar material. This subsection now bases the consumption or "burnup" charge upon the cost of the material to the Commission or the "average fair price" paid for the production of such material, whichever is lower. This change is necessary because of the amendments in section 11 of this bill which

would eliminate the requirement for payment of a "fair price" for material produced by licensees as it now appears in section 56 of the Atomic Energy Act of 1954.

Section 8 of the bill amends subsection 53e. by eliminating subsection 53e.(1) which states that "title to all special nuclear material shall at all times be in the United States." This amendment follows from the elimination by section 4 of the bill of the requirement of mandatory Government ownership of any special nuclear material within the United States.

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1.1t(3) CONGRESSIONAL RECORD, VOL. 110 (1964)

1.1t(3)(a) Aug. 6: Passed Senate, p. 18434

[No Relevant Discussion on Pertinent Section]

1.1t(3)(b) Aug. 18: Passed House, p. 20145

[No Relevant Discussion on Pertinent Section]

1.1u TO AMEND SECTION 170 OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

September 29, 1965, P.L. 89–210, §§1–5, 79 Stat. 855

AN ACT

To amend section 170 of the Atomic Energy Act of 1954, as amended

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection 170c. of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"c. The Commission shall, with respect to licenses issued between August 30, 1954, and August 1, 1977, for which it requires financial protection, agree to indemnify and hold harmless the licensee and other persons indemnified, as their interest may appear, from public liability arising from nuclear incidents which is in excess of the level of financial protection required of the licensee. The aggregate indemnity for all persons indemnified in connection with each nuclear incident shall not

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exceed $500,000,000 including the reasonable costs of investigating and settling claims and defending suits for damage: *Provided, however,* That this amount of indemnity shall be reduced by the amount that the financial protection required shall exceed $60,000,000. Such a contract of

indemnification shall cover public liability arising out of or in connection with the licensed activity. With respect to any production or utilization facility for which a construction permit is issued between August 30, 1954, and August 1, 1977, the requirements of this subsection shall apply to any license issued for such facility subsequent to August 1, 1977."

SEC. 2. The first two sentences of subsection 170 d. of the Atomic Energy Act of 1954, as amended, are amended to read as follows:

"In addition to any other authority the Commission may have, the Commission is authorized until August 1, 1977, to enter into agreements of indemnification with its contractors for the construction or operation of production or utilization facilities or other activities under contracts for the benefit of the United States involving activities under the risk of public liability for a substantial nuclear incident. In such agreements of indemnification the Commission may require its contractor to provide and maintain financial protection of such a type and in such amounts as the Commission shall determine to be appropriate to cover public liability arising out of or in connection with the contractual activities, and shall indemnify the persons indemnified against such claims above the amount of the financial protection required, in the amount of $500,000,000, including the reasonable costs of investigating and settling claims and defending suits for damage in the aggregate for all persons indemnified in connection with such contract and for each nuclear incident: *Provided,* That this amount of indemnity shall be reduced by the amount that the financial protection required shall exceed $60,000,000: *Provided further,* That in the case of nuclear incidents occurring outside the United States, the amount of the indemnity provided by the Commission shall not exceed $100,000,000."

SEC. 3. The first sentence of subsection 170 e. of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"The aggregate liability for a single nuclear incident of persons indemnified, including the reasonable costs of investigating and settling claims and defending suits for damage, shall not exceed the sum of $500,000,000 together with the amount of financial protection required of the licensee or contractor: *Provided, however,* That such aggregate liability shall in no event exceed the sum of $560,000,000: *Provided further,* That with respect to any nuclear incident occurring outside of the United States to which an agreement of indemnification en-

tered into under the provisions of subsection 170 d. is applicable, such aggregate liability shall not exceed the amount of $100,000,000 together with the amount of financial protection required of the contractor."

SEC. 4. Subsection 170 k. of the Atomic Energy Act of 1954, as amended, is amended by striking out the date "August 1, 1967" wherever it appears and inserting in lieu thereof the date "August 1, 1977".

SEC. 5. Subsection 170 l. of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"l. The Commission is authorized until August 1, 1977, to enter into an agreement of indemnification with any person engaged in the design, development, construction, operation, repair, and maintenance or use of the nuclear-powered ship authorized by section 716 of the Merchant Marine Act, 1936, and designated the 'nuclear ship Savannah'. In any such agreement of indemnification the

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Commission may require such person to provide and maintain financial protection of such a type and in such amounts as the Commission shall determine to be appropriate to cover public liability arising from a nuclear incident in connection with such design, development, construction, operation, repair, maintenance or use and shall indemnify the person indemnified against such claims above the amount of the financial protection required, in the amount of $500,000,000 including the reasonable costs of investigating and settling claims and defending suits for damage in the aggregate for all persons indemnified in connection with each nuclear incident: *Provided,* That this amount of indemnity shall be reduced by the amount that the financial protection required shall exceed $60,000,000."

Approved September 29, 1965.

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1.1u(1) JOINT COMMITTEE ON ATOMIC ENERGY

S. REP. No. 650, 89th Cong., 1st Sess. (1965)

EXTENDING AND AMENDING THE PRICE-ANDERSON INDEMNITY PROVISIONS OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

AUGUST 26, 1965.—Ordered to be printed

Mr. PASTORE, from the Joint Committee on Atomic Energy, submitted the following

REPORT

[To accompany S. 2042]

The Joint Committee on Atomic Energy, having considered S. 2042, to amend section 170 of the Atomic Energy Act of 1954, as amended, reports favorably thereon with two amendments and recommends that the bill do pass.

The amendments to the bill adopted by the Joint Committee are as follows:

On page 5, line 8, insert a comma between the word "required" and the word "in".

On page 5, line 10, insert "in the aggregate for all persons indemnified in connection with each nuclear incident" between the word "damage" and the colon.

These amendments adopted by the Joint Committee are technical amendments.

SUMMARY OF THE BILL

The bill, as recommended by the Joint Committee on Atomic Energy, would amend section 170 of the Atomic Energy Act of 1954, as amended, to accomplish the following principal purposes:

(1) The bill would extend the effective period of the Price-Anderson indemnity provisions of the Atomic Energy Act of 1954, as amended, for an additional 10 years, from August 1, 1967, to August 1, 1977.

(2) The bill would require a decrease in the $500 million governmental indemnity afforded under the Price-Anderson indemnity provisions corresponding to the amount whereby the financial protection required of an AEC licensee or con-

tractor exceeds the amount of commercial nuclear liability insurance currently available, i.e., $60 million.

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(3) The bill would provide that in no event would the liability of all persons who might be liable for public liability arising from a single nuclear incident exceed $560 million, i.e., the maximum amount of governmental indemnity which could be afforded under the Price-Anderson indemnity provisions, as they would be amended by the bill, together with the maximum amount of financial protection required in accordance with these indemnity provisions.

The foregoing are the main features of the proposed legislation. An explanation of the policy supporting the major provisions of this bill is found in the section of this report entitled "Committee Comments." A detailed legal analysis of the entire bill is found in the section of this report entitled "Section-by-Section Analysis."

LEGISLATIVE HISTORY

H.R. 8496 and S. 2042, identical bills to extend and amend the Price-Anderson indemnity provisions of the Atomic Energy Act of 1954, as amended, were introduced on May 26, 1965, by Congressman Melvin Price and Senator Clinton P. Anderson. The introduction of these bills followed many months of informal meetings and discussions among members of the Joint Committee, the Atomic Energy Commission, and their staffs, and representatives of private industry. Among the topics considered during these meetings was a draft of a study of the Price-Anderson Indemnity Act which AEC had commenced in 1964 to determine whether the act should be extended to licenses issued and contracts executed after August 1, 1967. The AEC's final report of this study, as submitted to the Joint Committee, recommended a simple extension of the Price-Anderson indemnity provisions for 10 years, to August 1, 1977. The AEC also recommended further study of a number of problems related to this legislation.

Public hearings on these bills were held on June 22–24, 1965, before the Subcommittee on legislation of the Joint Committee on Atomic Energy, as summarized in the next section of this report.

The Subcommittee on Legislation met in executive session on August 26, 1965, and after full discussion voted without dissent to approve H.R. 8496 and S. 2042, with two technical amendments. On August 26, 1965, the full committee met to consider these bills, and after careful consideration voted unanimously to report them out with the technical amendments approved by the Subcommittee

on Legislation, together with a recommendation that these bills do pass. The committee also adopted this report on H.R. 8496 and S. 2042.

HEARINGS

Public hearings on H.R. 8496 and S. 2042 were held on June 22–24, 1965, before the Joint Committee's Subcommittee on Legislation.

The following witnesses testified on behalf of the U.S. Atomic Energy Commission:

James T. Ramey, Commissioner.
John G. Palfrey, Commissioner.
Joseph F. Hennessey, General Counsel.
Robert Lowenstein, Assistant Director of Regulation.

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Witnesses presenting the views of industry and the public are listed below in order of appearance:

American Public Power Association: Lawrence Hobart, director, Atomic Energy Service.

Department of Water and Power, City of Los Angeles: Mel Frankel, nuclear engineer.

Rochester Gas & Electric Corp.: Francis E. Drake, vice president.

Florida Power & Light Co.: George C. Kinsman, vice president.

Southern California Edison Co.: James Davenport, executive vice president; William Gould, vice president; Alan M. Nedry, special counsel.

Philadelphia Electric Co.: R. G. Rincliffe, chairman of the board.

Westinghouse Electric Corp.: Charles H. Weaver, vice president; A. M. Pitcher, assistant general counsel.

General Electric Co.: James F. Young, vice president; William F. Kennedy, counsel, Atomic Products Division.

Allis-Chalmers Manufacturing Co.: Henry C. Nickel, general manager, Atomic Energy Division; Loren K. Olson, special counsel, Atomic Energy Division.

General Dynamics Corp.: Sam J. Farmer, vice president and counsel, General Atomic Division.

Martin-Marietta Corp.: Malcolm A. MacIntyre, vice president, also chairman of the board of Isochem, Inc.; Ross G. MacAuley, counsel.

Babcock & Wilcox Co.: R. H. Harrison, vice president.

United Nuclear Corp.: Walter A. Hamilton, vice president.

National Coal Association: Brice O'Brien, general counsel.

National Coal Policy Conference, Inc.: Joseph E. Moody, president; George Weil, consultant.

Peabody Coal Co.: W. G. Blewett, vice president.

Public Service Co. of Colorado: Robert T. Person, president.

Adolph J. Ackerman, consulting engineer, Madison, Wis.

Nuclear Energy Liability Insurance Association: DeRoy C. Thomas, counsel, Hartford Insurance Group, also representing NELIA; Francis X. Boylan, general manager.

Mutual Atomic Energy Liability Underwriters: Ashley St. Clair.

Mutual Atomic Energy Reinsurance Pool: Ashley St. Clair.

Nuclear Energy Property Insurance Association: H. Sumner Stanley, assistant general manager.

David F. Cavers, Fessenden professor of law, Harvard Law School.

Edison Electric Institute: James H. Campbell, member, Policy Committee on Atomic Power; John J. Kearney, professional staff.

The hearings were published by the Joint Committee under the title "Proposed Extension of AEC Indemnity Legislation."

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COMMITTEE COMMENTS

A. BACKGROUND

1. Enactment of the Price-Anderson legislation

The Atomic Energy Act of 1954 was enacted in the hope and belief that the substantial entry of private industry into the atomic energy program would speed the further development of the peaceful uses of atomic energy, a major policy goal of the United States. In recognition of the potential hazards, as well as the benefits, flowing from the peaceful uses of atomic energy, the act established a comprehensive regulatory program to assure that the health and safety of employees and the public would be adequately protected.

Shortly after the passage of this legislation it became apparent that the problem of potential liability and the inability to obtain adequate insurance from commercial sources in connection with the operation of nuclear reactors constituted a major obstacle to further private industrial participation in this program. This was true notwithstanding that the experts agreed the likelihood of a major reactor accident was exceedingly low. The Joint Committee,

the AEC, and private industry conducted a series of meetings and hearings on this subject extending over a period of 2 years. The result was the enactment of Public Law 85–256, on September 2, 1957, as an amendment to the Atomic Energy Act of 1954. This law became known as the Price-Anderson Act in recognition of its sponsorship by two members of the Joint Committee, Congressman Melvin Price and Senator Clinton P. Anderson.

The Price-Anderson Act was intended to accomplish two principal purposes:

> First, to protect the public by assuring the availability of funds for the payment of claims arising from a catastrophic nuclear incident;
>
> Second, to remove a deterrent to private industrial participation in the atomic energy program posed by the threat of tremendous potential liability claims.

The basic approach of the Price-Anderson Act with respect to AEC's reactor licensees was to require such licensees to furnish financial protection (in the form of nuclear liability insurance or otherwise) to cover public liability claims against the licensee and all others who might be liable for a nuclear incident; to require the AEC to indemnify the licensee and all others who might be liable in the amount of $500 million over and above the financial protection required; and to limit the liability of all persons who might be liable for a nuclear incident to the sum of the financial protection required plus the AEC's $500 million indemnity. The act provided a similar statutory pattern applicable to certain of AEC's licensees not operating reactors, and to certain AEC contractors.

The Price-Anderson Act also contained provisions to improve the AEC's procedures for regulating reactor licensees, such as establishment of the Advisory Committee on Reactor Safeguards (ACRS) as a statutory body, requirement of ACRS review of power and test reactor license applications, and requirement of mandatory hearings on power and test reactor license applications. This manifested the continuing concern of the Joint Committee and Congress with the necessity for assuring the effectiveness of the national regulatory pro-

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gram for protecting the health and safety of employees and the public against atomic energy hazards. The inclusion of these provisions in the statute also reflected the intimate relationship which existed between Congress' concern for prevention of reactor

accidents and the indemnity provisions of the Price-Anderson legislation.

2. Effectiveness of the Price-Anderson legislation

The Price-Anderson Act has clearly accomplished the second purpose for which it was enacted—removal of the deterrent to private industrial participation in the atomic energy program. This is obvious from the growth of the nuclear power industry and the huge increase in the scope and complexity of commercial nuclear energy activities. For example, when the Price-Anderson Act was passed in September 1957 this country had no installed commercial nuclear electric generating capacity. Today, reactors in operation in our country have a cumulative electrical capacity of about 1 million kilowatts. Many more power and prototype reactors are in the planning or construction stage.

The act has also fulfilled its primary purpose of providing assurance that funds will be made available to satisfy public liability claims arising from a catastrophic nuclear incident. However, as anticipated, there has been no such incident since the Price-Anderson Act was passed. In fact, only one claim has thus far been filed under a nuclear energy liability policy furnished as financial protection. This claim was for $3,500 and involved an incident in the transportation of spent fuel elements. For this reason, it is not possible to demonstrate with the same assurance that the public would receive prompt and adequate financial compensation in the event of a major nuclear incident. Correspondingly, there has been no demonstration of a serious weakness in the act or its administration.

3. Duration of Price-Anderson legislation and need for extension

The indemnity provisions of the Price-Anderson Act apply only to AEC licenses issued and contracts executed prior to August 1, 1967. In this connection, the Joint Committee's report recommending passage of the original act stated:

> The provisions of this bill provide governmental indemnifications to those licensees who obtain their licenses within the next 10 years. The indemnification agreement is to run for the life of the license. During the 10-year period it is hoped that there will be enough experience gained so that the problems of reactor safety will be to a great extent solved and the insurance people will have had experience on which to base a sound program of their own.

When this law was enacted, it was understood that the Joint Committee would undertake a comprehensive review of this subject

toward the end of the 10-year life of the act to determine whether the need for this legislation still obtained. In anticipation of this review, the AEC undertook a detailed study of the Price-Anderson Indemnity Act and its administration.[1]

The Joint Committee has now completed its study of the problem and has concluded that the act should be extended for 10 years with appropriate amendments. Succeeding sections of this report set forth

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the basis for the committee's decision and its recommendations for further action.

B. REASONS FOR EXTENSION OF THE PRICE-ANDERSON LEGISLATION

1. Protection of the public

In the almost 8 years that have elapsed since passage of the Price-Anderson Act, an impressive amount of operating data has been collected with respect to nuclear reactors and other atomic facilities. When added to the experience accumulated with the Government-owned reactors initially built, a total of about 600 reactor-years of operation have already taken place with relatively large reactors in the United States. Since the advent of the atomic age over 20 years ago, there has not been an accident in the United States at a nuclear reactor or other atomic energy installation which presented a radiation hazard to the general public.

The regulatory review process employed in the atomic energy program is such that no reactor would be licensed if there were a reasonable likelihood that its operation might result in an accident of the severity contemplated by the Price-Anderson legislation. However, the experience in this field is not yet sufficiently great nor the technology sufficiently developed, that it is possible to deny the theoretical possibility of such an accident. Thus, the AEC has recently reiterated that—

> it is possible to postulate extremely unlikely, theoretical nuclear accidents which, under certain circumstances, conceivably could cause damage considerably in excess of $60 million—

i.e., the maximum amount of nuclear liability insurance currently available from commercial sources.[2]

Accordingly, the principal reason for enacting the Price-

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[1] See Joint Committee on Atomic Energy print "Selected Materials on Atomic Energy Indemnity Legislation," June 1965, p. 1.

[2] See Joint Committee on Atomic Energy hearings, "Proposed Extension of AEC Indemnity Legislation," June 22, 23, and 24, 1965, p. 6.

Anderson legislation—the need to assure the availability of funds for the payment of claims arising out of a catastrophic nuclear incident—still persists.

In this connection, the committee has carefully considered the subject of the limitation of liability which is contained in the Price-Anderson legislation. Under the bill recommended by the committee, this limitation would continue to be set at the total amount of financial protection required plus the governmental indemnity, but in no event to exceed $560 million. It is the committee's view that this limitation does not, as a practical matter, detract from the public protection afforded by this legislation. In the first place, the likelihood of an accident occurring which would result in claims exceeding the sum of the financial protection required and the governmental indemnity is exceedingly remote, albeit theoretically possible. Perhaps more important, in the event of a national disaster of this magnitude, it is obvious that Congress would have to review the problem and take appropriate action. The history of other natural or manmade disasters, such as the Texas City incident, bears this out. The limitation of liability serves primarily as a device for

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facilitating further congressional review of such a situation, rather than an ultimate bar to further relief of the public.[3]

The committee is also of the view that the possible exposure of reactor operators and others to liability beyond the sum of the financial protection required and the Government's indemnity would not add a significant incentive to the safe operation of nuclear facilities. In the years since the Price-Anderson legislation was enacted, neither the AEC, the Advisory Committee on Reactor Safeguards, nor the Joint Committee has seen evidence that this legislation has had the effect of lessening the safety consciousness of the nuclear industry. The committee will continue its scrutiny

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[3] The fact that Congress recognized this point is indicated clearly by the following statements on pp. 21 and 22 in the Joint Committee's report on the original Price-Anderson bills:

"* * * the limit of the Commission's responsibility under these [indemnity] agreements is to be $500 million. This limit could be subject to upward revision by the Congress in the event of any one particular incident in which, after further congressional study, the Congress felt more appropriations would be in order.

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"Subsec. e limits the liability of the persons indemnified for each nuclear incident to $500 million, together with the amount of financial protection required. Of course, Congress can change this act at any time after any particular incident. The Joint Committee wanted to be sure that any such changes in the act would be considered by it in the light of the particular incident." (See S. Rept. 296, 85th Cong., 1st sess., pp. 21 and 22.)

[4] See Joint Committee on Atomic Energy hearings, "Proposed Extension of AEC Indemnity Legislation," June 22, 23, and 24, 1965.

of this program to assure that safety of operations of commercial nuclear facilities is a paramount consideration.

Finally, the committee agrees with the views expressed by the Attorney General and the General Counsel of the AEC, in response to an inquiry by the committee, that the limitation of liability provisions of the Price-Anderson legislation, as originally enacted and as they would be amended by the bill recommended by the committee, are constitutionally permissible.[1] The authority of the Federal Government to enact such provisions flows from, among other sources, the interstate commerce, war, and bankruptcy powers clauses of the Constitution.

2. Removal of deterrent to industrial participation in the atomic energy program

As indicated in the preceding section of this report, this country has made great strides in the development of civilian nuclear power during the last 8 years. Spurred on by Government encouragement and assistance, there have been extraordinary reductions in the cost of nuclear power. These developments have, in turn, produced a salutary competitive response from the fossil fuel and fuel transportation industries, with a resulting savings in power costs to the American taxpayers that has been estimated at $1 billion per year. It is acknowledged that no commercial nuclear powerplant is yet producing electricity at costs competitive with conventional plants, and much development work remains. However, it is clear that nuclear power is destined to become a major source of energy to meet our growing requirements for electricity, complementing our fossil fuels for which very significant increases in requirements are also predicted.

It is equally clear that this country will increasingly depend upon the efforts of industry—including utilities, equipment manufacturers, and other suppliers—to carry forward the development of nuclear power. Now, perhaps even more than in 1957, it is essential to insure that private industrial activity in the atomic energy program continue and expand, coincidentally with a concentration of Government resources on the more advanced concepts of nuclear power production.

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Another relevant consideration is the dynamic nature of our national reactor development program. Although some power reactor types—the low conversion ratio light water reactors—are now being offered by manufacturers on a competitive basis with fossil-fuel plants, the long-range requirements of this program call for continued cooperation between Government and industry in

the development of the more advanced converter and breeder type reactors which hold the promise of a more effective utilization of nuclear fuel resources. The development of some of these more advanced reactors is at roughly the same stage today as was the case with low conversion ratio light water reactors in 1957, and this development should similarly be encouraged through extension of the Price-Anderson legislation.

Although the committee regards the Price-Anderson legislation as a necessary building block for a healthy, progressive nuclear industry, the committee does not consider the legislation to be a subsidy for that industry, as this term is commonly understood. To date, no Government money has ever been expended under a Price-Anderson indemnity agreement with an AEC licensee. The costs of administration of this program have been nominal, and have been more than repaid through indemnity fees paid by AEC licensees. In fact, through June 30, 1965, the AEC has already received almost $343,000 in indemnity fees and these fees are expected to increase substantially in the future.

This legislation is also consistent with the basic principles underlying other Federal programs such as, for example, reclamation projects and improvement of the inland waterways of our Nation. In determining the value of these programs, the costs to the Federal Government of the improvements must be measured against the savings to the American people which the improvements produce. As has already been stated, the savings to the American taxpayer resulting from the nuclear power program have been estimated at $1 billion per year, and the Price-Anderson indemnity legislation has thus far cost the Government nothing.

It is true that the Government's indemnity is valuable and is provided at a charge which is presumably much lower than the charge which would be assessed for "commercial" insurance if such insurance were available. However, the fundamental reason why the indemnity is necessary is that there is yet not enough experience on which to base a firm judgment on the likelihood of the indemnity ever being utilized. Expert opinion holds this indemnity almost certainly will never be utilized. If this opinion eventually is proven correct, then there surely is no Government subsidy involved here, and in fact power reactor operators would have been paying for protection above that which is necessary.

Moreover, the basic financial protection for which these reactor operators are paying nuclear liability insurance involves no Government subsidy. Under the Price-Anderson Act, operators of large power reactors must carry the maximum amount of such insurance available from private sources. The premiums for this

insurance are currently much higher than for conventional liability insurance. For example, according to testimony presented to the committee the annual liability insurance premiums plus indemnity fee for a 450,000 electrical kilowatt nuclear plant amount to over $361,000, versus about $6,500 for a conventional plant of the same capacity, without taking into consideration the partial refunds of premiums for nuclear

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liability insurance which is expected to be made under the nuclear insurance pools' industry credit rating plan.[5]

Based upon the evidence and testimony presented to the committee, the committee has concluded that the potential threat of uninsurable liability arising out of nuclear activities, as discussed in the preceding section of this report, would effectively deter necessary industrial participation in this program. Every witness representing the nuclear industry, who testified at the committee's hearings in June, supported this view. The deterrent force of this threat, based as it is on a lack of sufficient operating experience to form an adequate judgment of risk, is probably as great today as it was in 1957. The best solution to this problem is an extension and amendment of the Price-Anderson legislation, as recommended in this report.

3. Indemnity for AEC's contractors

The Price-Anderson Act contains provisions which enable the AEC to treat its contractors generally in the same fashion as its licensees. The AEC has testified in favor of an extension of these provisions, as have AEC contractors. According to the AEC, the extraordinary financial risks which concerned many of the AEC's contractors in the early days of the atomic energy program continue to exist today and result from basically the same contractual activities. AEC also has reported that:

> It would appear that the most effective and economic form of financial protection which can be utilized to satisfy the needs of the Commission, the industry, and the public is that presently available under the Price-Anderson Act.[6]

The committee agrees that the contractor indemnity provisions of the Price-Anderson Act have operated well and should be extended until August 1, 1977, subject to the qualification that the Government's indemnity for its contractors should be reduced by

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[5] See Joint Committee on Atomic Energy hearings, "Proposed Extension of AEC Indemnity Legislation," June 22, 23, and 24, 1965, p. 64.

[6] See Joint Committee on Atomic Energy print, "Selected Materials on Atomic Energy Indemnity Legislation," June 1965, p. 49.

the amount that the financial protection, if any, required of such contractors shall exceed $60 million.

4. Need for long-range planning; period of extension of Price-Anderson legislation

The bill recommended by this committee would provide for a 10-year extension of the Price-Anderson legislation from August 1, 1967, to August 1, 1977, subject to the amendments discussed under the heading "Increased Private Insurance Capacity and Reduction of Governmental Indemnity." The committee is of the view that it is important for Congress to act this year to extend the Price-Anderson legislation, notwithstanding this law will not expire as to new AEC licenses and contracts until August 1, 1967. The AEC comprehensively reviewed this subject in its study of the Price-Anderson Indemnity Act, and the committee's 3 days of public hearings in June 1965 provided an opportunity for the matter to be thoroughly aired. Every individual and organization that requested permission to testify was invited to appear before the committee. It was repeatedly brought out during these hearings that the leadtime required for planning and construction of a nuclear powerplant requires

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a utility company to make its decisions on this matter several years in advance. The existence of Price-Anderson legislation has been cited as an indispensable element in such planning. Accordingly, to avoid an unwarranted disruption of this planning process, the Price-Anderson legislation should be extended without delay.

The committee further believes that 10 years is the most reasonable period for extension of this legislation. As was pointed out during the hearings, the total number of reactor-years of operation with relatively large reactors in the United States expected to be experienced by 1977 (2,400) is about four times the total number of reactor-years of operation experienced to date. In turn the current annual level of accumulation of reactor-years of experience is greater than all such experience existent in 1957. It has been estimated that by 1970 there will be about 5 million kilowatts of installed nuclear capacity, which may increase to 60–90 million kilowatts by 1980. Between now and 1980, estimates indicate that about 70 to 150 atomic powerplants of 500 to 1,000 megawatts capacity will be built.[7]

Thus, by 1977 a significant amount of data will have been accumulated, which should enable the industry and Congress to assess

[7] See Joint Committee on Atomic Energy hearings, "Proposed Extension of AEC Indemnity Legislation," June 22, 23, and 24, 1965, pp. 22 and 88.

much more accurately the likelihood of a major nuclear incident and the insurance requirements of the nuclear industry. It should also be recognized that about 5 years are required for one cycle of design to operation experience for a reactor. The committee further agrees in principle with the AEC's decision to augment efforts and redirect emphasis to define and develop improvements in reactor plant design and capability of critical systems and engineered safeguards. This effort is intended to obtain the accumulation of meaningful experience with respect to capability and reliability of important safety systems.

These developments, in conjunction with the expected increase in the capacity of the nuclear liability and property insurance pools, should provide the basis for another critical evaluation of this subject toward the end of the proposed period of extension.

The committee is keenly aware that programs involving Government participation or assistance become deeply enmeshed in the economic fabric of our society with the passage of time, and correspondingly are difficult to eliminate. As is more fully discussed in the next section of this report, the committee is also determined to place the nuclear liability insurance program on a normal commercial basis as soon as is practicable. Spurred on by the committee's recommendations, a number of important steps have been taken in that direction. It is the hope and belief of the committee that ultimately there will no longer be any need for the special indemnification provisions afforded by the Price-Anderson Act.

C. INCREASED PRIVATE INSURANCE CAPACITY AND REDUCTION OF GOVERNMENTAL INDEMNITY

The bill recommended by the committee would provide that the amount of the Government's indemnity for certain licensees and contractors (currently $500 million) shall be reduced by the amount that the financial protection required shall exceed $60 million (the maximum amount of nuclear liability insurance currently available

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from private sources). The act's present requirement that the operators of large licensed power reactors shall maintain the maximum amount of financial protection available from private sources (i.e., nuclear liability insurance) would remain unchanged. Thus, under this bill, the Government's participation in the total fund available to satisfy public liability claims would be reduced as private insurance assumes an increasingly larger share of this fund. However, the maximum protection available to the public at this time—$560 million—would remain unchanged. Although

there is no intention by this bill to establish the sum of $560 million as the measure of risk of a large power reactor, there is no reasonable basis established yet for lowering the total amount of protection for the public now afforded for such a reactor.

The provision in this bill for reduction of the Government's indemnity represents a significant step toward normalizing the role of insurance in the nuclear power business. The bill also differs in this respect from the approach recommended by the AEC, which had proposed in its study the Price-Anderson Act simply be extended for 10 years. However, this committee innovation has the full support of the AEC.

This provision of the bill is consistent with the recommendations of the present chairman of the Joint Committee, Congressman Chet Holifield, which were made during the hearings in May 1964 on a proposed amendment to the Price-Anderson Act, and repeated last fall in a statement to a group of representatives of the nuclear industry. Chairman Holifield pointed out that, based upon the nuclear industry's excellent safety record and experience gained to date, the insurance industry should be able to increase the insurance coverage available to the nuclear industry from the current $60 million, which has prevailed virtually from the inception of the Price-Anderson legislation, to a figure in the neighborhood of $100 million.

At the urging of the Joint Committee, representatives of the two nuclear liability insurance pools canvassed the industry to obtain increased subscriptions leading to a larger overall capacity. According to testimony presented to the committee by the insurance representatives, as a result of this canvass the two liability pools will be able, as of January 1, 1966, to offer an aggregate capacity of $74 million per nuclear facility. This additional $14 million represents about a 25-percent increase over the $60 million aggregate capacity currently available. However, the increased amount is still not sufficient to protect the public and industry from the theoretical consequences of a major accident, and thus is not sufficient to eliminate the need for a continuance of the Price-Anderson indemnity legislation. (As noted below, representatives of the nuclear insurance industry have indicated their intention that the aggregate capacity of the two liability pools will be increased in stages to $100 million by 1975.)

When this increased amount of insurance becomes available, currently licensed reactors with a rated capacity of 100,000 electrical kilowatts or more will be required to carry $74 million of coverage, in lieu of the $60 million presently required. Under the provisions of the bill recommended by the committee, the Govern-

ment's $500 million indemnity now afforded for such facilities would correspondingly be reduced to $486 million.

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The committee understands that it is not practicable for the insurance industry to provide now for an even larger share of the total requirements of the nuclear industry for third-party liability protection. Nevertheless, it must be recognized that the insurance industry has provided coverage for the nuclear industry in unprecedented amounts and forms. There are, moreover, certain reasons which help to explain the inability at this time of the insurance industry to achieve the goal set by the committee.

Perhaps the most important of these is the small number of operating reactors, which results in an inadequate spread of risk from the standpoint of the insurers.

Since the inception of the nuclear liability insurance program, the insurance pools have been able to amass a fund which it is estimated will total about $8.4 million by the end of 1965, as a reserve to cover a possible nuclear incident. This fund is, however, expected to grow substantially over the years as the nuclear power industry expands, thereby providing a more adequate basis for a significantly increased insurance capacity.

In this connection, representatives of the two nuclear liability insurance pools testified as follows at the committee's hearings:

> However, the capacity presently amassed should not be considered the total limit available from casualty insurers for the next 10 years. We are convinced that as the nuclear industry develops and grows, and the present Atomic Energy Commission projections become realities, additional amounts of capacity will be available. Based upon the Commission forecast and assuming a continuation of premium development predicated upon 1965 standards, we have estimated that our annual premium for 1970 will be approximately $4,300,000 and for 1975, $9,500,000. Assuming continuation of virtually loss-free experience, it is our estimate that our reserve fund will be $20 million by 1970 and $40 million by 1975. Given these figures, it is quite likely that by 1975 the pools will be able to offer the $100 million capacity suggested by Chairman Holifield in his speech.
>
> In order to reach the desired capacity, it is our plan to periodically test the insurance market in light of expanded nuclear development in order to increase our existing capacity.

> In our judgment, such periodic survey should be made every 2 or 3 years.[8]

The committee is encouraged by this expressed willingness of the insurance industry to increase its coverage for the nuclear industry. Assuming the expected growth of this industry takes place, and that the industry's exceedingly good safety record continues, it is possible under the terms of the bill recommended by the committee to foresee a step-by-step withdrawal of the Government from the nuclear indemnity program for licensees. At some point, it is to be hoped that complete reliance could be placed upon the private insurance market to provide coverage for this industry. This is the ultimate goal which the committee believes can, and will, be achieved. For the present, the committee believes extension of the Price-Anderson indemnity provisions is justified on the basis of (1) overall benefits

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to the public resulting from competition between nuclear and fossil fuel powerplants and (2) the development of a new source of basic energy for this and future generations.

D. OTHER IMPORTANT POLICY CONSIDERATIONS

1. Improving financial protection of the public

One of the most significant matters which emerged from the Joint Committee's review of a proposed extension of the Price-Anderson legislation, is the need for further consideration of the means by which persons suffering damage from a nuclear incident may obtain rapid and adequate financial compensation. There has never been an opportunity to judge how effectively the Price-Anderson statutory and administrative system operates after a major nuclear incident, and the committee, of course, hopes that there never will be. However, with the expected growth of the nuclear industry, prudence dictates that serious attention be devoted to this subject.

In the AEC's study of the Price-Anderson Act, and during the hearings on the bills to extend and amend this legislation, several areas were highlighted which warrant review by the executive and legislative branches. Among these are:

> (*a*) The adequacy of State tort law applicable to nuclear incidents, and the desirability of amending the Price-Anderson Act to establish the basis of liability for such in-

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[8] See Joint Committee on Atomic Energy hearings, "Proposed Extension of AEC Indemnity Legislation," June 22, 23, and 24, 1965, p. 179.

cidents and to assure an effective means of consolidation of suits resulting therefrom;

(*b*) The adequacy of State statutes of limitation applicable to claims based upon radiation injuries, taking into account delayed manifestations of such injuries; and

(*c*) The problem of processing radiation injury cases, including the determination of causal relationships.

These subjects are complex and involve many uncertainties and matters of judgment. The ramifications of decisions made in these areas would extend beyond the scope of the nuclear energy program.

This committee has always been vitally concerned with protecting the health and safety of the public and employees from the potential hazards which accompany the beneficial applications of nuclear energy. The committee is equally determined that the promise to the public, contained in the Price-Anderson Act, will not prove to be an illusory one. It is the clear intent of this legislation that if a member of the public ever is injured by a nuclear incident, he will not be subjected to a series of substantive and procedural hurdles which would prevent the speedy satisfaction of a legitimate claim.

With that objective in mind, the committee plans to continue to inquire into possible means of further assuring that the public will receive prompt and adequate financial compensation for any damage resulting from potential nuclear hazards. Among other things, the committee expects to conduct one or more hearings on this subject as early as practicable. Such hearings may well indicate the need for further legislative action by Congress.

2. Transportation problems

Over the past several years the Joint Committee has on numerous occasions reviewed the special problems applicable to possible nuclear incidents involving transportation of radioactive material. As indi-

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cated in the AEC's study of the Price-Anderson Indemnity Act, a number of the problems which have arisen in this area have been resolved, but others remain outstanding. Amendments to the Price-Anderson Act have also been suggested at various times to effect greater protection to carriers and other transportation agencies.

The committee agrees with the AEC's recommendation that further legislation on this subject is not warranted at this time. However, the possibility that further legislation may be needed if

existing problems cannot otherwise be resolved, should not be excluded. The Joint Committee understands that the AEC will specifically report on this matter in its next annual report under the Price-Anderson Act and the committee shall follow developments in this area closely.

3. International and maritime indemnity problems

There is little reason to doubt that the problems of third-party liability involving international and maritime nuclear energy transactions will become more pronounced with time, in the absence of effective international agreements covering these subjects.

There are many unresolved problems for which solutions must be found before such agreements can be effected. This calls for continuing cooperation between the executive and legislative branches of the Government, working together with American industry. The committee also notes that the primary reason for the unwillingness of the United States to execute the Brussels convention, dealing with the liability of operators of nuclear ships, is because the convention includes nuclear warships.

The AEC's study of the Price-Anderson Indemnity Act contained a useful summary of the efforts to reach acceptable international agreements in these areas. The committee agrees that consideration of these matters should not delay action on the extension of this legislation.

E. CONCLUSION

The Price-Anderson Act clearly is one of the most important pieces of legislation applicable to the nuclear industry. The committee believes this legislation continues to play an essential role in the cooperative effort between Government and industry for development of the peaceful uses of atomic energy. This development has already borne rich fruit for all mankind, and holds out much greater promise for the future.

The bill recommended by the committee recognizes two basic facts about the nuclear industry—(1) the continued lack of sufficient actuarial data upon which to base reliable conclusions concerning the necessity for Federal indemnification and (2) the increasingly rapid accumulation of these data. Given these facts, and on the basis of all other available evidence, it is the committee's judgment that the Price-Anderson legislation should now be extended for an additional 10 years, with the amendments recommended by the committee designed to facilitate the ultimate withdrawal of Federal indemnification for nuclear facilities.

As for the future, the committee fully appreciates that more

work needs to be done to insure the effectiveness of the Price-Anderson legislation in meeting its fundamental objectives. Certain areas requiring particular study are identified in this report. At the recom-

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mendation of the committee, the Price-Anderson Act has already been amended five times in order to render it a more serviceable tool of national policy. The committee will scrutinize this legislation as closely in the future as it has in the past, in order to accomplish this goal.

SECTION-BY-SECTION ANALYSIS

Section 1 of the bill would amend subsection 170 c. of the Atomic Energy Act of 1954, as amended, by changing the date "August 1, 1967", wherever it appears, to "August 1, 1977". The purpose of this amendment is to extend the Price-Anderson indemnity legislation, as it pertains to AEC licensees other than licensees subject to the provisions of subsections 170 k. or 170 l. of the act, for 10 years.

Section 1 of the bill would also amend subsection 170 c. by providing that the amount of the indemnity afforded by the AEC pursuant to subsection 170 c. shall be reduced by the amount that the financial protection required shall exceed $60 million. This requirement of the bill, and the corresponding requirement in sections 2 and 5 of the bill, constitutes the heart of the amendments to the Price-Anderson indemnity legislation which the bill would accomplish. Under subsection 170 b. of the Atomic Energy Act of 1954, as amended, the amount of financial protection required for facilities designed for producing substantial amounts of electricity and having a rated capacity of 100,000 electrical kilowatts or more shall be "the maximum amount available from private sources". Accordingly, the effect of this provision of the bill would be to require successive reductions of the governmental indemnity for relatively large power reactors, corresponding to any increases beyond $60 million in the amount of nuclear liability insurance available from private sources for such facilities.

Section 2 of the bill would amend subsection 170 d. of the Atomic Energy Act of 1954, as amended, by changing the date "August 1, 1967" to "August 1, 1977". The purpose of this amendment is to extend the Price-Anderson indemnity legislation, as it pertains to AEC contractors, for 10 years.

Section 2 of the bill would also amend subsection 170 d. by providing that the amount of the indemnity afforded by the AEC

pursuant to subsection 170 d., with respect to nuclear incidents occurring within the United States, shall be reduced by the amount that any financial protection that AEC may require shall exceed $60 million.

Section 3 of the bill would amend subsection 170 e. of the Atomic Energy Act of 1954, as amended, by providing that the aggregate liability for a single nuclear incident (other than a nuclear incident occurring outside of the United States to which an agreement of indemnification entered into under the provisions of subsec. 170 d. is applicable) of persons indemnified, including the reasonable costs of settling claims and defending suits for damage, shall in no event exceed the sum of $560 million.

The purpose of this amendment is to limit the liability of persons indemnified for a single nuclear incident, to the sum of the governmental indemnity afforded under subsection 170 c., 170 d., or 170 l. of the act as they would be amended by the bill, together with the amount of financial protection required of the licensee or contractor. This amendment follows from the amendment of subsections 170 c., 170 d., and 170 l. of the act which would be effected by sections 1, 2,

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and 5 of the bill, and thus does not alter the basic principle of limitation of liability presently contained in subsection 170 e.

Section 4 of the bill would amend subsection 170 k. of the Atomic Energy Act of 1954, as amended, by changing the date "August 1, 1967", wherever it appears, to "August 1, 1977".

The purpose of this amendment is to extend the Price-Anderson indemnity legislation, as it pertains to AEC licensees which the Commission has found to be nonprofit educational institutions in accordance with the provisions of subsection 170 k., for 10 years.

Since licensees subject to the provisions of subsection 170 k. are not required to maintain financial protection, section 4 does not provide for a reduction of the governmental indemnity which currently may be provided under subsection 170 k.

Section 5 of the bill would amend subsection 170 l. of the Atomic Energy Act of 1954, as amended, by changing the date "August 1, 1967" to "August 1, 1977". The purpose of this amendment is to extend the Price-Anderson indemnity legislation, as it pertains to the NS *Savannah*, for 10 years.

Consistent with sections 1 through 3 of the bill, section 5 would also amend subsection 170 l. by providing that the amount of the indemnity afforded by the AEC pursuant to subsection 170 l. shall be in the amount of $500 million including the reasonable costs of investigating and settling claims and defending suits for damage

in the aggregate for all persons indemnified in connection with each nuclear incident, provided that this amount of indemnity shall be reduced by the amount that any financial protection that AEC may require shall exceed $60 million.

CHANGES IN EXISTING LAW

In accordance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law recommended by the bill accompanying this report are shown as follows (deleted matter is shown in black brackets and new matter is printed in italic):

PUBLIC LAW 83–703, AS AMENDED

(Atomic Energy Act of 1954, as Amended)

SEC. 170. INDEMNIFICATION AND LIMITATION OF LIABILITY.—* * *

* * * * * * *

"c. The Commission shall, with respect to licenses issued between August 30, 1954, and August 1, [1967] *1977*, for which it requires financial protection, agree to indemnify and hold harmless the licensee and other persons indemnified, as their interest may appear, from public liability arising from nuclear incidents which is in excess of the level of financial protection required of the licensee. The aggregate indemnity for all persons indemnified in connection with each nuclear incident shall not exceed $500,000,000 including the reasonable costs of investigating and settling claims and defending suits for damage, *Provided, however: That this amount of indemnity shall be reduced by the amount that the financial protection required shall exceed $60,000,000.* Such a contract of indemnification shall cover public liability arising out of or in connection with the licensed activity. With respect to

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any production or utilization facility for which a construction permit is issued between August 30, 1954, and August 1, [1967] *1977*, the requirements of this subsection shall apply to any license issued for such facility subsequent to August 1, [1967] *1977*.

"d. In addition to any other authority the Commission may have, the Commission is authorized until August 1, [1967] *1977*, to enter into agreements of indemnification with its contractors for the construction or operation of production or utilization facilities or other activities under contracts for the benefit of the United States involving activities under the risk of public liability for a substantial nuclear incident. In such agreements of indemnification the Commission may require its contractor to provide and

maintain financial protection of such a type and in such amounts as the Commission shall determine to be appropriate to cover public liability arising out of or in connection with the contractual activity, and shall indemnify the persons indemnified against such claims above the amount of the financial protection required, in the amount of $500,000,000 including the reasonable costs of investigating and settling claims and defending suits for damage in the aggregate for all persons indemnified in connection with such contract and for each nuclear incident: *Provided, That this amount of indemnity shall be reduced by the amount that the financial protection required shall exceed $60,000,000: Provided further,* That in the case of nuclear incidents occurring outside the United States, the amount of the indemnity provided by the Commission shall not exceed $100,000,000. The provisions of this subsection may be applicable to lump sum as well as cost type contracts and to contracts and projects financed in whole or in part by the Commission. A contractor with whom an agreement of indemnification has been executed and who is engaged in activities connected with the underground detonation of a nuclear explosive device shall be liable, to the extent so indemnified under this section, for injuries or damage sustained as a result of such detonation in the same manner and to the same extent as would a private person acting as principal, and no immunity or defense founded in the Federal, State, or municipal character of the contractor or of the work to be performed under the contract shall be effective to bar such liability.

"e. The aggregate liability for a single nuclear incident of persons indemnified, including the reasonable costs of investigating and settling claims and defending suits for damage, shall not exceed the sum of $500,000,000 together with the amount of financial protection required of the licensee or contractor: *Provided, however,* That *such aggregate liability shall in no event exceed the sum of $560,000,000: Provided further,* That with respect to any nuclear incident occurring outside of the United States to which an agreement of indemnification entered into under the provisions of subsection 170 d. is applicable, such aggregate liability shall not exceed the amount of $100,000,000 together with the amount of financial protection required of the contractor. The Commission or any person indemnified may apply to the appropriate district court of the United States having venue in bankruptcy matters over the location of the nuclear incident, except that in the case of nuclear incidents occurring outside the United States, the Commission or any person indemnified may apply to the United States District Court for the District of Columbia, and upon a showing

that the public liability from a single nuclear incident will probably exceed the limit of liability imposed by this section, shall be

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entitled to such orders as may be appropriate for enforcement of the provisions of this section, including an order limiting the liability of the persons indemnified, orders staying the payment of claims and the execution of court judgments, orders apportioning the payments to be made to claimants, orders permitting partial payments to be made before final determination of the total claims, and an order setting aside a part of the funds available for possible latent injuries not discovered until a later time.

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"k. With respect to any license issued pursuant to section 53, 63, 81, 104 a., or 104 c. for the conduct of educational activities to a person found by the Commission to be a nonprofit educational institution, the Commission shall exempt such licensee from the financial protection requirement of subsection 170 a. With respect to licenses issued between August 30, 1954, and August 1, [1967] *1977*, for which the Commission grants such exemption:

"(1) the Commission shall agree to indemnify and hold harmless the licensee and other persons indemnified, as their interests may appear, from public liability in excess of $250,000 arising from nuclear incidents. The aggregate indemnity for all persons indemnified in connection with each nuclear incident shall not exceed $500,000,000, including the reasonable cost of investigating and settling claims and defending suits for damage;

"(2) such contracts of indemnification shall cover public liability arising out of or in connection with the licensed activity; and shall include damage to property of persons indemnified, except property which is located at the site of and used in connection with the activity where the nuclear incident occurs; and

"(3) such contracts of indemnification, when entered into with a licensee having immunity from public liability because it is a State agency, shall provide also that the Commission shall make payments under the contract on account of activities of the licensee in the same manner and to the same extent as the Commission would be required to do if the licensee were not such a State agency.

Any licensee may waive an exemption to which it is entitled under this subsection. With respect to any production or utilization

facility for which a construction permit is issued between August 30, 1954, and August 1, [1967] *1977*, the requirements of this subsection shall apply to any license issued for such facility subsequent to August 1, [1967] *1977*.

"l. The Commission is authorized until August 1, [1967] *1977*, to enter into an agreement of indemnification with any person engaged in the design, development, construction, operation, repair, and maintenance or use of the nuclear-powered ship authorized by section 716 of the Merchant Marine Act, 1936, and designated the 'nuclear ship Savannah'. In any such agreement of indemnification the Commission may require such person to provide and maintain financial protection of such a type and in such amounts as the Commission shall determine to be appropriate to cover public liability arising from a nuclear incident in connection with such design, development, construction, operation, repair, maintenance or use and shall indemnify the person indemnified against such claims above the amount of the financial protection required, [in the maximum amount provided by subsection e.] *in the amount of*

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$500,000,000 including the reasonable costs of investigating and settling claims and defending suits for damage *in the aggregate for all persons indemnified in connection with each nuclear incident: Provided, That this amount of indemnity shall be reduced by the amount that the financial protection required shall exceed $60,000,000.*"

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1.1u(2) JOINT COMMITTEE ON ATOMIC ENERGY

H.R. REP. No. 883, 89th Cong., 1st Sess. (1965)

EXTENDING AND AMENDING THE PRICE-ANDERSON INDEMNITY PROVISIONS OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

AUGUST 26, 1965.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HOLIFIELD, from the Joint Committee on Atomic Energy, submitted the following

REPORT

[To accompany H.R. 8496]

The Joint Committee on Atomic Energy, having considered H.R. 8496, to amend section 170 of the Atomic Energy Act of 1954, as amended, reports favorably thereon with two amendments and recommends that the bill do pass.

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1.1u(3) CONGRESSIONAL RECORD, VOL. 111 (1965)

1.1u(3)(a) Aug. 31: Passed Senate, p. 22281

[No Relevant Discussion on Pertinent Section]

1.1u(3)(b) Sept. 16: Debated and passed House, pp. 24035–24049

Mr. HOLIFIELD. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (S. 2042) to amend section 170 of the Atomic Energy Act of 1954, as amended.

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved it-

self into the Committee of the Whole House on the State of the Union for the consideration of the bill, S. 2042, with Mr. ROSTENKOWSKI in the chair.

The Clerk read the title of the bill.

By unanimous consent, the first reading of the bill was dispensed with.

The CHAIRMAN. Under the rule, the gentleman from California [Mr. HOLIFIELD] will be recognized for 30 minutes and the gentleman from California [Mr. HOSMER] will be recognized for 30 minutes.

The Chair recognizes the gentleman from California [Mr. HOLIFIELD].

Mr. HOLIFIELD. Mr. Chairman, I yield myself such time as I may use.

Mr. Chairman, I intend to make a relatively short statement and then yield to the gentleman from Illinois [Mr. PRICE] who is the author of the bill for a section-by-section analysis.

I believe that all Members of this House can take great pride in the support they have given to the atomic energy program since the law was first passed in 1946. During that period of time of almost two decades, this House with almost complete unanimity has authorized and funded a program that has accomplished two vital purposes for the security of our Nation and for the welfare of our people.

First, with your support we have built the most powerful military capability of any nation in the history of man. It has been your support that has made possible our great store of atomic hydrogen weapons and the capability to deliver those weapons on target in case of attack by an aggressor. We stand today then by virtue of our great inventory of atomic hydrogen weapons in a position to deter a major attack from any possible aggressor. This strength in my opinion is the primary reason why the forces of aggressive communism have hesitated, as far as an all-out effort is concerned, to carry out their admitted timetable of world conquest.

Secondly, you have supported a program to apply the energy of the atom to the peacetime needs of our country. The atom is now used in more than 1,100 different ways for the benefit of man. Of course, time would not permit me to recount all of these uses.

Mr. Chairman, we are concerned in this legislation today with maintaining a vital part of the peacetime program, the program of producing electricity from the fission of the atom. It is interesting to note that the consumption of electrical energy has been doubling in our country every 10 years. It will continue to double and possibly treble as our population grows and as the demands for goods and services of the highest standard of living of people of any nation throughout the world continues to grow.

We will need and we will use every kilowatt of electricity which can be derived from falling water.

We will need and use every kilowatt of electrical energy which can be derived from fossil fuel—coal, oil, and gas.

We will need and use every kilowatt of electrical energy which can be derived from the splitting of the atom. This is why we are on the floor here today.

All of those three sources will be needed and used by our exploding population. None of those sources will replace any of the others. We are not going to replace oil, gas, or coal with the atom. We shall supplement it as the need for energy in this Nation continues to double and triple. Competition between these sources will continue to cheapen basic energy, and our people will continue to raise their standards of living if we maintain and preserve the element of competition, which is the lifeblood of the free enterprise system. This legislation will guarantee competition, and the production of energy and the multiplication of the use of energy by our society will preserve and improve the security and welfare of our people.

It is interesting to note that this Nation, with the highest standard of

living of any nation in the world, uses far more electrical and mechanical horsepower than any other nation in the world. To the degree to which energy is available, that will be the degree to which our standard of living and our national security in fact will be controlled.

So when the Congress has helped to bring into existence a third great source

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of energy, it has done one of the most climactic things, I believe, in the last 20 years, because energy is the basis of our society and access to cheap energy is necessary if we are going to continue to produce the goods and services which our country needs.

S. 2042, which is identical to H.R. 8496, was unanimously reported by the Joint Committee on Atomic Energy after careful deliberation and has already passed the Senate.

This act would amend section 170 of the Atomic Energy Act of 1954, as amended, to accomplish the following principal purposes:

First. It would extend the effective period of the Price-Anderson indemnity provisions of the Atomic Energy Act of 1954, as amended, for an additional 10 years, from August 1, 1967, to August 1, 1977;

Second. It would require a decrease in the $500 million governmental indemnity afforded under the Price-Anderson indemnity provisions corresponding to the amount whereby the financial protection required of an AEC licensee or contractor exceeds the amount of commercial nuclear liability insurance currently available, that is, $60 million; and

Third. It would provide that in no event would the liability of all persons who might be liable for public liability arising from a single nuclear incident exceed $560 million, that is, the maximum amount of governmental indemnity which could be afforded under the Price-Anderson indemnity provisions, as they would be amended by the act, together with the maximum amount of financial protection required in accordance with these indemnity provisions.

The introduction of S. 2042 last May followed many months of informal meetings and discussions among members of the joint committee, the Atomic Energy Commission, and their staffs, and representatives of private industry. Three days of public hearings on this bill were held on June 22–24, 1965, before the Subcommittee on Legislation of the Joint Committee on Atomic Energy.

Mr. Chairman, our committee is convinced that this legislation is necessary to enable continued progress in the vital field of development of the peaceful uses of atomic energy.

I now yield such time as he may consume to the gentleman from Illinois.

Mr. Chairman, I now yield such time as he might use to the gentleman from Illinois [Mr. PRICE], the author of the bill, to explain the bill.

Mr. PRICE. Mr. Chairman, I strongly support passage of S. 2042, an act to extend and amend the Price-Anderson Indemnity Act, which is a part of the Atomic Energy Act of 1954.

The Price-Anderson Act resulted from bills which my distinguished colleague on the Joint Committee on Atomic Energy, Senator CLINTON P. ANDERSON, and I introduced in 1956. The legislation was based upon intensive studies which convinced the joint committee that a substantial deterrent existed to fulfillment of the congressional policy, expressed in the Atomic Energy Act of 1954, that private participation in and development of atomic energy be permitted and encouraged. This roadblock, the committee concluded, arose from the extremely unlikely but nonetheless potentially catastrophic possibility of a nuclear accident, and the inability of prospective nuclear reactor operators to obtain adequate insurance from commercial sources.

The joint committee accordingly rec-

ommended, and Congress approved the Price-Anderson Act, which applies to Atomic Energy Commission licenses and contracts effective before August 1, 1967. The act was intended to accomplish two principal purposes: First, to protect the public by assuring the availability of funds for the payment of claims arising from a catastrophic nuclear accident; and, second, to remove a deterrent to private industrial participation in the atomic energy program posed by the threat of tremendous potential liability claims.

To accomplish these purposes the Price-Anderson Act provides that certain licensees of the Atomic Energy Commission, particularly reactor operators, will purchase what commercial insurance is available and appropriate, and that the Government will indemnify the licensee, and the public, against risks not covered by insurance, up to a ceiling amount of $500 million.

The act further provides that the liability of the persons indemnified shall be limited, for each nuclear incident, to the amount of the Government indemnity together with the amount of financial protection required. In the case of operators of large reactors, the amount of financial protection required is the maximum amount of liability insurance available from commercial sources, which amount is currently $60 million. In these cases, therefore, the combination of insurance and governmental indemnity affords the public protection in the amount of $560 million.

A statutory pattern similar to the foregoing was also made applicable by the act to certain contractors of the AEC engaged in the Commission's important programs for the national defense.

The second purpose for which the Price-Anderson Act was enacted—removal of the deterrent to private industrial participation in the atomic energy program—has clearly been accomplished. Today, reactors in operation in this country have a cumulative electrical capacity of about 1 million kilowatts. When the Price-Anderson Act was passed in September 1957, this country had no installed commercial nuclear electric generating capacity.

Although the act has also fulfilled its purpose of providing assurance that funds will be made available to satisfy public liability claims resulting from a major nuclear incident, it is more difficult to demonstrate that the public would receive prompt and adequate financial compensation in the event of such an incident. The difficulty arises from the fact that no payment has ever been made under an indemnity agreement with an AEC licensee. As anticipated, no nuclear incident has occurred which involved liability even remotely approaching the limits of available private insurance. The sole claim for damages that has been filed under a nuclear energy liability policy furnished as proof of financial protection was for property damage in the amount of $3,500 and arose from an incident during the transportation of some nuclear fuels. No one was injured in that incident and of course the claim was covered by available private insurance.

I want to emphasize—this Federal indemnity liability insurance has not cost the Government one penny.

When the original Price-Anderson Act was passed, it was understood that the Joint Committee would undertake a comprehensive review of this subject toward the end of the act's 10-year term to determine whether the need for this legislation still obtained. The committee has recently completed this review.

We found that despite the accumulation of an impressive amount of operating data with respect to nuclear reactors and other atomic facilities, the experience in this field is not yet sufficiently great nor the technology sufficiently developed to permit one to completely rule out the theoretical possibility of a catastrophic nuclear incident. The insurance industry has offered, as of January 1966, to increase

by about 25 percent—to $74 million—the unprecedented amount of liability insurance coverage which it is already providing to the nuclear industry. However, the committee understands that the limited number of operating reactors—and the consequent inadequate spread of risk—make it impracticable for the insurance industry to provide coverage immediately which is sufficient to protect the public and industry from the theoretical consequences of a major accident. On the other hand, insurance industry representatives have indicated their intention that the aggregate coverage for the nuclear industry will be increased in stages to $100 million in the next few years.

The potential threat of uninsurable liability, the committee is convinced, requires an extension of the Price-Anderson legislation. Every witness representing the nuclear industry who testified during our hearings in June supported this view. S. 2042, in addition to extending the Price-Anderson Act for an additional 10 years, would amend the act in such a way as to permit a gradual reduction of the Government's participation in the total insurance and indemnity program. It does this, in effect, by requiring a decrease in the $500 million governmental indemnity afforded for large licensed reactors to the extent of any increase in the amount of nuclear liability insurance currently available from private sources, which amount, as I indicated earlier, is now $60 million.

Thus if, as expected, the insurance industry increases its coverage to $74 million early next year, the Government's indemnity for large licensed reactors will be decreased to $486 million. The maximum protection of the public currently available—$560 million—will be undiminished, however, since any reduction in the Government's indemnity

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would be offset by a corresponding increase in commercial insurance obtained by operators of nuclear facilities. As the amount of commercial nuclear liability insurance increase over the years, the Government's indemnity would continue to decrease, which represents a significant step toward normalizing the role of insurance in the nuclear energy field.

Lastly, the bill would provide that in no event would the aggregate liability of persons who might be liable for damages arising from a single nuclear incident exceed $560 million.

At this point, it is important to mention that the operators of licensed power reactors are paying substantial sums for the private insurance and governmental indemnity which they are required to carry. For example, according to testimony presented to our committee, the annual liability insurance premium plus indemnity fee for a 450,000 electrical kilowatt nuclear plant amount to over $361,000 versus about $6,500 for a conventional plant of the same capacity, without taking into consideration the partial refund of premiums for nuclear liability insurance which is expected to be made under the nuclear liability insurance pools' industry credit rating plan. The AEC had already received almost $343,000 in indemnity fees as of June 30, 1965, which far exceeds the cost of administration of this indemnity program, and these fees are expected to increase substantially in the future.

In conclusion, Mr. Chairman, I would like to explain our reason for seeking action on the bill this year, even though the Price-Anderson law does not expire until August 1, 1967. The lead time required for planning and construction of a nuclear powerplant requires a utility company to make its decision on this matter several years in advance. There are several utilities already planning new nuclear plants costing between $500 million and $1 billion. The existence of the Price-Anderson legislation has been cited as an indispensable element in such planning. Accordingly,

the Price-Anderson Act should be extended without delay to avoid an unwarranted disruption of this planning process.

I wish to emphasize that S. 2042 was reported out by our committee without dissent and has already passed the other body. I ask for approval of this act by the House today.

Mr. HOSMER. Mr. Chairman, I yield such time as he may consume to the gentleman from Massachusetts [Mr. BATES].

Mr. BATES. Mr. Chairman, the essential provisions of S. 2042 have already been adequately described. It merely extends for another 10-year period the provisions of the Atomic Energy Act of 1954, as amended, insofar as it pertains to any indemnity that might arise from a nuclear incident. It reduces somewhat the Federal participation in this insurance program as financial protection from private sources becomes available.

In respect to the latter situation, I would like to make clear my philosophy, and I believe that it represents the general views of the committee, in regard to the advancement of the peaceful uses of atomic energy. The taxpayers of America have contributed billions of dollars and the scientists have given years of their talent on the development of atomic energy. We believe that what had been a hidden secret from the beginning of time is now a national, and indeed, international natural resource, and should be put to work in a multitude of ways for the betterment of mankind.

The demand for electric power in this country will be so great that it is expected that atomic power will supplement—not provide a substitute—for conventionally conceived power. Nevertheless, in a wide range of interests atomic development has provided an impetus to various industries to reevaluate and improve their operation.

Mr. Chairman, one of the most gratifying aspects of the development of atomic power has been the healthy competitive response by the coal industry to the prospective, long-range competition for the fuel dollar afforded by atomic energy and various other fuels. In New England, where fuel costs are among the highest in the Nation, we consider this developing competition as a definite asset in our economic advancement.

Just how significant the coal industry's competitive response has been was explained in a speech last week by Charles R. Ross, a member of the Federal Power Commission. Mr. Ross commented, and I quote:

> The most significant development in the fuel market since 1963 has been the success of coal in improving its production operation and, in cooperation with the railroads, in reducing substantially coal freight rates. As a result the coal industry has been able to enter into long-term contracts with utilities at prices not substantially higher or even lower than those existing in the past decade.

There is little question, Mr. Chairman, that the development of atomic power has contributed significantly to the coal industry's successful drive to improve efficiency and reduce costs. There is even less question that atomic energy's role in this competitive situation was permitted and fostered by the Price-Anderson Act.

In order that this healthy competition can continue and the public be protected, I firmly support a continuation of the Price-Anderson indemnity legislation.

Mr. HOLIFIELD. Mr. Chairman, I yield such time as he may consume to the gentleman from Colorado [Mr. ASPINALL].

Mr. ASPINALL. Mr. Chairman, if for no other reason than general principle I would support the enactment of S. 2042, because I feel that without an extension of the Price-Anderson Act the development of atomic power at its present healthy rate would be jeopardized.

There are, however, reasons touching closer to home which urge my support of this proposed legislation. As my colleagues in the House may recall,

this body several months ago approved legislation which authorized the Atomic Energy Commission to enter into a cooperative arrangement with a utility or a group of utilities for research and development, design, construction, and operation of a high-temperature gas-cooled nuclear powerplant, the AEC, pursuant to this authority, entered into a memorandum of understanding with the General Dynamics Corp., and the Public Service Co. of Colorado under which these companies propose to build a prototype nuclear powerplant in the State of Colorado.

The parties to this agreement have taken constructive steps which indicate that construction of this plant can go forward as originally contemplated. However, under the current schedule the construction permit for this facility may not be issued by the AEC prior to the present Price-Anderson cutoff date, and the memorandum of understanding already executed by the Public Service Co. of Colorado, General Dynamics, and the AEC specifically provides a right of termination in the event that Price-Anderson coverage, or its equivalent, is not available for the project. Further, the companies involved in this project have testified that they deem coverage of this type essential to their continuing the plant.

Other companies engaged in somewhat comparable advanced projects have also told the committee of the critical importance which they attach to the continued existence of this legislation.

Mr. Chairman, the demonstration project in Colorado is important to the Nation as a whole because the high-temperature, gas-cooled reactor is aimed at increasing the utilization of nuclear fuel, thereby conserving one of the Nation's vital resources. This project is also of great importance to the people of Colorado, who stand to benefit from the economies in power production costs which this type of plant promises. I would regret to see a project of such importance to my State and the Nation at large imperiled by the failure of Congress to enact a piece of legislation which in all probability will never cost the Government a red cent. I therefore strongly urge the enactment of S. 2042.

Mr. HOLIFIELD. Mr. Chairman, I yield such time as he may consume to the gentleman from New Mexico [Mr. MORRIS].

Mr. MORRIS. Mr. Chairman, I rise in favor of S. 2042 and I want to congratulate the chairman of this committee and the gentleman from Illinois [Mr. PRICE] on the work they have done on this legislation.

Mr. Chairman, the Price-Anderson Act's greatest impact has probably been in the area involving the licensed private activities of companies engaged in the atomic energy program. However, it should not be overlooked that the act also authorizes the Atomic Energy Commission to indemnify certain of the contractors engaged in the Commission's vital national defense programs. In the absence of this legislation, the indemnity protection afforded these contractors against nuclear risks would, in the eyes of many, be something less than complete, and perhaps compel some of these

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companies to reconsider their participation in the program.

Prior to enactment of the Price-Anderson Act, the U.S. Government, in recognition of the extraordinary financial risks involved in the activities of its atomic contractors, provided these contractors with indemnification arrangements. However, these arrangements, for the most part, were of necessity made subject to the availability of funds. As a result, the Commission's contractors were provided with only limited indemnification protection against the financial risks associated with their work, and the public was not afforded the assurance that it would be financially protected from

damage which might arise from the contractual activities.

The Price-Anderson legislation rectified this situation. The act contains provisions which enable the AEC to treat its contractors generally in the same fashion as its licensees. Today, in addition to the coverage of all major atomic installations operated by AEC contractors, indemnification agreements have been entered into with manufacturers and carriers of weapons components, manufacturers of naval reactor core components, contractors involved in the conduct of research and development experiments connected with the Commission's space applications program, and so forth and so on.

According to the AEC and the contractors who testified before the Joint Committee in June, the extraordinary financial hazards which concerned many of the Commission's contractors in the early days of the atomic energy program continue to exist today and result from basically the same contractual activities. There is, then, a continuing need for the protection afforded by the Price-Anderson legislation. For that reason, Mr. Chairman, I wholeheartedly support an extension of the Price-Anderson Act and recommend enactment of S. 2042.

Mr. HOSMER. Mr. Chairman, I yield such time as he may consume to the gentleman from Illinois [Mr. ANDERSON].

Mr. ANDERSON of Illinois. Mr. Chairman, I believe I made it perfectly clear when I spoke earlier under the rule that I support wholeheartedly the objectives of this legislation. I believe it is in the public interest. It is not subsidy legislation. It is legislation that quite to the contrary is designed ultimately, I believe, to let the nuclear power industry not only grow but prosper and stand on its own feet.

Mr. Chairman, I think it is not too much this afternoon to look forward very hopefully as I think the gentleman from Illinois who spoke earlier and who is one of the coauthors of this bill, did to the day when we will not even need legislation of this kind, when we will have built up the kind of actuarial experience with respect to the operations of these reactors so that the private insurance industry will be able to step in and completely meet the needs of the industry with respect to public liability insurance.

Mr. Chairman, part and parcel of the act which established the Price-Anderson indemnity system in 1957 were amendments to the Atomic Energy Act of 1954 which strengthened the AEC's comprehensive regulatory program. The entire legislative package had one overall objective: the protection of the public. The regulatory's amendments to the AEC's Organic Act were designed to make the unlikely possibility of a major nuclear accident even more remote. The Price-Anderson Act complemented and supplemented this protection by providing the public with the financial protection required if the highly unlikely ever did occur.

I will not take the time to give a detailed statement of the exacting requirements which must be complied with in order for a person or organization to obtain, and then maintain, a license to possess and use atomic materials, suffice it to say that, in the case of an application for a power reactor construction permit, an applicant has to satisfy each of the following groups as to the safety of the reactor and its location: the AEC regulatory staff, the Independent Advisory Committee on Reactor Safeguards, the Atomic Safety and Licensing Board, and the Commission itself. The truly remarkable safety record compiled by the atomic energy industry during the 8 years that Price-Anderson has been in existence attests to the effectiveness of this regulatory program.

In this connection I might add, Mr. Chairman, that there is little reason to believe that a significant incentive to the safe operation of nuclear facilities would be added by the exposure of reactor operators and others to potential

liability beyond the sum of financial protection required and the Government's indemnity. In the years since the Price-Anderson legislation was enacted, neither the AEC, the Advisory Committee on Reactor Safeguards, nor the Joint Committee has seen evidence that this legislation has had the effect of lessening the safety consciousness of the nuclear industry.

Moreover, to expose reactor operators and others to some amount of uninsurable liability would reinstate in substantial part the very deterrent to the growth of the atomic energy industry which Price-Anderson was designed to alleviate. For these reasons, Mr. Chairman, the committee rejected the idea of eliminating or restricting the "no recourse" provisions of this act.

In concluding I would like to point out that the Price-Anderson Act, as it is presently constituted and as it would be amended, is very similar to legislation that has been enacted in most of the countries of the world having advanced atomic energy programs. These countries include the United Kingdom, Germany, Japan, and others. The atomic energy acts of all of these countries have in common the basic elements of Price-Anderson: Underlying liability insurance from commercial sources; a governmental indemnity system as a secondary source of compensation for the victims of a nuclear incident; and a limitation upon the liability of persons liable.

These same elements are incorporated into each of the various international conventions that have been drafted on the subject of atomic energy: the extension of the Price-Anderson Act would therefore facilitate the U.S. entry into one or more of these conventions should our country decide to become a signatory thereto.

Mr. HOSMER. Mr. Chairman, I yield such time as he may consume to the gentleman from Ohio [Mr. MCCULLOCH].

Mr. MCCULLOCH. Mr. Chairman, I rise in support of S. 2042, which would extend and amend the Price-Anderson Act. My colleagues have furnished the facts to support my conclusion.

The Price-Anderson legislation is indeed complex, and my participation in the public hearings on S. 2042, and in our committee's deliberations thereon, have led me to believe that we ought to devote further attention as soon as practicable to the subject of settlement of claims in the event of a major nuclear accident. We hope such an accident will never occur, but with the increasing uses of atomic energy prudence dictates that we review this problem in greater detail, to determine if additional legislative action is warranted.

However, there is no reason to delay action on S. 2042. The Price-Anderson Act has already been amended five times, and if additional legislation is called for, an appropriate recommendation will be made.

I am of the opinion that there is a sound legal basis for the conclusion of the Justice Department and the AEC's general counsel that the no-recourse provisions of the Price-Anderson legislation—whereby a limit is placed on the liability of all persons who may be liable for a nuclear incident—are constitutional.

Finally, that part of the statement of my able and experienced colleague, the gentleman from Illinois [Mr. PRICE], with respect to claims for injury or damage which involved liability from either public or private activity in this field is so good that repetition is justified. In effect, Representative PRICE said that the only claim so made was for only $3,500, and that the claim was for property damage only.

Mr. Chairman, I urge approval of S. 2042.

Mr. HOLIFIELD. Mr. Chairman, I yield such time as he may desire to the gentleman from Illinois [Mr. GRAY].

Mr. GRAY. Mr. Chairman, my dear friend, the gentleman from Illinois [Mr. PRICE], the author of this bill, has

made a brilliant statement today and I rise with great reluctance to oppose this bill because of certain aspects.

Mr. Chairman, there are certain inadequacies in the present Price-Anderson Act, which, if are allowed to stand, raise serious doubt to the wisdom of its extension for another 10 years.

The Price-Anderson requires the operators of an atomic plant to purchase the maximum amount of available commercial liability insurance to cover his and the manufacturer's financial responsibility resulting from an atomic accident. Even though the insurance companies have indicated they might offer protection of up to $72 million, the maximum protection an atomic plant owner can purchase from commercial sources is $60 million. Also the Government will pro-

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vide, at rates far below those of the commercial companies, $500 million of addition protection against claims of citizens injured by a nuclear accident.

So, the total protection that an atomic plant can purchase is $560 million. In the event of a nuclear accident, we know that damage could be far more than $560 million. A report prepared by the Brookhaven Laboratory, for the Atomic Energy Commission, makes this clear. Yet, Price-Anderson does not by law recognize this possibility. It arbitrarily limits the indemnity which a citizen could collect under such unfortunate circumstances.

Actually, the law provides less than $560 million for use against liability claims. Before the public is allowed to place claims against the $560 million "package" certain amounts are set aside for possible later injuries resulting from radiation effects; and investigation, settlement, and legal fees. The remainder of that is subjected to claims of the injured people. It would seem constitutionally and morally correct to assume that if the remaining moneys were not sufficient to remunerate the injured people for their losses, the persons responsible for the accident should "make up the difference." Price-Anderson flatly rejects this.

It grants a totally arbitrary limitation of liability to the atomic powerplants. The AEC's study of the extension of Price-Anderson contends this legislation is necessary first, to assure the availability of funds to satisfy public liability claims in the event of a catastrophic nuclear accident; and, second, to remove the deterrent to industrial activity in atomic energy presented by the threat of enormous liability claims if such an accident were to occur.

In reality, Price-Anderson only assures the availability of some funds to satisfy in part public liability claims.

The act provides that if the public liability from a single nuclear accident exceeds the limit of liability, the appropriate U.S. district court having jurisdiction in bankruptcy matters shall have authority to appropriate payments from the specified fund among the injured persons, and these injured persons shall thereafter have no recourse to anyone for the balance of the uncompensated damages. Compared to liability claims conducted by normal rules of law, Price-Anderson's no-recourse clause seems to reshuffle, for the sake of an atomic experiment, the whole concept of the citizen's rights of redress and this to me raises serious doubts as to its fairness, if not its constitutionality.

Seven years ago the Joint Committee on Atomic Energy's report stated three specific grounds to justify this unusual invasion of the ordinary rights of citizens—the limitations of the right to recover damages.

First, the Joint Committee felt the reactors would produce "special nuclear material" vital for the defense of the country; therefore, the companies should be protected against unlimited liability claims. This argument now appears to be inapplicable as the Chairman of the Atomic Energy Commis-

sion in a letter to the Joint Committee states that there is no foreseeable military market for the byproducts of atomic powerplants.

The second reason, that "since title to special nuclear material is in the United States, Congress has special powers and duties as the respect to the use of that material," has also lost pertinence over the past 7 years. Last year Congress passed legislation permitting and later requiring private ownership of nuclear fuel.

The third justification for the no-recourse provision the Joint Committee presented in 1957 is as follows:

> One of the other constitutional bases for the limitation of liability programs is the bankruptcy power of the United States, for it's improbable that any firm could survive claims against it of $500 million, over and above the insurance which might be available.

This reason does not appear to be valid. The bankruptcy jurisdiction of the United States is based on the assumption that most of the assets of the bankrupt have been used to pay creditors. Price-Anderson exempts from claim the assets of the operator of an atomic powerplant. And, there are several utility firms and manufacturers of atomic power equipment who have assets well above $500 million.

Thus, if we allow Price-Anderson to continue without amendment, we will give the utilities complete freedom from their financial responsibilities, at the expense of the public. While their legislation does offer some protection in the event of a nuclear accident the no-recourse clause stops that protection well short of full protection. For these reasons I cannot support the extension of the Price-Anderson Act in its present form.

Mr. HOLIFIELD. Mr. Chairman, I ask unanimous consent that the gentleman from Pennsylvania [Mr. DENT] may extend his remarks at this point in the RECORD.

The CHAIRMAN. Without objection, it is so ordered.

There was no objection.

Mr. DENT. Mr. Chairman, I believe it to be apropos at this time, while the debate of this conference is going on, to present to the House an address given by Thomas Debevoise before the Section of Public Utility Law of the American Bar Association at Miami, Fla., on August 11, 1965.

This address deals with the legal aspects of the national power survey, and, in my opinion, makes "must" reading for all Members of Congress when considering legislation of this type.

For too long we have been dealing in matters of public power supply on the record of yesteryear. The only thing that is constant in life is change, and since change is inevitable, changes have come in the public power policy.

From reading the following address one gets the notion that we had better take another look at our powerplants for the future.

It has been my humble opinion over the years that where public service can be rendered at reasonable cost to the people such services should be left to taxpaying bodies. When such public bodies engage in profiteering and gouging of the public, then it becomes the duty of Congress to enact legislation to protect the public.

I attach hereto the material referred to above:

LEGAL ASPECTS OF THE NATIONAL POWER SURVEY

Eight months ago the Federal Power Commission's national power survey was officially released. It is still too early to predict accurately the form of the new policies and statutes which will be developed as a result of the material contained in it and which will determine the shape of the electric utility industry in the future. It is possible, however, to point up some of the unanswered legal and policy questions implicit in the survey's coverage of the industry.

The institutional organization of the electric utility industry is unique among industries in this country. There are four entirely different types of organizations which have been developed to supply the Nation's electric power requirements. Three of them have been fostered as a result of policies which have as a common bond only the desire to meet those power needs; the fourth has developed as a result of a policy to make complete use of resources being developed for other purposes. While each segment uses the same engineering technology to do its job, institutionally they are so different that

they cannot be merged one with another and still retain characteristics of more than one of the segments. The four segments are the local public agency, the investor owned, the cooperative and the Federal.

The national power survey is grounded on the fact that all of the segments use the same engineering technology. While recognizing that there are four segments of the industry, with widely divergent characteristics and costs, the survey makes no attempt to grapple with the effect this fact has on the efficient use of the Nation's resources. Aside from its factual review of the industry, the survey confines itself to engineering matters which could point the way to lower unit costs of electric power in the future. It bases its forecasts on technically possible complete coordination of the 3,600 utility systems in the country, with their power supply planning integrated on an ever-widening area basis until eventually it is planned on a nationwide basis. The survey assumes that the institutional organization of the industry will remain in status quo, with the implicit inference that each segment will continue to supply the same relative share of the market in the future that it does today. The survey does not suggest or recommend any changes in law or policy in connection with the organizational structure of the industry, again implicitly inferring that the status quo can be maintained without such.

On the other hand, in the survey's account of the history of the industry, there are basic facts which would indicate that the industry will not remain in status quo without the amendment of old or enactment of new laws to reflect changed conditions in the country. The basic change in condition is that all of the country is now being supplied with electricity, while this was not the case at the time the last major legislation affecting the shape of the industry was enacted in the mid-1930's. It is from one of these laws passed 30 years ago that the Federal Power Commission took its authority to undertake the survey. Section 202(a) of the Federal Power Act enacted in 1935 provides:

"For the purpose of assuring an abundant supply of electric energy throughout the United States with the greatest possible economy and with regard to the proper utilization and conservation of natural resources, the Commission is empowered and

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directed to divide the country into regional districts for the voluntary interconnection and coordination of facilities for the generation, transmission, and sale of electric energy, and it may at any time thereafter, upon its own motion or upon application, make such modifications thereof as in its judgment will promote the public interest. Each such district shall embrace an area which, in the judgment of the Commission, can economically be served by such interconnected and coordinated electric facilities. It shall be the duty of the Commission to promote and encourage such interconnection and coordination within each such district and between such districts."

At the time that statute was passed, investor-owned systems accounted for 95 percent of the industry with local public agencies accounting for most of the balance. The Rural Electrification Act had not yet been passed, and the Federal systems as they exist today were the dream of only a few people. Today, with very few gaps, we have Federal transmission lines extending across the country, and there are some cooperative systems which, while nowhere near as large as the largest investor-owned systems, are larger than 75 percent of the investor-owned systems. The investor-owned systems' share of the market has been reduced by 20 percent in the same period and is continuing to be reduced. These basic facts are to be found in the survey as history, but are not projected. They are the basis for rivalries, mentioned by the survey, between the segments as each tries to maintain or strengthen its own position and have undoubtedly led in the past to building technically uneconomic facilities. These basic facts and the resultant rivalry also dictated the form of the national power survey, although they do not support the supposition on which the forecasts are based: that technically uneconomic facilities should not and will not be built in the future.

To gather its data for the survey, the Federal Power Commission called on representatives of each of the segments throughout the country. The advisory committees which it formed were each given this broad base. Every segment of the industry received two assurances from the Commission: (1) that the survey would be based on the maintenance of the status quo between the segments and (2) that the survey would not be a blueprint for the industry in the future but would attempt to establish engineering guidelines for its future growth. These assurances were able to overcome initial hesitation and reluctance. They permitted the different committees to meet to discuss their common technology and provide the Commission with its required raw material.

Actually, there already exist within the industry many more examples of intersegment cooperation than of warfare. As a result of the national power survey, with the ground rules established on this basis, we can expect to see more such cooperation in the future if the status quo can be maintained. The advisory committee meetings with their exchange of information on common technical problems and planning will assist in accomplishing this objective. With two exceptions these same ground rules removed the necessity for the advisory committees to discuss the legal and policy issues concerning the makeup of the electric utility industry will actually determine its shape in the future. Nor are these issues discussed in the survey.

The two exceptions were, first, a discussion by the executive advisory committee of a fixed-

charged rate to be used in the survey, and, second, the broad discussions of the legal advisory committee.

The fixed-charge policy which was established by the Commission after discussion when its executive advisory committee was reported in the excellent article on the development of the survey by Herbert B. Cohn at 1964 annual report of the section of public utility law, page 15. The necessity for the policy discussion arose from the way in which fixed charges are computed for the purpose of determining that component of the cost of power. The basic elements commonly classified as fixed charges are depreciation, annual cost of capital and taxes. For facilities with the same estimated service life, the depreciation element should be the same for each segment of the industry, although different methods, such as sinking fund variants, do produce different patterns. However, the cost of capital element is usually taken to be the charge paid by the particular enterprise; for example, the 2-percent interest rate paid by cooperatives, although it could also be viewed in terms of a national cost of capital. Similarly, the income tax element is usually viewed narrowly and recorded only to the extent that the particular segment of the industry is subject to such taxes. The cost of capital and tax elements in the fixed charges of each industry segment vary as a result of social policies developed in the past which manifest themselves in differing tax treatment and differing availability of Government credit. The fixed charges imposed on the investor-owned segment by reason of the fact that it obtains its capital without Government credit and is subject to income taxes are much higher than those of the other segments

One task that was implicit in the survey was an evaluation of the relative merits of the larger, more efficient generating units and the extra high voltage transmission lines which are now becoming technically feasible. If the costs of these developments had been based on the fixed charges imposed on the investor-owned segment and then compared with the cost of smaller, traditionally sized units to which had been applied the fixed charges resulting from subsidized capital costs and exemption from income tax, projects which did not make the most efficient use of national resources would have appeared to be in the national interest. Since annual cost of capital and taxes represent so large a part of power cost and vary widely, a meaningful evaluation of alternative courses of action and development cannot be made by applying the fixed charges of different segments of the industry to alternative development possibilities. The social policies developed in the past which result in the wide difference in fixed charges do not affect the fundamental national economics of a particular development.

The Commission recognized the current necessity for a common yardstick with which to evaluate alternative developments and agreed basically to a composite fixed charge rate derived from averaging the fixed charges imposed upon each of the segments according to the percentage of the industry that each represented at the time. Since the composite fixed charge rate developed by the Commission was within shooting range of the fixed charge rate imposed upon the investor-owned segment of the industry, it could be uniformly applied without producing significant distortions.

The discussions of policy by the 15 lawyers of the legal advisory committee were much more widespread and far reaching and at one time or another covered all of the policy matters which are basic to the industry and have found expression in existing statutes. This could not be avoided, since, in dealing with the law, you are dealing with policies. When these laws and their policies are 30 years old and an attempt is being made to forecast legal barriers in the future, they must necessarily come under discussion. However, since the legal advisory committee was operating on the same basic assurances and assumptions as the other advisory committees, and since it found that technically the law would not, in general, prevent engineering coordination of the systems of the various segments, these discussions were not reproduced in the report of the legal advisory committee. In the time available, it would have been impossible to obtain unanimous approval of the wording of any such discussion, even if that had been a necessary part of the job of the committee.

After its internal discussion of the different policies affecting the different segments of the industry and the increasing conflicts between them, the legal advisory committee settled in its report for a description, as factual as possible in a limited amount of space, of each of the segments of the industry and the basic policies affecting it. It also stated:

"It must be remembered that national policy concerning the institutional organization of the industry, as exemplified in statutes of the United States and of the several States, is pluralistic. There are statutes and regulations which in varying degrees, encourage, favor, protect and restrict each of the segments within the industry."

It did not go on to say that certain of these policies are unalterably inconsistent and are leading to head-on conflicts which will determine the future shape of the industry.

The national power survey followed the same method of handling the problem as had the report of the legal advisory committee; the survey ignored it. It expanded upon the legal advisory committee's description of the development and present situation of each segment and repeatedly mentioned the pluralistic nature of the industry. If it was to follow its own ground rules and if the technical aspects of the survey were to be accomplished, this is all the Commission could do. In doing so, however, it had to eschew issues of fundamental policy and forecast that policies developed 30 years ago, when the shape of the industry was much

different, would remain in effect well into the future. This places serious limitations on the value of the survey as a picture of the industry in the future. Its forecast of a retention of the status quo, moreover, is unrealistic absent a reconciliation of the policies affecting the industry. The situation has not been in status quo during the last 30 years. If the Federal systems grow at the same rate in the next 30 years that they have in the past at the expense of the investor-owned systems, the investor-owned systems will soon represent less than 50 percent of the power supply in the country.

To me, the two very basic questions raised by the facts contained in, but not evaluated by, the survey in its discussions of possible methods of economic use of the Nation's resources are (1) whether the return is the same to the Nation from the same use of resources by the several segments? and (2) what is the proper role of the Federal systems which, except for TVA, have no public utility responsibility? Both are large subjects, so in regard to the former, let me just say that, while I believe in the right of the people in an area to choose between public and private ownership to provide electric utility services, I question whether in making that choice the people in a particular area should also be able to determine the form of and relative contribution the necessary resources will make to the national economy. Should the local choice between public, cooperative or private ownership of a strictly power system determine the tax revenues to be received by the National Government? A reciprocal of this question is: Does the national cost of capital vary depending upon whether the utility system to which capital is dedicated is under public or private ownership? The experience in countries in which

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capital is scarce would indicate that it does not.

In regard to the role of the Federal systems, the issues, while encompassing also the first question, are much larger and of greater import for the future shape of the electric utility industry. In 1935, when the Congress seemed to express a national policy for coordination and against duplication of electric utility facilities in section 202 of the Federal Power Act, the Federal systems as they exist today were unknown. The policy to install hydropower facilities at Bureau of Reclamation and Corps of Engineers water resource developments being undertaken for other purposes had, of course, been initiated, and there are few who would suggest that it would be other than wasteful not to have such a policy. Where the power facilities were to be installed by the Government itself, legislation authorizing construction, from an early period, required that any surplus power be marketed at cost and contained variations of the so-called preference clause which today requires that Federal power be made available first to local public agency and cooperative systems.

Basically that is the extent of congressional policy in regard to the Federal systems, other than TVA today. Today, however, we see the Department of Interior, which controls the Federal systems, taking many actions not required to simply market surplus Federal power. It has sought to block non-Federal development of power projects which it wished to build. It has extended Federal transmission lines in ways not necessary to market the power from authorized projects. It has used its authority over public lands and their mineral deposits to force a power partnership on non-Federal systems. Recently, for the New England region, conjunctively with requesting authorization for the first Federal hydroelectric project in the area, it recommended that the basic region transmission system, from now on, should be "cooperatively developed by Federal, non-Federal agencies and consumer-owned and private utilities." The Department also is seeking authorization for Federal pumped storage projects which serve only a power function, and if such are authorized, it will only be a matter of time before it seeks authorization for Federal steam electric plants to supply the off-peak energy required by such projects.

Implicit in such actions on behalf of the Federal systems is the assumption by the Department of Interior of a utility responsibility which I do not believe has been given to the Federal systems by Congress. If it has not, the words of the Assistant Secretary of the Interior for Water and Power, in a speech to the 1964 annual convention of the National Rivers and Harbors Congress, seem presumptuous. He said: "We will accept as a responsibility of Government, that all of the Nation have an adequate supply of low-cost power and water."

What is the proper role of the Federal Government in regard to supplying electricity to the Nation's consumers? That is a question Congress must answer. It is a question which must be answered soon if Congress wishes to maintain the status quo in the industry. Just as the issue was raised a number of years ago when advocates of Federal power attempted to block the use of atomic energy by the non-Federal segments of the industry, so today the issue arises in deciding who shall construct and control the power output of the proposed large desalinization plants. If the plants are constructed and the power marketed by the Department of Interior without any definition of the Federal systems' role, there is no question that Federal transmission lines soon will span the country. Depending on Congress' resolution of the issues, the national power survey will have value as a series of possible guidelines for continued non-Federal development and control of the industry or as a blueprint for Federal ownership and control.

While the jockeying for position between the segments of the industry has in the past most frequently caught the public eye when a question was raised whether or not a particular source of power should be developed and, if so, by whom, the national power survey makes clear that con-

trol of high voltage transmission in the future will determine control of the industry. Federal Power Commissioner Ross several months after the survey was released had the following to say in support of legislation to give the Commission authority over construction of high voltage transmission lines by all segments of the industry:

"Very bluntly, as most people in the power business realize, it is no longer the parties who control generation that control the industry—it is the parties who control transmission, the arteries of the industry, that control the destiny of the millions of rate-payers of this Nation. With the ever-threatening rivalry between public, private, and Federal transmission systems, it should be obvious that there should be some instrumentality to referee the building of the proper interconnections and insure against the needless duplication of facilities. * * * If there is any justification at all for the maintenance of the status quo in the current lineup of public, private, and Federal systems, which I believe there is, then such a bill as this is necessary."

While there are built-in limitations as to territory and economic justification which circumscribe the location and timing of non-Federal construction of transmission lines, the same limitations do not apply to the Federal system. All of the Nation is its potential service area. Today, by rolling transmission costs in with project costs in basin accounts, on the assumption that Congress has authorized the use of revenues from the power projects available after the payout periods to cover on a continuing basis other costs of the Federal power systems, the Federal systems are building transmission lines sized in anticipation of projected future area requirements. If this continues and if duplication is to be avoided in the future, the Federal systems will be necessary middlemen in the power pooling transactions of the non-Federal segments.

There are many complicated issues to be decided in regard to the future role of the Federal systems, and I am not trying to say here how they should all be resolved. I do suggest that if the answers are allowed to be developed by the Federal systems, themselves, it would be unnatural to expect them to stop short of complete control of the industry. Having unilaterally accepted public utility responsibility, the Federal systems are pushing ahead with their expansion plans, fully recognizing that a policy vacuum in regard to them exists. The Assistant Secretary declared in the talk mentioned before: "We do not have a national water or power policy in a literal sense." Further, I suggest that a serious limiting factor on its tremendous technical achievement results from the failure of the national power survey to warn the Congress that head-on conflicts between the Federal and non-Federal segments of the electric utility industry are imminent because of the lack of a consistent national power policy.

A letter dated June 16, 1965, to the editor of the Ogden Standard-Examiner in Utah, over the signature of the Bonneville Power Administrator, indirectly poses some of the questions Congress must answer. The letter was in answer to an editorial criticizing a proposed Federal transmission line into southern Idaho.

Bonneville's proposed southern Idaho line has generated much controversy in the last year or so. Initially the line was intended to bring Bonneville power not only to preference customers in the area but also to industrial customers, all of which local suppliers were already serving or capable of serving. Last year, the House Appropriations Committee, when funds for the line were requested, suggested that Bonneville work out a wheeling agreement with the local power companies instead of building its own line. At that time, the letter recites, the committee also specifically directed Bonneville to serve "preference customers only" in the area. After going into these matters, and expressing Bonneville's side in the traditional argument as to whether the Federal system cost the taxpayers money ("BPA does not cost the taxpayers a single penny"), the letter continues in pertinent part:

"4. We have diligently sought a wheeling agreement with the Idaho Power Co. which would eliminate the need for a Federal line to southern Idaho. Inability to reach agreement on one crucial point—that of service to future preference customers—has forced us to seek funds for a Federal line. * * *

"5. We have offered to build a 500,000-volt line jointly with the Idaho and Utah companies. * * *

"6. Such a line is needed * * *. The need for a 500,000-volt line in the area was further established by the Federal Power Commission's national power survey, participated in by all segments of the electric utility industry including the private power companies."

In regard to the letter, first, I believe the person who prepared it was partly in error. The national power survey, in connection with possible patterns of generation and transmission in 1980, does suggest the possibility of a larger line, 700 kilovolts alternating current or plus-minus 500 to plus-minus 750 kilovolts direct current, running from the Columbia River through southern Idaho to the area of Kemmerer, Wyo., and from there all the way to Fort Worth, Tex. In discussing this larger line, with several caveats, as a possible pattern of transmission in 1980, the survey suggests that it might be justified on the basis of regional diversity and the use of mine mouth generation from coal deposits in southwestern Wyoming to supply markets in the Northwest As I read the survey, there is no suggestion that there is need of a 500 kilovolt alternating current line to bring power from the Northwest to supply customers in southern Idaho in the immediate or distant future, nor does it suggest that power is not currently available to supply all customers in the area.

But more important, the letter raises the following issues concerning the future shape of the industry. Supposing the National Power Sur-

vey had created a blueprint instead of guidelines and had established a current need for a 500 kilovolt alternating current line such as is proposed by Bonneville, would that support the position that Congress should appropriate money for a Federal system to build the line? Do the Federal systems have the utility responsibility to supply such transmission needs? Do they have a utility responsibility to supply the over 3,000 systems eligible for preference power? If so, how does the Federal responsibility mesh with the responsibility of public utilities to serve these same customers under the Federal Power Act? Can current Federal construction be justified on the basis that additional preference customers may be created in the future? In order to market surplus Federal power, should the Federal systems be permitted to build transmission lines which are larger than required by demonstrated Federal need? Should the only alternatives for a non-Federal system not wishing to bargain away future load be a Federal line or a joint Federal-non-Federal line,

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thereby in either case making the Department of Interior, with which it has to compete, a partner to its future transactions?

To me these are basic questions concerning the future shape of the industry which grow out of the exposition of facts and projections, but are not discussed, in the national power survey. True, the Federal Power Commission could not have resolved these questions; that is a job for Congress. They do, however, affect the basic assumptions of the national power survey, maintenance of the status quo and a pluralistic industry working in harmony. Answers to them cannot be put off if those assumptions are to have validity.

In closing, let me suggest that the primary goal of Congress in its power legislation of the 1930's has been achieved. Today, all of the electric energy requirements of the Nation are being served. While these requirements are expected to continue to grow by leaps and bounds, the non-Federal segments of the industry which have the utility responsibility to meet the new requirements are in a position and are laying plans to do so. The methods of Government regulation and other restraints, to which each of the non-Federal segments is subject in varying forms, will continue to insure that the job is done properly.

Today, the Nation is embarking on new, far-reaching, experimental programs covering many aspects of basic human needs: physical, mental, intellectual, environmental and esthetic. The programs will require tremendous capital resources. The task of achieving efficient use of resources to speed the attainment of the new goals will be a tremendously challenging one, particularly because one can only guess at the return a particular use of resources will yield in these areas. New methods of evaluating return will have to be devised in order to know where the proper emphasis should be placed to achieve each goal.

The return to the Nation from the increasing use of resources by the electric utility industry, however, can be measured with a fair degree of accuracy. That being the case, it would appear to me that any discussion of efficient use of resources by the industry must concern itself with the return to the Nation from the resources. The use of resources in this sense is synonymous with the use of capital. Since the electric utility industry has larger capital requirements than any other industry in the country, the return to the Nation from the industry's use of capital has far-reaching significance.

The national power survey records the facts which demonstrate that the return to the Nation from the use of capital by each segment of the electric utility industry is different. Some will urge, in general terms, that the difference is only one of form: a return which basically can be measured in tax dollars as opposed to one which results in other benefits to the Nation. The return can and should be measured under conditions as they exist today in order to determine the validity of such claims. If the return to the Nation from each segment is unequal as well as different, and I strongly suspect it is, adjustments should be made. This is a matter which could not be considered by the national power survey even though it very basically concerns the efficient use of the Nation's resources. It is a matter which Congress should consider, to be sure that the Nation gets a full return from all of the capital used in the electric utility industry to apply toward the goals of our Great Society.

Mr. HOSMER. Mr. Chairman, I yield such time as he may consume to the gentleman from Indiana [Mr. BRAY].

Mr. BRAY. Mr. Chairman, I rise in opposition to the enactment of H.R. 8496 in its present form. It should be amended to eliminate the no recourse provision as it applies to proven types of commercial atomic powerplants. If this provision must be continued at all, its application should be restricted to experimental plants which are necessary steps in the development of breeder reactors.

To put the situation into proper perspective, let us look at these reserves of low-cost uranium, so that we can determine whether it is beneficial or harmful to humanity to encourage consumption of those reserves in nonbreeders.

The Atomic Energy Commission, in the 1962 Report to the President—page

34 of the appendixes—estimated that we have enough low-cost uranium—including that which is still to be discovered to produce the equivalent of power from about 2,000 billion tons of coal—if we could use it in the breeder reactor. The nonbreeder is very inefficient; it wastes about 99 percent of the potential energy. In other words, if we use this material in the nonbreeders, it will supply the energy equivalent of about 20 billion tons of coal, and our descendants will be left with only the high-cost material.

If we waste the low-level atomic fuel, will it hurt future generations? It will, gentlemen. Even when the breeder reactor is developed, the tremendous fuel inventory involved will impose a very heavy cost burden if humanity has to use high-cost atomic fuel.

In this complex field, we have to rely on the opinions of scientists. I do not ask you to accept my word for the statement that waste of low-cost atomic fuel will be detrimental to future generations. Dr. Alvin M. Weinberg, a highly respected scientist for the Atomic Energy Commission, authored a paper entitled "Burning the Rocks," published under the number of ANL–6122, as part of the proceedings on the Conference of the Physics of Breeding, October 19–21, 1959. Dr. Weinberg made it clear that extremely high cost atomic ore can result in very expensive power even if the breeder reactor is developed, but he also made it clear that this will not be true if we have enough low-cost ore available to get the system started. The breeder system, according to Dr. Weinberg, will some day be able to use high-cost ore for makeup provided it can be started on low-cost ore.

It appears, then, that we are faced with this alternative: We can use our low-cost uranium to replace about 20 billion tons of coal, to the permanent detriment of mankind. Or, on the other hand, we can use 20 billion tons of coal to preserve our low-cost uranium in order that it can supply 2,000 billion tons of coal for future generations of mankind. Which course should we follow?

How much coal do we have? According to the Department of Interior, we have about 800 billion tons of recoverable coal, of which more than 200 billion tons can be mined without any substantial cost increase. We are currently using about one-half a billion tons per year for all purposes, including the generation of electricity. We can afford to use 20 billion tons of this coal to preserve for mankind the hope of low-cost power in perpetuity. If we do this, we will in effect be trading 20 billion tons of coal for nearly 2,000 billion tons of coal-equivalent atomic power, for the benefit of future generations.

In addition to needless waste of the power which future generations may need, are there any other disadvantages involved in the crash program approach which is inherent in pushing the proliferation of nonbreeder reactors? I believe there are, and I want to take a few minutes to summarize some of them.

Paramount should be the problem of public protection. We are dealing with a weird new material. We should proceed cautiously, in order that we do not take unnecessary risks until we have accumulated the maximum knowledge and experience in an orderly manner. If we have 200 atomic powerplants operating for 20 years, will we be better off than we will if we have 20 atomic powerplants operating for 20 years? I think not. We have several large powerplants now under construction, and we ought to take advantage of the opportunity to see how they work, to find out how safe they are, before we subject our people to the risk of a large number of these plants. When I say "risk," I think I am being conservative. Remember that witnesses from the atomic energy industry unanimously admitted that these plants will not be built if the manufacturers and operators have to assume financial respon-

sibility for the public damage which may be caused by an accident.

In the history of mankind, no one has ever yet been able to design a foolproof machine. We cannot, merely by passing a law, prevent the occurrence of a catastrophe. We can say the utilities do not have to pay for it, but we cannot effectively say that it will not happen. If it does happen, the cost may, according to the experts, run into the billions of dollars. Why should we not, then, follow the sensible course—let us encourage the construction and operation of a reasonable number of these plants, for a long enough period of time to gain the experience necessary to the safety of our people.

If we follow the opposite course—if we grant the license to take risks at the expense of the public which is inherent in the no recourse provision of the Price-Anderson Act—we subject the public to unnecessary risks. But we do more than that. We subject our economy to grave risks in time of peace, and we make our country extremely vulnerable in time of war.

Where is the risk to the economy in peacetime? Electric power is one of the most essential commodities for a healthy economy. Let this country become prematurely dependent on atomic power for a large portion of its electricity, and then assume that one single atomic powerplant, anywhere in the world, causes a multibillion-dollar catastrophe. What will happen? You know what will happen. The public will demand that every atomic powerplant in the country be shut down immediately, and our economy will be seriously crippled for lack of power. It takes a period of several years to build coal burning powerplants and to open new coal mines, and the

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economy would lack sufficient electricity for a period of time long enough to have a very serious effect.

In wartime, the risk is even greater. I am told that some scientists take it for granted that all atomic powerplants will be shut down in the event of war, because of the terrible effects of an enemy bomb or sabotage on an atomic powerplant. That, of course, would cause a disastrous shortage in the supply of electricity at a critical period. To complicate matters, we already have in storage, in steel tanks, some 100 million gallons of the most terrible poison known to man—high-level radioactive wastes resulting from reprocessing of atomic fuel. I have been informed that an atomic bomb could release this material into the environment, making large sections of the Nation uninhabitable for hundreds of years. The more of this material we accumulate, the more vulnerable we are.

If we extend the Price-Anderson Act, we will force our country and our people to undergo all these unnecessary risks, and what will we gain? At the expense of future generations, we may reduce our fuel bill by 10 percent. How much will that mean to the average homeowner? The cost of coal is about 12 percent of the total electric hill, or about $1 per month for the average home. If we take all of these terrible risks, we may save the average homeowner 10 cents a month, until the waste of low-cost atomic fuel catches up with us.

I think we should inhibit the unwise proliferation of nonbreeder atomic powerplants. I think we should restrict the application of the Price-Anderson Act to those experimental and research plants which are necessary for the eventual development of breeder reactors, to the permanent benefit of mankind.

In summary, Mr. Speaker, let me say, "We have already learned how to waste atomic fuel. Let us concentrate in the future on learning how to utilize its full potential, for the permanent benefit of mankind."

Mr. HOSMER. Mr. Chairman, I yield 5 minutes to the gentleman from Pennsylvania [Mr. SAYLOR].

Mr. SAYLOR. Mr. Chairman, in the

report on H.R. 8496, the Joint Committee states—page 13—that extension of the Price-Anderson Act is justified "on the basis of, first, overall benefits to the public resulting from competition between nuclear and fossil fuel powerplants; and, second, the development of a new source of basic energy for this and future generations."

It is difficult to quarrel with the objective of developing a new source of energy which will serve mankind when needed. I therefore feel that it may be justifiable to extend the provisions of the Price-Anderson Act—perhaps even the no-recourse provision which frees plant operators from liability—with respect to experimental plants which are necessary to develop the breeder technology.

I do, however, object to extension of the no-recourse provision with respect to the proven types of atomic powerplants. Let us examine the Joint Committee's reasoning with respect to these plants. Apparently it is based on the claim that atomic powerplants are already saving the electricity consumers of this country $1 billion a year. On page 7 of the report, the Joint Committee states:

> Spurred on by Government encouragement and assistance, there have been extraordinary reductions in the cost of nuclear power. These developments have, in turn, produced a salutary competitive response from the fossil fuel and fuel transportation industries, with a resulting savings in power costs to the American taxpayers that has been estimated at $1 billion per year. It is acknowledged that no commercial nuclear powerplant is yet producing electricity at costs competitive with conventional plants, and much development work remains.

In other words, gentlemen, the Joint Committee asks us to extend this no-recourse provision, without which the utilities would cease to build the proven atomic powerplants, because atomic power is allegedly saving the people of this country $1 billion a year. Let me state flatly that the $1 billion figure is simply ridiculous. If the rest of the report is as erroneous as this figure, then it is time for us to make a complete and searching analysis of the course we are taking in the atomic power program.

Mr. Chairman, last year the utilities spent a total of about $2 billion for coal, oil, and gas for use in generating electricity. This figure of $2 billion includes the cost of delivery to the generating plant. If the Joint Committee is correct in using the $1 billion figure, that means that the delivered price of coal, oil, and gas would have been 50 percent higher in the absence of the threat of atomic competition. That, on its face, is completely without foundation.

Coal furnishes the fuel for most of the thermal powerplants in this country. Let us look at the price paid by utilities for coal over the last several years. The average delivered price, including cost of the coal and cost of the transportation, has been as follows:

	Per ton
1952	$6.61
1953	6.61
1954	6.31
1955	6.07
1956	6.32
1957	6.64
1958	6.58
1959	6.37
1960	6.26
1961	6.20
1962	6.17
1963	6.02

Mr. Chairman, this record shows a steady reduction in the delivered price of coal since 1952—a reduction amounting to approximately 10 percent for the entire interval of 12 years. Most of this reduction occurred prior to 1963. Let us look at the causes.

First, the coal-producing industry is intensely competitive. It is competitive with natural gas, with Government-sponsored hydroelectric power, and with imported residual oil. It is also intensely competitive within itself.

In the past several years, there has also been intense competition in the transportation of coal to utilities. The coal industry developed a feasible method of carrying coal by pipeline.

Great strides were made in the transmission of mine-mouth power to markets. These factors, coupled with the competition of coal mines served by water carriers, have served to force the railroads to develop low-cost methods of transporting coal. As a result, the unit train concept was put into use. The unit train concept has reduced the cost of delivering coal by an average of about $1 per ton, or less. Less than 100 million tons of coal are being hauled by unit train. Even if this were all attributable to the threat of atomic power, the amount involved would be less than one-tenth of the claimed billion-dollar-a-year saving.

But the truth is that threatened competition from atomic power can be credited with only a very small part of the unit train saving, and with little or no part of the reduction in the cost of coal. Until Jersey Central Power & Light Co. announced its plans to build the Oyster Creek atomic powerplant, no one in the coal industry or the railroad industry regarded atomic power as posing any real competition for a period of many years into the future. The Oyster Creek announcement came in 1963. If atomic energy has had any effect at all on utility fuel prices, the effect is minute. Instead of being anywhere near $1 billion a year, as claimed in the Joint Committee report, it is far less than the present annual expenditures—nearly $200 million—being made by the Government for the purpose of promoting atomic powerplants.

Some day in the far distant future we may run short of low-cost supplies of coal. When and if that day comes, mankind will need atomic power. In order for atomic power to serve any long-range purpose, breeder reactors will be required. I therefore agree that we should take necessary steps to continue an orderly program of research for the development of breeder reactors.

But if the only excuse for the continuation of the "no recourse" provision for proven types of atomic powerplants is the allegation that they are already saving consumers of this Nation $1 billion a year, then I say the excuse is so patently erroneous that we should hold up this legislation until we can review the entire atomic power program. We are dealing with a matter which may have very serious consequences for the public. Let us make sure we are on sound ground before we act. The Joint Committee's use of the $1 billion a year figure indicates to me that the rest of the Members of Congress should take a good look to see if the committee has made similar grave errors in guiding this program.

Mr. HECHLER. Mr. Chairman, will the gentleman yield?

Mr. SAYLOR. I yield to the gentleman from West Virginia.

Mr. HECHLER. Have not the alleged savings in power costs been unrealistically presented because part of the cost is a Federal subsidy to atomic energy production?

Mr. SAYLOR. It is all Federal subsidy. The AEC should come forward, be truthful and admit it. There is a place in the rapidly expanding electric energy field for atomic power. However, I do

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not think that the Joint Committee has any justification for coming forward with a figure like $1 billion in saving that they cannot substantiate and no one on their staff or anyone else can substantiate.

If the rest of the atomic energy program is as faulty as that statement, then we should not pass the bill, but we should appoint a special committee to examine the entire atomic energy program, both military and peacetime uses.

Mr. HOSMER. Mr. Chairman, I yield 5 minutes to the gentleman from Utah.

Mr. BURTON of Utah. Mr. Chairman and Members of the Committee, I must acknowledge that I am somewhat confused by some of the arguments

which have been advanced in support of extension of the Price-Anderson Act.

First, we are assured that nuclear powerplants of any size can be safely built and operated anywhere in the country, even in large centers of population.

But then, we are told that no more nuclear powerplants will be built by private groups unless the Government continues to make available to the operators of such plants indemnity insurance up to $500 million and, furthermore, limits the total liability which can be incurred as the result of any nuclear accident to $560 million, regardless of the total damage involved.

I think all of us are prepared to accept the assurances of the Atomic Energy Commission and the builders and operators of nuclear powerplants that they are safe; they are experts in this field and we must rely upon their judgment.

However, there is one question which has occurred to me and which I am sure has occurred to many other people. If the nuclear plants are safe, as we are assured they are by the experts, why should it be necessary for the Government to provide them with protection against the risk of a possible accident, and more importantly, why should the liability resulting for any such accident be limited?

It is my feeling, Mr. Chairman, that if nuclear powerplants are not safe, they should not be built. If they are safe, and we are assured repeatedly that they are, then the manufacturers and operators of such plants should be prepared to assume the responsibility for all the risks and liabilities involved in such an operation.

It has been stated over and over that the possibility of an accident in one of these plants is so remote that it is not even worth considering. Yet, spokesmen for the utility industry went before the Joint Committee on Atomic Energy and stated without equivocation that unless the Price-Anderson Act is extended they would not undertake to build any nuclear powerplants.

I cannot understand this apparent contradiction between what appears to be the nuclear industry position on safety, when stated publicly, and the position of the industry on this particular piece of legislation.

There is no doubt in my mind that the Price-Anderson Act constitutes a significant subsidy for the operators of commercial nuclear powerplants. But what concerns me even more is the limit which is set on the amount of damages for which the public would be compensated in case of an accident.

We are being asked here today to extend the legislation for 10 years without amendment. The Government—which means the taxpayers—will continue to bear the major share of the burden for providing indemnity insurance without which nuclear powerplants would not be built. And furthermore, the public is being asked to accept for another 10 years a plan whereby it would not be fully compensated for any damages which might result from the operations of such plants.

The present act does not expire until 1967—2 years from now. I cannot see there is any urgent need to pass the extension bill at this session. I sincerely believe that action should be postponed until the Joint Committee conducts further studies, which it has announced it plans to do, on the question of how the public would be compensated for damages in any nuclear accident.

I strongly feel there is a basic and fundamental question at issue in this matter. The right of the public to protection against hazards over which it has no control has long been accepted as a matter of course. In this legislation, we are being asked to transport what was supposed to have been a temporary departure from this accepted procedure into a permanent and established process.

Mr. Chairman, as presently written the Price-Anderson Act is patently unfair to the public. It asks the public

to assume almost the full burden of risks involved in the construction and operation of nuclear powerplants. If the nuclear powerplants now being built require that the Government provide indemnity insurance, then at least we should see to it that the public is fully compensated for any damages. The cutting off of liability from any nuclear accident at $560 million is cold-blooded denial of the rights of the public.

Mr. ANDERSON of Illinois. Mr. Chairman, will the gentleman yield?

Mr. BURTON of Utah. I yield to the gentleman from Illinois.

Mr. ANDERSON of Illinois. As I indicated earlier, we do not have the actuarial experience at the present time. As I said in 1957, when the act was first passed, we did not then have a single kilowatt of installed nuclear power. Today we have something like 1,000 megawatts, or 1 million kilowatts. That is within a relatively short period of time.

In these 8 years, the insurance companies have, however, not had enough experience with the operation of these plants to provide the kind of coverage that the utilities would want and need. I believe the gentleman from Illinois said earlier that the maximum today is $60 million but we are hopeful that in a few years it will be up to $100 million. As the amount of private coverage increases, the amount of Government indemnity will go down. I think we are arriving at a solution. That is why at the present time we need to have a Government indemnity program.

Mr. BURTON of Utah. I thank my friend from Illinois for his comments. I should like to point out that the present act does not expire until 1967, 2 years from now. I cannot see that there is any urgent need to pass the extension at this session. I sincerely believe that action can be postponed.

Mr. HOLIFIELD. Mr. Chairman, I yield 2 minutes to the gentleman from Wyoming [Mr. RONCALIO].

Mr. RONCALIO. Mr. Chairman, it is with some reluctance that I speak upon this subject. While I agree in the committee most of the time with the eminent minority member of the House Committee on Interior and Insular Affairs, the gentleman from Pennsylvania [Mr. SAYLOR], who just spoke, I would agree with him on being opposed to this legislation at this time, but for an entirely different reason.

If the Congress of the United States —the Senate and the House—has one great monument to its eternal credit, it is the Joint Atomic Energy Committee, which probably not only is a success but perhaps too great a success in its contribution to the well-being of the people of the world and in its efforts to promote the useful and peaceful purposes of atomic energy. However, the time has come, if I may say so to my colleagues, when there is no longer a justification for what appears to be an unreasonable subsidy to the nuclear phase of the generation of our electric energy. I say unreasonable for the following reasons:

First, insurance companies are willing to increase their coverage of public damage by a few million dollars, to a total of $74 million, but they have not demonstrated confidence in the safety of atomic plants. The insurance companies have inserted clauses in their regular casualty policies eliminating coverage on damage from radioactive contamination. As a result, the homeowner, the factory owner, and the owner of office buildings have no insurance coverage in their own policies against radioactive contamination; their recovery will be limited to their proportionate share of a fund which may be grossly inadequate.

Second, the Advisory Committee on Reactor Safeguards, an independent group of eminent scientists, told the Joint Committee on Atomic Energy:

> Considerable further improvements in safety are required before large power reactors may be located on sites close to population centers.

Third, various utility witnesses appeared before the Joint Committee and were asked to comment on the coal industry's proposal that unlimited Government insurance beyond the amount available through private sources be provided at comparable commercial rates, and that the utilities be subject to ordinary rules of law in the event public damage exceeded the coverage purchased. One after the other, the utility witnesses stated they would not build atomic plants if the law made them subject to financial responsibility for the amount of such damage in excess of the commercial insurance and Government indemnity.

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Thus, an unfair subsidy for atomic power does in fact set back the orderly development of the natural resources of Wyoming, particularly of the large coal reserves throughout my State. There is no valid reason why Congress should continue artificial stimulation to the growth of atomic power which is now a force in our competitive economy and there is certainly no reason why the coal fields of America should lie undeveloped as a result of this unfair competition.

Mr. ASPINALL. Mr. Chairman, will my friend from Wyoming yield to me?

Mr. RONCALIO. I am proud to yield to the gentleman from Colorado.

Mr. ASPINALL. Would my friend point to any place where there has been unfair competition which has hurt the coal mining industry, so far as competition is concerned? I have a district similar to the district of my friend. All of the energy resource values are there. If my friend can point to a place where we have done damage to the coal mining industry, I should like to hear about it.

Mr. HOSMER. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, it has come time to tidy up the Chamber a little bit, after some of the oratory which has preceded this.

Perhaps I should mention the remarks of the gentleman from Pennsylvania concerning the mysterious billion dollars, since he cannot see where it comes from, because there are only $2 billion worth of nonnuclear fuels being consumed in this country, by way of the production of electricity.

If the gentleman from Pennsylvania had taken a close look at the report he would have noted that the report was not talking about buying B.t.u.'s, buying coal, buying oil or any other conventional fuel. The report was not addressing itself to the beginning side of the powerplant, but was addressing itself to the inside of the powerplant, where the electricity comes from, where people buy it.

Our report said, on page 7:

As indicated in the preceding section of this report, this country has made great strides in the development of civilian nuclear power during the last 8 years. Spurred on by Government encouragement and assistance, there have been extraordinary reductions in the cost of nuclear power. These developments have, in turn, produced a salutary competitive response from the fossil fuel and fuel transportation industries, with a resulting savings in power costs to the American taxpayers that has been estimated at $1 billion per year.

We received specific testimony on this point from the Chairman of the AEC during our fiscal year 1966 AEC authorization hearings, at page 1386, as follows:

SAVINGS ATTRIBUTED TO NUCLEAR POWER

Representative HOSMER. Against that figure, I think someone has estimated that the developmental work which has been done in the nuclear energy field under sponsorship of the Government is now resulting in at least a billion dollars a year saving to American citizens in the form of power rates that have not been increased because we have this form of power.

Is that somewhere in the ball park?

Dr. SEABORG. Yes, that is in the ball park. That is an estimate that has been made and I think on a good basis.

Representative HOSMER. So we are not just pursuing science for science's sake, we are paying dividends to the taxpayers then.

Dr. SEABORG. Yes, I think so.

What our report reflects is that the consumers of electricity in the United

States are not paying $1 billion a year for electricity which they otherwise would be paying, except for the fact that this new source of energy for the production of electricity has been introduced and has created a sharp pencil competitive situation.

We were not referring only to savings in fuel costs. Fuel costs, of course, are only part of the total cost of producing energy. We were referring to total annual savings in overall energy costs including transportation costs.

Considering the large amount of energy we now use annually in this country even small reductions in unit energy costs result in large total annual savings. For example, applying a 1 mill per kilowatt-hour reduction to the FPC's projection of total energy generation for 1965 which is over 1 million million kilowatt-hours—10^{12} kilowatt-hours—results in an annual saving of $1 billion.

I believe we all agree that that kind of situation is good for the United States. In fact, I believe we have spent, in all, about $22 billion on all phases of our atomic effort. A good deal of that was a crash program for the Manhattan project during the war. This was the program which produced the atomic bomb and enabled us to avoid a bloody invasion of the Japanese Islands.

So for every cent of money which the Government has put into the civilian atomic energy program which has totaled about $1¾ billion, the American people have already, practically, gotten out everything they have invested, on the peacetime side of the atom, and they are in a position where it is repaying dividends to them.

Mr. HOLIFIELD. Mr. Chairman, will the gentleman yield?

Mr. HOSMER. I yield to the gentleman.

Mr. HOLIFIELD. Is it not true, of the figure of some $20 billion that has been spent approximately $18.5 or $19 billion has been spent for military purposes for the development of weapons, for the improvement of weapons, and for the great inventory of weapons which we now have?

There are 30 nuclear submarines of the Polaris type which now roam the oceans of the world, and which give us the most invulnerable launching capacity of any nation. A portion of this $19 billion went toward that.

Mr. HOSMER. So when you come down to it the Government is not in the business of business, but in the business of making a better America. Not only have we made a better America through this program, but we have made a more prosperous one by this program. The Government has by this program contributed to the reduction in the cost of living rather than to an increase in it.

I also think it should be commented on, although it is not directly pertinent to this argument, that it is almost impossible to find a safer industry in America than the atomic energy industry. I think that is due to the fact that we take precautions of every nature.

I want to say, also, to support some statements on the absence of actuarial figures upon which any insurance could be based, that it is a fact that in the entire history of the Price-Anderson Act there has only been one $3,500 accident in this industry which involved a claim against a licensed reactor operator who was required to furnish financial protection under the Price-Anderson Act. That is pretty remarkable.

I would like to recall that before coming to Congress in the year 1947–48 I was an employee of the Atomic Energy Commission in its legal department at Los Alamos. In going through some of the files at that time I came across the workmen's compensation that was being carried on all the workers in this area. The University of California was a contractor. It could not say what it was doing there, so it had to pay the highest insurance rates of all back in 1943 when their activities started. In 1948 it was still paying the high rate. When we went back to look at the accident experience

it was almost impossible to believe that an installation, a gigantic installation such as this one, dealing with this new and difficult subject, could have had the safety record it had.

I think we can be proud that the traditions that began with America's past for putting the atom to work for its defense and then putting it to work for its peace have been traditions which have included the utmost regard for the public safety and for the safety of the employees involved.

An exemplification of this tradition is that legislation which we seek to extend today.

I would like to devote a minute or two to the charge, made by some, that the Price-Anderson Act is a subsidy to the atomic power industry. If by that term the opponents of this type of legislation mean payments of money to or on behalf of the atomic power industry, I would point out to them that not a red cent has been expended under a Price-Anderson indemnity agreement with a licensee during the 8 years of the act's existence. As a matter of fact, the almost $343,000 received by the AEC in indemnity fees have more than repaid the costs of the administration of this program, and these fees are expected to increase substantially in the future.

While the Price-Anderson Act is not a subsidy within the conventional meaning of that term, it is indisputable that the act is a form of Government assistance. However, the type of assistance afforded by the Price-Anderson Act is entirely consistent with the basic principles underlying other Federal programs—programs such as reclamation projects and the improvement of the Nation's inland waterways. In determining the value of these programs, the cost to the Federal Government of the improvements must be measured against the benefits to the American people which the improvements produce. In the case

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of the Price-Anderson indemnity legislation, the benefits derived by the American people are amply evidenced by the estimated $1 billion annual savings in power costs which I mentioned a moment ago. These benefits, I would reiterate, have been achieved under legislation which thus far has cost the Government nothing.

Some have argued that the atomic energy industry should be made to pay the estimated true costs of the indemnity protection which the Government affords under the Price-Anderson Act. Aside from the fact that no one knows the true costs of this protection, since the very lack of actuarial data for this industry is what necessitates the governmental indemnity, I say this is not a desirable approach.

Although I strongly recommend enactment of S. 2042, I also believe that further study should be undertaken to assure that the public would receive prompt and adequate financial compensation in the event of a major nuclear accident. During the hearings on S. 2042, several of my questions elicited responses from AEC witnesses which indicated to me that the problem of settlement of claims in the event of such an accident is rather like the vast Amazon Basin, explored only in very small part by very few people. Further hearings on this subject, as our committee report recommends, are certainly called for.

Mr. Chairman, in order that the growth and development of nuclear power may continue to progress in an orderly and expeditious manner, I join Chairman HOLIFIELD in urging passage of S. 2042.

Mr. HOLIFIELD. Mr. Chairman, this is the last atomic energy bill which I shall handle this year. I want to take this occasion as chairman of the Joint Committee to express a word of thanks to the members of our committee, the gentleman from Illinois [Mr. PRICE], the gentleman from Colorado [Mr. ASPINALL], the gentleman from Texas [Mr. THOMAS], the gentleman from

New Mexico [Mr. MORRIS], the gentleman from California [Mr. HOSMER], the gentleman from Massachusetts [Mr. BATES], the gentleman from Illinois [Mr. ANDERSON] and the gentleman from Ohio [Mr. MCCULLOCH] for the intensive work that they have done and for their dedication in trying to solve the problems of this important field to strengthen our Nation, both on the domestic front and on the military front.

They have rendered to me the utmost of cooperation and I should like to express my appreciation today.

Mr. Chairman, I have no further requests for time.

Mr. SECREST. Mr. Chairman, H.R. 8496 would extend the "no recourse" provision of the Price-Anderson Act. This provision eliminates the liability of reactor manufacturers and operators for damages in excess of the commercial insurance and Government indemnity, even if such damages are caused by willful negligence.

In 1956 the Atomic Energy Commission opposed such a provision because of doubts as to its constitutionality. Now, however, the Joint Committee states, at page 7 in its report on H.R. 8496:

> Finally the committee agrees with the views expressed by the Attorney General and the General Council of the AEC, in response to an inquiry by the committee, that the limitation of liability provisions of the Price-Anderson legislation, as originally enacted and as they would be amended by the bill recommended by the committee, are constitutionally permissible.

In the last analysis, the Supreme Court of the United States will decide whether the "no recourse" provision is a constitutional exercise of the powers of Congress. When and if an atomic powerplant catastrophe occurs, the Supreme Court will decide whether or not the corporations which build these reactors, and whether or not the utility corporation operators of these plants, shall go completely free of liability.

In my opinion, Mr. Chairman, if we in Congress pass this legislation, we should alert atomic powerplant manufacturers and operators that the views of the Joint Committee, the Attorney General, and the General Counsel of the AEC are not binding upon the Supreme Court. The manufacturers and operators of these plants should be told, in spite of the report of the Joint Committee, "Gentlemen, if you rely upon the constitutionality of the no recourse provision, you do so at your peril. That question will be decided by the Supreme Court, in the light of the circumstances that exist when an atomic catastrophe has brought the question before the Court."

My purpose in making this statement, Mr. Chairman, is to warn the operators and manufacturers of these plants that, in the event this provision is held unconstitutional, Congress will have no legal duty to pay for damages otherwise assessable against them.

Mr. KEE. Mr. Chairman, during the hearings on H.R. 8496, the witnesses for the reactor manufacturers and the utility operators were each asked by the chairman of the Joint Committee on Atomic Energy what they felt would be the consequences of the failure of Congress to extend the no recourse provision of the Price-Anderson Act—the provision granting freedom from liability for damages in excess of the $60 million insurance pool and the $500 million Government indemnity fund. To a man, the witnesses stated that atomic powerplants would not be built without such freedom.

This is a very alarming situation, because it can only be interpreted as a declaration by these witnesses that they do not have faith in the safety of these plants. You can check the accuracy of my statement by reading the record of the hearings before the Joint Committee, but you do not have to go that far. You can read the report of the Joint Committee recommending the adoption of H.R. 8496. On page 9 of the report, it is stated:

> Based upon the evidence and testimony presented to the committee, the committee has

concluded that the potential threat of uninsurable liability arising out of nuclear activities, as discussed in the preceding section of this report, would effectively deter necessary industrial participation in this program. Every witness representing the nuclear industry, who testified at the committee's hearings in June, supported this view.

Under these circumstances, I do not believe we should pass legislation encouraging the utilities to place upon the people of their areas financial risks which the utilities are themselves unwilling to assume. If we extend the "no recourse" provision of the Price-Anderson Act, we will be forcing the public to assume serious risks for which they will have no recourse against anyone.

How much financial risk are we talking about? The 1957 Brookhaven report prepared by the Atomic Energy Commission estimated that the property damage from radiation could be, under the worst circumstances, as great as $7 billion, and could involve contamination of 150,000 square miles. An area of 150,000 square miles means a circle with a radius greater than 200 miles.

In the 1957 report, the AEC was talking about a small atomic power plant. Today plants five times as large are being built, and we could be talking about maximum property damage of $35 billion, with contamination of 750,000 square miles—a circle with a radius of nearly 500 miles.

Assuming that this unthinkable catastrophe does occur—and no one can say that it will not—who will suffer the loss, under the Price-Anderson Act? Not General Electric, Westinghouse, or the operating electric utility—they are granted immunity. The insurance companies will pay $60 million; Uncle Sam will pay $500 million; and the property owners will settle for less than 2 cents on the dollar for their losses.

Few members of the public realize that they do not have insurance in their own property insurance policies against such losses. The standard policies written by insurance companies on homes, on farms, on factories, on office buildings, and on other property carry a nuclear exclusion clause. It excludes losses from radiation caused by an atomic powerplant or any other source. Unfortunately, few people read the fine print in their insurance policies, because the language used is difficult to understand. I can assure you that your policies covering damage to your property contain a provision which means that you will not be paid for loss caused by radioactive contamination from an atomic powerplant.

Frequently an obscure clause like this, in an insurance policy, is completely overlooked by the public until some catastrophe brings it into play. I am sure that many property owners in Los Angeles were quite surprised to find they had a very sizable financial stake in the definition of an insurrection as compared to the definition of a riot. In the event of a real atomic powerplant catastrophe, many people within 500 miles of the plant will be surprised to find they must personally bear 98 percent of the loss of the value of their homes and their business property.

Mr. Chairman, if we are going to encourage the construction of great numbers of these atomic powerplants, we owe

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a duty to the public to tell them what we are doing; that we are granting immunity to the manufacturers of atomic powerplants and to the electric utilities for any damages which might be caused to their homes and their business property, even though they have no insurance against such loss in their own policies and cannot obtain such insurance; that we are thus forcing them to assume risks which the utilities will not assume and which the insurance companies will not assume. Certainly we should not mislead the public by stating that we are granting "protection to the public." Two cents on the dollar is not protection.

We have several large atomic power-

plants in the process of construction. Until those plants have operated for a long period of years, we will not know just how dangerous such plants are. Until we do, we should not encourage the construction of great numbers of large plants, at the risk of the public. H.R. 8496 should be amended to remove the no recourse provision.

Mr. HECHLER. Mr. Chairman, after considerable thought and careful examination of the issues involved in H.R. 8496, I have decided to oppose the pending legislation. I believe that it is high time that we take steps to place the nuclear power industry and its competitors—like coal—on a fair and equal footing. For too long, the nuclear power industry has enjoyed the protection of an "infant industry." It has been pampered with subsidies, exemptions, and one form or another of assistance. This has been done to such an extent that the claims of its proponents that lower power rates are produced for the consumer are patently inaccurate. If the Federal Government continues to pick up the tab, it is unfair to claim that nuclear power is cheaper.

Essentially, the pending bill extends another form of subsidy to the detriment of the coal industry and the miners who work in that industry. In the first place, why does this act have to be extended for 10 years? Surely a shorter period of time would be a more feasible way to handle this problem, with a review to determine additional steps to be taken after a few years. Second, we have heard that the nuclear power industry is now very safe. If this is true, then why are we so stirred up about providing so much insurance and indemnities. Third, why does the Federal Government have to get into the insurance business in this case anyway? Would it not be fairer and more in keeping with the spirit of free enterprise to require these companies to take out their premiums at rates closer to those provided by private insurance sources?

These are just a few of the reasons, Mr. Chairman, why I oppose this bill in its present form, and I expect to vote against it. I trust that in the future we may have legislation in this field which is fairer and more objective in relation to the great coal industry which means so much to the strength of the Nation's economy and its future.

The CHAIRMAN. If there are no further requests for time, the Clerk will read.

The Clerk read as follows:

S. 2042

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection 170 c. of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"c. The Commission shall, with respect to licenses issued between August 30, 1954, and August 1, 1977, for which it requires financial protection, agree to indemnify and hold harmless the licensee and other persons indemnified, as their interest may appear, from public liability arising from nuclear incidents which is in excess of the level of financial protection required of the licensee. The aggregate indemnity for all persons indemnified in connection with each nuclear incident shall not exceed $500,000,000, including the reasonable costs of investigating and settling claims and defending suits for damages: *Provided, however,* That this amount of indemnity shall be reduced by the amount that the financial protection required shall exceed $60,000,000. Such a contract of indemnification shall cover public liability arising out of or in connection with the licensed activity. With respect to any production or utilization facility for which a construction permit is issued between August 30, 1954, and August 1, 1977, the requirements of this subsection shall apply to any license issued for such facility subsequent to August 1, 1977."

SEC. 2. The first two sentences of subsection 170 d. of the Atomic Energy Act of 1954, as amended, are amended to read as follows:

"In addition to any other authority the Commission may have, the Commission is authorized until August 1, 1977, to enter into agreements of indemnification with its contractors for the construction or operation of production or utilization facilities or other activities under contracts for the benefit of the United States involving activities under the risk of public liability for a substantial nuclear incident. In such agreements of indemnification the Commission may require its contractor to provide and maintain financial protection of such a type and in such amounts as the Commission shall determine to be appropriate to cover public liability arising out of or in connection with the contractual activity, and shall indemnify the persons indemnified against such claims above

the amount of the financial protection required, in the amount of $500,000,000, including the reasonable costs of investigating and settling claims and defending suits for damage in the aggregate for all persons indemnified in connection with such contract and for each nuclear incident: *Provided*, That this amount of indemnity shall be reduced by the amount that the financial protection required shall exceed $60,000,000: *Provided further*, That in the case of nuclear incidents occurring outside the United States, the amount of the indemnity provided by the Commission shall not exceed $100,000,000."

SEC. 3. The first sentence of subsection 170 e. of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"The aggregate liability for a single nuclear incident of persons indemnified, including the reasonable costs of investigating and settling claims and defending suits for damage, shall not exceed the sum of $500,000,000 together with the amount of financial protection required of the licensee or contractor: *Provided, however*, That such aggregate liability shall in no event exceed the sum of $560,000,000: *Provided further*, That with respect to any nuclear incident occurring outside of the United States to which an agreement of indemnification entered into under the provisions of subsection 170 d. is applicable, such aggregate liability shall not exceed the amount of $100,000,000 together with the amount of financial protection required by the contractor."

SEC. 4. Subsection 170 k. of the Atomic Energy Act of 1954, as amended, is amended by striking out the date "August 1, 1967" wherever it appears and inserting in lieu thereof the date "August 1, 1977."

SEC. 5. Subsection 170 l. of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"l. The Commission is authorized until August 1, 1977, to enter into an agreement of indemnification with any person engaged in the design, development, construction, operation, repair, and maintenance or use of the nuclear-powered ship authorized by section 716 of the Merchant Marine Act, 1936, and designated the 'nuclear ship Savannah'. In any such agreement of indemnification the Commission may require such person to provide and maintain financial protection of such a type and in such amounts as the Commission shall determine to be appropriate to cover public liability arising from a nuclear incident in connection with such design, development, construction, operation, repair, maintenance or use and shall indemnify the person indemnified against such claims above the amount of the financial protection required, in the amount of $500,000,000 including the reasonable costs of investigating and settling claims and defending suits for damage in the aggregate for all persons indemnified in connection with each nuclear incident: *Provided*, That this amount of indemnity shall be reduced by the amount that the financial protection required shall exceed $60,000,000."

Mr. HOLIFIELD (interrupting the reading of this bill). Mr. Chairman, I ask unanimous consent that further reading of the bill be dispensed with, that it be printed in the RECORD, and subject to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. MOORE. Mr. Chairman, I move to strike out the last word.

Mr. Chairman, I oppose the further extension of the Price-Anderson Act.

Mr. Chairman, I have never opposed the development by private capital of the nuclear power industry. Although I have vigorously objected to the many Government subsidies that have been introduced into its framework by its advocates in the Government and in Congress.

I urge the rejection of H.R. 8496 which would extend the Price-Anderson Act for 10 years, until August 1, 1977. On the basis of the evidence, Mr. Chairman, Price-Anderson is in fact nothing more than a possible massive subsidy.

Within recent years atomic power has begun to come into its own as a source of power. Thirteen atomic powerplants have been completed. These plants will ultimately generate about 1 million kilowatts of electricity. Five more plants are under construction and when they are completed they will add another 1.7 million kilowatts of capacity. These 2.7 million kilowatts of atomic electric generating capacity will represent about 6.6 percent of the electric utilities total capacity. Other utilities are also considering the atomic approach when decisions are made to build new generating stations to supply the ever increasing demands for energy.

The atom has become another important source of fuel for electric power

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generation. But quite obviously, atomic power has arrived in the mar-

ketplace by way of the U.S. Treasury. The U.S. Atomic Energy Commission has paid millions of dollars in direct subsidies to atomic powerplant designers and builders as well as to those operating atomic powerplants.

In the early 1950's it was argued that Federal subsidies were absolutely necessary to ignite interest in development of atomic power. It was argued that atomic power would be needed to supplement the Nation's future energy needs. Leaders of competitive energy source industries at that time did not oppose Government-financed atomic power research, even though the Nation has enough low-cost conventional fuel to serve the needs of this Nation for generations to come. Reports of the U.S. Geological Survey show reserves of coal alone which would last hundreds of years at current production levels.

When Congress passed the Price-Anderson Act to give the public some financial protection against the consequences of a nuclear accident, this protection took the form of public liability insurance bought by the licensed operator, with an added $500 million indemnity provided by the Government. Thus the combined insurance-indemnification protection for each atomic powerplant is $560 million since the liability insurance industry will presently not sell more than $60 million worth of coverage per plant.

However, Mr. Chairman, there is an important provision in this law which has not been called to the attention of most of us and of which most of the general public has not been made aware. I am referring to the provision, the no-recourse provision of the Price-Anderson Act, which limits total liability to the sum of the insurance available plus the $500 million Government indemnity. In other words, the public is required, by law, to subsidize atomic powerplants through law by being involuntary self-insurers without compensation, for the amount of damages in excess of the $560 million.

This no-recourse provision does not only deny protection to the taxpayer, it actually removes protection which ordinarily would be available under general rules of tort liability. I frankly have my doubts as to the constitutionality of this provision. In the 1956 hearings on this matter before the Joint Committee on Atomic Energy, the Atomic Energy Commission stated that the approach of limitation of liability had been carefully considered, but this method was not recommended primarily because of doubts as to constitutionality.

Normally, a claimant could sue the corporation and proceed against the corporate assets of those controlling the atomic plant. In most instances these manufacturers and operators are worth much more than $500 million. But not so under the Price-Anderson shield, which limits the aggregate liability to $560 million—$500 million from the U.S. Treasury and $60 million.

Mr. Chairman, the two basic reasons for extending this act are obviously without justification. The no-recourse provision does not assure the availability of funds to satisfy public liability claims in the event of a catastrophic nuclear accident. And the elimination of this provision would not deter the growth of atomic power, because the atomic power industry have assured us that these plants are safe.

Then what is the real reason, the real justification for extending this inequitable law? No such shield from financial responsibility is available to operators of conventional powerplants, or to the public in general. I firmly believe that this Congress should immediately end the limitation of liability in the Price-Anderson Act, and restore to our citizens their normal legal right to full compensation for damages. Further, I believe that Congress should end the $500 million indemnity protection now granted atomic powerplant operators. If the public needs additional insurance protection, beyond the amount available through private sources, then the Government should

provide insurance, but at comparable commercial rates.

As a Representative in the Congress from a major coal-producing State in opposing this measure I will be charged with being oversensitive to any legislation that affects coal. However I know that atomic fuel is reducing the quantity of coal produced. I am not altogether convinced that the economics of nonsubsidized atomic power will favor it over more conventional forms of energy in the mass power generation field. I am in complete accord with the Federal Government doing research that cannot be done by private industry, but in this case I think the assistance has continued long enough. I know that those who live the life of coal miners in my State feel that in a free enterprise system such as ours, the industry in which they work should not be underwriting a business which promises to eliminate their jobs and their livelihood.

Mr. Chairman, I believe that by rejecting this legislation, H.R. 2042, the ordinary legal rights of the public will be restored and the right of all energy industries to compete on equitable terms for its share of the energy market will be maintained. I believe that it is high time that we realize that the Government should not underwrite one side of a business competition in America's free enterprise system.

The CHAIRMAN. If there are no amendments, under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker having resumed the chair, Mr. ROSTENKOWSKI, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (S. 2042) to amend section 170 of the Atomic Energy Act of 1954, as amended, pursuant to House Resolution 579, he reported the bill back to the House.

The SPEAKER. Under the rule, the previous question is ordered.

The question is on the third reading of the bill.

The bill was ordered to be read a third time, and was read the third time.

The SPEAKER. The question is on passage of the bill.

The question was taken.

Mr. HALL. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Doorkeeper will close the doors, the Sergeant at Arms will notify absent Members, and the Clerk will call the roll.

The question was taken; and there were—yeas 337, nays 30, not voting 65, as follows:

* * * * *

[p. 24048]

So the bill was passed.

[p. 24049]

1.1v TO AMEND THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

October 13, 1966, P.L. 89–645, §§1(b), 2, 3, 80 Stat. 891

SEC. 1.

* * * * * * *

(b) Section 109 of such Act is amended by striking out "subsection 11 t.(2) or 11 aa.(2)" and inserting in lieu thereof "subsection 11 v.(2) or 11 cc.(2)".

SEC. 2. Subsection 170 e. of the Atomic Energy Act of 1954, as amended, is amended by deleting the last sentence.

SEC. 3. Section 170 of the Atomic Energy Act of 1954, as amended, is amended by adding at the end thereof the following new subsections:

"m. The Commission is authorized to enter into agreements with other indemnitors to establish coordinated procedures for the prompt handling, investigation, and settlement of claims for public liability. The Commission and other indemnitors may make payments to, or for the aid of, claimants for the purpose of providing immediate assistance following a nuclear incident. Any funds appropriated to the Commission shall be available for such payments. Such payments may be made without securing releases, shall not constitute an admission of the liability of any person indemnified or of any indemnitor, and shall operate as a satisfaction to the extent thereof of any final settlement or judgment.

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"n. (1) With respect to any extraordinary nuclear occurrence to which an insurance policy or contract furnished as proof of financial protection or an indemnity agreement applies and which—

"(a) arises out of or results from or occurs in the course of the construction, possession, or operation of a production or utilization facility, or

"(b) arises out of or results from or occurs in the course of transportation of source material, byproduct material, or special nuclear material to or from a production or utilization facility, or

"(c) during the course of the contract activity arises out of or results from the possession, operation, or use by a Commission contractor or subcontractor of a device utilizing special nuclear material or byproduct material,

the Commission may incorporate provisions in indemnity agreements with licensees and contractors under this section, and may require provisions to be incorporated in insurance policies or con-

tracts furnished as proof of financial protection, which waive (i) any issue or defense as to conduct of the claimant or fault of persons indemnified, (ii) any issue or defense as to charitable or governmental immunity, and (iii) any issue or defense based on any statute of limitations if suit is instituted within three years from the date on which the claimant first knew, or reasonably could have known, of his injury or damage and the cause thereof, but in no event more than ten years after the date of the nuclear incident. The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. When so incorporated, such waivers shall be judicially enforcible in accordance with their terms by the claimant against the person indemnified. Such waivers shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages, nor shall such waivers apply to injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant. The waivers authorized in this subsection shall, as to indemnitors, be effective only with respect to those obligations set forth in the insurance policies or the contracts furnished as proof of financial protection and in the indemnity agreements. Such waivers shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (i) the terms of insurance policies or contracts furnished as proof of financial protection, or indemnity agreements, and (ii) the limit of liability provisions of subsection 170 e.

"(2) With respect to any public liability action arising out of or resulting from an extraordinary nuclear occurrence, the United States district court in the district where the extraordinary nuclear occurrence takes place, or in the case of an extraordinary nuclear occurrence taking place outside the United States, the United States District Court for the District of Columbia, shall have original jurisdiction without regard to the citizenship of any party or the amount in controversy. Upon motion of the defendant or of the Commission, any such action pending in any State court or United States district court shall be removed or transferred to the United States district court having venue under this subsection. Process of such district court shall be effective throughout the United States.

"o. Whenever the United States district court in the district where a nuclear incident occurs, or the United States District Court for the District of Columbia in case of a nuclear incident

occurring outside the United States, determines upon the petition of any indemnitor or

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other interested person that public liability from a single nuclear incident may exceed the limit of liability under subsection 170 e.:

"(1) Total payments made by or for all indemnitors as a result of such nuclear incident shall not exceed 15 per centum of such limit of liability without the prior approval of such court;

"(2) The court shall not authorize payments in excess of 15 per centum of such limit of liability unless the court determines that such payments are or will be in accordance with a plan of distribution which has been approved by the court or such payments are not likely to prejudice the subsequent adoption and implementation by the court of a plan of distribution pursuant to subparagraph (3) of this subsection (o); and

"(3) The Commission shall, and any other indemnitor or other interested person may, submit to such district court a plan for the disposition of pending claims and for the distribution of remaining funds available. Such a plan shall include an allocation of appropriate amounts for personal injury claims, property damage claims, and possible latent injury claims which may not be discovered until a later time. Such court shall have all power necessary to approve, disapprove, or modify plans proposed, or to adopt another plan; and to determine the proportionate share of funds available for each claimant. The Commission, any other indemnitor, and any person indemnified shall be entitled to such orders as may be appropriate to implement and enforce the provisions of this section, including orders limiting the liability of the persons indemnified, orders approving or modifying the plan, orders staying the payment of claims and the execution of court judgments, orders apportioning the payments to be made to claimants, and orders permitting partial payments to be made before final determination of the total claims. The orders of such court shall be effective throughout the United States."

Approved October 13, 1966.

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1.1v(1) JOINT COMMITTEE ON ATOMIC ENERGY

S. REP. No. 1605, 89th Cong., 2d Sess. (1966)

AMENDMENTS TO THE PRICE-ANDERSON INDEMNITY PROVISIONS OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED, PERTAINING TO WAIVER OF DEFENSES

SEPTEMBER 16 (legislative day, SEPTEMBER 7), 1966.—Ordered to be printed

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Mr. PASTORE, from the Joint Committee on Atomic Energy, submitted the following

REPORT

[To accompany S. 3830]

The Joint Committee on Atomic Energy, having considered S. 3830 to amend the Atomic Energy Act of 1954, as amended, reports favorably thereon and recommends that the bill do pass.

SUMMARY OF THE BILL

The bill, as recommended by the Joint Committee on Atomic Energy, would amend section 170 and related sections of the Atomic Energy Act of 1954, as amended, concerning private insurance and governmental indemnification with respect to nuclear incidents.

1. *Emergency Assistance Payments (subsec. 170 m.)*.—The bill would authorize the Atomic Energy Commission to establish coordinated procedures with the nuclear liability insurance pools (Nuclear Energy Liability Insurance Association and Mutual Atomic Energy Liability Underwriters) for the prompt handling, investigation, and settlement of claims arising out of a nuclear incident. In accordance with this authority the insurers and the Commission could make financial assistance available to claimants immediately following a nuclear incident without requiring claimants to sign a release or otherwise compromise their claims. The bill specifically provides that any such payment shall not constitute an admission of liability but shall operate as a satisfaction to the extent thereof of any final settlement or judgment.

2. *Waiver of Defenses (subsec. 170 n.(1))*.—The bill would also authorize the AEC to incorporate provisions in its indemnity agree-

ments, and to require incorporation of provisions in insurance policies and contracts furnished as proof of financial protection, which waive "any issue or defense as to the conduct of the claimant or fault of persons indemnified." The primary end result of these waivers

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would be to eliminate, first, any requirement that a claimant prove negligence ("fault") in order to recover for his damages, and second, any possible issue as to the claimant's contributory negligence or assumption of the risk. Similar authority would be conferred on the AEC respecting waivers of any issue or defense as to charitable or governmental immunity of the defendant; as well as any issue or defense based on any statute of limitations if suit is instituted within 3 years after the victim knowns of his injury and its cause, and in any event within 10 years after the nuclear incident.

3. *Extraordinary Nuclear Occurrence (subsec. 11 j.)*.—The bill provides that such waivers would apply with respect to any "extraordinary nuclear occurrence," as defined in the bill and explained below, which (*a*) arises out of or results from or occurs in the course of the construction, possession, or operation of a production or utilization facility, (*b*) arises out of or results from or occurs in the course of transportation of source material, byproduct material, or special nuclear material to or from a production or utilization facility, or (*c*) during the course of the contract activity arises out of or results from the possession, operation, or use by a Commission contractor or subcontractor of a device utilizing special nuclear material or byproduct material.

Under the bill the Commission would have the responsibility and authority to determine whether an "extraordinary nuclear occurrence" has taken place. An extraordinary nuclear occurrence is defined by the bill to mean—

> any event causing a discharge or dispersal of source, special nuclear, or byproduct material from its intended place of confinement in amounts offsite, or causing radiation levels offsite, which the Commission determines to be substantial, and which the Commission determines has resulted or will probably result in substantial damages to persons offsite or property offsite.

This definition has been drafted so as to give the Commission broad discretion in determining whether an extraordinary nuclear occurrence has taken place. However, the Commission is required by the bill to establish criteria in writing setting forth the basis upon which such determination shall be made. The bill further

provides that the Commission's determination as to whether or not an extraordinary nuclear occurrence has taken place will not be subject to either direct or collateral administrative or judicial review.

4. *Defenses Preserved (subsec. 170 n.(1)).*—The bill provides certain exceptions to the applicability of the waivers. The waivers shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages, nor shall they apply to injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant.

5. *Execution of Waivers (subsec. 170 n.(1)).*—It is expected that these waivers will be executed by both the insurers and the named insureds designated in policies of nuclear liability insurance required as proof of financial protection, as well as by the AEC and the licensees and contractors which are parties to the Commission's indemnity agreements. Persons furnishing proof of financial protection in a form other than nuclear liability insurance would similarly be required

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to waive defenses. Under the authority of this bill the Commission could also require the execution of such waivers by any other person (for example, a carrier of nuclear materials) who may be held liable for a nuclear incident and who seeks the benefit of the insurance policy or contract furnished as proof of financial protection or the Commission's indemnity.

6. *Consolidation of Suits (subsec. 170 n.(2)).*—The bill provides that in the event of an extraordinary nuclear occurrence the U.S. district court in the district where such occurrence takes place (or, in the case of such an occurrence taking place outside the United States, the U.S. District Court for the District of Columbia) shall have original jurisdiction of any public liability action arising out of or resulting from the occurrence, without regard to the citizenship of any party or the amount in controversy. Moreover, the bill authorizes the possible removal to such district court of any public liability action arising from such an occurrence pending in any State or other U.S. district court, upon motion of the Commission or the defendant.

7. *Allocation of Insurance-Indemnity Fund (subsec. 170 o.).*—Finally, whenever the U.S. district court in the district where a nuclear incident occurs, or the U.S. District Court for the District of Columbia in case of a nuclear incident occurring outside the United States, determines that public liability from a single nuclear incident may exceed the limit of liability established by subsection

170 e. of the act, total payments made from the insurance-indemnity fund provided for by the act may not exceed 15 percent of such limit of liability without the prior approval of such court. Payments in excess of that figure could be made only after a determination by the court that they are or will be in accordance with a plan of distribution which has been approved by the court, or are not likely to prejudice the subsequent adoption and implementation by the court of a plan of distribution. The Commission would be required by the bill, and other interested persons would be authorized by the bill, to submit to the court a plan for the disposition of pending claims and for the distribution of remaining funds available. Authority to implement fully the foregoing responsibilities would also be conferred upon the court. Consistent with the present language of the act, this authority would include the power to limit the liability of persons indemnified.

The foregoing are the main features of the proposed legislation. An explanation of the policy supporting the major provisions of this bill is found in the section of this report entitled "Committee Comments." A detailed legal analysis of the entire bill is found in the section entitled "Section-by-Section Analysis."

LEGISLATIVE HISTORY

In 1965 the Joint Committee recommended and there was enacted legislation (Public Law 89–210) which among other things extended the so-called Price-Anderson indemnity provisions of the Atomic Energy Act of 1954, as amended, for an additional 10 years, from August 1, 1967, to August 1, 1977. During the hearings which preceded enactment of this legislation a number of problem areas were identified relating to the means by which persons suffering damage from a nuclear incident might obtain rapid and adequate financial compensation.

There was concern expressed, for example, over the fact that there was no assurance that all State courts would impose a rule of strict

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liability in the event of a nuclear incident. Because of his inability to prove negligence the victim in such a case might, therefore, go without compensation for his injury or damage. Similarly, because of varying State law respecting the time within which such an action may be brought, and particularly because this limitation period in many States is considered inadequate for delayed manifestation of radiation injuries, there was concern that victims in different jurisdictions might be subjected to unequal and possibly unfair treatment.

The Atomic Energy Commission, in its study to determine whether the Price-Anderson Indemnity Act should be extended beyond August 1, 1967, concluded that additional study should be given to the possibility of further amending the act to establish the basis of liability thereunder, and to enacting a uniform statute of limitations for claims covered by the Price-Anderson Act. The Commission indicated during the 1965 hearings that such additional study would be undertaken. Others who testified at that time identified several related problems, and at least one witness strongly recommended that the necessary amendments to the act be enacted forthwith. The related issues which were identified included (1) the difficulty that could be expected if a large number of suits arising out of a serious nuclear incident were filed in different jurisdictions, (2) the problem of apportioning insurance and indemnity funds, and (3) the lack of coordinated procedures for the processing of claims for emergency relief.

Because of the complexities, uncertainties and matters of judgment involved in these matters, the Joint Committee concluded that further study should be given to these problems. However, rather than delay action on the extension, the committee decided to recommend the 10-year extension without taking formal action on these related matters. Nevertheless, the committee made it clear in its report on the extension legislation that the committee would return to the subject at the first opportunity. The report stated:

> This committee has always been vitally concerned with protecting the health and safety of the public and employees from the potential hazards which accompany the beneficial applications of nuclear energy. The committee is equally determined that the promise to the public, contained in the Price-Anderson Act, will not prove to be an illusory one. It is the clear intent of this legislation that if a member of the public ever is injured by a nuclear incident, he will not be subjected to a series of substantive and procedural hurdles which would prevent the speedy satisfaction of a legitimate claim.
>
> With that objective in mind, the committee plans to continue to inquire into possible means of further assuring that the public will receive prompt and adequate financial compensation for any damage resulting from potential nuclear hazards. Among other things, the committee expects to conduct one or more hearings on this subject as early as practicable. Such hearings may well indicate the need for further legislative action by Congress.[1]

[1] See S. Rept. No. 650, 89th Cong., 1st sess., p. 13.

Subsequently, on November 26, 1965, in anticipation of further inquiry into these matters by the committee during the forthcoming

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session of Congress, the executive director of the Committee wrote to the Commission specifically soliciting the Commission's views on the problem areas identified during the earlier hearings. There followed numerous meetings among the Joint Committee and AEC staffs and representatives of private industry, including the utility, insurance and equipment manufacturing industries. The result of these efforts was H.R. 15913 and S. 3548, identical bills introduced on June 23, 1966, by Congressman Melvin Price and Senator Clinton P. Anderson.

Public hearings were held on these bills as summarized in the next section of this report. These hearings are published under the title "Proposed Amendments to Price-Anderson Act Relating to Waiver of Defenses."

The committee met in executive session on September 12, 1966, and voted without dissent to approve certain amendments to H.R. 15913 (S. 3548) which were incorporated in "clean bills" introduced on September 13, 1966, by Congressman Melvin Price as H.R. 17685, and on September 14, 1966, by Senator Clinton P. Anderson as S. 3830. The committee also approved the reporting of these bills without amendment and adopted this committee report.

HEARINGS

Public hearings on H.R. 15913 and S. 3548 were held on July 19, 20, and 21, 1966, before the Joint Committee on Atomic Energy.

The following witnesses appeared on behalf of the U.S. Atomic Energy Commission:

James T. Ramey, Commissioner;
Gerald F. Tape, Commissioner;
R. E. Hollingsworth, General Manager;
Joseph F. Hennessey, General Counsel;
Bertram H. Schur, Associate General Counsel; and
Myron B. Kratzer, Director, Division of International Affairs.

Witnesses presenting the views of industry and the public are listed below in the order of their appearance:

Edison Electric Institute, J. Harris Ward, chairman, Commonwealth Edison Co., Jack Kearney, member of the staff of Edison Electric Institute, and Arthur Gehr, attorney for Commonwealth Edison Co.

United Nuclear Corp., Walter A. Hamilton, vice president.
General Public Utilities Corp., James B. Liberman, general counsel.
Arthur W. Murphy, professor, Columbia University School of Law.
New York State Thruway Authority, John P. MacArthur, special counsel.
Robert Lowenstein, attorney, Washington, D.C.
Nuclear Energy Liability Insurance Association, DeRoy C. Thomas, E. A. Cowie, Roger Fisher, and Lester Senger.
Mutual Atomic Energy Liability Underwriters, Wallace M. Smith and James H. Merritt.
National Coal Policy Conference, Inc., Joseph E. Moody, president.
National Coal Association, Brice O'Brien, general counsel.

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Samuel Edlow, Robert F. Pitcher, John J. Bell, Alvin Shapiro, and Bernard Bechhoefer, Edlow & Isbrandtsen Associates, American Merchant Marine Institute, and Nuclear Fuel Services, Inc.
Mutual Atomic Energy Liability Underwriters, James H. Merritt.
Nuclear Energy Liability Insurance Association, Roger Fisher, Lester Senger, and Francis X. Boylan.
Nuclear Property Insurance Association, H. Sumner Stanley, accompanied by H. S. Hirst, Mutual Atomic Energy Reinsurance Pool.

COMMITTEE COMMENTS

A. Background

The Price-Anderson Act was enacted in 1957 for a twofold purpose:

First, to protect the public by assuring the availability of funds for the payment of claims arising from a catastrophic nuclear incident.

Second, to remove a deterrent to private industrial participation in the atomic energy program which flowed from the threat of tremendous potential liability claims. It was considered that enlarged private participation in this program would speed the further development of peaceful uses of atomic energy.

It is generally recognized that the possibility of a catastrophic nuclear incident is extremely remote because of, among other things, the safety requirements imposed by the AEC upon persons

engaged in the atomic energy business. Nevertheless, an accident of uninsurable dimensions is conceivable.

The Price-Anderson Act accordingly affords protection to the public and to AEC licensees and contractors from the risks associated with atomic energy by providing for a program of private insurance and governmental indemnity amounting to a maximum of $560 million to cover damages that conceivably could arise from a nuclear incident.

The act further provides for a limitation of liability of all persons indemnified in the event of a catastrophic nuclear incident resulting in claims which exceed the total amount of private insurance and governmental indemnity, subject, of course, to future congressional action in light of the particular circumstances.

Since its enactment by Congress in 1957 one of the cardinal attributes of the Price-Anderson Act has been its minimal interference with State law. Under the Price-Anderson system, the claimant's right to recover from the fund established by the act is left to the tort law of the various States; the only interference with State law is a potential one, in that the limitation of liability feature of the act would come into play in the exceedingly remote contingency of a nuclear incident giving rise to damages in excess of the amount of financial responsibility required together with the amount of the governmental indemnity.

The policy decision to refrain from establishing the basis of liability under the statute was made in the knowledge that there are existing legal doctrines for imposing strict liability (i.e., liability of the defendant without the necessity of proving the defendant's "fault") and in the belief that, in view of the "omnibus" type coverage of the insurance policies and indemnity agreements provided for in the statute, courts would be constrained to ignore legal niceties and impose liability upon someone on one ground or another in the event of a nuclear incident. The belief that strict liability would be im-

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posed in the event of a serious nuclear incident was, and is, shared by many, including distinguished legal scholars.

The various international conventions on third-party liability in the nuclear field which have been proposed for adoption since passage of the Price-Anderson Act have taken a different approach, however. The same may be said with respect to pertinent domestic legislation enacted by various foreign countries. These conventions and legislative enactments have specifically provided for strict (or "absolute") liability for most nuclear incidents, and most of them provide for channeling of liability (i.e., exclusive

liability on the part of the operator of the nuclear installation). Another basic characteristic of these regimes is the establishment of a period within which an injured person may initiate action to recover for his damage.

Within our own country, attempts to establish strict liability for nuclear incidents by State statute have met with failure. To date not one State has adopted the "Model Nuclear Facilities Liability Act," which was promulgated in 1961 by the National Conference of Commissioners on Uniform State Laws and approved by the American Bar Association. The model act provides for strict liability, channeling of liability, and a gross period of 10 years in which to sue.

Over the years increasing criticism has been directed at the Price-Anderson Act for its failure to establish strict liability as the basis of liability for suits covered by the Act. While commentators generally agree that strict liability would be imposed by most courts in the event of a large-scale nuclear incident, there are some jurisdictions which purport to reject the doctrine of strict liability. In these jurisdictions a claimant might be required to establish negligence in order to recover for his damage, a burden which might prove insurmountable where much of the relevant evidence has been destroyed in the nuclear incident.

Moreover, and perhaps more importantly, in a sizable number of States the law relative to strict liability is unsettled. Part of the reason for the uncertain state of the law concerning liability for nuclear incidents is the remarkable safety record of the nuclear industry which, happily, has spared the courts from acting in this area. It is feared by some legal experts, therefore, that the victims of a nuclear incident might have to engage in protracted litigation in these jurisdictions in order to benefit from the protection that the Price-Anderson Act was designed to afford them.

Finally, in the case of nuclear facilities and devices operated or used by Federal agencies, it has been observed that a victim of a nuclear incident might be denied protection entirely because of the "discretionary function" exception to the Federal Tort Claims Act.

As a consequence of the foregoing, there have been suggestions that a Federal statute should be enacted imposing strict liability for nuclear incidents covered by the Price-Anderson Act. Advocates of this proposal believe it would eliminate existing uncertainties and reduce the likelihood of unequal treatment of victims. They argue, additionally, that the appropriateness of a rule of strict liability is clear because, while the probability that a nuclear incident will ever occur is low, there is a possibility that great

harm could result if the unexpected ever took place.

Opponents of such a Federal statute argue that it is unnecessary and inappropriate for the Federal Government to legislate in areas which the States are equipped to handle, particularly regarding those

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matters which have been within their traditional jurisdiction. This seems especially so, they contend, where nothing has so far indicated that the substantive rules of existing American law will not provide adequate protection if a nuclear incident should occur.

It has also been suggested by some that the adoption of statutory strict liability could inhibit the development and use of atomic energy for peaceful purposes. Such action, it is alleged, would single out the nuclear industry as one for which extraordinary rules of liability must be devised; it would stimulate public apprehension of the potential dangers of atomic activities; and it would subject the industry to a series of harassing and unfounded claims.

Many of these same arguments have been advanced for and against the establishment of a Federal statute of limitations for injuries and damages arising from a nuclear incident. Students of the subject agree that there is a problem: there is not only a wide variation among the States in the time allowed for asserting claims, but also a lack of recognition in many State statutes that the results of exposure to radiation may not become evident within the timespan normally allotted for more conventional injuries. The basic question, again, is whether reform should be accomplished by State or Federal law.

As previously indicated, other potential problems under the Price-Anderson Act have been pointed out. One of these relates to emergency assistance payments which the insurers and the AEC might make in the event of a nuclear incident. A question might be raised in this connection whether the AEC could make such payments in the absence of a final settlement with and release by the person to whom the payment is made. Without this explicit authority the Commission might not be able to make emergency assistance available to deserving victims of a nuclear incident who were unable or unwilling to enter into final settlements of their claims shortly after the incident.

The lack of provision in the act for possible consolidation in one Federal court of all suits arising out of a serious nuclear incident has also been cited as a shortcoming of the present regime. A large-scale nuclear incident might well injure persons in more than one State. The tort and procedural laws of the several States, however, vary in many respects. Thus one victim of a nuclear in-

cident might be subject to different substantive and procedural laws than would apply to another victim simply by reason of an invisible State boundary line that separates them.

Moreover, in the extremely unlikely event of a nuclear disaster involving damages approaching or exceeding the limit of liability established by the act, knowledge by one court of what other affected courts were doing would be essential in the orderly distribution of Price-Anderson funds; however, in attempting to coordinate the handling of these matters by different courts it could be expected that efficiency would be impaired and possibly justice delayed. A related problem which arises in this connection is that of apportioning insurance and indemnity moneys in such a way as to reserve sufficient funds for victims whose injuries may not become manifest until long after the nuclear incident. In the event of a nuclear catastrophe involving damages approaching or exceeding the limit of liability, the extent of property damage should be fairly readily apparent; the determination of the amount of bodily injury inflicted presents a much more difficult problem, however, because the existence or the extent of possible latent injuries could not be determined with precision.

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Therefore, in such a case some provision would have to be made for setting aside a "delayed injury" fund from among the total funds available for distribution.

B. Waiver of defenses: A preferable alternative to enactment of a new body of Federal tort law

The question whether courts should apply legal principles akin to those of strict liability in the event of a serious nuclear incident seems to the committee to be free from dispute. The existing Price-Anderson system rests on the assumption that such principles will be so applied. All who have testified before the Joint Committee during the past 2 years have agreed that such principles should apply in such a case. Many have agreed also that some Federal legislative action should be taken to assure this result, because of existing legal uncertainties.

A similar consensus prevails concerning the need for improvement in State statutes of limitations as they relate to radiation injuries. One witness after another coming before the committee has acknowledged the inadequacy of the laws of many States in this respect.

If these uncertainties are to be removed and these deficiencies corrected, and if greater uniformity in the treatment of claimants is to be assured—as the committee is convinced they should be—

then it appears to the committee that Federal legislative action is required. However, the committee does not believe it is necessary to go to the length of enacting substantive law—that is, a new body of Federal tort law—to achieve these ends. Essentially the same result, it is believed, can be accomplished through a Federal statute authorizing the Atomic Energy Commission to require that participants in the nuclear industry waive certain key defenses to liability that might otherwise be permissible under applicable State or Federal law.

The issues and defenses that would be waived are more fully described below in the section-by-section analysis. Suffice it to say at this point that, generally speaking, it is intended that the effect of these waivers will be to require a victim of an extraordinary nuclear occurrence, as that term is defined in the bill, to prove only that he or his property was damaged and that such damage was caused by the nuclear incident. Such waivers would be incorporated in AEC's indemnity agreements and in insurance policies and contracts which are required by the AEC to be furnished as proof of financial protection, and under mandate of Federal statute would be judicially enforceable in accordance with their terms.

This approach to the problems discussed above is in keeping with the approach followed in enacting the original Price-Anderson Act —namely, interfering with State law to the minimum extent necessary. In essence, the plan adopted permits the retention of State law with respect to the cause of action and the measure of damages, but the requirements specified for the insurance contracts and indemnity agreements provide the uniform rules needed to accomplish the bill's objectives. This approach, moreover, cements the new system firmly to the Price-Anderson Act without extending the new concepts to activities not covered by that act. The objective of the committee in drafting this bill has been to perfect the Price-Anderson law; this is not a measure designed either to accomplish a general revision of American tort law or to set precedents for activities in other fields.

An important advantage gained from following the approach of this bill—rather than attempting to enact a Federal statute prescribing

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strict liability for some or all nuclear incidents—is the avoidance of the severe difficulties that would be encountered in securing agreement on such a statute. Even assuming that a consensus could be obtained in favor of passage of such a statute in principle, many complex problems would remain. Although

attempts have been made in this direction, there has been no agreement reached in this country as to what would be an acceptable version of a strict liability statute applicable to nuclear incidents. Some of the principles of strict liability are not entirely well defined, and many aspects of this problem are subject to dispute among courts and legal scholars. Furthermore, enactment of a Federal tort would require consideration of such matters as proof of damages and causation, and the possibility of continued validity of some portion of State law. This bill, on the other hand, seeks to isolate and deal effectively with certain problem areas in existing State and Federal law, leaving undisturbed the remaining body of the law.

Most important of all, perhaps, the means of accomplishing the desired objective reflected in this bill has the support of industry, including the insurance segment of the nuclear industry. The vast majority of witnesses testifying before the committee strongly favored this approach in lieu of enactment of a new Federal tort. The lone witness who said he would prefer to see Congress enact a Federal law of liability nevertheless agreed that if that alternative were not feasible a system of waivers would be a workable and acceptable solution to the problem. All who testified recognized that there are differing points of view—some of them very strongly held—within industry and the legal profession on the question of enactment of a Federal strict liability statute applicable to nuclear incidents. The unique system of waivers contemplated by this bill avoids these differences of opinion surrounding such a statute; at the same time it accomplishes essentially the same result.

The path charted by this bill not only substantially improves the protection of the public but gives strong indication of continuing and strengthening the partnership between Government and private industry that has characterized the Price-Anderson insurance and indemnity system throughout its 9 years of operation. The rather unique system which the Price-Anderson Act represents has been made possible by an exceptionally high degree of Government-industry cooperation and accommodation. This spirit of cooperation must continue to prevail if the act is to remain a meaningful amalgam of public and private responsibility. The committee therefore believes that the approach set out by this bill is to be preferred over equally efficacious but perhaps more divisive means to achieve the same goal. The committee also wishes to note specifically the highly constructive role played by representatives of the nuclear industry, including the nuclear insurance industry, in developing this proposed legislation. In the committee's

view, this type of Government-industry cooperation should serve as a model for action in other areas of mutual concern.

C. The concept of "extraordinary nuclear occurrence"

One of the Price-Anderson Act's two principal purposes is to protect the public by assuring the availability of funds for the payment of claims arising from a catastrophic nuclear incident. Hence, the necessity for the Price-Anderson Act has always been related to the remote possibility of a catastrophic, or at least serious, nuclear incident. "Catastrophe" protection is provided by a governmental in-

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demnity of up to $500 million beyond the amount of private financial protection which the act requires be furnished by licensed nuclear facility operators.

Although the Price-Anderson governmental indemnity system was designed to become operative only in situations where any private financial protection required has first been exhausted, the beneficial aspects of the bill recommended by the committee are not so limited. For example, a nuclear incident need not reach catastrophic proportions, or involve Government funds, before the waivers of defenses contemplated by this bill would apply. Indeed, an incident involving only a very small fraction of the amount of private insurance available could well fall within the system of waivers. At the same time, however, the bill has been drafted so that minor claims involving nuclear facilities or materials may remain subject to the traditional rules of tort law. This has been accomplished by confining the applicability of the waivers to "extraordinary nuclear occurrences."

The inclusion of the "extraordinary nuclear occurrence" concept in the bill stems in major part from the desire of industry to preserve its customary legal defenses in situations where nothing untoward or unusual has occurred in the conduct of nuclear activities. Expressions of concern over the possibility that waivers applicable to any "nuclear incident" would expose nuclear operators to a large number of nuisance suits were voiced by various segments of the industry. The view seems widely held by industry representatives that they should be able to assert defenses permitted by State law in circumstances where the plaintiff's claim may be spurious. It has also been argued that relatively minor claims lodged against nuclear facility operators do not represent the major public hazard against which the Price-Anderson Act was designed to provide protection. Hence, it is urged that the application of the waivers should be limited to serious incidents.

The committee recognizes that inclusion of the "extraordinary nuclear occurrence" concept in this bill adds very considerably to the complexity of implementing the proposed legislation. The committee has also considered very carefully the arguments in favor of eliminating this concept. Nevertheless the committee is of the opinion, on balance, that there is no pressing need to invoke the mechanisms and procedures of the special waivers in situations which are not exceptional and which can well be taken care of by the traditional system of tort law. Accordingly, in the absence of some extraordinary occurrence involving a nuclear facility or device or nuclear materials, traditional concepts should be allowed to prevail. For this reason, and for the additional purpose of helping to assure that the waiver system will not be invoked in case of nuisance suits, the committee believes that a reasonable threshold should be satisfied before the special waiver provisions of the bill become operative. In reaching this determination, the committee is also mindful that the special waivers authorized by this bill would deprive a defendant of certain defenses which might well be available to him even in a jurisdiction which would apply the doctrine of strict liability to a minor nuclear incident.

This threshold is identified by the term "extraordinary nuclear occurrence." After considerable study, it was determined advisable to vest the Commission with authority to determine whether an "extraordinary nuclear occurrence" has taken place, rather than to define such an occurrence in the bill. This decision rested in large

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measure on the difficulty of fixing a definition which would be suitable for a wide variety of circumstances, and the need for application of informed judgment to the facts of a particular case. The possibility of litigation over the application of a statutory definition to a specific case was also considered, which could frustrate the purposes of the proposed legislation. A more detailed discussion of the basis for determination by the Commission whether an "extraordinary nuclear occurrence" has taken place is found in the section-by-section analysis portion of this report.

The Commission is accorded wide latitude under the bill to determine whether or not such an "extraordinary nuclear occurrence" has taken place. The discretion conferred on the AEC is such that an event involving relatively small amounts of demonstrable damage could be held to be an "extraordinary nuclear occurrence." Once such a determination has been made the waivers would be fully applicable. Absent such a determination, a claimant would have exactly the same rights that he has today under

existing law—including, perhaps, benefit of a rule of strict liability if applicable State law so provides. Thus, this bill in no way provides for deprivation of a claimant's existing rights.

The bill requires that the Commission establish criteria in writing setting forth the basis upon which such determination would be made in a particular case. The adoption and amendment of these criteria would be subject to rulemaking procedures, thus assuring that the public, various segments of the nuclear industry, and other interested persons will be afforded the opportunity to comment upon any proposed criteria prior to their final issuance. It is intended, however, that the Commission's determination as to whether an extraordinary nuclear occurrence has or has not taken place shall be deemed adjudication within the meaning of the Administrative Procedure Act; and that such cases of adjudication need not be determined on the record after opportunity for an agency hearing.

Because of the emergency nature of the system and the need for prompt action, the committee believes that the Commission's determination as to whether an "extraordinary nuclear occurrence" has or has not taken place should not be subject to judicial review. Aside from the fact that the Commission, from the standpoint of expertise, is in the best position to make the various findings necessary for any such determination, provision for normal judicial review of the Commission's determination would permit of the delays which inevitably flow from the appellate process. Such delays might subvert the whole purpose of the special system.

D. Emergency assistance payments

One of the most beneficial aspects of the bill recommended by the committee may well be the provision for rendition of emergency assistance payments by the insurers and the AEC to victims of a nuclear incident. The private insurance companies are, of course, presently free to make emergency assistance payments without requiring final settlements or releases, and the committee understands that this practice is frequently followed with respect to other types of insurance coverage.

The extent of the Commission's present authority to make emergency assistance payments is not clear. This bill would remove this uncertainty. The bill would confer upon the Commission the authority to make financial assistance available to claimants immediately

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following a nuclear incident without requiring claimants to sign a release or otherwise compromise their claims. Under

this authority payments for such immediate necessities as food and shelter, medical and hospital expenses, and the like could be made to claimants on an emergency basis during the interim period before final settlements of claims are made. All that will be required of the claimant is an appropriate receipt signifying delivery of the partial payment, such payment to be credited against any final settlement or judgment. This authority, together with the Commission's authority to establish coordinated procedures with the private insurance pools for the prompt handling, investigation, and settlement of such claims, should help to ease the immediate problems arising from a serious nuclear incident.

The emergency assistance contemplated by the bill may be rendered by the insurers and the Commission in the event of any nuclear incident, whether or not the incident has been determined to be an "extraordinary nuclear occurrence." However, as noted below, the Commission could not make emergency assistance payments unless it appears to the Commission that any underlying financial protection required was likely to be exhausted. Moreover, the bill imposes no limit on the amount of money which could be paid to any individual victim of the incident; the committee believes it unwise to set a statutory ceiling on the amounts which the Commission could pay to victims, because the amount of damages would not be the same for all claimants. Flexibility is the keynote to this section of the bill and should not be discarded in the one area perhaps most difficult to predict with precision; namely, the extent of the assistance required by individual victims of the incident.

It should be noted in this connection, however, that the bill does establish an overall limit on the total amount of funds that can be dispersed without prior court approval where it appears that the damages arising from a nuclear incident may exceed the aggregate liability of the persons indemnified. In such case no more than 15 percent of the total funds available (i.e., 15 percent of $560 million in the case of large nuclear power reactors) could be distributed without the prior approval of the plan of distribution by the U.S. district court having jurisdiction. This measure would, of course, come into play only in the highly remote contingency of a nuclear catastrophe, and would prevent any unfairness in the distribution of funds in such a case. The method under which moneys in excess of the 15-percent limitation would be distributed is more fully described below in the section entitled "Allocation of Insurance and Indemnity Funds."

As noted above, emergency assistance payments may be made whether or not the nuclear incident has been determined by the

Commission to be an "extraordinary nuclear occurrence." Of course, until such determination is made the special waiver-of-defenses system established by other provisions of the bill will not have been invoked. Nevertheless, pending a determination of whether or not the incident is "extraordinary," the insurers and the Commission would be expected by the committee to make emergency assistance payments in the spirit of the statute. It is anticipated that payments could be made on the basis of submittal by a claimant of an approved claim form alleging that the cause of his personal injury or property damage was the nuclear incident. If it appears from the nature of the injury or damage and from other relevant factors that the nuclear incident could reasonably have been the cause thereof, emergency

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relief could be given. To this extent a showing of probable causal relationship between the incident and the injury would be required, but no greater burden than this need be imposed on the claimant. Of course, care would be exercised to try to assure that interim payments will not be made for unfounded claims.

If a nuclear incident were to occur at a facility covered by underlying financial protection and the amount of financial protection were not likely to be exhausted by the resulting claims, the insurance pools would have the primary responsibility of handling emergency relief and making settlement of claims. Under the Price-Anderson Act, Government funds are to be expended only where there is no underlying financial protection or where that which was required is likely to be exhausted. The Commission and the insurance pools have, accordingly, established settlement and adjustment procedures for each of three possible contingencies: (1) where claims would be paid only by insurance, (2) where claims would be paid from both insurance and Price-Anderson funds, and (3) where payment would be entirely from Government funds. These existing arrangements would be revised to provide for the new settlement procedures and interim payments authorized by this bill.

Emergency financial assistance to victims of a nuclear incident immediately upon the happening thereof, without necessarily obtaining a release from the victim, should prove helpful in solving problems related to delayed manifestations of radiation injury. As noted above in the discussion concerning the need for an extended limitation period for injuries arising from radiation, the full extent of a radiation-caused injury may not become evident until long after the causal event. Yet, under the usual legal rules of merger and *res judicata,* a victim who brings suit and recovers

for his immediate damages prior to manifestation of delayed injuries may find that no further damages are recoverable in a subsequent suit.

The interim payments procedures called for in this bill offer desirable flexibility for the insurance pools and the Commission to make funds available where there is demonstrable personal injury or property damage within a reasonably short time after an occurrence. Thus, claimants would receive immediate relief even though the full extent of their injuries could not be immediately determined so as to permit a final settlement. Since no release would be required, further payments could be made for injuries of delayed emergence occurring within the limitations period, which period in the case of an extraordinary nuclear occurrence could be expanded to a maximum of 10 years by the waiver provisions of the bill. To this extent, therefore, this bill avoids the problem under existing law caused by the inability of claimants to split their causes of action.

It is reasonable to believe that the foregoing procedures, when coupled with the Commission's authority to enter into final settlements of claims, should result in the administrative processing of most claims arising from a nuclear incident. This, of course, would be all to the good for, in addition to saving claimants the time and expense of initiating litigation, the administrative processing of most claims would lessen the burdens that could otherwise fall upon the courts.

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E. Consolidation of suits in a single Federal court

The motive that has impelled many of the bill's provisions discussed above—namely, the desire for more equitable and uniform treatment of victims of a nuclear incident—has also led the committee to include in the bill a provision authorizing the possible consolidation in one U.S. district court of all law suits arising from an "extraordinary nuclear occurrence."

The bill confers upon the Federal district court in the district where the occurrence takes place original jurisdiction with respect to any public liability action arising out of or resulting from any such occurrence, without regard to the citizenship of any party or the amount in controversy. (Similar jurisdiction is reposed in the Federal district court for the District of Columbia in the case of an extraordinary nuclear occurrence taking place outside of the United States.) Additionally, and most importantly, the bill makes provision for the possible removal to such district court of any action pending in any State or other Federal district court upon motion of the Commission or defendant. This latter measure

stems from the committee's recognition of the need to assure means of coordinated handling of all phases of litigation that could result from a large nuclear incident notwithstanding concerted settlement efforts.

While the committee believes that relatively few claims arising from such an incident would actually require litigation, a claimant who does feel constrained to take his claim to court should not be subjected to procedural requirements different from those which some other claimant might face. This bill would authorize all such claimants to sue in the same Federal district court, generally under the same rules of procedure. The bill, moreover, makes it possible, although it does not require, that all suits stemming from the extraordinary nuclear occurrence be litigated in one court—the United States district court located in the district where the extraordinary nuclear occurrence takes place. If the circumstances of the occurrence and the damage actions did not appear to the Commission or to the defendant to necessitate removal to this single Federal court, an action started in a State court or other Federal court could of course proceed to judgment in that court.

The absolute right of removal is important because it provides a mechanism for bringing before the same court all cases arising from the same set of circumstances—circumstances with which the court would become thoroughly familiar. Claimants and defendants would become acquainted with the approach taken by the court, the taking of depositions and other evidentiary problems would be simplified, and this would seem to be a deterrent to an excess number of cases actually going to trial. The end result, it is believed, would be more expeditious and uniform treatment of all parties. With no issue of the defendant's fault to litigate, the one court could direct itself to causal relationships and damages and would be in a position of continuing familiarity with all the facts necessary in passing on plans relative to distribution of funds and orders submitted for court approval. In the event that there is a relatively large volume of cases to be litigated, additional Federal judges could be assigned to assist the judges normally presiding in the district.

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The constitutional authority of Congress to confer such original jurisdiction upon the Federal courts and to provide for the possible removal of State court and other Federal court actions to a designated Federal court seems clear. The committee is convinced, as is the executive branch,[2] that the conferral of these authorities

[2] See "Proposed Amendments to Price-Anderson Act Relating to Waiver of Defenses," hearings before the Joint Committee on Atomic Energy, July 19, 20, and 21, 1966, p. 37.

upon the Federal judiciary is within the ambit of Congress' constitutional powers. Paramount among the constitutional powers which may be relied upon in connection with Federal legislation on the matter of an "extraordinary nuclear occurrence" is the power to regulate commerce with foreign nations and among the several States. The relation to interstate commerce of a nuclear event of such magnitude is manifest. Not only would the materials involved in such an occurrence in all likelihood have crossed State lines in moving to the nuclear facility, but the radiation and radioactive particles released by the event might well cross State boundaries in their flight. The disruptive effect which such an occurrence could have upon interstate commerce hardly needs elucidation. These considerations fairly compel the conclusion that an "extraordinary nuclear occurrence," as defined in the bill, is inexorably related to interstate commerce and subject to Congress' constitutional authority to regulate, control, foster, and protect the same.

F. Allocation of insurance and indemnity funds in case of catastrophe

During the committee's 1965 hearings concerning the Price-Anderson Act questions were raised relative to the desirability, in the administration of the insurance and indemnity fund made available by the act, of making appropriate allocations between personal injury and property damage as well for possible personal injuries of delayed manifestation. Concern was expressed in this connection that absent such a system of allocation a catastrophic nuclear incident involving damages approaching or in excess of the act's limit of liability might result in disproportionate sharing of the available funds and, possibly, exhaustion of the total fund prior to emergence of possible latent injuries in some victims.

In the year that has ensued since the 1965 hearings additional study has been given to these problems. It is evident that any plan of distribution must be responsive to the needs of the particular situation, and that therefore a specific legislative plan in advance of a large-scale nuclear incident is not feasible. The best solution to the problem, it appears, is to repose considerable discretion in the judiciary, with appropriate modification of the act to assure that funds disbursed in the event of a serious nuclear incident are distributed only in accordance with a court-approved plan of distribution.

To this end the bill recommended by the committee would amend the Price-Anderson Act to add authority to that which the act (subsection 170 e.) presently vests in the Federal judiciary to

oversee the distribution of funds in cases where public liability is likely to exceed the limit of liability. Specifically, the bill provides that whenever the U.S. district court in the district where a nuclear incident occurs determines that such limit of liability is likely to be exceeded, total payments from the Price-Anderson insurance-indemnity fund shall not exceed 15 percent of the limit of liability without prior approval

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of the court. This limitation, it must be emphasized, applies only in the highly improbable event that the aggregate liability of the persons indemnified is likely to be exceeded. Further, it is provided that the court shall not authorize payments in excess of the 15 percent ceiling unless the court determines that such payments are or will be in accordance with a plan of distribution which has been approved by the court, or such payments are not likely to prejudice the subsequent adoption and implementation by the court of such a plan.

These provisions leave the Commission and the insurance pools free to distribute ample funds (up to a maximum of $84 million) in the form of emergency assistance and settlements while assuring that the bulk of the fund will be disbursed only after the court has passed judgment upon the feasibility of the plan of distribution of the remaining funds. In this connection it should be noted that the bill affords any interested person the opportunity to submit a proposed distribution plan to the court for its consideration, but specifically directs the Atomic Energy Commission to submit such a plan. The plan submitted to the court must include an allocation of appropriate amounts for personal injury claims, property damage claims, the possible latent injury claims which may not be discovered until a later time. Additional authorities to implement fully the foregoing provisions are conferred on the court by this bill.

The likelihood that the need to use these provisions will ever arise is exceedingly remote. Nevertheless, so long as even the theoretical possibility exists that such a need may arise, Congress should act accordingly. Whatever precautionary steps can reasonably be taken in advance to guard against and provide for the unexpected should be taken. It is with this purpose in mind that the foregoing revisions in the law are recommended. On the other hand, the committee is of the view with respect to this and other theoretical problems that could arise under the Price-Anderson legislation that there is no need to attempt to anticipate all such problems, or to develop unduly detailed arrangements which will probably never be called into play.

Not foreclosed, of course, are the actions which could be taken after the actual occurrence of a disastrous nuclear incident. Should the highly unlikely nevertheless come to pass, further congressional review of the situation would undoubtedly be undertaken with the view to possible action by Congress in the light of the particular incident. One obvious possibility, of course, would be for Congress to increase the limit of the Commission's responsibility under its indemnity agreements. This possibility was specifically recognized in the Joint Committee's report on the original Price-Anderson bills,[3] and in the committee's report last year recommending a 10-year extension of this legislation.[4] Another and perhaps complementary possibility, one that might be followed in the event that a flood of court cases arose from a nuclear incident in a Federal district court which found itself unable to dispose of them without delay, would be for Congress

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to provide within a reasonable time after the incident for disposition of the claims on an administrative basis. As noted above, the committee does not believe it necessary at this time to attempt to resolve all the problems which such contingencies might present.

G. Other important policy considerations

Discussed below are some of the other important policy considerations which shaped the bill recommended by the committee.

1. *Improvement of position of transportation industries.*— About 1959 the conventional fire and property insurance carriers adopted a nuclear exclusion clause, as follows, which was inserted in existing policies:

> This policy does not insure against loss by nuclear reaction, or nuclear radiation, or radioactive contamination, all whether controlled, or uncontrolled, and whether such loss be direct or indirect, proximate or remote, or be in whole or in part caused by, contributed to, or aggravated by the peril(s) insured against in this policy; however, subject to the foregoing and all provisions of this policy, direct loss by fire

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[3] The committee's report (S. Rept. 296, 85th Cong., 1st sess., pp. 21 and 22), stated: "* * * the limit of the Commission's responsibility under these [indemnity] agreements is to be $500 million. This limit could be subject to upward revision by the Congress in the event of any one particular incident in which, after further congressional study, the Congress felt more appropriations would be in order.

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"Subsection e limits the liability of the persons indemnified for each nuclear incident to $500 million together with the amount of financial protection required. Of course, Congress can change this act at any time after any particular incident. The Joint Committee wanted to be sure that any such changes in the act would be considered by it in the light of the particular incident."

[4] See S. Rept. 650, 89th Cong., 1st sess., pp. 6–7.

resulting from nuclear reaction, or nuclear radiation, or radioactive contamination is insured against by this policy.

The above exclusion of first-party property damage and loss of revenue coverage against the radioactive materials hazard was adopted by the insurance industry because of the formation of insurance pools (NELIA/MAELU and NEPIA/MAERP) which issued policies insuring against third-party liability and property damage arising out of nuclear risks. However, the nuclear exclusion in the conventional first-party property insurance policies applies without regard to whether or not the nuclear incident falls within the scope of the Price-Anderson indemnity system, which applies to nuclear reactors and certain other atomic energy operations.

The existence of this nuclear exclusion has been a continuing source of concern to bridge, tunnel, port, and toll road authorities. Among other problems, they believe they have had no way of assuring themselves that a nuclear shipment about to be conveyed over or through their facilities is in fact covered by nuclear liability insurance and Price-Anderson indemnity protection. Certain railroads engaged in the transportation of nuclear materials have voiced similar concern. To alleviate this problem the Commission has offered to issue a certification in appropriate form at the time of delivery to the carrier of radioactive material covered by Price-Anderson, which would certify that the specific materials, during specified transportation, are covered by a specified indemnity agreement.

More troublesome, perhaps, to the bridge, tunnel and like authorities has been the fact that they could not recover against NELIA/MAELU or the Commission for damage to the authority's own property without establishing liability on the part of a specific defendant or defendants. The authorities have feared that inability to prove negligence might result in their going uncompensated for destruction of, or damage to, their facilities and for sizable losses of revenues. As a result, many of the authorities have excluded from their facilities carriers of materials of the type subject to the nuclear exclusion clause. In order to eliminate this uncertainty one authority has recommended an amendment to the Price-Anderson Act which would establish

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a rule of absolute liability, and the authorities generally have suggested that the nuclear liability insurance policies and Price-Anderson indemnity agreements should discard the requirement of "legal liability."

This bill should assist substantially in meeting the objections of the bridge, tunnel, and like authorities to the scope of the Price-Anderson Act. Accordingly, it should help to remove any current obstacles to transportation of atomic energy materials over the facilities of these authorities.

The system of waivers provided for by the bill would eliminate any issue of negligence in case of an event determined by the Commission to be an "extraordinary nuclear occurrence." The Commission has testified that an event resulting in damages in excess of $5 million would in all probability be determined to be an "extraordinary nuclear occurrence," while an event resulting in damages less than that could be so held (in accordance with published criteria) depending on the surrounding circumstances. In this connection the committee urges the Commission to be particularly mindful of the special problems associated with transportation of radioactive materials.

The committee also commends the continuing efforts of the bridge, tunnel, and like authorities, and the insurance industry, to resolve the remaining problems in this area.

2. *Flexibility afforded the Commission in establishing conditions of waivers.*—A fundamental characteristic of this bill is that it authorizes, rather than requires, specific action on the part of the AEC. Hence the conditions of the waivers to be incorporated in insurance policies or contracts furnished as proof of financial protection, and in AEC's indemnity agreements, are of utmost importance. These are the provisions to which the courts will be expected to look to determine the rights of the parties in litigation.

The Commission is accorded flexibility in establishing the conditions of the waivers authorized by the bill. The establishment of these conditions, both with respect to the insurance policies or contracts furnished as proof of financial protection and the indemnity agreements, will be accomplished in accordance with rulemaking proceedings. It is the committee's considered opinion that the technical and legal complexities and matters of expert judgment involved lend themselves more readily to administrative rulemaking proceedings than to legislative resolution.

However, the Commission's discretion in this regard is not entirely unfettered. The outer boundaries of the Commission's authority are delineated by the proposed subsection 170 n. of the act to be added by this bill. Moreover, much of what the Commission may do within these limits has already been given specific direction by the Commission's testimony on the bill and the guidance contained in this committee report. Furthermore, where it remains for the Commission to make the important and difficult decisions

with respect to the contents and applicability of waivers that are necessary in implementation of the bill, the decisionmaking will be subject to rulemaking proceedings. This assures that industry and the public will have full opportunity to comment upon the proposed waivers prior to their final adoption. Lastly, the Commission under its statutory obligation to keep the Joint Committee "fully and currently informed"

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will be expected, as is customary, to work closely with the committee in assuring that the legislative purpose is effectuated.

Apart from the formulation of the conditions of the waivers, one of the important issues to be faced by the Commission relates to their applicability. The Commission will have to decide, for example, whether such waivers are to be incorporated in indemnity agreements covering the N. S. *Savannah* and in certain other indemnity agreements covering nuclear incidents occurring abroad. The arguments for and against doing so will have to be given careful consideration by the Commission.

With respect to nuclear incidents occurring domestically, the bill has been drawn so that the Commission has been authorized to require, in both its indemnity agreements and in the insurance policies and contracts furnished as proof of financial protection, waivers by the person most likely to be named as the defendant, or one of the defendants, in a damage action—namely, the private licensee, Commission contractor, or Federal agency using, shipping, or receiving the nuclear facility, device, or material giving rise to the extraordinary nuclear occurrence. It is likely that the waivers of defenses by these nuclear operators will be so drawn by the Commission as to cover situations arising not only when the nuclear material involved in the incident is in their possession but also when the material is being transported to or from their installation. Additionally, the Commission has said it plans to require waivers by other persons (for example, carriers of nuclear materials) who, though not parties to an insurance policy or indemnity agreement, are "persons indemnified" under the act and may be held liable for the nuclear occurrence. It is anticipated that waivers from such persons would be required as a condition of receiving the benefit of the insurance policies and Price-Anderson indemnity agreements. Of course, the Commission and other "indemnitors," as defined in this bill, would also waive defenses.

3. *Period of statute of limitations.*—The bill provides that the Commission may incorporate provisions in indemnity agreements and require provisions to be incorporated in policies or contracts furnished as proof of financial protection which waive—

any issue or defense based on any statute of limitations if suit is instituted within three years from the date on which the claimant first knew, or reasonably could have known, of his injury or damage and the cause thereof, but in no event more than ten years after the date of the nuclear incident.

The 10-year gross limitations period which this bill establishes is a more equitable time period for asserting radiation-caused personal injury claims than is afforded under the laws of many States. The 10-year period settled upon by the committee is consistent with the gross period provided for in the Vienna Convention on Civil Liability for Nuclear Damage (1963), the Brussels Convention on the Liability of Operators of Nuclear Ships (1962), the Paris Convention on Third-Party Liability in the Field of Nuclear Energy (1960), and the laws of several foreign countries. This period also coincides with that which was recommended by the National Conference of Commissioners on Uniform State Laws in 1961.

Some commentators, however, have argued that while medical evidence is far from conclusive, there is indication that some radiation injuries may not become evident from 10 to 30 years, and perhaps

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even up to 50 years, after the radiation exposure. It is to be noted in this connection that many European countries have established a more liberal 30-year cutoff on such claims.

Those who have studied the question agree that it is difficult to suggest a "magic number" which will strike an equitable balance between the need to quiet stale claims and the need to assure victims a reasonable time in which to discover and assert their claims.

It seems clear that the problem of delayed manifestation of injury will require continued study. If further studies demonstrate the desirability of extending the period, and if necessary action to improve their limitations statutes is not forthcoming from the States, the Joint Committee may consider the possibility of extending the length of the period waived under this bill. In the meantime, the 10-year period provided for by this bill represents a significant improvement over the limitations periods provided by many of the States. It is noted that the States have made considerable progress in recent years in improving their statutes of limitations applicable to radiation injuries subject to workmen's compensation.

It should also be noted that the 10-year period is not a maximum period for assertion of Price-Anderson covered claims, since the waiver authorized by the bill serves only to avoid the application of more restrictive State statutes of limitations. Such waiver

leaves undisturbed the laws of those States which have enacted—or in the future may enact—longer periods of limitation. Moreover, it is intended that the waivers of other defenses, as authorized by this bill, would continue during such longer period of limitation established by State statute.

4. *Limitation of special waivers to certain categories of activities.*—The bill provides that the special waivers of defenses shall apply only to extraordinary nuclear occurrences which arise out of certain categories of activities presently covered by the Price-Anderson indemnity system, including the operation of nuclear reactors. This limitation is designed to restrict the special waivers to those activities which have a potential already identified for causing an extraordinary nuclear occurrence. There seems to be no pressing reason at this time to extend the special waivers to other activities for which the Commission does not presently exercise its authority under the Price-Anderson Act to require proof of financial protection by licensees of the Commission.

The committee understands that the Commission may in the future require proof of financial protection with respect to categories of activities not covered by this bill. At such time the Commission and the committee may consider whether legislation to enlarge such categories would be desirable.

5. *Proof of biological damage in alleged radiation injury cases.*—The committee continues to recognize that the problem of processing radiation injury cases, including the determination of whether a particular biological damage has been caused by a particular exposure to radiation, remains a substantial one. Although this bill can eliminate some of the major legal obstacles that might confront a claimant in the event of a nuclear incident, the bill does not purport to cure the problems of proving causal relationships between radiation exposure arising from a nuclear incident—whether or not it is an "extraordinary nuclear occurrence"—and alleged radiation injury. In many cases, the proof of such relationship can be exceedingly difficult, if not impossible.

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The committee supports continued study by the Commission, with other interested agencies of Government, of the effects of radiation upon man. The results of this effort should help to provide the basic scientific information needed to assist in establishing the validity of claims based upon alleged radiation injury. In this connection, the fiscal year 1967 authorization act for the AEC (Public Law 89–428) included the sum of $86 million for the Commission's biology and medicine program.

6. *International nuclear liability conventions.*—The United

States has participated extensively in the development of international conventions dealing with third-party liability in the field of nuclear energy. At least one of these conventions, as supplemented—the Paris Convention—will likely come into force before long.

The committee recognizes that there are clear advantages, in principle, to the development of acceptable international conventions in this field. As stated in the committee's 1965 report on the 10-year extension of the Price-Anderson Act:

> There is little reason to doubt that the problems of third-party liability involving international and maritime nuclear energy transactions will become more pronounced with time, in the absence of effective international agreements covering these subjects.[5]

The committee's hearings this year provided evidence that the problems of ocean transportation of nuclear materials are indeed becoming more acute. Nevertheless, there remain a number of problems which prevent adherence by the United States to any of these conventions as a means of resolving any difficulties which have been identified.

It is the committee's belief that enactment of the legislation recommended in this report will assist in the resolution of some of the problems which have prevented the United States from adhering to any of the conventions. The committee further believes this general subject warrants continued close attention by the executive and legislative branches, and by the nuclear industry.

CONCLUSION

The Price-Anderson Act is clearly recognized as one of the cornerstones of the nuclear industry. In the 9 years of its existence, this act has well served its principal purpose of protecting the public and removing the deterrent to private industrial participation in the atomic energy program.

Nevertheless, the committee believes the Price-Anderson Act should be amended to provide for the waiver of certain defenses to legal liability which might frustrate the purposes of this remedial legislation, and to resolve a number of uncertainties as to the administration of the current system.

It is the committee's view that the bill recommended herein is the most appropriate and effective means to accomplish the purposes discussed in this report. The committee further considers

[5] S. Rept. No. 650, 89th Cong., 1st sess., p. 14.

that this bill significantly improves the protection to the public which is afforded by the Price-Anderson legislation, without operating to the detriment of the nuclear industry.

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Finally, it should be noted that considerable effort will be required to implement fully the provisions of this bill. It may be that this effort will demonstrate the need for additional legislation to further the purposes discussed herein. The committee agrees with the testimony of one distinguished witness, who has been associated with the Price-Anderson indemnity legislation since its inception, that the amendments proposed in this bill are potentially the most far reaching since the act was passed in 1957. The continued close cooperation of private industry, and the Government, which has characterized the history of the Price-Anderson Act, should assure that the full benefits of this legislation are made available to the public as soon as possible.

SECTION-BY-SECTION ANALYSIS

Section 1 (a) (1) redesignates certain subsections of section 11 of the Atomic Energy Act of 1954, as amended (hereinafter referred to as the "act") to permit insertion of new definitions in alphabetical order.

Section 1 (a) (2) amends the act by adding new subsection "j." to section 11 of the act which defines the term "extraordinary nuclear occurrence" to mean—

> any event causing a discharge or dispersal of source, special nuclear, or byproduct material from its intended place of confinement in amounts offsite, or causing radiation levels offsite, which the Commission determines to be substantial, and which the Commission determines has resulted or will probably result in substantial damages to persons offsite or property offsite.

The Commission is directed to establish criteria in writing setting forth the basis upon which the Commission shall determine whether or not an extraordinary nuclear occurrence has taken place in a particular case. Subsection 11 j. also defines the term "offsite" to mean away from "the location" or "the contract location" as defined in the applicable Commission indemnity agreement entered into pursuant to section 170.

Various elements must be present before the definition is met. There must have been an identifiable event causing (*a*) a discharge or dispersal of nuclear material from its intended place of confinement, that is, the last confining barrier between the material

and the public, in substantial amounts offsite; or (*b*) substantial radiation levels offsite.

The Commission will determine what is "substantial" in a particular case in accordance with the criteria, referred to above, which have been developed in advance of the event. It is anticipated that the criteria may establish a quantitative test or tests applicable to different types of situations.

In addition, the Commission must determine whether the event has resulted or will probably result in "substantial damages" to persons or property offsite. The amount of damages likely to follow from a particular event will be an estimate. The Commission will determine the substantiality of damages to persons or property offsite in a particular case in accordance with the criteria, referred to above, which have been developed in advance of the event. A reasonable rule of thumb which it is expected the Commission would follow is that if damages are estimated to exceed $5 million they would be considered substantial. The Commission could, however, determine

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that damages below this figure are substantial, taking into consideration all relevant factors.

In establishing criteria, the Commission shall provide an opportunity to the various segments of the nuclear industry and other interested persons to comment, in accordance with its usual public rulemaking procedures, on criteria which the Commission would propose, prior to final issuance.

Once the criteria have been finally issued, the determination made thereunder by the Commission that there has, or there has not, been an extraordinary nuclear occurrence, will be final and conclusive, and no other official and no court shall have power or jurisdiction to review such determination. This is to assure that the Commission's determination can be neither appealed nor attacked collaterally.

Section 1 (*a*) (*3*) amends the act by adding new subsection m. to section 11 of the act defining the term "indemnitor" to mean (1) any insurer with respect to his obligations under a policy of insurance furnished as proof of financial protection, (2) any licensee, contractor, or other person who is obligated under any other form of financial protection, with respect to such obligation, and (3) the Commission with respect to any obligation undertaken by it in an indemnity agreement entered into pursuant to section 170. The term thus encompasses the nuclear liability insurance pools (NELIA and MAELU), self-insurers, and the Commission, to the extent of their obligations. The term is later used in the

amendments, (1) to indicate those persons who may enter into agreements with the Commission for prompt handling, investigation, and settlement of claims for public liability (subsec. 170 m.), (2) to identify those as to whom the special waivers are effective only with respect to obligations set forth in insurance policies or contracts furnished as proof of financial protection and in indemnity agreements (subsec. 170 n. (1)), and (3) to identify those who, together with other interested persons, may petition the court for a determination that public liability for a single nuclear incident may exceed the limit of liability under subsection 170 e., and who are mentioned in other respects in the special provisions of the bill dealing with allocation of the insurance and indemnity fund (subsec. 170 o.).

Section 1(a)(4) amends subsection 11 q. of the act (which was subsec. 11 o. prior to redesignation as provided in sec. 1(a)(1) of this amendment) to make it clear that the term "occurrence" as used in the definition of "nuclear incident" includes an "extraordinary nuclear occurrence." Thus, an "extraordinary nuclear occurrence," which causes the effects specified in subsection 11 q., is a "nuclear incident." Because subsections 170 c. and 170 d. provide that the Commission shall agree to indemnify for public liability arising from "nuclear incidents," this addition to the definition of "nuclear incident" makes clear that indemnity may be paid for liability arising out of extraordinary nuclear occurrences which, in fact, do cause the kind of injury or damage referred to in the definition of "nuclear incident."

Section 1(b) amends section 109 of the act by redesignating references therein to section 11 of the act consistent with the redesignation of certain subsections of section 11 as provided in section 1(a)(1) of this bill.

Section 2 deletes the last sentence of subsection 170 e. of the act. Under subsection 170 e. of the present act, provision is made for the unlikely event that damages may exceed the total fund available from

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financial protection and Price-Anderson indemnity. The U.S. district court having venue in bankruptcy matters over the location of the incident is authorized, in effect, to control the funds, limit liability, and apportion the payments. Since new subsection 170 o. continues this mechanism, but without reference to the district court having venue in bankruptcy and with expanded authority with respect to plans of distribution, the deleted language is no longer necessary.

Section 3 amends section 170 of the act by adding new subsec-

tions m., n., and o.

New subsection 170 m. authorizes the Commission to enter into agreements with indemnitors, as defined in new subsection 11 m. of the act, to establish coordinated procedures for the prompt handling, investigation, and settlement of claims for public liability.

New subsection 170 m. authorizes the Commission and other indemnitors to make payments to, or for the aid of, claimants for the purpose of providing immediate assistance following a nuclear incident. These payments may be made without securing releases, and they shall not constitute an admission of the liability of any person indemnified or of any indemnitor. Such payments shall operate as a satisfaction to the extent thereof of any final settlement or judgment.

Where Commission funds are to be used in making emergency payments, any funds appropriated to the Commission are available for such payments.

New subsection 170 n. (1) authorizes the Commission to establish a system of waivers of defenses with respect to extraordinary nuclear occurrences to which insurance policies or contracts furnished as proof of financial protection or indemnity agreements apply. The system will not be coextensive with all Price-Anderson coverage. The waivers will be applicable only to extraordinary nuclear occurrences which—

(a) Arise out of or result from or occur in the course of the construction, possession, or operation of a production or utilization facility; or

(b) Arise out of or result from or occur in the course of transportation of source, byproduct, or special nuclear material to or from such a facility; or

(c) During the course of the contract activity, arise out of or result from the possession, operation, or use by a Commission contractor or subcontractor of a device utilizing special nuclear or byproduct material.

Category (a) is coextensive with nuclear liability insurance policies required as proof of financial protection and Price-Anderson indemnity coverage presently extended to utilization and production facilities.

Category (b) is also coextensive with nuclear liability insurance policies furnished as proof of financial protection and Price-Anderson indemnity agreements.

Category (c) contains the limitation "during the course of the contract activity" in order to exclude from the new system of waivers occurrences which involve liability of an AEC contractor

or subcontractor for damage to others based upon a defective item produced under the contract where the occurrence transpires subsequent to delivery of the product by the contractor. The system would apply, however, if the accident occurred while the device was still in the custody of the AEC contractor or subcontractor. Thus, this limita-

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tion is intended to have only temporal application; it is not intended to create technical defenses but rather to impose a time limit based upon when the risk of liability to the contractor or subcontractor ceases.

The reference in category (c) to a "device" utilizing special nuclear or byproduct material includes within its scope SNAP auxiliary power and propulsion devices, Plowshare devices, and atomic weapons to the extent they are possessed, operated, or used in the course of the contract activity.

The system of waivers is effectuated by authorizing the Commission to incorporate provisions in existing and new indemnity agreements with licensees and contractors and to require provisions to be incorporated in existing and new policies or contracts furnished as proof of financial protection which waive certain defenses and issues. The Commission is thus authorized to require waivers of defense and issues as to negligence ("fault") in policies or contracts furnished as proof of financial protection, and in Price-Anderson indemnity agreements. Such waivers will remove the possibility that a claim will be defeated on technical, legal grounds relating to issues of negligence ("fault"). Thus, the claimant, or plaintiff, on a showing that the AEC has determined pursuant to subsection 170 j. that there has been an "extraordinary nuclear occurrence," and the defendant's reasonable relationship thereto, will be able to proceed directly to his proof that the occurrence caused his personal injury or property damage arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of the nuclear material, the nature of the injuries or damage, and the amount of his damages. With respect to these remaining issues or defenses, the defendant can still invoke the traditional rules of proof and present evidence on his own behalf. Courts must still make determinations on these issues.

The waivers provided for under subsection 170 n. (1) not only waive any issue or defense as to the fault of persons indemnified, but also waive any issue or defense as to the conduct of the claimant. The latter waiver eliminates from any trial the issues of contributory negligence or assumption of risk on the part of the

claimant. "Conduct of the claimant" should be interpreted broadly to include conduct of persons through whom the claimant derives his cause of action, as in the case, for example, of a representative suit.

To the extent that a court need not concern itself with proof of fault of persons indemnified, or the conduct of the claimant, plaintiffs will not be subject to varying rules of law in proving the public liability of defendants. By requiring potential defendants to agree to waive defenses the defendants' rights are restricted; concomitantly, to this extent, the rights of plaintiffs are enlarged. Just as the rights of persons who are injured are established by State law, the rights of defendants against whom liability is asserted are fixed by State law. What this subsection does is to authorize the AEC to require that defendants covered by financial protection and indemnity give up some of the rights they might otherwise assert.

In authorizing the Commission to require waivers as to the fault of persons indemnified, the intent is that waivers as to other defenses such as act of God, intervening third party, and proximate cause to the extent it is an element in establishing fault or negligence may also be required by the Commission. However, the waivers would save a defense pertaining to the issue of causal relationship; i.e., the damages

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are not reasonably related to the occurrence. It is expected the Commission would also give consideration to permitting a defense that the injury or damage would not have resulted but for the abnormally sensitive character of the claimant's activity.

The incorporation of waivers of charitable or governmental immunity is also authorized. Provision for payment of indemnity irrespective of immunity is already found in subsection 170 k. of the act, which is an outgrowth of subsection 170 a., which provides in pertinent part:

> The Commission may require, as a further condition of issuing a license, that an applicant waive any immunity from public liability conferred by Federal or State law.

It is understood that the waivers required, under new subsection 170 n.(1), of other Federal agencies which are licensees or contractors of the Commission would be applicable in suits against the United States under the Federal Tort Claims Act. Thus, under the provision that the Commission has authority to require waivers of charitable or governmental immunity, the Commission also has

authority to require other Federal agencies which are licensees or contractors to waive the "discretionary function" defense permitted by the Federal Tort Claims Act. The Commission would also have the authority to require the waiver of the defense of the statute of limitations applicable to a suit under the Federal Tort Claims Act.

Waivers of issues or defenses based on any statute of limitations may be required by the Commission if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have known, of his injury or damage and the cause thereof, but in no event more than 10 years after the date of the nuclear incident. This provision serves to avoid the application of more restrictive State statutes of limitations which are not appropriate to claims for radiation injury.

All of the waivers incorporated in indemnity agreements or policies and contracts furnished as proof of financial protection shall be effective regardless of whether the issue or defense waived may otherwise be deemed jurisdictional or relating to an element in the cause of action. Thus, for example, if a State's decisional or statutory law provides that a necessary element in stating a cause of action in tort is that the State statute of limitations must not yet have run, a suit to which Price-Anderson waivers apply may not be dismissed for such failure to state a cause of action. Another example might be under the Federal Tort Claims Act concerning which it has been said that an allegation of negligence is necessary for the purpose of conferring jurisdiction upon the court. A suit to which Price-Anderson waivers apply may not, on that ground, be dismissed for lack of jurisdiction.

New subsection 170 n. (1) contains a provision that when so incorporated in indemnity agreements with licensees and contractors and in policies or contracts furnished as proof of financial protection, such waivers shall be judicially enforceable in accordance with their terms by the claimant against the person indemnified. This serves to assure that the claimant will not be treated merely as an incidental beneficiary by the court, but will be entitled to have the waivers enforced as to himself as a third-party beneficiary.

There are a number of defenses which will not be waived. It is clear that the legitimate interests of all concerned are served by allow-

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ing persons indemnified to retain the right to defend against injury or damage to a claimant or a claimant's property which is either (1) intentionally sustained by the claimant, or (2) is a re-

sult of a nuclear incident intentionally and wrongfully caused by the claimant. A defense based upon a failure to take reasonable steps to mitigate damages is also retained. This, of course, does not mean that a failure to mitigate constitutes a complete defense to an entire claim; it does entitle the defendant to an offset for the amount found by a court to be appropriate in mitigation. Other than the specific exceptions of mitigation and claimant's wrongful conduct and the exceptions from the definition of public liability in subsection 11 w. of the act, as redesignated by this bill, the waivers may essentially waive all defenses. As noted above, the issues relating to the amount of damages and whether the occurrence led to the damages could still be litigated.

The last sentence of proposed subsection 170 n. (1) assures that, as to indemnitors, the waivers will be effective only with respect to the obligations set forth in the policies or contracts furnished as proof of financial protection and in the indemnity agreements, and further assures that the waivers will have no effect on any claim or portion thereof which is not within the protection afforded under the terms of such policies, contracts, and indemnity agreements, and the limit of liability provisions of subsection 170 e.

New subsection 170 n. (2) establishes the applicable venue and jurisdiction for public liability actions arising out of or resulting from an "extraordinary nuclear occurrence."

Under this subsection any action involving "public liability" (as defined in subsec. 11 w. of the act, as redesignated by this bill) arising out of or resulting from an extraordinary nuclear occurrence may be filed in the Federal courts without regard to the amount in controversy or diversity of citizenship. The venue is to be fixed in the U.S. district court in the district where the extraordinary nuclear occurrence takes place (that is, the district in which the first release of nuclear material or radioactivity occurs), and for an extraordinary nuclear occurrence taking place outside of the United States, in the District Court for the District of Columbia.

An action may be instituted in a State court or another U.S. district court, and, indeed, may be permitted to continue in such court if the circumstances of the occurrence and the action do not appear to the defendant or the Commission to necessitate removal. However, the absolute right of removal or transfer by the defendant or the Commission to the U.S. district court having venue under subsection 170 n.(2) would be assured. The last sentence of subsection 170 n.(2), referring to the effectiveness of process of the court throughout the United States, refers to all relevant types of process, such as that for instituting an action and that for

requiring attendance of witnesses.

New subsection 170 o. provides certain specific authority for the U.S. district court in the district where a nuclear incident occurs (that is, the district in which the first release of nuclear material or radioactivity occurs), or the U.S. District Court for the District of Columbia in case of a nuclear incident occurring outside the United States, in place of the provision in the last sentence of the present subsection 170 e. which provides inter alia for distribution of funds in a

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situation where the total claims from a single nuclear incident will probably exceed the limit of liability. By the new section, the appropriate court is given discretion to adopt such plan as it deems equitable; and the court is given guidance with respect to some factors which are essential to its consideration of a plan, such as an allocation of appropriate amounts for personal injury claims, property damage claims, and possible latent injury claims which may not be discovered until a later time.

Under this subsection, whenever the court, upon the petition of any indemnitor or other interested person, determines that public liability for a single nuclear incident may exceed the limit of liability under subsection 170 e., the following provisions are applicable:

1. Total payment as a result of the nuclear incident shall not exceed 15 percent of the limit of liability without the prior approval of the court. The limitation of 15 percent is applicable to any nuclear incident when the court determines that the limit of liability may be exceeded. Not only the emergency assistance payments permitted under proposed new subsection 170 m. but also any settlements are to be included within the 15 percent limitation. There would be no change in the Commission's present authority to settle any claims to which indemnity applies;

2. The court shall not authorize payments in excess of the 15 percent unless it determines that the payments are or will be in accordance with a plan of distribution approved by the court or that such payments are not likely to prejudice the subsequent adoption and implementation by the court of such a plan; and,

3. The Commission shall, and any other indemnitor or other interested person may, submit to the court a plan for the disposition of pending claims and for the distribution of remaining funds available. The court shall have all power necessary

to approve, disapprove, or modify plans proposed, or to adopt another plan, and to determine the proportionate share of funds available for each claimant. Additional authority is provided to the court to issue orders of types described, in implementation of its mandate. Orders of the court implementing and enforcing the provisions of this section shall be effective throughout the United States.

The first sentence of new subsection 170 o. allows a petition by any indemnitor or "other interested person." This latter designation is intended to include not only "persons indemnified," as defined in the act, but also any person who claims injury or damage as a result of an extraordinary nuclear occurrence. It appears appropriate that a claimant should have standing to petition the court for a determination that the limit of liability may be exceeded, since his interests may be directly affected. It is also noted that under subsection 170 o.(3) "other interested persons" may submit a plan of distribution to the court upon a determination by the court that the limit of liability may be exceeded.

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CHANGES IN EXISTING LAW

In accordance with subsection (4) of Rule XXIX of the Standing Rules of the Senate, changes in existing law recommended by the bill accompanying this report are shown as follows (deleted matter is shown in black brackets and new matter is printed in italic):

PUBLIC LAW 83–703, AS AMENDED

(Atomic Energy Act of 1954, as Amended)

SEC. 11. DEFINITIONS.—

* * * * * * *

j. The term "extraordinary nuclear occurrence" means any event causing a discharge or dispersal of source, special nuclear, or byproduct material from its intended place of confinement in amounts offsite, or causing radiation levels offsite, which the Commission determines to be substantial, and which the Commission determines has resulted or will probably result in substantial damages to persons offsite or property offsite. Any determination by the Commission that such an event has, or has not, occurred shall be final and conclusive, and no other official or any court shall have power or jurisdiction to review any such determination. The Commission shall establish criteria in writing setting forth the basis

upon which such determination shall be made. As used in this subsection, "offsite" means away from "the location" or "the contract location" as defined in the applicable Commission indemnity agreement, entered into pursuant to section 170.

[j.] *k.* * * *

[k.] *l.* * * *

m. The term "indemnitor" means (1) any insurer with respect to his obligations under a policy of insurance furnished as proof of financial protection; (2) any licensee, contractor or other person who is obligated under any other form of financial protection, with respect to such obligations; and (3) the Commission with respect to any obligation undertaken by it in an indemnity agreement entered into pursuant to section 170.

[l.] *n.* * * *

[m.] *o.* * * *

[n.] *p.* * * *

[o.] *q.* The term "nuclear incident" means any occurrence, *including an extraordinary nuclear occurrence,* within the United States causing, within or outside the United States, bodily injury, sickness, disease, or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material: *Provided, however,* That as the term is used in subsection 170 l., it shall include any such occurrence outside of the United States: *And provided further,* That as the term is used in section 170 d., it shall include any such occurrence outside the United States if such occurrence involves a facility or device owned by, and used by or under contract with, the United States.

[p.] *r.* * * *

[q.] *s.* * * *

[r.] *t.* * * *

[s.] *u.* * * *

[t.] *v.* * * *

[p. 30]

[u.] *w.* * * *

[v.] *x.* * * *

[w.] *y.* * * *

[x.] *z.* * * *

[y.] *aa.* * * *

[z.] *bb.* * * *

[aa.] *cc.* * * *

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SEC. 109. COMPONENT PARTS OF FACILITIES.—With respect to those utilization and production facilities which are so determined by the Commission pursuant to subsection 11 [t.] *v.* (2) or 11 [aa.] *cc.* (2) the Commission may (a) issue general licenses for activities required to be licensed under section 101, if the Commission determines in writing that such general licensing will not constitute an unreasonable risk to the common defense and security, and (b) issue licenses for the export of such facilities, if the Commission determines in writing that each export will not constitute an unreasonable risk to the common defense and security.

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SEC. 170. INDEMNIFICATION AND LIMITATION OF LIABILITY.—

* * * * * * *

e. The aggregate liability for a single nuclear incident of persons indemnified, including the reasonable costs of investigating and settling claims and defending suits for damage, shall not exceed the sum of $500,000,000 together with the amount of financial protection required of the licensee or contractor: *Provided, however,* That such aggregate liability shall in no event exceed the sum of $560,000,000: *Provided further,* That with respect to any nuclear incident occurring outside of the United States to which an agreement of indemnification entered into under the provisions of subsection 170 d. is applicable, such aggregate liability shall not exceed the amount of $100,000,000 together with the amount of financial protection required of the contractor. [The Commission or any person indemnified may apply to the appropriate district court of the United States having venue in bankruptcy matters over the location of the nuclear incident, except that in the case of nuclear incidents occurring outside the United States, the Commission or any person indemnified may apply to the United States District Court for the District of Columbia, and upon a showing that the public liability from a single nuclear incident will probably exceed the limit of liability imposed by this section, shall be entitled to such orders as may be appropriate for enforcement of the provisions of this section, including an order limiting the liability of the persons indemnified, orders staying the payment of claims and the execution of court judgments, orders apportioning the payments to be made to claimants, orders permitting partial payments to be made before final determination of the total claims and an order setting aside a part of the funds available for possible latent injuries not discovered until a later time.]

* * * * * * *

m. The Commission is authorized to enter into agreements with

other indemnitors to establish coordinated procedures for the prompt handling, investigation, and settlement of claims for public liability. The Commission and other indemnitors may make payments to, or for the aid of,

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claimants for the purpose of providing immediate assistance following a nuclear incident. Any funds appropriated to the Commission shall be available for such payments. Such payments may be made without securing releases, shall not constitute an admission of the liability of any person indemnified or of any indemnitor, and shall operate as a satisfaction to the extent thereof of any final settlement or judgment.

n. (1) With respect to any extraordinary nuclear occurrence to which an insurance policy or contract furnished as proof of financial protection or an indemnity agreement applies and which—

(a) arises out of or results from or occurs in the course of the construction, possession, or operation of a production or utilization facility, or

(b) arises out of or results from or occurs in the course of transportation of source material, byproduct material, or special nuclear material to or from a production or utilization facility, or

(c) during the course of the contract activity arises out of or results from the possession, operation, or use by a Commission contractor or subcontractor of a device utilizing special nuclear material or byproduct material,

the Commission may incorporate provisions in indemnity agreements with licensees and contractors under this section, and may require provisions to be incorporated in insurance policies or contracts furnished as proof of financial protection, which waive (i) any issue or defense as to conduct of the claimant or fault of persons indemnified, (ii) any issue or defense as to charitable or governmental immunity, and (iii) any issue or defense based on any statute of limitations if suit is instituted within three years from the date on which the claimant first knew, or reasonably could have known, of his injury or damage and the cause thereof, but in no event more than ten years after the date of the nuclear incident. The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. When so incorporated, such waivers shall be judicially enforceable in accordance with their terms by the claimant against the person indemnified. Such waivers shall not preclude a defense based upon a failure to take reasonable steps to mitigate

damages, nor shall such waivers apply to injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant. The waivers authorized in this subsection shall, as to indemnitors, be effective only with respect to those obligations set forth in the insurance policies or the contracts furnished as proof of financial protection and in the indemnity agreements. Such waivers shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (i) the terms of insurance policies or contracts furnished as proof of financial protection, or indemnity agreements, and (ii) the limit of liability provisions of subsection 170 e.

(2) With respect to any public liability action arising out of or resulting from an extraordinary nuclear occurrence, the United States district court in the district where the extraordinary nuclear occurrence takes place, or in the case of an extraordinary nuclear occurrence taking place outside the United States, the United States District Court for the District of Columbia, shall have original jurisdiction without regard to the citizenship of any party or the amount in controversy. Upon motion of the defendant or of the Commission, any such action pending in any

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state court or United States district court shall be removed or transferred to the United States district court having venue under this subsection. Process of such district court shall be effective throughout the United States.

o. Whenever the United States district court in the district where a nuclear incident occurs, or the United States District Court for the District of Columbia in case of a nuclear incident occurring outside the United States, determines upon the petition of any indemnitor or other interested person that public liability from a single nuclear incident may exceed the limit of liability under subsection 170 e.:

(1) Total payments made by or for all indemnitors as a result of such nuclear incident shall not exceed 15 per cent of such limit of liability without the prior approval of such court;

(2) The court shall not authorize payments in excess of 15 per cent of such limit of liability unless the court determines that such payments are or will be in accordance with a plan of distribution which has been approved by the court or such payments are not likely to prejudice the subsequent adoption and implementation by the court of a plan of distribution pur-

suant to subparagraph (3) of this subsection (o); and

(3) The Commission shall, and any other indemnitor or other interested person may, submit to such district court a disposition of pending claims and for the distribution of remaining funds available. Such a plan shall include an allocation of appropriate amounts for personal injury claims, property damage claims, and possible latent injury claims which may not be discovered until a later time. Such court shall have all power necessary to approve, disapprove, or modify plans proposed, or to adopt another plan; and to determine the proportionate share of funds available for each claimant. The Commission, any other indemnitor, and any person indemnified shall be entitled to such orders as may be appropriate to implement and enforce the provisions of this section, including orders limiting the liability of the persons indemnified, orders approving or modifying the plan, orders staying the payment of claims and the execution of court judgments, orders apportioning the payments to be made to claimants, and orders permitting partial payments to be made before final determination of the total claims. The orders of such court shall be effective throughout the United States.

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1.1v(2) JOINT COMMITTEE ON ATOMIC ENERGY

H.R. REP. No. 2043, 89th Cong., 2d Sess. (1966)

AMENDMENTS TO THE PRICE-ANDERSON INDEMNITY PROVISIONS OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED, PERTAINING TO WAIVER OF DEFENSES

SEPTEMBER 14, 1966.—Committed to the Committee of the Whole House and ordered to be printed

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Mr. HOLIFIELD, from the Joint Committee on Atomic Energy, submitted the following

REPORT

[To accompany H.R. 17685]

The Joint Committee on Atomic Energy, having considered H.R.

17685 to amend the Atomic Energy Act of 1954, as amended, reports favorably thereon and recommends that the bill do pass.

[p. 1]

1.1v(3) CONGRESSIONAL RECORD, VOL. 112 (1966)

1.1v(3)(a) Sept. 22: Passed Senate, pp. 23633–23634

AMENDMENT OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

Mr. PASTORE. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 1571, S. 3830.

The ACTING PRESIDENT pro tempore. The bill will be stated by title.

The LEGISLATIVE CLERK. A bill (S. 3830) to amend the Atomic Energy Act of 1954, as amended.

The ACTING PRESIDENT pro tempore. Is there objection to the present consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. PASTORE. Mr. President, I rise in support of enactment of S. 3830, a bill to amend the Price-Anderson nuclear indemnity provisions of the Atomic Energy Act of 1954.

The Price-Anderson nuclear indemnity legislation was enacted in 1957 for two principal purposes. First, to protect the public by assuring the availability of funds for the payment of claims arising in the extremely unlikely event of a catastrophic nuclear incident. Second, to remove a deterrent to private industrial participation in the atomic energy program which flowed from the threat of tremendous potential liability claims. The act accordingly affords protection to the public and to AEC's licensees and contractors from the risks associated with atomic energy by providing for a program of private insurance and governmental indemnity amounting to a maximum of $500 million to cover damages that conceivably could arise from a nuclear incident.

Last year the Joint Committee recommended, and there was enacted, legislation extending the Price-Anderson Act for 10 years—to 1977. During our hearings on the extension legislation, our committee identified a number of potentially serious problems which required further study. These included the difficulty that might face a claimant if he were unable to prove someone's negligence was the cause of a nuclear incident. In addition, concern was expressed that the statutes of limitations of many States are inadequate to provide for delayed manifestation of radiation injury.

Our committee has continued to study these problems, in consultation with representatives of the private insurance industry, the nuclear industry, and the AEC. As a result of the cooperative efforts of all concerned a bill was drafted which attempted to remedy the deficiencies in the existing legislation.

In July of this year our committee held 3 days of hearings on the proposed bill, and we believe that we have now reported out a measure which will substantially improve the protection to the public afforded by the Price-Anderson legislation without in any way operating to the detriment of the nuclear industry. Moreover, it is important to note that S. 3830—while providing

for the elimination of certain serious legal obstacles which might face claimants in the event of a substantial nuclear incident—does not establish a new body of Federal tort law. Instead, this bill follows the approach of the original Price-Anderson Act; that is, making a minimum interference with the laws of the several States insofar as legal liability for nuclear incidents is concerned. Our committee continues to endorse this general approach.

Mr. President, a detailed analysis of S. 3830 is contained in our committee's report which is before you. Our report discusses the provisions of this bill in depth and explains the policy bases of our committee's recommendation.

I will summarize the major provisions of S. 3830 very briefly as follows:

First. The bill would authorize the AEC to establish coordinated procedures with the nuclear liability insurance pools for the prompt settlement of claims arising out of a nuclear incident.

Second. The bill would authorize the AEC to incorporate provisions in its indemnity agreements with AEC's licensees and contractors, and to require incorporation of provisions in nuclear liability insurance policies and contracts which are furnished as proof of financial protection by AEC's licensees and contractors, which waive any issue or defense as to conduct of the claimant or fault of defendants. The primary end result of these waivers would be first to eliminate any requirement that a claimant prove that someone was negligent in order to recover for his damages from a serious nuclear incident and, second, any possible issue as to the claimant's contributory negligence or assumption of risk. Waivers could also be required with respect to charitable or governmental immunity of the defendant and statutes of limitations, subject to certain conditions.

Third. The waivers would apply only with respect to an "extraordinary nuclear occurrence" as defined in the bill. The Commission would be empowered to determine whether an "extraordinary nuclear occurrence" had taken place in order to make the waivers effective.

Fourth. The bill would provide that in the event of an "extraordinary nuclear occurrence" the U.S. district court in the district where such occurrence takes place shall have original jurisdiction of any public liability action arising out of the occurrence, without regard to the citizenship of any party or the amount in controversy. The bill would also authorize the removal to such district court of all public liability actions arising from the same occurrence which are pending in other courts.

Fifth. The bill would provide limitations on the amounts that may be paid from the private insurance-governmental indemnity fund established under the Price-Anderson Act without prior court approval. In addition, authority would be provided the appropriate U.S. district court to approve plans of distribution of the fund.

The Joint Committee believes this bill is an important improvement in the atomic energy legislation. S. 3830 was reported out by the Joint Committee without dissent, and I urge the Senate to pass this bill without delay.

Mr. President, I might add that the bill has the approval of both the insurance industry and the nuclear industry involved.

I understand that the distinguished Senator from Massachusetts [Mr. SALTONSTALL] would like to ask me several questions.

Mr. SALTONSTALL. I thank the Senator from Rhode Island. He and I have been Governors, and we know that there are differences in State laws particularly with relation to damages, and so forth. We also know that at times we have tried to get universal State laws on such matters as banking, for instance. The reason I ask these questions is that I have read part of the report—I will not say

that I read it all—but it struck me that there were certain things of which I should like to make sure, although I know that they are probably quite clear in the Senator's mind.

My first question is: It is my understanding that this bill provides definite authority to the AEC to make emergency assistance payments to victims of a nuclear incident without requiring a potential claimant to release his right to sue for further damages, once they may become known.

Am I correct in this assumption, that the right of a person to file suit for additional damages, whether in a State or Federal court, would not be prejudiced by acceptance of such emergency assistance offered soon after an incident?

Mr. PASTORE. That is correct. The Senator is absolutely correct.

Mr. SALTONSTALL. My second question is: Do I understand correctly that it will not be necessary for the Commission to make the determination that the incident was an "extraordinary nuclear occurrence" before such emergency assistance could be offered?

Mr. PASTORE. For emergency assistance payments, no. The Commission does not have to make such a determination in order to make such payments. I might say to my distinguished

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colleague that if he and I were Governors once more, we would welcome this law. This law is intended to protect the claimant who, as the result of the special waivers authorized, would not be obliged to prove negligence. Instead of writing a new body of law, what we are actually doing is permitting the AEC, in its indemnity agreements, and the insurance companies in their contracts of insurance with the utilities, or any other person who runs a reactor in any community where we might have this extraordinary incident that we have been talking about, to agree that the claimant can make his claim for any damage without proving negligence. He also would not be restricted by a short statute of limitations because sometimes, in a radiation injury, there is no manifestation of that injury within the period of the statute of limitations.

Thus, actually, this is a bill intended to protect the claimant and, in the meantime, of course, for the benefit of the claimant, he can get emergency payments.

Mr. SALTONSTALL. I ask the Senator, because he has answered my third question—but I have two or three more—what special advantages not now covered by the operation of the act could result from this authority to provide emergency assistance?

I think the Senator has answered that.

Mr. PASTORE. Yes, I have answered that.

Mr. SALTONSTALL. My next question is: What must the claimant show or prove to qualify him for emergency assistance?

Mr. PASTORE. That he was injured.

Mr. SALTONSTALL. That he was injured. I assume that he would have to get advice——

Mr. PASTORE. He would have to show that. Of course he would.

Mr. SALTONSTALL. He would have to prove it, in order to qualify himself for this emergency assistance?

Mr. PASTORE. He would have to show that the injury was probably the result of the nuclear incident. That would have to be shown.

Mr. SALTONSTALL. He would have to prove that before representatives of the Commission?

Mr. PASTORE. That is right.

(At this point Mr. BASS took the chair as Presiding Officer.)

Mr. SALTONSTALL. My last question is: Would such assistance be in addition to or included as part of any final settlement?

Mr. PASTORE. It would be included within the final settlement. If

he was entitled to more, he would get it.

Mr. SALTONSTALL. He would get what the Commission gave him anyway, and if he was entitled to more in the future, he would get that.

Mr. PASTORE. He would get his maximum damage and they would deduct anything that they have already paid him.

Mr. SALTONSTALL. So that this is an effort to make it the same all over the United States.

Mr. PASTORE. That is right.

Mr. SALTONSTALL. I thank the Senator.

Mr. PASTORE. I merely want the RECORD to show that a claim has never been filed under a Price-Anderson indemnity agreement with an AEC licensee. In other words, I do not want to leave the impression that anyone should be frightened over this bill. We recognize that there is a tremendous responsibility on the part of the Government in the event that we might have that kind of incident. But I want to say that we have come a long way in the development of plants for the production of electricity through the use of atomic energy. We have not had one major incident as yet.

Of course, the Senator from Massachusetts knows that there is a plant in Rowe, Mass., which is the pride of the Nation. I went up there and inspected it, and I was so pleased with it. When they tried to build another one in Connecticut, they hired a bus and took some people in Connecticut to Rowe, Mass. They were left there on their own to knock on doors and ask people in the neighborhood what they thought of having an atomic energy plant in Massachusetts, and the response was overwhelmingly in favor of it.

Mr. SALTONSTALL. Mr. Webster can take a great deal of credit for that; can he not?

Mr. PASTORE. Absolutely.

Mr. SALTONSTALL. I thank the Senator.

Mr. PASTORE. Mr. President, before I ask that the bill be passed, there is an error in the printing of S. 3830 in the word "of" appearing between the word "prosecution" and the word "defense" on line 23 of page 5. It should read "or" instead of "of."

I ask unanimous consent that the error be corrected, and I offer an amendment to the bill.

The PRESIDING OFFICER. The amendment will be stated.

The LEGISLATIVE CLERK. On page 5, line 23, after the word "prosecution" strike out "of" and insert "or".

The PRESIDING OFFICER. The question is on agreeing to the amendment.

Without objection, the amendment is agreed to.

If there be no further amendment to be offered, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and was passed, as follows:

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1.1v(3)(b) Sept. 30: Passed House, pp. 24635–24637

The Clerk read the title of the Senate bill.

The SPEAKER. Is there objection to the request of the gentleman from California [Mr. HOLIFIELD].

There was no objection.

The Clerk read the Senate bill, as follows:

S. 3830

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) section 11 of the

Atomic Energy Act of 1954, as amended, is amended—

(1) by redesignating subsections j. and k. as subsections k. and l., respectively, and by redesignating subsections l. through aa. as subsections n. through cc., respectively;

(2) by inserting after subsection i. the following new subsection:

"j. The term 'extraordinary nuclear occurrence' means any event causing a discharge or dispersal of source, special nuclear, or byproduct material from its intended place of confinement in amounts offsite, or causing radiation levels offsite, which the Commission determines to be substantial, and which the Commission determines has resulted or will probably result in substantial damages to persons offsite or property offsite. Any determination by the Commission that such an event has, or has not, occurred shall be final and conclusive, and no other official or any court shall have power or jurisdiction to review any such determination. The Commission shall establish criteria in writing setting forth the basis upon which such determination shall be made. As used in this subsection, 'offsite' means away from 'the location' or 'the contract location' as defined in the applicable Commission indemnity agreement, entered into pursuant to section 170.";

(3) by inserting after the subsection redesignated as subsection l by paragraph (1) of this subsection the following new subsection:

"m. The term 'indemnitor' means (1) any insurer with respect to his obligations under a policy of insurance furnished as proof of financial protection; (2) any licensee, contractor or other person who is obligated under any other form of financial protection, with respect to such obligations; and (3) the Commission with respect to any obligation undertaken by it in an indemnity agreement entered into pursuant to section 170."; and

(4) by inserting the phrase ", including an extraordinary nuclear occurrence," between the word "occurrence" and the word "within" in the subsection redesignated as subsection q. by paragraph (1) of this section.

(b) Section 109 of such Act is amended by striking out "subsection 11 t.(2) or 11 aa.(2)" and inserting in lieu thereof "subsection 11 v.(2) or 11 cc.(2)".

SEC. 2. Subsection 170 e. of the Atomic Energy Act of 1954, as amended, is amended by deleting the last sentence.

SEC. 3. Section 170 of the Atomic Energy Act of 1954, as amended, is amended by adding at the end thereof the following new subsections:

"m. The Commission is authorized to enter into agreements with other indemnitors to establish coordinated procedures for the prompt handling, investigation, and settlement of claims for public liability. The Commission and other indemnitors may make payments to, or for the aid of, claimants for the purpose of providing immediate assistance following a nuclear incident. Any funds appropriated to the Commission shall be available for such payments. Such payments may be made without securing releases, shall not constitute an admission of the liability of any person indemnified of any indemnitor, and shall operate as a satisfaction to the extent thereof of any final settlement or judgment.

"n. (1) With respect to any extraordinary nuclear occurrence to which an insurance policy or contract furnished as proof of financial protection or an indemnity agreement applies and which—

"(a) arises out of or results from or occurs in the course of the construction, possession, or operation of a production or utilization facility, or

"(b) arises out of or results from or occurs in the course of transportation of source material, byproduct material, or special nuclear material to or from a production or utilization facility, or

"(c) during the course of the contract activity arises out of or results from the possession, operation, or use by a Commission contractor or subcontractor of a device utilizing special nuclear material or byproduct material.

the Commission may incorporate provisions in indemnity agreements with licensees and contractors under this section, and may require provisions to be incorporated in insurance policies or contracts furnished as proof of financial protection, which waive (i) any issue or defense as to conduct of the claimant or fault of persons indemnified, (ii) any issue or defense as to charitable or government immunity, and (iii) any issue or defense based on any statute of limitations if suit is instituted within three years from the date on which the claimant first knew, or reasonably could have known, of his injury or damage and the cause thereof, but in no event more than ten years after the date of the nuclear incident. The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise by deemed jurisdictional or relating to an element in the cause of action. When so incorporated, such waivers shall be judicially enforcible in accordance with their terms by the claimant against the person indemnified. Such waivers shall not preclude a defense based upon a failure to take reasonable steps to mitigate damages, nor shall such waivers apply to injury or damage to a claimant or to a claimant's property which is intentionally sustained by the claimant or which results from a nuclear incident intentionally and wrongfully caused by the claimant. The waivers authorized in this subsection shall, as to indemnitors, be effective only with respect to those obligations set forth in the insurance policies or the contracts furnished as proof of financial protection and in the indemnity agreements. Such waivers shall not apply to, or prejudice the prosecution or defense of, any claim or portion of claim which is not within the protection afforded under (i) the terms of insurance policies or contracts furnished as proof of financial protection, or indemnity agreements, and (ii)

the limit of liability provisions of subsection 170 e.

"(2) With respect to any public liability action arising out of or resulting from an extraordinary nuclear occurrence, the United States district court in the district where the extraordinary nuclear occurrence takes place, or in the case of an extraordinary nuclear occurrence taking place outside the United States, the United States District Court for the District of Columbia, shall have original jurisdiction without regard to the citizenship of any party or the amount in controversy. Upon motion of the defendant or of the Commission, any such action pending in any State court or United States district court shall be removed or transferred to the United States district court having venue under this subsection. Process of such district court shall be effective throughout the United States.

"o. Whenever the United States district court in the district where a nuclear incident occurs, or the United States District Court for the District of Columbia in case of a nuclear incident occurring outside the United States, determines upon the petition of any indemnitor or other interested person that public liability from a single nuclear incident may exceed the limit of liability under subsection 170 e.:

"(1) Total payments made by or for all indemnitors as a result of such nuclear incident shall not exceed 15 per centum of such limit of liability without the prior approval of such court;

"(2) The court shall not authorize payments in excess of 15 per centum of such limit of liability unless the court determines that such payments are or will be in accordance with a plan of distribution which has been approved by the court or such payments are not likely to prejudice the subsequent adoption and implementation by the court of a plan of distribution pursuant to subparagraph (3) of this subsection (o); and

"(3) The Commission shall, and any other indemnitor or other interested person may, submit to such district court a plan for the disposition of pending claims and for the distribution of remaining funds available. Such a plan shall include an allocation of appropriate amounts for personal injury claims, property damage claims, and possible latent injury claims which may not be discovered until a later time. Such court shall have all power necessary to approve, disapprove, or modify plans proposed, or to adopt another plan; and to determine the proportionate share of funds available for each claimant. The Commission, any other indemnitor, and any person indemnified shall be entitled to such orders as may be appropriate to implement and enforce the provisions of this section, including orders limiting the liability of the persons indemnified, orders approving or modifying the plan, orders staying the payment of claims and the execution of court judgments, orders apportioning the payments to be made to claimants, and orders permitting partial payments to be made before final determination of the total claims. The orders of such court shall be effective throughout the United States."

Mr. HOLIFIELD. Mr. Speaker, I move to strike out the last word.

Mr. Speaker, the bill that is before the House is to amend the Price-Anderson Nuclear Indemnity Act. It is a technical bill. It has been passed unanimously by the committee for the purpose of making available on an emergency basis funds which the Atomic Energy Commission may have for the immediate settlement of any claims that might arise. It removes certain legal objections which would ordinarily obtain in proving negligence on the part of a nuclear reactor operator.

We have approached this matter in conference with private insurance companies, with representatives of the States and with all the people who might be affected.

This bill removes the necessity for a new body of Federal tort law which might interfere with the various State laws on that particular subject.

It is supported completely by the insurance industry. They have agreed to follow the format of the bill which is before us in lieu of having a bill prescribing a new Federal tort advanced in the House.

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I will be perfectly willing to explain this in detail if there are any questions to be asked on the matter.

If not, I yield to the gentleman from Illinois [Mr. PRICE], the author of the bill.

Mr. PRICE. Mr. Speaker, this bill is entirely in the public interest. This legislation itself pertains to third-party liability and the protection of the public. The purpose of this particular bill is to eliminate the necessity of prolonged and drawn-out litigation to determine legal liability. This legislation takes care of that matter and fulfills the fundamental intent of the act.

It has the support of the private in-

surance industry, the utility industry, the AEC, and the Joint Committee. In fact, no one appeared in opposition to this legislation.

Mr. Speaker, I join the distinguished chairman of the Joint Committee in urging passage of S. 3830.

When Senator ANDERSON and I introduced the Price-Anderson legislation over 10 years ago, it was our belief that the public would receive adequate financial protection from the very large private insurance-governmental indemnity fund provided for by the act. We assumed, on the basis of the evidence presented to the Joint Committee, that under existing legal principles someone would be held liable in the event of a serious nuclear incident. This would make the Price-Anderson fund available for payments of claims, because the insurance policies and indemnity agreements cover the liability of all.

We continue to believe these legal principles would apply. However, in more recent years, there have been fears expressed that bona fide claimants would be subjected to protracted litigation before they could collect from the fund, assuming they could collect at all. This is not in accord with the purpose of the Price-Anderson legislation. As the Joint Committee report stated last year:

> It is the clear intent of this legislation that if a member of the public ever is injured by a nuclear incident, he will not be subjected to a series of substantive and procedural hurdles which would prevent the speedy satisfaction of a legitimate claim.

I recognize, of course, that the likelihood of a serious nuclear incident is extremely remote. However, in view of the substantial participation by the Government in the nuclear energy program—and the special provisions already contained in the Price-Anderson Act for the benefit of the public and the nuclear industry—it appears to a number of members of the Joint Committee, including myself, that if an incident should occur, the public should be able to rely on the availability of the insurance and indemnity funds without having to prove someone was negligent. However, a claimant should still have to prove that the incident caused his injury and what his damages actually were.

Since last year, there has been an intensive, cooperative effort among representatives of the private insurance industry, the utility industry, the AEC, and the Joint Committee. I particularly want to commend the constructive role played by the representatives of industry in attempting to resolve this problem affecting the public welfare.

Mr. Speaker, I introduced the companion bill to S. 3830 to correct the possible deficiencies in the existing Price-Anderson Act which our committee identified in our hearings. I believe this bill is a fair and workable piece of legislation and I urge that the House pass it today.

Mr. ANDERSON of Illinois. Mr. Speaker, I move to strike the requisite number of words.

Mr. Speaker, I rise to support S. 3830. I agree that under the existing law a claimant would probably not have to prove that someone was negligent in order to recover damages resulting from a serious nuclear incident. Nevertheless, a claimant might still face some potentially serious legal obstacles in such a case. For this reason, I support S. 3830, and believe this bill helps to fulfill the promise to the public contained in the Price-Anderson Act that funds will be available to pay for legitimate claims arising out of atomic energy activities.

Of course, it is the committee's belief and fervent hope that there will never be a need to call upon the huge sums of money made available through the Price-Anderson legislation. Dollars are no substitute for safety in the first instance. This is why the committee will continue to insist that the most rigorous standards are followed in building and operating nuclear plants. I should also note that there has never

been an incident at a licensed nuclear reactor that caused injury to a member of the public.

Mr. SAYLOR. Mr. Speaker, I move to strike the requisite number of words.

Mr. Speaker, I take this time to direct some questions to the author of the bill, or the members of the committee who are handling it.

Mr. PRICE, if I understood you correctly, you said that one of the purposes of the bill was to prevent any prolonged action to prove liability in case there was a nuclear explosion or catastrophe?

Mr. PRICE. That is correct. However, it does not change the necessity of proving injury or damage.

Mr. SAYLOR. If my memory serves me correctly, the proponents of this legislation, back in 1954, said that one of the reasons that they were passing this legislation was to enable the Government to get in real early and to make sure that the public had an adequate amount of money to protect them. It seems rather strange that 12 years later we now come along and in amending the bill say that one of the purposes of it is to make it easier in case there is a nuclear occurrence, that we should be able to have the public get their money more easily.

Mr. PRICE. It is not simply a matter of getting the money. The bill is designed to remove the technical legal obstacles that might face a claimant who was injured by an incident. It is a further concession to the public and to the injured party, but he must prove the injury and he must prove his damages.

I must also say I believe at the time the original legislation was under consideration we said that we anticipated no time when we might have to exercise a provision of this act. I think our statements at that time have been proven correct. We have now passed the 9-year mark and there have been no nuclear incidents involving a licensed facility in which this legislation had to be invoked.

Mr. SAYLOR. Do not misunderstand me, Mr. PRICE. I am delighted that the AEC and private industry have had this kind of record. I am delighted that there has been no occasion to call upon this fund or the insurance fund which is available for the protection or claims of the public. But I notice that you now have included the phrase "extraordinary nuclear occurrence." What do you mean by including in this bill the term "extraordinary nuclear occurrence"?

Mr. PRICE. This is to make it certain that it would come into play only in an unusual situation—a significant incident, not a minor incident. That was the purpose.

Mr. SAYLOR. Oh, then, the purpose of the bill might be construed by the courts to limit liability in case there is not a catastrophe?

Mr. PRICE. The word "extraordinary" certainly would not place any limitation on liability.

Mr. HOSMER. Mr. Speaker, will the gentleman yield?

Mr. SAYLOR. I am happy to yield to the gentleman from California.

Mr. HOSMER. The procedures under this bill for settlement of claims on account of a nuclear accident come into play when the accident is of such type as the AEC determines to be an "extraordinary nuclear occurrence." Before that point there are still remedies, the usual ones, and the usual means of settling a claim. So whether or not there is an "extraordinary nuclear occurrence" merely goes to the manner and the procedures by which settlements are arrived at. It does not go to the substance of the rights of anyone.

Mr. SAYLOR. Does the gentleman from California mean to tell the House that if there is a nuclear incident there is another means of liability against the Federal Government, rather than as provided in the Price-Anderson bill?

Mr. HOSMER. I am saying no such thing. I say merely that there might

be a nuclear incident, and perhaps one person will be slightly injured and $20 worth of damage done to property. We would not call upon the procedures of this bill for settling that kind of situation. We would go about it in the ordinary manner of bringing a suit against somebody.

The SPEAKER. The time of the gentleman from Pennsylvania has expired.

(On request of Mr. HOSMER, and by unanimous consent, Mr. SAYLOR was allowed to proceed for 5 additional minutes.)

Mr. HOSMER. On the other hand, there are situations in which there may be large numbers of people involved, or a large dollar amount of property damage. I recall the conventional disaster situation at Texas City. One of the things learned from Texas City was that when there is that kind of disaster the claims settlement machinery must be able to move in, and move in fast and

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move in effectively. This bill provides that in the event of an "extraordinary nuclear occurrence," not in the event of an insignificant nuclear occurrence, injured persons will not have to go through the legal technicality of proving negligence. Moreover, there will be this swift-moving machinery set up to provide for the type of claims settlement which experience has taught should be provided and which in fact the Price-Anderson Act as originally written did not clearly provide for.

Mr. SAYLOR. I say to the Members, and the members of the committee, I commend them for this type of legislation they have brought to the House. I believe it is a step in the right direction.

I hope that the Joint Committee on Atomic Energy will not stop here. Those of us who have objected to this approach of limited liability will someday see the time when the Joint Committee on Atomic Energy will say to the American public and to the world that if there is a catastrophe, whatever the liability of the Federal Government and the private operators, whomsoever they may be, they will put forth all their assets in an effort to settle these claims, rather than do it on a limited basis such as included in the Price-Anderson bill.

Mr. HOSMER. Mr. Speaker, I move to strike the requisite number of words.

Mr. Speaker, I fully subscribe to what our distinguished Chairman has said about this bill. It would improve the protection to the public presently provided by the Price-Anderson Act, and it would do so in what I consider to be an ingenious way.

This bill does not superimpose a new body of Federal law upon a segment of our traditional State tort laws. Rather, it accomplishes the beneficial purposes we have in mind principally by providing for contractual agreement by the persons who might be held liable for a nuclear incident to forgo certain defenses that might otherwise be available to them under applicable State or Federal law. The Atomic Energy Commission would also waive these defenses in its indemnity agreements. Through this mechanism the Price-Anderson Act will remain true to the principle that has been a cornerstone of the act since its passage, viz., minimal interference with State law.

There is one other point that I believe deserves emphasis. Among the issues that could be waived under this bill is that of the statute of limitations. The bill provides that the Commission may require the waiver of the defense as to any suit instituted within 3 years after the victim knows of his injury and its cause, and in any event within 10 years after the nuclear incident.

As the chairman indicated, there are a number of States whose statutes of limitations fail to take into account the problems of delayed manifestation of some radiation-caused injuries. In these States a claimant may not discover his injury until after the rela-

tively short period of limitations has expired, in which case he probably would be unable to collect for his damages.

The effect of this bill would be to establish a more equitable 10-year gross limitations period for asserting claims arising from a serious nuclear incident. At the same time, however, the waiver leaves undisturbed the laws of those States which have enacted—or in the future may enact—longer periods of limitation. It is my hope that the States whose statutes of limitations are inadequate in this respect, will review them and take remedial action.

I believe there is nothing else that need be added to the statement of our distinguished chairman, and I join him in urging that this bill be enacted.

Mr. HALL. Mr. Speaker, I ask unanimous consent to extend my remarks at this point in the RECORD.

The SPEAKER. Is there objection to the request of the gentleman from Missouri?

There was no objection.

Mr. HALL. Mr. Speaker, I have long been interested in this type of legislation. I think it is very apropos and commend the committee for bringing it in at this time. It was only on the last Consent Calendar that I asked a similar action on the part of the Federal Government be passed over without prejudice until such time as the Judge Advocate General of the department of the military services could come in and visit with me. The Speaker will recall that I engaged in colloquy at that time with the gentleman from Texas [Mr. PATMAN] concerning a most unusual and a highly classified military security ordnance plant in Texas.

Mr. Speaker, I want to say that since that time I have had this conference, and on the next Consent Calendar this is very necessary, this very favorable action on the part of the Federal Government in behalf of the people who are injured, and because of security being involved, can go to court and ask and obtain redress just as might happen in an unusual atomic nuclear incident. This approach has been justified to my complete satisfaction.

For that reason, Mr. Speaker, I am most anxious to support this legislation, and to seek the support of the other Members of this Chamber today in favor of these amendments.

The SPEAKER. The question is on the third reading of the bill.

The bill was ordered to be read a third time, and was read the third time.

The SPEAKER. The question is on the passage of the bill.

The bill was passed.

A motion to reconsider was laid on the table.

A similar House bill (H.R. 17685) was laid on the table.

[p. 24637]

1.1w TO AMEND THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

December 14, 1967, P.L. 90–190, §§9, 10, 11, 81 Stat. 577

SEC. 9. Subsection 53 f. of the Atomic Energy Act of 1954, as amended, is amended by revising the first sentence thereof to read as follows: "The Commission is directed to distribute within the United States sufficient special nuclear material to permit the con-

duct of widespread independent research and development activities to the maximum extent practicable."

SEC. 10. Subsection 53 c. (1) of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"c. (1) The Commission may distribute special nuclear material licensed under this section by sale, lease, lease with option to buy,

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grant, or through the provision of production or enrichment services: *Provided, however,* That unless otherwise authorized by law, the Commission shall not after December 31, 1970, distribute special nuclear material except by sale or through the provision of production or enrichment services to any person who possesses or operates a utilization facility under a license issued pursuant to section 103 or 104 b. for use in the course of activities under such license; nor shall the Commission permit any such person after June 30, 1973, to continue leasing for use in the course of such activities special nuclear material previously leased to such person by the Commission."

SEC. 11. Subsection 161 n. of the Atomic Energy Act of 1954, as amended, is amended by striking out "57 a. (3)" and inserting in lieu thereof "57 b.".

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1.1w(1) JOINT COMMITTEE ON ATOMIC ENERGY

S. REP. No. 743, 90th Cong., 1st Sess. (1967)

AMENDMENTS TO THE ATOMIC ENERGY COMMUNITY ACT OF 1955, AS AMENDED, THE ATOMIC ENERGY ACT OF 1954, AS AMENDED, AND THE EURATOM COOPERATION ACT OF 1958, AS AMENDED

NOVEMBER 13, 1967.—Ordered to be printed

Mr. PASTORE, from the Joint Committee on Atomic Energy, submitted the following

REPORT

[To accompany S. 2644]

The Joint Committee on Atomic Energy, having considered S. 2644 to amend the Atomic Energy Community Act of 1955, as amended, the Atomic Energy Act of 1954, as amended, and the EURATOM Cooperation Act of 1958, as amended, reports favorably thereon and recommends that the bill do pass.

SUMMARY OF THE BILL

Section 1 of the bill would amend section 58 of the Atomic Energy Community Act of 1955, as amended, by revising the system of priorities applicable to the sale of apartment houses at Los Alamos, N. Mex. As amended, section 58 would authorize sale of these dwellings on a priority basis not only to housing cooperatives but to certain others as well.

Sections 2, 3, and 4 of the bill would amend sections 91, 94, and 118 of the Atomic Energy Community Act of 1955 to authorize the Atomic Energy Commission to continue to make assistance payments to the Cities of Oak Ridge, Tenn., and Richland, Wash., and to the Richland School District, and to state more explicitly the criteria for making such payments. The Commission's present authority to make such payments to these entities expires in fiscal year 1969. Under the amendment, any contracts entered into by the AEC to provide such assistance after June 30, 1979, would be subject to the availability of appropriations. The amendments also provide that no appropriations shall be made to carry out the

provisions and purposes of the Community Act unless previously authorized by legislation enacted by Congress.

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Sections 5 and 6 of the bill would amend subsection 25 a. and section 28 of the Atomic Energy Act of 1954 to confer on the Director of the AEC's Division of Military Application the new title of Assistant General Manager for Military Application. The amendment also provides that the officer serving in the position shall have general or flag rank, and that his service shall be reimbursed by the Commission for his military pay and allowances.

Section 7 of the bill would amend section 33 of the Atomic Energy Act of 1954, as amended, to provide certain additional authority for the AEC to perform research for others pertaining to the protection of public health and safety.

Section 8 of the bill would amend subsection 41 b. of the Atomic Energy Act of 1954 to eliminate the requirement for determinations by the President of the quantities of special nuclear material to be produced under section 41, and the amounts to be available for distribution by the AEC pursuant to sections 53 and 54 of the act.

Section 9 of the bill would amend subsection 53 f. of the Atomic Energy Act of 1954, in light of section 8 of the bill, to eliminate a reference to the Presidential determinations under subsection 41 b. of the act that would no longer be applicable.

Section 10 of the bill is a technical amendment to the Atomic Energy Act of 1954. It would amend paragraph (1) of subsection 53 c. of the act to make it clear that the term "distribute" as used in that paragraph includes the furnishing of special nuclear material through production or enrichment service contracts authorized by paragraph A of subsection 161 v. of the act.

Section 11 of the bill is another technical amendment, and would amend subsection 161 n. of the Atomic Energy Act of 1954 by deleting a no longer correct reference therein to subsection 57 a. (3) and substituting for it a correct reference to subsection 57 b.

Section 12, another perfecting amendment, would amend section 223 of the Atomic Energy Act of 1954 by deleting the no longer correct reference therein to subsection 161 p., and substituting therefor a correct reference to subsection 161 o.

Section 13 would amend section 5 of the EURATOM Cooperation Act of 1958, as amended, to effect three changes. *First,* this amendment would authorize the transfer of an additional 145,000 kilograms of contained uranium 235 to the European Atomic Energy Community. *Second,* this amendment would authorize the transfer of an additional 1,000 kilograms of plutonium to Euratom.

Third, this amendment would authorize the AEC to perform uranium enrichment services for Euratom.

Section 14 would add a new heading in the table of contents of the Atomic Energy Community Act of 1955, reflecting the amendment of that act that would be effected by section 1 of the bill.

A more complete explanation of the provisions in this bill is contained in the sections of this report entitled "Committee Comments" and "Section-by-Section Analysis."

BACKGROUND

On April 26, 1967, Congressman Thomas G. Morris, chairman of the Joint Committee's Subcommittee on Communities, and Senator Clinton P. Anderson, a member of the Joint Committee, introduced

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identical bills (H.R. 9199 and S. 1623) to amend the provisions of the Atomic Energy Community Act of 1955, as amended, pertaining to sale of Government-owned apartment houses at Los Alamos, N. Mex.

On May 11, 1967, the Atomic Energy Commission transmitted to Congress a proposed 1967 omnibus bill containing four amendments to the Atomic Energy Act of 1954 and one to the EURATOM Cooperation Act of 1958. This bill was identical to proposed legislation submitted by the AEC on June 30, 1966.[1] The AEC's proposed 1967 omnibus bill was introduced on June 5, 1967, by the chairman of the Joint Committee, Senator John O. Pastore (by request) as S. 1901, and on June 7, 1967, by Vice Chairman Chet Holifield (by request) as H.R. 10627.

Another amendment to the Atomic Energy Community Act of 1955 was submitted by the AEC on July 28, 1967, and introduced on August 3, 1967, by Senator Pastore (by request) and by Vice Chairman Holifield (by request), as S. 2220 and H.R. 12087. These bills would authorize the Atomic Energy Commission to make assistance payments to the Cities of Oak Ridge, Tenn., and Richland, Wash., and to the Richland School District, through June 30, 1979.

On August 14 and 24, 1967, the Atomic Energy Commission submitted two other legislative proposals for consideration in connection with the 1967 omnibus bill. Both proposals involve amendments to the Atomic Energy Act of 1954. The first relates to provision by the Commission of orientation and language train-

[1] See "AEC Omnibus Leglislation—1967," hearings before the Subcommittees on Communities and Legislation of the Joint Committee on Atomic Energy, Aug. 11, 15, and 24, 1967, app. 23. Although hearings were held on the 1966 bill (H.R. 16211, S. 3617, 89th Cong., 2d sess.) on Aug. 30, 1966, further legislative action was deferred.

ing for members of families of AEC officers and employees assigned abroad. The second would clarify and revise the status of the Director of the AEC's Division of Military Application.

Two other legislative proposals, both relating to the EURATOM Cooperation Act of 1958, were submitted by the AEC on August 22 and September 28, 1967, for consideration in connection with the 1967 omnibus bill. The first would authorize an increase in the amount of plutonium which may be transferred to the European Atomic Energy Community; [2] the other would amend the Cooperation Act to authorize an increase in the amount of contained uranium 235 which may be transferred to the Community for peaceful purposes.

On November 2, 1967, the Department of Defense submitted a proposed amendment of the Atomic Energy Act of 1954 to remove the locations, numbers, and yields of atomic weapons from the so-called "formerly Restricted Data" category.

Hearings concerning the 1967 legislative proposals were held by the Joint Committee's Subcommittees on Communities and Legislation, and the full committee, as summarized in the next section of this report.

On November 8, 1967 the Subcommittee on Legislation met to consider the above-described legislative proposals. With respect to its

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consideration of sale of apartment houses at Los Alamos, and financial assistance for the communities of Oak Ridge and Richland, the Subcommittee on Legislation met jointly with the Subcommittee on Communities. After full discussion, the subcommittees voted to approve certain of these proposals, with modifications and additions, and to file clean bills. These were introduced on November 9, 1967, by Senator Pastore, as S. 2644, and by Vice Chairman Holifield, as H.R. 13934.

For reasons described more fully in the section of this report entitled "Committee Comments," the Subcommittee on Legislation took no further action on the Commission's request of August 14, 1967, for legislative authority to provide appropriate orientation and language training for dependents of AEC's employees on overseas assignment; nor on the Defense Department's November 2,

[2] This proposal is identical to one submitted by the AEC on Sept. 1, 1966, and introduced on Sept. 7, 1966, by Congressman Holifield (by request) as H.R. 17557, and by Senator Pastore (by request) as S. 3808. No further action was taken by the Joint Committee in view of the lateness in the session when the administration requested the legislation and since the additional plutonium desired by Euratom apparently was not needed in 1966. See "AEC Omnibus Legislation—1967," hearings before the Subcommittees on Communities and Legislation of the Joint Committee on Atomic Energy, app. 24.

1967, proposal pertaining to "formerly Restricted Data."

On November 9, 1967, the full joint committee met and voted to approve S. 2644 and H.R. 13934, as approved by the Subcommittees on Legislation and Communities. The committee further voted to adopt this report thereon.

HEARINGS

On August 11, 1967, the Subcommittee on Communities convened in Los Alamos, N. Mex., to hear public testimony on S. 1623 and H.R. 9199. Herman E. Roser, area manager of the Los Alamos Area Office of the AEC, and Franklin N. Parks, Associate General Counsel, testified on behalf of the Commission. Joseph P. Smith, Director of the Community Disposition Staff, testified on behalf of the Department of Housing and Urban Development. Also testifying were the following: Martin Gursky, county of Los Alamos; Philip Thompson, on behalf of FCH Services, Inc.; Alan Rawcliffe and Barbara Hoak, residents of Los Alamos, on behalf of Los Alamos Community Homes, Inc.; and Chuck Caldwell, Fred Selarge, John Rogers and Lloyd Poquette, residents of the Los Alamos community.

The Subcommittee on Communities met again in Washington, D.C., on August 24, 1967 (jointly with the Subcommittee on Legislation) to consider S. 2220 and H.R. 12087. Senator Howard H. Baker presented testimony to the subcommittee. Testifying for the AEC were Commissioner Wilfrid E. Johnson, John A. Erlewine, assistant general manager for operations, and other AEC staff. The subcommittee also heard from John R. Sullivan, mayor, and Murray W. Fuller, city manager, of the City of Richland, Wash.; Samuel Clark, superintendent, and Karl Diettrich, senior member of the school board, Richland School District No. 400; A. K. Bissell, mayor, Carleton E. McMullin, city manager, and Eugene L. Joyce, attorney, City of Oak Ridge, Tenn.

The Subcommittee on Legislation held a hearing on August 15, 1967, to consider testimony on the AEC's proposed omnibus bill for 1967 (S. 1901 and H.R. 10627), and on a proposed amendment to the bill submitted by the AEC on August 14 concerning provision by the AEC of orientation and language training to dependents of AEC employees assigned abroad. Although another amendment to the bill concerning the status of the Director of the AEC's Division of Mili-

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tary Application had not officially been transmitted to Congress at the time of the hearing (the amendment was officially submitted on August 24, 1967), the subcommittee took the opportunity to

explore this proposal with the AEC at this time. Witnesses who appeared on behalf of the AEC were: Edward J. Bloch, deputy general manager; Myron B. Kratzer, assistant general manager for international activities; and Joseph F. Hennessey, general counsel.

On August 24, 1967, the Subcommittee on Legislation met again in open session to hear Commission testimony on S. 2220 and H.R. 12087 (discussed above), and on another proposed amendment to the omnibus bill for 1967, this one concerning a proposed increase in the amount of plutonium which may be transferred to the European Atomic Energy Community under the EURATOM Cooperation Act of 1958. The following AEC witnesses appeared: Dr. Gerald F. Tape, Commissioner; Howard C. Brown, Jr., assistant general manager; Joseph F. Hennessey, general counsel; and R. Glenn Bradley, division of international affairs. This topic was also considered by the full committee in executive sessions on July 18, 1966, when AEC and State Department representatives testified, and on October 25, 1967, when witnesses representing the AEC appeared.

At executive sessions on November 8 and 9, 1967, the Subcommittee on Legislation and the full committee also considered another proposed amendment to the omnibus bill for 1967, submitted by the AEC on September 28, 1967. This amendment would modify the EURATOM Cooperation Act of 1958 to increase by 145,000 kilograms the amount of contained uranium 235 which may be transferred to the European Atomic Energy Community.

COMMITTEE COMMENTS

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Sections 8 and 9. Elimination of Presidential determinations concerning production and distribution of special nuclear material

Subsection 41 b. of the Atomic Energy Act of 1954 requires, as did its precursor, subsection 4(c) (2) of the Atomic Energy Act of 1946, that the President determine at least once each year the quantities of special nuclear material (or "fissionable material" as it was known under the 1946 act) to be produced under that section. Subsection 41 b. further requires that the President shall specify in such determination the quantities of special nuclear material to be available for distribution by the Commission pursuant to sections 53 and 54 of the act which relate, respectively, to the domestic and foreign distribution of such material. Sections 8 and 9 of the bill would eliminate both of these requirements.

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The first of these requirements was embodied in the 1946 act and then carried over into the 1954 act to assure, among other things, that military requirements for special nuclear materials would receive adequate attention by the Chief Executive. The second requirement—that the President specify in his determination the quantities of material to be available for distribution domestically and abroad—was included in the section in 1954 primarily to permit greater participation in civilian atomic energy matters, particularly in the development of atomic power, while at the same time affording assurance that sufficient special nuclear material (which was still in short supply at that time) would be available to meet military and other needs of the AEC and the Department of Defense. Through this device the President was authorized to provide for military and other governmental requirements but at the same time to reserve, from existing stocks of special nuclear material and from future production of such materials approved by him for the ensuing year, quantities of special nuclear material to be available for distribution to domestic and foreign persons.

The scarcity of special nuclear material which prevailed 13 years ago, and which prompted the incorporation of these requirements into the 1954 act, no longer exists. This change in circumstances was acknowledged by Congress in 1964 when it approved the Private Ownership of Special Nuclear Materials Act (Public Law 88–489), which not only permits private ownership of special nuclear material but authorizes the Commission to enter into long-term contracts to sell special nuclear material to, and to perform toll enrichment services for, both domestic and foreign persons.

In view of the foregoing, it does not seem necessary to require the President to continue to make the determinations required by the last sentence of subsection 41 b. The Joint Committee, therefore, recommends the elimination of these requirements from the Atomic Energy Act, as proposed by the AEC.

It is believed that other sections of the act afford adequate assurance that military requirements for special nuclear materials will continue to receive due attention. Moreover, it should be noted that even in the absence of a statutory requirement for such Presidential determinations, the amount of special nuclear materials to be produced by the Commission will continue to be controlled by Congress and the executive branch through normal budgetary authorization and appropriation processes. Noteworthy also is the fact that distribution of such materials abroad for civilian purposes can be made only pursuant to an agreement for cooperation which, under the terms of section 123 of the act, must be approved by the President and submitted to the Joint

Committee for a period of 30 days while Congress is in session before becoming effective.[7] Thus, sufficient control mechanisms will remain to insure executive and, in particular, congressional supervision over the production and distribution of these important materials.

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It is further believed that one of the purposes served by the Presidential determination under subsection 41 b.—informing the atomic energy industry, both domestic and foreign, of the total amount of enriched uranium available for distribution by the Commission for peaceful purposes, primarily for use as fuel in nuclear powerplants—can be better served by a substitute procedure not requiring legislation. At the Joint Committee's request, the Commission has previously undertaken to report annually to the committee "its outstanding and anticipated commitments for providing uranium enriching services, and projected enrichment capability." [8] The committee believes that by adding to this report information concerning sale, lease, and grant of enriched uranium, data would become available to the committee and to the public which would provide more meaningful and current information as to the enriched uranium supply situation than was revealed through publication of Presidential determinations under subsection 41 b.

The committee expects, therefore, that the Commission will submit to the Joint Committee each year a report indicating, first, the AEC's outstanding and anticipated commitments for the provision of enriched uranium and uranium enriching services, and second, the projected capability, both actual and potential, of the AEC's existing production facilities to undertake additional commitments to provide such material and services. It is the expectation of the committee that such reports will be made available to the public.

Sections 10, 11, and 12. Technical amendments of the Atomic Energy Act of 1954

Sections 10, 11, and 12 of the bill embody technical amendments of the Atomic Energy Act of 1954.

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[7] In the case of special nuclear materials proposed to be transferred to a foreign country for military purposes, sec. 123 requires that the proposed agreement for cooperation be submitted to the Congress for referral to the Joint Committee, where the agreement must lie for a period of 60 days while Congress is in session before becoming effective. Any such agreement shall not become effective if during the 60-day waiting period Congress passes a concurrent resolution stating its disfavor of the agreement

[8] See letter from Congressman Chet Holifield to Dr. Glenn T Seaborg, dated Oct. 18, 1966, and AEC response thereto dated Dec. 16, 1966, set forth in the Joint Committee's hearings on "Uranium Enrichment Services Criteria and Related Matters" (Aug 2, 3, 4, 16, and 17, 1966), pp. 517–519.

Section 10 of the bill would amend subsection 53 c. (1) of the act to make it clear that the authority of the Commission to "distribute" special nuclear material to domestic licensees under that subsection includes the authority to distribute such material through production or enrichment service contracts authorized under paragraph A of subsection 161 v.

With the passage of the Private Ownership of Special Nuclear Materials Act in 1964, private ownership of special nuclear material became possible in the United States. Concurrently, the AEC was authorized, after December 31, 1968, to furnish production and enrichment services under contracts with the AEC's licensees. However, in amending various sections of the Atomic Energy Act to reflect these and numerous other changes wrought in the law by the Private Ownership Act, subsection 53 c. (1) through inadvertence was not amended specifically to reflect that the furnishing of special nuclear material through such production or enrichment services constituted a "distribution" under subsection 53 c. (1). Since the term "distribute" as used in section 54 of the act includes the furnishing of production or enrichment services, it is desirable to clarify subsection 53 c. (1) in this respect.

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A corresponding change would be made to the proviso in subsection 53 c. (1), which directs the Commission not to "distribute" special nuclear material after December 31, 1970, to certain persons except by sale unless otherwise authorized by law. Again, this amendment comports with the language of subsection 161 v. of the Atomic Energy Act, which permits the Commission to distribute special nuclear materials after December 31, 1968, through the furnishing of production or enrichment services.

Section 11 of the bill would amend subsection 161 n. of the act by deleting a reference therein to subsection 57 a. (3) and substituting for it a correct reference to subsection 57 b. The private ownership legislation of 1964, referred to above, amended section 57 in such a way that the provisions of the former subsection 57 a. (3) now appear in subsection 57 b. Subsection 161 n., which identifies certain Commission functions as nondelegable, should be revised to reflect the change in section 57.

[p. 13]

Section 9 of the bill would amend subsection 53 f. of the Atomic Energy Act of 1954, as amended, to delete the reference therein to the limitations on the distribution of special nuclear materials set by the President in determinations made pursuant to subsection 41 b. This change in subsection 53 f. is necessitated by the pro-

posed change in subsection 41 b. to be effected by the bill.

Section 10 of the bill, a technical amendment, would amend subsection 53 c. (1) of the Atomic Energy Act of 1954, as amended, to add the words "or through the provision of production or enrichment services" at two points in the subsection dealing with the methods by which the Commission can distribute special nuclear material under that subsection. As amended, the subsection would make it clear (*a*) that the furnishing of uranium enrichment services by the AEC pursuant to subsection 161 v. of the act is one method of distribution of special nuclear material under subsection 53 c. (1), and (*b*) that the furnishing of such services to certain licensees after December 31, 1970, is not prohibited by that subsection.

Section 11 of the bill would amend subsection 161 n. of the Atomic Energy Act of 1954, as amended, to delete an erroneous reference therein to subsection 57 a. (3) of the act. This technical amendment would also insert a correct reference to subsection 57 b. of the act in lieu of the deleted reference to subsection 57 a. (3).

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1.1w(2) JOINT COMMITTEE ON ATOMIC ENERGY

H.R. REP. No. 911, 90th Cong., 1st Sess. (1967)

AMENDMENTS TO THE ATOMIC ENERGY COMMUNITY ACT OF 1955, AS AMENDED, THE ATOMIC ENERGY ACT OF 1954, AS AMENDED, AND THE EURATOM COOPERATION ACT OF 1958, AS AMENDED

NOVEMBER 9, 1967.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. HOLIFIELD, from the Joint Committee on Atomic Energy, submitted the following

REPORT

[To accompany H.R. 13934]

The Joint Committee on Atomic Energy, having considered H.R. 13934 to amend the Atomic Energy Community Act of 1955, as amended, the Atomic Energy Act of 1954, as amended, and the

EURATOM Cooperation Act of 1958, as amended, reports favorably thereon and recommends that the bill do pass.

SUMMARY OF THE BILL

Section 1 of the bill would amend section 58 of the Atomic Energy Community Act of 1955, as amended, by revising the system of priorities applicable to the sale of apartment houses at Los Alamos, N. Mex. As amended, section 58 would authorize sale of these dwellings on a priority basis not only to housing cooperatives but to certain others as well.

Sections 2, 3, and 4 of the bill would amend sections 91, 94, and 118 of the Atomic Energy Community Act of 1955 to authorize the Atomic Energy Commission to continue to make assistance payments to the Cities of Oak Ridge, Tenn., and Richland, Wash., and to the Richland School District, and to state more explicitly the criteria for making such payments. The Commission's present authority to make such payments to these entities expires in fiscal year 1969. Under the amendment, any contracts entered into by the AEC to provide such assistance after June 30, 1979, would be subject to the availability of appropriations. The amendments also provide that no appropriations shall be made to carry out the provisions and purposes of the Community Act unless previously authorized by legislation enacted by Congress.

[p. 1]

1.1w(3) CONGRESSIONAL RECORD, VOL. 113 (1967)

1.1w(3)(a) Nov. 15: Passed Senate, p. 32583

[No Relevant Discussion on Pertinent Section]

1.1w(3)(b) Nov. 30: Passed House, pp. 34398–34399, 34403

Mr. HOLIFIELD.

* * * * *

Mr. Chairman, I also wish to say a few additional words concerning the performance by the AEC of research for others.

The Atomic Energy Commission's laboratories represent a national asset of incomparable value. The plants themselves are unique in their quality and diversity. They are staffed by outstanding people, expert in both the physical and life sciences. The systems type approach which they have applied to problems of such magnitude and complexity as development of nuclear energy especially qualifies these organizations for coping with other pressing tasks affecting the public health and safety which must be undertaken today. Section 7 of H.R.

13934 was included in this bill at the recommendation of the Joint Committee, to provide additional assurance that the AEC's excellent facilities will be available to undertake these tasks.

At the present time, the AEC possesses authority under section 33 of the Atomic Energy Act to perform research for others under certain circumstances, provided the Commission deems the activities and studies "appropriate to the development of atomic energy." In addition, the AEC possesses a very broad charter under sections 31 and 32 of the act to perform or have performed research and development pertaining to the atomic energy program. Further, the Commission may perform work—including work outside of the atomic energy field—for other Federal agencies under the so-called Economy Act. Using these authorities, the AEC has undertaken such programs as development of liquid centrifuges for use in carcinogenesis studies, as well as some ecological and environmental pollution studies.

The AEC has also initiated a so-called "spin-off" program, designed to help translate into beneficial commercial-industrial use the information and techniques developed in the atomic energy program.

Notwithstanding these provisions of law, there may be legal barriers which prevent the use of the AEC's facilities where they could make additional—perhaps unique—contributions to the public health and safety. Such a barrier could exist, for example, if a State or local government were to seek the AEC's assistance in performing certain types of nonnuclear work for which the AEC's facilities were especially qualified. Section 7 of H.R. 13934 would assist in removing such obstacles to obtaining the full benefits from the investment made by the American people in the plants, equipment, and personnel of the AEC.

This is a matter, incidentally, that I and other members of the Joint Committee, particularly the ranking House member of the committee, the gentleman from California [Mr. HOSMER], have been concerned with for some time. Included in the record of our committee's hearings on the AEC's budget for this fiscal year are letters I sent to the Director of the Bureau of the Budget and the Comptroller General last fall—see part 2 of AEC authorizing legislation, fiscal year 1968, pages 1285–1287—expressing my views on this subject. I will ask unanimous consent to include these letters in the RECORD at the conclusion of my remarks, as well as excerpts from a talk which I delivered in September 1966 dealing with this matter. I cite these documents for the purpose of illustrating the nature of our committee's interest in achieving the best utilization of the AEC's facilities.

Mr. Chairman, I believe our national needs today and in the years to come will be too great to afford the luxury of wasteful duplication of equipment, and the building up of new teams of specialists, when we may already have the means at hand to do the job. That is why our committee supports the inclusion of section 7 in H.R. 13934.

Of course, once this bill is enacted the Joint Committee would expect to maintain careful supervision over the AEC's use of this new authority to assure that the intent of Congress is being carried out. Moreover, the appropriations committees and Congress would, of course, retain complete control over the expenditure of funds by the AEC pursuant to this law.

Mr. Chairman, that completes my summary and statement concerning H.R. 13934. The material I referred to earlier is as follows:

HOUSE OF REPRESENTATIVES,
Washington, D.C., November 15, 1966.

Hon. ELMER B. STAATS,
The Comptroller General of the United States,
Washington, D.C.

DEAR ELMER: I am sending you a copy of my letter to the Bureau of the Budget as I am sure you will be interested in the proposal which I am making.

I am not making this proposal for the pur-

pose of obtaining work for the A.E.C. national laboratories, but on behalf of utilizing these well equipped laboratories and personnel for appropriate Federal projects in the field of anti pollution. I see no reason for building and equipping duplicate laboratories and the costly and laborious effort of obtaining scientific teams who probably will not have the background of specialized knowledge which present scientific personnel have in the A.E.C. laboratories.

I will want to go into this matter in more detail in January with you and Charles Schultze.

Kindest regards.

Sincerely,

CHET HOLIFIELD,
Chairman.

JOINT COMMITTEE ON ATOMIC ENERGY,
November 15, 1966.

MR. CHARLES L. SCHULTZE,
Director, Bureau of the Budget, Washington, D.C.

DEAR MR. SCHULTZE: I am writing to discuss the overall pollution of our environment, which President Johnson has described as "one of the most pervasive problems of our society." I also wish to offer some suggestions concerning use of existing facilities to help resolve this critical problem affecting our nation and the entire world.

Month by month the degree of concern over pollution, within the scientific community and the public at large, becomes more intense. Clearly, it is the responsibility of the Federal Government to furnish dynamic leadership in planning and conducting a long term program to deal with this matter. In this connection, I have reviewed and been impressed by last November's report of the Environmental Pollution Panel of the President's Science Advisory Committee. On several occasions I have publicly called attention to some of the Panel's most significant conclusions.

One of these conclusions is that an urgent need exists to provide additional trained personnel, with adequate facilities, to launch the required broadscale attack on the manifold causes of environmental pollution. While I generally agree with this view, I am concerned that we may lose irretrievable lead-time in establishing new organizations and facilities, which will result in wasteful duplication and fail to achieve the desired results. We can and must make the optimum use of the qualified people and facilities currently available to us.

For more than two decades, the Federal Government has supported a vast program of research and development including the construction of expensive laboratories and other scientific establishments. These plants are furnished with the most advanced equipment. Thousands of scientists and engineers have been trained at Federal expense, and there exists in this country a number of highly skilled organizations which we have built up and supported in order to devote their energies to the attainment of various national research and development objectives. My efforts on the Joint Committee on Atomic Energy and the Government Operations Committee have convinced me of the critical need for making better use of these Federal research establishments in solving the dilemma of environmental pollution, particularly as it relates to urban design. This needs to be done in order to maximize our scientific and technological progress and to achieve the best allocation of scarce resources.

As a specific example I call your attention to the Federally-supported atomic energy research laboratories. Unquestionably, these facilities represent a national asset of incomparable value. The plants themselves are outstanding in their quality and diversity. They are staffed by outstanding people, expert in both the physical and life sciences. The systems type approach which they have applied to problems of the magnitude and complexity of development of nuclear energy for peaceful and military purposes especially qualifies these organizations for coping with the Herculean tasks which must be accomplished in order to safeguard our environment against pollution. Moreover, and very importantly, these organizations have had perhaps the most extensive experience in many of the programs which must be pursued now with great vigor, such as measurements of pollution, studies of its effects, and analysis of waste disposal methods.

I have discussed this matter with Atomic Energy Commission Chairman Glenn Seaborg, and have requested him to consider carefully the capabilities of our atomic energy facilities to contribute to the national effort to abate pollution. I am also bringing this to your personal attention because of your position of responsibility concerning the overall programs of Executive Agencies. I hope you will specifically review this subject with Dr. Seaborg to determine how best to utilize these outstanding laboratories. Your efforts to assure that available resources are used wherever possible are of the utmost importance in promoting an effective, timely and economical Federal approach to this problem. You can be assured of my support in these efforts.

I believe it is of vital importance that the matters I have discussed be given full and early consideration. Accordingly, I would appreciate an opportunity to talk with you about them as soon as our mutual schedules permit.

With kindest regards,

Sincerely,

CHET HOLIFIELD,
Chairman.

[p. 34398]

A COMPREHENSIVE APPROACH TO THE POLLUTION PROBLEM

(Excerpts from remarks by Congressman CHET HOLIFIELD, chairman, Joint Committee on Atomic Energy, at the Governors' Confer-

ence, Gilbertsville, Ky., September 19, 1966)

I for one question whether present efforts to bring environmental pollution under control as we enter the era of the megalopolis will be successful. Thus far most of the thinking on the subject has been devoted to isolating single aspects of the problem—such as air pollution resulting from the operation of automobiles, or water pollution due to industrial operations.

I do not think that it is fruitful to consider only specific types of pollution. The piecemeal approach tends to limit the consideration to only local areas of such pollution. Moreover, certain areas tend to be emphasized while others are neglected. For example, one important aspect of environmental control which I think has been neglected is the interrelation of environmental pollution factors with our over-all way of life. I think it is time now to look at complete urban centers with control of environmental pollution a fundamental factor in their design.

In many localities we are now witnessing the construction of completely new cities, sometimes through initiation of construction of large new developments, and in many cases through the wholesale redevelopment of existing urban areas. Wouldn't it be wise to seize this opportunity to take an overall approach to the pollution problem? Let me give a few examples of what I have in mind.

The automobile is now one of the greatest contributors to atmospheric pollution. Highways and interchanges for automobiles present severe problems in the design of urban communities. It's quite possible that if we looked at these questions as related problems—that is, as part of a whole—we might find a combined solution to both of them. In other words, in lieu of setting one group of planners upon the problem of reducing pollution from the automobile and another group to solving the transportation question, why not look at these as interrelated problems? In doing so the planners might find that restricted use of the automobile and the creation of a central mass transportation system in the urban area would provide superior commuting service while eliminating both the problem of air pollution and the problem of concrete jungles. Other similar examples of the value of considering urban design from the standpoint of a complete system can readily be given.

One fundamental factor which is critical to the overall problem of urban design is the provision of energy. The availability of an adequate supply of low cost energy which in itself does not contaminate the environment will permit the elimination of many of our pollution problems. With adequate supplies of low cost energy, water can be purified, air can be filtered, automobiles can be propelled, various wastes can be converted and eliminated, and so forth. Nuclear energy, for one, may fill this bill. Perhaps, therefore, energy should be given a more central position in our urban planning.

The foregoing amply indicates, I think, that we can no longer consider piecemeal solutions to our environmental problems. We must approach the urban design problem on a broader basis. I also want to indicate that it is an urgent matter to get on with the overall system analysis approach in our attempts to achieve proper control of environmental pollution. We should also utilize our great scientific centers to give us guidance in this critical area. Our atomic energy laboratories, for example, contain a concentration of scientific and technical talent never before amassed. The accomplishments in the field of nuclear weapons and civilian applications of nuclear energy I do not believe are matched by any other scientific effort. I think it might help if I were to give a few examples to illustrate the uniqueness of this national resource and its adequacy to treat the overall system analysis approach to the urban design problem.

The Atomic Energy Commission's national laboratories are staffed by outstanding scientists in both the physical and life sciences. The concept of tracer techniques mastered and used in the atomic energy program is a fundamental tool in the analysis of our environment The problems of nuclear weapons effects and fallout have been faced by the national laboratories on a worldwide basis using techniques directly applicable to the analysis of pollution problems. The worldwide aspect of pollution is stressed in the Report of the President's Science Advisory Panel on Pollution where they recommended that data be obtained on pollution and temperature trends in the atmosphere and stratosphere throughout the world. The same approach has been used concerning measurements in the oceans when radioactive waste disposal in the ocean was under consideration. The biological studies of the effects of radiation on ecological systems is also an area of special talent possessed by the national laboratories. The pest control work which has been achieved through the use of radiation also covers an important aspect of the environmental pollution problem. Of course, as I mentioned before, the development of nuclear power plants, which was done by our national laboratories, to supply the electrical needs of urban centers is a fundamental factor in any approach to the pollution problem. This one factor may prove to be the most effective in contributing to a solution to the pollution problem—but it must be considered in the overall analysis of our environmental pollution problem.

What I personally propose to do is to follow up on this item with the Atomic Energy Commission. What I would like to see the Atomic Energy Commission do is mobilize its resources and come up with an outline of how to approach the overall environmental pollution problem of the megalopolis. If it is agreed that the proposed attack can give us valuable assistance then we can look into how this competence can be utilized.

I firmly believe that our only hope for a satisfactory solution to the general problems of environmental pollution is the comprehensive approach. The city or the megalopolis must be considered as a whole and ways must be found to provide man with his needs without poisoning him.

Mr. HOLIFIELD. Mr. Chairman, I ask unanimous consent that the gentleman from Tennessee [Mr. EVINS] may extend his remarks at this point in the RECORD.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. EVINS of Tennessee. Mr. Chairman, I want to associate myself with the remarks of the distinguished gentleman from California [Mr. HOLIFIELD] and rise in support of H.R. 13934 which consists of amendments to various atomic energy acts.

This is a most important and significant bill, Mr. Chairman, in the growth and progress of the atomic city of Oak Ridge.

This bill contains provisions to retain and continue the Atomic Energy Commission's payments in lieu of taxes to the city of Oak Ridge, among other local governmental units. These payments are vital and essential to the city of Oak Ridge because of the limitations placed upon its tax base by its inception and development as a Federal city with virtually all industry owned and operated by a Federal agency. In other words these payments assist in filling the void in revenue which normally could be expected to accrue to a municipality through a private industrial base.

In 1955 payments were approved for a 10-year period to the city government of Oak Ridge. This bill under consideration today proposes to continue these payments with the provision that future payments must be authorized by the Joint Committee on Atomic Energy and funds appropriated as needed by the Committee on Appropriations.

In the meantime the city of Oak Ridge is continuing and developing its program of progress to expand its private industrial base and its tax base. I want to commend and congratulate the city of Oak Ridge upon its achievements and objectives in this connection. The Joint Committee on Atomic Energy in its report praised the efforts of Oak Ridge to achieve "financial independence through self-help."

I strongly urge the passage of this most important legislation. It is vital —it is needed—it is the equitable course to follow, and I urge passage of this bill.

Mr. HOSMER. Mr. Chairman, I yield myself such time as I may consume.

The Joint Committee's evaluation of H.R. 13934 was characterized by a bipartisan spirit, as has generally been the case with our committee's activities. This bill is, to some extent, "nuts and bolts" legislation designed to perfect inadequacies in existing law, or to continue cooperation already begun. The Atomic Energy Act of 1954 is the basic charter by which the Nation's atomic affairs are governed. From time to time we bring before the Congress a bill such as this one making such adjustments to the provisions of the act as seem necessary or desirable. In short this is sort of an annual housekeeping exercise. The bill before us also makes similar adjustments in the Atomic Energy Community Act of 1955 and the Euratom Cooperation Act of 1958.

The vice chairman of our committee has summarized the bill, and I need not repeat what he has said. I would like to emphasize that I regard this bill as a moneymaker for the U.S. Government. At a time when we are justifiably seriously concerned about Government expenses and the balance of payments, this bill offers a happy contrast to some of the legislation that has been presented to Congress.

* * * * *

[p. 34399]

SEC. 6. Section 28 of the Atomic Energy Act of 1954, as amended, is amended by revising the first two sentences thereof to read as follows:

"Notwithstanding the provisions of any other law, the officer of the Army, Navy, or Air Force serving as Assistant General Manager for Military Application shall serve without prejudice to his commissioned status as such officer. Any such officer serving as Assistant General Manager for Military Application shall receive in addition to his pay and allowances, including special and incentive pays, for which pay and allowances the Commission shall reimburse his service, an amount equal to the difference between such pay and allowances, including special and incentive pays, and the compensation established for this position."

SEC. 7. Section 33 of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"SEC. 33. RESEARCH FOR OTHERS.—Where the Commission finds private facilities or laboratories are inadequate to the purpose, it is authorized to conduct for other persons, through its own facilities, such of those activities and studies of the types specified in section 31 as it deems appropriate to the development of atomic energy. To the extent the Commission determines that private facilities or laboratories are inadequate to the purpose, and that the Commission's facilities, or scientific or technical resources have the potential of lending significant assistance to other persons in the fields of protection of public health and safety, the Commission may also assist other persons in these fields by conducting for such persons, through the Commission's own facilities, research and development or training activities and studies. The Commission is authorized to determine and make such charges as in its discretion may be desirable for the conduct of the activities and studies referred to in this section."

SEC. 8. Subsection 41 b. of the Atomic Energy Act of 1954, as amended, is amended by deleting the last sentence.

SEC. 9. Subsection 53 f. of the Atomic Energy Act of 1954, as amended, is amended by revising the first sentence thereof to read as follows: "The Commission is directed to distribute within the United States sufficient special nuclear material to permit the conduct of widespread independent research and development activities to the maximum extent practicable."

SEC. 10. Subsection 53 c. (1) of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"c. (1) The Commission may distribute special nuclear material licensed under this section by sale, lease, lease with option to buy, grant, or through the provision of production or enrichment services: *Provided, however,* That unless otherwise authorized by law, the Commission shall not after December 31, 1970, distribute special nuclear material except by sale or through the provision of production or enrichment services to any person who possesses or operates a utilization facility under a license issued pursuant to section 103 or 104 b. for use in the course of activities under such license; nor shall the Commission permit any such person after June 30, 1973, to continue leasing for use in the course of such activities special nuclear material previously leased to such person by the Commission."

SEC. 11. Subsection 161 n. of the Atomic Energy Act of 1954, as amended, is amended by striking out "57 a. (3)" and inserting in lieu thereof "57 b.".

SEC. 12. Section 223 of the Atomic Energy Act of 1954, as amended, is amended by striking out the letter "p." appearing after the word "or" and inserting in lieu thereof the letter "o.".

SEC. 13. Section 5 of the EURATOM Cooperation Act of 1958, as amended, is amended to read as follows:

"SEC. 5. Pursuant to the provisions of section 54 of the Atomic Energy Act of 1954, as amended, there is hereby authorized for sale or lease to the Community—

"two hundred fifteen thousand kilograms of contained uranium 235;

"one thousand five hundred kilograms of plutonium; and

"thirty kilograms of uranium 233;

in accordance with the provisions of an agreement or agreements for cooperation between the Government of the United States and the Community entered into pursuant to the provisions of section 123 of the Atomic Energy Act of 1954, as amended: *Provided,* That the Government of the United States obtains the equivalent of a first lien of any such material sold to the Community for which payment is not made in full at the time of transfer. The Commission may enter into contracts to provide, after December 31, 1968, for the producing or enriching of all, or part of, the above-mentioned contained uranium 235 pursuant to the provisions of subsection 161 v. (B) of said Act, as amended, in lieu of sale or lease thereof."

SEC. 14. The table of contents of the Atomic Energy Community Act of 1955, as amended, is amended by inserting a new heading entitled "Sec. 58. Priority sale of apartment houses."

AMENDMENT OFFERED BY MR. HOLIFIELD

Mr. HOLIFIELD. Mr. Speaker, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. HOLIFIELD: Strike out all after the enacting clause of the bill S 2644 and insert in lieu thereof the provisions of H R 13934, as passed.

The amendment was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

A similar House bill (H.R. 13934) was laid on the table.

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1.1x ATOMIC ENERGY ACT AMENDMENTS

December 19, 1970, P.L. 91-560, §§1, 4, 5, 7, 8, 84 Stat. 1472, 1474

To amend the Atomic Energy Act of 1954, as amended, to eliminate the requirement for a finding of practical value, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That paragraph (4) of subsection 31 a. of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

> "(4) utilization of special nuclear material, atomic energy, and radioactive material and processes entailed in the utilization or production of atomic energy or such material for all other purposes, including industrial or commercial uses, the generation of usable energy, and the demonstration of advances in the commercial or industrial application of atomic energy; and".

SEC. 4. The first sentence of subsection 103 a. of the Atomic Energy Act of 1954, as amended, is amended to read as follows: "The Commission is authorized to issue licenses to persons applying therefor to transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, use, import, or export under the terms of an agreement for cooperation arranged pursuant to section 123, utilization or production facilities for industrial or commercial purposes."

SEC. 5. Subsection 104 b. of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"b. As provided for in subsection 102 b. or 102 c., or where specifically authorized by law, the Commission is authorized to issue licenses under this subsection to persons applying therefor for utilization and production facilities for industrial and commercial purposes. In issuing licenses under this subsection, the Commission shall impose the minimum amount of such regulations and terms of license as will permit the Commission to fulfill its obligations under this Act."

[p. 1472]

SEC. 7. Subsection 161 n. of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"n. delegate to the General Manager or other officers of the Commission any of those functions assigned to it under this Act except those specified in section 51, 57 b., 61, 108, 123, 145 b. (with respect to the determination of those persons to whom the Commis-

sion may reveal Restricted Data in the national interest), 145 f., and 161 a.;"

SEC. 8. The first proviso in subsection 161 v. of the Atomic Energy Act of 1954, as amended, is amended to read as follows: "*Provided,* That (i) prices for services under paragraph (A) of this subsection shall be established on a nondiscriminatory basis; (ii) prices for services under paragraph (B) of this subsection shall be no less than prices under paragraph (A) of this subsection; and (iii) any prices established under this subsection shall be on a basis of recovery of the Government's costs over a reasonable period of time;"

[p. 1474]

1.1x(1) JOINT COMMITTEE ON ATOMIC ENERGY

H.R. REP. No. 91-1470, 91st Cong., 2d Sess. (1970)

AMENDING THE ATOMIC ENERGY ACT OF 1954, AS AMENDED, TO ELIMINATE THE REQUIREMENT FOR A FINDING OF PRACTICAL VALUE, TO PROVIDE FOR PRELICENSING ANTITRUST REVIEW OF PRODUCTION AND UTILIZATION FACILITIES, AND TO EFFECTUATE CERTAIN OTHER PURPOSES PERTAINING TO NUCLEAR FACILITIES

SEPTEMBER 24, 1970.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. HOLIFIELD, from the Joint Committee on Atomic Energy, submitted the following

REPORT

[To accompany H.R. 18679]

The Joint Committee on Atomic Energy, having considered H.R. 18679, an original committee bill to amend the Atomic Energy Act of 1954, as amended, and for other purposes, report favorably thereon and recommend that the bill do pass.

SUMMARY OF BILL

H.R. 18679 would amend the Atomic Energy Act of 1954, as amended, to accomplish the following principal purposes:

1. *Abolish the concept of a finding of practical value (sec. 3 of the bill).*—The bill would amend section 102 of the Atomic Energy Act which now requires that the Atomic Energy Commission first make "a finding in writing that any type of utilization or production facility has been sufficiently developed to be of practical value for industrial or commercial purposes" before the Commission may issue licenses for such type of facility pursuant to section 103 of the act, the section concerned with "commercial" licenses.

Under the bill, utilization or production facilities for commercial or industrial purposes would be subject to licensing under section 103, and no finding of "practical value" would be required. Two exceptions to such licensing under section 103 would be provided for and these are later described in this report.

2. *Clarify the procedure for prelicensing antitrust review (sec. 6 of the bill).*—The bill would clarify and revise the present text of subsection

[p. 1]

105c. of the Atomic Energy Act relative to antitrust review of applications for AEC licensing of utilization or production facilities for industrial or commercial purposes.

3. *Authorize variation of disciplines in the composition of atomic safety and licensing boards (sec. 10 of the bill).*—The bill would amend the first sentence of subsection 191a. which now requires that of the three members of any atomic safety and licensing board two members "shall be technically qualified" and the third "shall be qualified in the conduct of administrative proceedings." The amendment in the bill would permit two members to have "such technical or other qualifications as the Commission deems appropriate to the issues to be decided"; the third member would, as in the present text of this section, be one "qualified in the conduct of administrative proceedings."

4. *Require the Government to enter into an arrangement with the National Council on Radiation Protection and Measurements for a comprehensive and continuing review of basic radiation protection standards, and an arrangement with the National Academy of Sciences for a comprehensive and continuing review of the biological effects of radiation on man and the ecology (sec. 11 of the bill).*—The bill would substitute the scientific efforts of these eminent bodies for the functions presently required of the Federal Radiation Council pursuant to subsection 274h. of the Atomic Energy Act.

5. *Reaffirm with greater clarity the intention of the Joint Committee, and in the opinion of the committee the intention of the Congress, underlying a provision of the Private Ownership of Special Nuclear Materials Act, enacted into law as Public Law 88–489 on August 26, 1964 (sec. 8 of the bill).*—The bill would change several words in subsection 161 v. of the Atomic Energy Act to emphasize the underlying intention as evidenced by the legislative history, and as correctly discerned by the Comptroller General of the United States in the GAO "Report to the Joint Committee on Atomic Energy" of July 17, 1970, captioned "Review of Proposed Revisions to the Price and Criteria for Uranium Enrichment Services." Although the General Accounting Office questions the legality of a proposed implementation by the AEC of subsection 161 v. of the Atomic Energy Act, on the ground that it does not appear to be consistent with the intention of the Congress in enacting the statute, the committee is concerned that the AEC has not desisted; the committee recommends that the original legislative intent be reiterated and the wording of the statute buttressed in support of its intended purpose.

The bill is comprised of three separate parts, although the three parts all relate to licensed nuclear facilities. The first part, discussed below under the heading "Part I," covers items 1, 2, and 3 above and embraces sections 1 through 7 and sections 9 and 10 of the bill. Part II pertains to item 4 above and section 11 of the bill. Part III pertains to item 5 above and section 8 of the bill.

PART I
LEGISLATIVE HISTORY

Shortly after the completion by the Commission of its first rulemaking proceeding for consideration of a finding of "practical value" under section 102 of the Atomic Energy Act of 1954, which resulted

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in the determination by the Commission, in December 1965 "that there has not yet been sufficient demonstration of the cost of construction and operation of light water, nuclear electric plants to warrant making a statutory finding that any types of such facilities have been sufficiently developed to be of practical value within the meaning of section 102," the Joint Committee requested the AEC's views on the continued need for the statutory requirement for such finding. The Commission replied that the principal bases underlying the "practical value" provisions of the 1954 act had receded in significance and that it was considering

proposing legislation to eliminate the "practical value" concept from the statute.[1]

In 1967, during the first session of the 90th Congress, Senators Aiken and Kennedy, of New York, introduced a bill (S. 2564, 90th Cong., first sess., 1967) which would have enlarged substantially the Commission's jurisdiction over the licensing of reactors. S. 2564 would, among other things, have required consideration in the licensing process of the impact of a proposed nuclear plant on the most efficient development of power resources in the particular region; and it would have barred the issuance of a nuclear plant license unless the Commission found that the applicant had granted to all interested utilities an opportunity to participate "to a fair and reasonable" extent in the ownership of the proposed facility.

S. 2564 was the subject of extensive hearings before the Joint Committee in 1968.[2] Following these hearings, the Commission proposed legislation (S. 3960, 90th Cong., second sess., 1968) and additional bills were introduced by members of the Joint Committee (S. 3851, H.R. 18669, 90th Cong., second sess., 1968) which would have eliminated the present statutory requirement for a finding of "practical value" as a condition of commercial licensing. Because of the need for further comment by interested Government agencies and for additional hearings, no legislative action was taken on these bills while the 90th Congress was in session; however, the Joint Committee indicated that consideration of the "practical value" question would be a matter for its attention in the next Congress.

During the first session of the 91st Congress, several legislative measures were introduced concerning prelicensing review of nuclear powerplants; S. 212 was introduced on January 15, 1969, by Senator Anderson, for himself and Senator Aiken; H.R. 8289 was introduced on March 5, 1969, by Representative Holifield, for himself and Representative Price; H.R. 9647 was introduced on March 27, 1969, by Representative Holifield, by request (H.R. 9647, and the identical companion bill, S. 1883, introduced by Senator Pastore on Apr. 18, 1969, are the AEC bills); and S. 2768 was introduced on August 4, 1969, by Senator Tydings.

S. 212, H.R. 8289, and H.R. 9647 would eliminate from the

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[1] This exchange of correspondence is printed in "Hearings on Licensing and Regulation of Nuclear Reactors" before the Joint Committee on Atomic Energy, 90th Cong., first sess., pt. 2, app. 5, pp. 906, 908–909 (1967). See also testimony of Commissioner Ramey before the Joint Committee on Aug. 29, 1966, which is printed in "Hearings on AEC Omnibus Legislation—1967," before the Joint Committee on Atomic Energy, 90th Cong., first sess., app. 7, pp. 194–195 (1967).

[2] "Hearings on Participation by Small Electrical Utilities in Nuclear Power," before the Joint Committee on Atomic Energy, 90th Cong., second sess., pts. 1 and 2 (1968).

Atomic Energy Act of 1954 the requirement that a finding of the "practical value" of a type of utilization or production facility be made before such type of facility may be licensed by the AEC as "commercial."

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Under these legislative proposals, practically all nuclear powerplants would be subject to a prelicensing antitrust review by the Commission, with the advice of the Attorney General, pursuant to a revised subsection 105c. S. 212 also would confer upon the Commission regulatory authority to control the thermal effects of heated effluents discharged from nuclear powerplants. S. 2768 would declare the protection of the environment to be a purpose of the Atomic Energy Act and would authorize the Commission to establish "such standards to protect and promote the preservation of environmental quality" as the Commission deems appropriate.

The National Environmental Policy Act of 1969 (Public Law 91–190) and the Water Quality Improvement Act of 1970 (Public Law 91–224) were enacted into law subsequent.to the introduction of the above-mentioned bills. These statutes add certain functions concerning environmental matters to the licensing activities of Federal agencies. In light of the recent laws the Joint Committee principally focused its current attention on the advisability of deleting the existing prerequisite to licensing under section 103—a finding of "practical value"—and on a suitable statutory process for the "commercial" licensing of nuclear facilities that includes due regard for antitrust considerations.

During the second session of the 90th Congress, initial public hearings were held by the committee on bills (H.R. 18667 and S. 3851) substantially similar to S. 212 and H.R. 8289.

During the 91st Congress, public hearings were held by the committee in 1969 and 1970. These hearings, summarized below, are published under the caption "Prelicensing Antitrust Review of Nuclear Powerplants, Hearings before the Joint Committee on Atomic Energy," 91st Congress, 1st session, part 1 (1969), and 91st Congress, 2d session, part 2 (1970).

The full Joint Committee met in executive session on July 28, 1970, and approved certain amendments to H.R. 8289, H.R. 9647, S. 212, and S. 1883 which were incorporated in an original bill introduced on July 28, 1970, by Chairman Holifield (for himself, Representative Price of Illinois, and Representative Hosmer) as H.R. 18679 and on July 29, 1970, by Vice Chairman Pastore as S. 4141. At that meeting the committee also voted to approve the reporting of the original bill favorably without amendment and

to adopt this committee report. Thereafter, on September 24, 1970, the committee effected several changes in the text of the report and voted unanimously to adopt the report as revised.

HEARINGS

Public hearings on S. 212, H.R. 8289, H.R. 9647, S. 1883 and S. 2768 were held on November 18, 19, and 20, 1969, and on April 14, 15, and 16, 1970. Representatives of the Commission and of various other Federal agencies and departments interested in the legislation testified at the initial hearings (November 18–20, 1969). Part 2 of the hearings (April 14–16, 1970) afforded interested individuals and organizations the opportunity to present their views on the proposed legislation.

The following witnesses appeared on behalf of the U.S. Atomic Energy Commission:

James T. Ramey, Commissioner
Joseph F. Hennessey, General Counsel

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The following additional witnesses appeared on behalf of other Federal agencies and departments:

Carl L. Klein, Assistant Secretary for Water Quality and Research, Department of the Interior.
Walker B. Comegys, Acting Assistant Attorney General, Antitrust Division, Department of Justice.
S. David Freeman, Director, Energy Policy Staff, Office of Science and Technology.

Witnesses presenting the views of industry and the public are listed below in the order of their appearance at the hearings on April 14–16, 1970:

Carl Horn, Jr., vice president, finance, and general counsel, Duke Power Co., on behalf of the Edison Electric Institute (accompanied by John J. Kearney).
Alex Radin, general manager, American Public Power Association (accompanied by Lawrence Hobart).
J. Harris Ward, chairman of the board, Commonwealth Edison Co.
Sherman R. Knapp, chairman of the board, Northeast Utilities (accompanied by C. Duane Blinn of Day, Berry & Howard, Hartford, Conn.).
Michael F. Collins, secretary-treasurer, Municipal Electric Association of Massachusetts, represented by George Spiegel, counsel, and accompanied by Worth Rowley, counsel.
Charles A. Robinson, Jr., staff counsel to the general man-

ager, National Rural Electric Cooperative Association.
William R. Gould, senior vice president, Southern California Edison Co., Los Angeles, Calif. (accompanied by Alan M. Nedry and David N. Barry III).
William C. Wise, counsel, Mid-West Electric Consumers Association, Inc.
J. O. Tally, Jr., general counsel, ElectriCities of North Carolina.
Shearon Harris, chairman of the board of directors and president of the Carolina Power & Light Co. (accompanied by Charles D. Barham, Jr., associate general counsel).
Edward Berlin of Berlin, Roisman & Kessler, general counsel for the Consumer Federation of America.
James H. Campbell, president of Consumers Power Co., Jackson, Mich. (accompanied by Jud Bacon).
Donald C. Allen, vice president of New England Electric System and President of Yankee Atomic Electric Co. (accompanied by Frederick E. Greenman).
George H. R. Taylor, secretary, AFL–CIO Staff Committee on Atomic Energy and Natural Resources.

COMMITTEE COMMENTS

A. BACKGROUND

1. The Atomic Energy Act of 1946

Almost a quarter century ago, the Atomic Energy Act of 1946 committed fully and securely to the exclusive control of the specially

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created civilian agency called the Atomic Energy Commission the development, utilization and control of atomic energy. This major statute recognized at the outset that whereas the significance of the atomic bomb was evident, the beneficial potential of the new source of energy for civilian purposes had yet to be explored. The national policy was expressed that "subject at all times to the paramount objective of assuring the common defense and security, the development and utilization of atomic energy shall, so far as practicable, be directed toward improving the public welfare, increasing the standard of living, strengthening free competition in private enterprise, and promoting world peace."

Section 7 of the Atomic Energy Act of 1946 included the following provisions:

> (b) REPORT TO CONGRESS.—Whenever in its opinion, any industrial, commercial, or other nonmilitary use of fissionable

material or atomic energy has been sufficiently developed to be of practical value, the Commission shall prepare a report to the President stating all the facts with respect to such use, the Commission's estimate of the social, political, economic, and international effects of such use and the Commission's recommendations for necessary or desirable supplemental legislation. The President shall then transmit this report to the Congress together with his recommendations. No license for any manufacture, production, export, or use shall be issued by the Commission under this section until after (1) a report with respect to such manufacture, production, export, or use has been filed with the Congress; and (2) a period of ninety days in which the Congress was in session has elapsed after the report has been so filed. In computing such period of ninety days there shall be excluded the days on which either House is not in session because of an adjournment of more than three days.

(c) ISSUANCE OF LICENSES.—After such ninety-day period, unless hereafter prohibited by law, the Commission may license such manufacture, production, export, or use in accordance with such procedures and subject to such conditions as it may by regulation establish to effectuate the provisions of this Act. The Commission is authorized and directed to issue licenses on a nonexclusive basis and to supply to the extent available appropriate quantities of fissionable material to licensees (1) whose proposed activities will serve some useful purpose proportionate to the quantities of fissionable material to be consumed; (2) who are equipped to observe such safety standards to protect health and to minimize danger from explosion or other hazard to life or property as the Commission may establish; and (3) who agree to make available to the Commission such technical information and data concerning their activities pursuant to such licenses as the Commission may determine necessary to encourage similar activities by as many licensees as possible. Each such license shall be issued for a specified period, shall be revocable at any time by the Commission

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in accordance with such procedures as the Commission may establish, and may be renewed upon the expiration of such period. Where activities under any license might serve to maintain or to foster the growth of monopoly, restraint of trade, unlawful competition, or other trade position inimical to the entry of new, freely competitive enter-

> prises in the field, the Commission is authorized and directed to refuse to issue such license or to establish such conditions to prevent these results as the Commission, in consultation with the Attorney General, may determine. The Commission shall report promptly to the Attorney General any information it may have with respect to any utilization of fissionable material or atomic energy which appears to have these results. * * *

The opening section of the Atomic Energy Act of 1946 recognized that many factors then unknown would affect the use of atomic energy for civilian purposes, and it wisely declared that "any legislation will necessarily be subject to revision from time to time."

No "practical value" report was made by the Commission pursuant to subsection 7(b) of the Atomic Energy Act of 1946, and no antitrust exercise was conducted under subsection 7(c) of that act, with respect to any utilization or production facility.

Within 8 years after the passage of the 1946 act Congress began to consider, and to discuss and debate extensively, major proposed revisions intended to bring the 1946 act up to date in relation to the many developments achieved in the interim and to the outlook at that time for the future.

2. The Atomic Energy Act of 1954

When the Atomic Energy Act of 1954 was passed, it was the hope of the Congress that the major revisions designed to lessen the Government's monopolistic grip on civilian applications of atomic energy would encourage private industry and the free enterprise system to contribute markedly to the development and use of atomic energy to increase the standard of living and improve the general welfare.

The legislative report accompanying the House and Senate bills (H.R. 9757 and S. 3690) that substantially evolved into the Atomic Energy Act of 1954 included the following remarks under the caption "Changing Perspectives in Atomic Energy":

> * * * It was commonly believed 8 years ago that the generation of useful power from atomic energy was a distant goal, a very distant goal. Atomic energy then was 95 percent for military purposes, with possibly 5 percent for peacetime uses. The resources of the Atomic Energy Commission and of its contractors appeared fully adequate to develop atomic-power reactors at a rate consistent with foreseeable technical progress. Moreover, there was little experience concerning

the health hazards involved in operating atomic plants, and this fact was in itself a compelling argument for making the manufacture and use of atomic materials a Government monopoly.

Today, however, we can draw on the experience acquired [p. 7] in designing, building, and operating more than a score of atomic reactors. It is now evident that greater private participation in power development need not bring with it attendant hazards to the health and safety of the American people. Moreover, the atomic-reactor art has already reached the point where atomic power at prices competitive with electricity derived from conventional fuels is on the horizon, though not within our immediate reach. * * *

Many technological problems remain to be solved before widespread atomic power, at competitive prices, is a reality. It is clear to us that continued Government research and development, using Government funds, will be indispensable to a speedy and resolute attack on these problems. It is equally clear to us, however, that the goal of atomic power at competitive prices will be reached more quickly if private enterprise, using private funds, is now encouraged to play a far larger role in the development of atomic power than is permitted under existing legislation. In particular, we do not believe that any developmental program carried out solely under governmental auspices, no matter how efficient it may be, can substitute for the cost-cutting and other incentives of free and competitive enterprise. * * *

* * * * * * *

In summary: Statutory provisions which were in harmony with the state of atomic development in 1946 are no longer consistent with the realities of atomic energy in 1954. Legislation not responsive to the needs and problems of today can serve only to deny our Nation, and like-minded nations as well, the true promise of atomic energy—both in augmenting the total military strength of the free world, and in increasing opportunities for beneficent uses of the atom.

Among the major revisions effected by the Atomic Energy Act of 1954 are those in chapter 10 of the 1954 act concerned with "Atomic Energy Licenses."

In chapter 10, the concept of "practical value," utilized in the 1946 act, was retained in substance (sec. 102); however, it was converted to the form of "a finding in writing" to be made by the

Commission whenever it concluded "that any type of utilization or production facility has been sufficiently developed to be of practical value for industrial or commercial purposes." Only subsequent to such a finding could the Commission, in accordance with the provisions of chapter 10, issue "commercial" licenses for the type of utilization or production facility covered by its finding of practical values (sec. 103).

To date, the Commission has not made an affirmative finding of practical value, although it has carefully considered the matter on two separate occasions. Only July 10, 1964, the Commission published a notice in the Federal Register (29 F.R. 9458) that it had under consideration the matter of a possible finding of practical value with respect to some type or types of light water nuclear powerplants. It requested public comments, and then conducted an extensive rule making proceeding in the course of which over 100 written comments

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were received. This exercise culminated in the Commission's determination, dated December 29, 1965, to decline to make a section 102 finding on the ground that nuclear powerplant operating experience up to that time was limited to small-scale facilities that were not economically competitive; the Commission stated:

> While certain economic evaluations governing the award of contracts for scaled-up plants not involving Government assistance provide strong indication that economic competitiveness will be achieved, we have decided to exercise our discretion to await a reliable estimate of the economics based upon a demonstration of the technology and plant performance. Pending the completion of scaled-up plants, and the information to be obtained from their operation, and in light of the legislative history, the Commission has determined that there has not yet been sufficient demonstration of the cost of construction and operation of light water, nuclear plants to warrant making a statutory finding that any types of such facilities have been sufficiently developed to be of practical value within the meaning of section 102 of the Atomic Energy Act of 1954, as amended.

On October 18, 1966, following another rulemaking petition and Commission consideration, the Commission again determined that a section 102 finding of "practical value" should not be made, and that such a finding should await a reliable estimate of the applicable economics based upon a demonstration of plant performance and the nuclear technology involved. Recently, on June 26,

1970, the Commission published a notice in the Federal Register (35 F.R. 10460) that it would again consider the matter of a finding of "practical value," and that it was seeking public comment.

In accordance with chapter 10 of the 1954 act, because there has not yet been a finding of practical value no license for a nuclear powerplant or other nuclear facility has been issued under section 103. To date, the construction and operation of all civilian nuclear powerplants have been licensed under subsection 104b. which provides for the licensing of "utilization and production facilities involved in the conduct of research and development activities leading to the demonstration of the practical value of such facilities for industrial or commercial purposes."

The high degree of practical interest and the controversies that have centered on the difference between licensing a nuclear powerplant under section 103 and under subsection 104 b. are essentially due to subsection 105 c. in chapter 10 of the 1954 act. As finally composed, after considerable discussion and debate by the 83d Congress which passed the 1954 act, the text of subsection 105 c. bore only some resemblance to the provisions of subsection 7(c) of the 1946 act in regard to antitrust considerations. The Commission's express authority in subsection 7(c) to refuse to issue a license or to establish conditions in order to prevent antitrust situations was muted into dead silence. The general antitrust theme was restated simply in terms of advice from the Attorney General. The nature and scope of the advice were described in a broad-brush clause of inexact import. Subsection 105 c. reads as follows:

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> c. Whenever the Commission proposes to issue any license to any person under section 103, it shall notify the Attorney General of the proposed license and the proposed terms and conditions thereof, except such classes or types of licenses, as the Commission, with the approval of the Attorney General, may determine would not significantly affect the licensee's activities under the antitrust laws as specified in subsection 105 a. Within a reasonable time, in no event to exceed 90 days after receiving such notification, the Attorney General shall advise the Commission whether, insofar as he can determine, the proposed license would tend to create or maintain a situation inconsistent with the antitrust laws, and such advice shall be published in the Federal Register. Upon the request of the Attorney General, the Commission shall furnish or cause to be furnished such information as the At-

torney General determines to be appropriate or necessary to enable him to give the advice called for by this section.

Several of the present members of the committee served on this body 16 years ago during the period when the 1954 act was conceptualized, heavily debated, and finally crystallized and enacted by the Congress. The recollections of these members have not dimmed in regard to the evolvement and formulation of the principal features of chapter 10 and of other major features of the 1954 act. The detailed review by the committee staff of the 10 inches of legislative history bearing on the Atomic Energy Act of 1954 has served to confirm their recollections, as well as to assist the whole committee in its review of the salient background events.

In the full perspective that a mature backward look can now provide, it is obvious that the Atomic Energy Act of 1954 failed to anticipate the exact course of the future development and use of civilian nuclear power and to devise a perfect licensing system. Also, as a consequence of the many doubts and concerns in the Congress, the enacted bill, including chapter 10, contained a number of compromise provisions, some of them in the form of relatively vague or ambiguous language. At that time a finding of practical value and the applicability of subsection 105 c. were matters for the distant future, and the whole projected picture of things to come varied considerably depending on individual imaginations, preferences and anxieties. When the Senate passed the atomic energy bill (H.R. 9757 after substituting language of S. 3690) on July 27, 1954, Senator Ervin who voted for the bill, made a statement which included the following remarks:

> * * * Much of the debate in the Senate overemphasized the power aspects of the bill. This is true because experts in the atomic energy field state that it will be 12 years or more before it will be economically feasible to produce power by atomic energy for general uses in any substantial quantities. As a consequence, those who have overemphasized the power aspects of the matter are somewhat like the man who invited his friends to a rabbit stew before he made the rabbit gum [1] to catch the rabbit.
>
> * * * * * * *
>
> [p. 10]
>
> As a result of my study I reached the deliberate conclusion that the atomic energy bill is a meritorious measure. To be

[1] Well known in North Carolina as a rabbit trap (courtesy of Senator Ervin's office).

sure it is not perfect. No bill of such magnitude can be perfect.

It is of interest to note that the bill which the Senate passed on July 27, 1954, contained the following version of subsection 105 (c):

> c. Whenever the Commission proposes to issue any license to any person under section 103, it shall notify the Attorney General of the proposed license and the proposed terms and conditions thereof, except such classes or types of licenses, as the Commission, with the approval of the Attorney General, may determine would not significantly affect the licensee's activities under the antitrust laws as specified in subsection 105 a. Within a reasonable time, in no event to exceed ninety days after receiving such notification, the Attorney General shall advise the Commission whether, insofar as he can determine, the proposed license would tend to create or maintain a situation inconsistent with the antitrust laws. *If the Attorney General advises the Commission that issuing the license would create or maintain a situation inconsistent with the antitrust laws, then the Commission shall not issue such license unless it makes a finding approved by the President that the issuance of such license is essential to the common defense and security, and the finding is published in the Federal Register.* Upon the request of the Attorney General, the Commission shall furnish or cause to be furnished such information as the Attorney General determines to be appropriate or necessary, to enable him to give the advice called for by this section. [Italics added.]

The italicized sentence had been proposed by Senator Humphrey, and his amendment to the text had been supported by Senator Hickenlooper, the vice chairman of the Joint Committee and in charge of the bill on the floor of the Senate. The explanatory colloquy in the Senate on July 24, 1954 in regard to this amendment clearly indicates that the words "tend to" were purposely omitted and that the phrase "inconsistent with the antitrust laws" was intended to be the equivalent of actual violation of the antitrust laws.

The Senate version on July 27, 1954, recaptured to some extent the feature in subsection 105 c. of the House and Senate bills as originally reported out by the Joint Committee which specifically would have placed an obligation on the Commission not to issue a license if the Attorney General or the Federal Trade Commission believed that the proposed license would tend to create or maintain a situation inconsistent with the antitrust laws and if, there-

after, the Federal Trade Commission so found under the basic laws governing antitrust matters and the jurisdiction of the Federal Trade Commission. This provision went on to state that all parties to the Federal Trade Commission's hearings could appeal the Federal Trade Commission's determination in the courts.

Debates on the provisions of the atomic energy bills continued in the Congress into August 1954. Ultimately, after two conference reports, the Senate and the House agreed on the version which was

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signed into law by the President on August 30, 1954. The House-Senate committee of conference deleted from subsection 105 c. the sentence added by the Humphrey amendment. In the accompanying statement by the Managers on the Part of the House the deletion was explained as follows:

> In connection with the issuance of licenses for utilization and production facilities, the House bill provided certain requirements with respect to the antitrust laws (sec. 105). Among these was the requirement that the Commission obtain the advice of the Attorney General before issuing any such license. The Senate amendment required that the Commission follow the advice of the Attorney General unless the President made a finding that the issuance of such a license was essential to the common defense and security and the finding was published in the Federal Register. This amendment in effect made the advice of the Attorney General a decision binding upon the Commission and the applicant without hearing. The conference substitute deletes the portion of the provision added by the Senate amendment which required that the advice of the Attorney General be followed, but requires that the advice of the Attorney General be published in the Federal Register.

Though the language and possible effect of subsection 105 c. of the Atomic Energy Act of 1954 were born unclear, it can scarcely be said after a full review of the history of the 1954 act that the text of subsection 105 c. was inadvertently or haphazardly created. Rather, it was the deliberate product of a very deliberative legislative process.

In any event, the mechanism of subsection 105 c.—however the courts would be inclined to construe it—was intended to lie dormant until awakened into activity by a finding of practical value by the Commission followed by the proposed issuance of a "commercial" license for the type of nuclear facility covered by the finding. Unlike the sleeping princess of the fairytale, who by def-

inition was not only beautiful but also endurable on a live-happily-ever-afterward basis, the awakening into activity of subsection 105 c., as presently constituted, would probably mainly result in uncertainty, expensive delays, and extended litigation. Subsection 105 c. in chapter 10 of the 1954 act needs to be clarified and revised.

Chapter 10, which this committee strongly believes should be clarified and improved, contains in the first two subsections of section 105 provisions which the committee does not propose to amend.

Subsection 105 b. contains the broad-brush requirement that the Commission promptly report to the Attorney General "any information it may have with respect to any utilization of special nuclear material or atomic energy which appears to violate or to tend toward the violation of any of" the antitrust laws "or to restricted free competition in private enterprise." This requirement is separate and distinct from subsection 105 c. and, in the judgment of the committee, is both sound in concept and practical. The funnel for information of this general sort ought to have a very wide mouth to assure that the Attorney General is as fully informed as possible.

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Subsection 105 a. wisely emphasizes that "Nothing contained in this Act"—and this includes subsection 105 c.—"shall relieve any person from the operation" of the antitrust laws. It further provides that in the event a licensee is found to have violated the antitrust laws in the conduct of the licensed activities that "the Commission may suspend, revoke, or take such other action as it may deem necessary with respect to any license issued by the Commission under the provisions of this Act."

B. PRINCIPAL REASONS FOR PROPOSED LEGISLATION

1. Finding of practical value

The concept of a "Finding of Practical Value" (sec. 102), plausible in 1954 when transmuted from the cautious approach of subsection 7(b) of the 1946 act, has been overtaken by developments. It is now an archaic symbol of what may once have been a good idea. Clearly it is now neither practical nor of value. Unfortunately, under the present law it is also a formidable roadblock to "commercial" (sec. 103) licensing of nuclear powerplants and other industrially or commercially useful nuclear facilities. The Commission has recently begun once again the cumbersome exercise of attempting to surmount this hurdle to section 103 li-

censing, and a good deal of time and expense will be consumed in the full execution of the administrative process entailed. When it ends the Commission may or may not make an affirmative finding with respect to a type or types of facility, and it seems prudent to assume that the Commission's determination—whatever it turns out to be—will set off another round of controversy.

If the Commission makes a finding of "practical value," serious legal problems would probably come into play. These could include such matters as the convertibility of subsection 104 b. licenses to section 103 licenses, and, of course, the interpretation and effect of the provisions of subsection 105 c. The accompanying delays and expense could be extremely onerous. It must be borne in mind that the licensing process is already being extended and sorely strained these days, and costly delays are being experienced, due to the sudden impact of the National Environmental Policy Act of 1969 (Public Law 91–190) and the Water Quality Improvement Act of 1970 (Public Law 91–224); thus far, the attempted implementation of these acts seems to be creating more delays due to legal questions of interpretation and implementation than to environmental considerations as such.

All of the witnesses at the committee's hearings and all the advice the committee has received on this subject, from within and outside of the Government, favor removal of the concept of "practical value" from the Atomic Energy Act of 1954. The committee has endeavored to proceed responsibly with legislation to accomplish this objective in a sensible manner.

2. Clarification of procedure for prelicensing antitrust review

In the committee's judgment, no sensible legislation to remove the roadblock to "commercial" licensing under section 103 could fail to clarify and revise the present provisions of subsection 105c. The bill proposed by the committee clarifies the antitrust review standard and explicitly describes the Commission's authority and responsibility in relation to advice from the Attorney General. The clarified standard

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and the specified procedures are reasonable and workable. The bill and the explanation in this report should assure a full understanding of the standard and of the process entailed. A detailed review of the new subsection 105c. is contained in the section-by-section account in this report.

Of course, the committee is intensely aware that around the subject of prelicensing review and the provisions of subsection 105c., hover opinions and emotions ranging from one extreme to

the other pole. At one extremity is the view that no prelicensing antitrust review is either necessary or advisable and that the first two subsections of section 105 concerned with violation of the antitrust laws and the information which the Commission is obliged to report to the Attorney General are wholly adequate to deal with antitrust considerations. Additionally, there are those who point out that it is unreasonable and unwise to inflict on the construction or operation of nuclear powerplants and the AEC licensing process any antitrust review mechanism that is not required in connection with other types of generating facilities. At the opposite pole is the view that the licensing process should be used not only to nip in the bud any incipient antitrust situation but also to further such competitive postures, outside of the ambit of the provisions and established policies of the antitrust laws, as the Commission might consider beneficial to the free enterprise system. The Joint Committee does not favor, and the bill does not satisfy, either extreme view.

The committee is recommending the enactment of prelicensing review provisions which—as in the proposed Atomic Energy Act of 1954 that the Joint Committee originally reported out, and as is in the version of subsection 105c. that the Senate passed on July 27, 1954—do not stop at the point of the Attorney General's advice, but go on to describe the role of the Commission with respect to potential antitrust situations.

The legislation proposed by the committee provides for a finding by the Commission "as to whether the activities under the license would create or maintain a situation inconsistent with the antitrust laws as specified in subsection 105a." The concept of certainty of contravention of the antitrust laws or the policies clearly underlying these laws is not intended to be implicit in this standard; nor is mere possibility of inconsistency. It is intended that the finding be based on reasonable probability of contravention of the antitrust laws or the policies clearly underlying these laws. It is intended that, in effect, the Commission will conclude whether, in its judgment, it is reasonably probable that the activities under the license would, when the license is issued or thereafter, be inconsistent with any of the antitrust laws or the policies clearly underlying these laws.

It is important to note that the antitrust laws within the ambit of subsection 105 c. of the bill are all the laws specified in subsection 105 a. These include the statutory provisions pertaining to the Federal Trade Commission, which normally are not identified as antitrust law. Accordingly, the focus for the Commission's finding will, for example, include consideration of the admonition

in section 5 of the Federal Trade Commission Act, as amended, that "Unfair methods of competition in commerce, and unfair and deceptive acts in commerce, are declared unlawful."

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The committee is well aware of the phrases "may be" and "tend to" in the Clayton Act, and of the meaning they have been given by virtue of decisions of the Supreme Court and the will of Congress —namely, reasonable probability. The committee has—very deliberately—also chosen the touchstone of reasonable probability for the standard to be considered by the Commission under the revised subsection 105 c. of the bill.

The committee did not deem it advisable to extend the boundaries of the considerations to be taken into account by the Commission beyond the antitrust laws and the policies clearly underlying those laws. The situation is different in respect to AEC's developmental regime; here Government funds are extensively devoted to the research and development aspects of atomic energy and the Commission has the duty not only to see to it that the funds are employed to best advantage in relation to the specific statutory missions involved but to be mindful of the general objective of strengthening free competition in private enterprise. The absence of specific, guiding criteria toward this objective, where the expense of the activity is borne by the Government, does not amount to an intolerably gross and unfair infliction on private enterprise of the convictions of a Federal agency, though these may often be based on generally debatable philosophical principles. Here, too, the committee, in its authorization process and in its "watchdog" role, is in a position to react with respect to any particular Commission measure relative to the objective of strengthening free competition in private enterprise which the committee may believe to be insupportable or unwise; the committee could not so effectively react in context of a licensing matter. The committee recognizes that there is not a clear boundary between antitrust considerations in relation to the strengthening of free competition in free enterprise and measures to accomplish such objective for reasons other than the antitrust laws or underlying antitrust policy; the Commission will have to exercise discretion and judgment.

3. Authorization for varying expertise in the composition of atomic safety and licensing boards

Under the present provisions of subsection 191 a. of the Atomic Energy Act of 1954 two of the three members of an atomic safety and licensing board must "be technically qualified"; the third member must "be qualified in the conduct of administrative proceed-

ings." If the Commission is to consider potential antitrust situations as part of its licensing process, as specifically provided for in the bill, it will be necessary as a practical matter that the Commission be authorized to have such expertise on the boards as is desirable in relation to the issues. The proposed revision would permit two of the three members of the board to have "such technical or other qualifications as the Commission deems appropriate to the issues to be decided."

The committee believes that the flexibility that would be provided by the proposed amendment may well turn out to be useful in connection with other matters within the orbit of the Commission's licensing process.

The committee expects and will urge the Commission to make every reasonable effort to deal with the potential antitrust feature under subsection 105c. of the bill fully but expeditiously. Clearly, a separate board or boards should be utilized in the implementation of paragraphs (5) and (6) of subsection 105c. The committee anticipates that all the functions contemplated by these paragraphs would be carried

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out before the radiological health and safety review and determination process is completed, so that the entire licensing procedure is not further extended in time by reason of the added antitrust review function.

PART II

LEGISLATIVE HISTORY

In 1959, the Atomic Energy Act of 1954 was amended by the addition of section 274 which recognized the interests of the States in the peaceful uses of atomic energy and provided for programs of cooperation between the States and the Commission. Subsection 274h statutorily established a "Federal Radiation Council, consisting of the Secretary of Health, Education, and Welfare, the Chairman of the Atomic Energy Commission, the Secretary of Defense, the Secretary of Commerce, the Secretary of Labor, or their designees, and such other members as shall be appointed by the President". The Council was required to consult with "qualified scientists and experts in radiation matters, including the President of the National Academy of Sciences, the Chairman of the National Committee on Radiation Protection and Measurements, and qualified experts" in other fields, and to advise the President "with respect to radiation matters, directly or indirectly affecting health,

including guidance for all Federal agencies in the formulation of radiation standards . . ."

In recommending the inclusion of this feature in section 274, the Committee considered that thereby basic radiation protection guides would be arrived at pursuant to high scientific standards, and that a continuing, comprehensive review process by the Council would keep it thoroughly abreast of all pertinent scientific information and alert to any need to revise its radiation protection guides. The Committee believed that the Council should function as a statutory body because of its important responsibilities, rather than simply as an arm of the executive branch which it had theretofore been.[1]

COMMITTEE COMMENTS

The Federal Radiation Council recommended radiation protection guides, and these guides have been followed by the AEC and other Government agencies. Based on all the information available to this committee, and on the advice furnished to this committee by outstanding scientists whose opinions are highly regarded by their peers and scientific associates, the guides that constitute the bases for AEC's radiation protection standards are valid and appropriate from radiological health and safety standpoints.

However, the committee has come to appreciate the fact that the members of the Federal Radiation Council are really too occupied with the principal activities of their respective departments and agencies, and with duties imposed by membership on other committees, to devote their continuing attention to the functions of the Council as envisioned by the committee when it recommended the inclusion in the act of subsection 274h. in 1959.

On March 20, 1970, the Chairman of the Joint Committee wrote the following letter to the Federal Radiation Council:

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CONGRESS OF THE UNITED STATES,
JOINT COMMITTEE ON ATOMIC ENERGY,
Washington, D.C., March 20, 1970.

Hon. ROBERT H. FINCH,
Chairman, Federal Radiation Council,
Federal Office Building, No. 7, Washington, D.C.

DEAR MR. CHAIRMAN: On January 28, 1970, you had occasion to write to Senator Muskie, chairman of the Subcommittee on Air and Water Pollution of the Public Works Committee, relative to testimony of Dr. Gofman and Dr. Tamplin before that subcommittee. Also on January 28, 1970, Dr. John Gofman appeared as a witness before the Joint Committee on Atomic Energy

[1] Executive Order No. 10831, dated August 17, 1959.

in the course of this committee's hearings on the environmental effects of producing electric power, and he presented written testimony in support of his contention that there should be an immediate ten-fold reduction in the Federal Radiation Council guidelines for radiation exposure to the population at large. Dr. Gofman's written material consisted of nine documents which are listed on the attachment to this letter; he stated that the material was being furnished concurrently to the Federal Radiation Council for review.

I understand from your letter to Senator Muskie that as Chairman of the FRC you have recommended that the Council undertake a complete review of the present FRC guidelines in the light of all available scientific information. As chairman of the Joint Committee on Atomic Energy, I thoroughly believe in the advisability of a full-scale review. My belief is not motivated by the views of Dr. Gofman and Tamplin; rather, it has seemed to me that the effective discharge of FRC's responsibilities under section 274h. of the Atomic Energy Act of 1954, as amended, should entail thorough periodic reviews to take advantage of factual and meaningfully evidentiary developments. My own thought is that a complete reexamination should, as a minimum, be conducted every 5 years. FRC's knowledgeable conclusions, following such a review and evaluation on a sound scientific basis, should serve to reinforce general confidence in the integrity of FRC's performance of its statutory duties, as well as to help Federal agencies and the public who will be affected by the guidelines.

I would expect that such reviews of radiation protection guidelines will be conducted in accordance with the highest procedural and substantive standards of true scientific inquiry.

Please let this committee know what the FRC's plans are in regard to the review of the guidelines for radiation protection. Your cooperation in this important matter is appreciated.

I am sending a copy of this letter to the other members of the Council.

Sincerely yours,

CHET HOLIFIELD, *Chairman.*

FRC's reply was to the effect that a review of the guidelines was in progress. The review has apparently not yet been completed.

The committee firmly believes that the time has come to abolish the Federal Radiation Council and to substitute for the present text of subsection 274 h. of the Atomic Energy Act new, detailed requirements

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in regard to the need for a continuing, comprehensive review of radiation protection standards and the bases therefor. The National Council on Radiation Protection and Measurements, known in 1959 when subsection 274 h. was enacted into law as the National Committee on Radiation Protection and Measurements, and thereafter specially recognized by the Congress under its revised name, has informally advised the committee that it would be willing to enter into a contractual arrangement with a Government agency to carry out the functions specified in the revised provisions of subsection 274 h. in the bill. These functions would include (i) the conduct by the NCRPM of a full-scale

review of the radiation protection guides presently in effect by virtue of the recommendations of the FRC, and of all available scientific information; (ii) the preparation and submittal by the NCRPM to the executive branch and to the Congress, by December 31, 1970, of its first complete report of its review activities, including its recommendations respecting basic radiation protection standards; (iii) the submittal by the NCRPM of annual, and other, reports thereafter; and (iv) the prompt publication of these reports by a Government agency or by the NCRPM.

The revised subsection 274 h. also calls for an arrangement with the National Academy of Sciences for a comprehensive and continuing review of the biological effects of radiation on man and the ecology. The work of the Academy would be coordinated with the functions of the NCRPM. The committee has been informally advised by the Academy that it would be agreeable to entering into a contractual arrangement with a Government agency to perform the required service.

The committee visualizes that the contracts may be for an extended period of years, perhaps about 5 years subject to renewal by mutual agreement of the parties, and on a cost basis subject to the availability of appropriations.

These two unique and preeminent scientific bodies are the most knowledgable collection of experts in the fields of radiation and effects of radiation. The arrangements would require that their work be carried out in accordance with high substantive and procedural standards of sound scientific investigation and findings. Their publicized reports and findings should create and maintain the most solid and credible foundation for basic radiation protection standards that can be realistically achieved. (See Appendix.)

The committee intends that under the arrangements the NCRPM and the NAS will concern themselves essentially with information and matters pertaining to the "hard" sciences, as distinguished from sociological or "soft" science considerations. The latter considerations, including the sociological aspects of such factors as "risk-benefit," would be identified and dealt with by a Government agency having authority to establish radiation protection standards. Under the revised subsection 274 h., all of these matters pertaining to basic radiation protection standards pertinent to the health and safety aspects of exposure to radioactivity resulting from the development, use or control of atomic energy would be promptly publicized and reported to the Joint Committee and made available to the public.

The contracting Government agency may, in the discretion of the President, be the Environmental Protection Agency recently

proposed by the President in Reorganization Plan No. 3—should this plan come

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into effect pursuant to law—or the Atomic Energy Commission, or another Government agency or agencies; any Government agency or agencies designated by the President may administer the contractual arrangements.

PART III

LEGISLATIVE HISTORY

Ten years after the Atomic Energy Act of 1954 became law, the Joint Committee recommended, and there was enacted into law, the Private Ownership of Special Nuclear Materials Act (Public Law 88–489, Aug. 26, 1964). For the first time persons were permitted to own special nuclear material; the Commission was required to phase out its distribution of such material by lease.

In the processing and refining chain from raw material to the enriched uranium used as a fuel for nuclear powerplants, the AEC's gaseous diffusion plants at Oak Ridge, Tenn., Paducah, Ky., and Portsmouth, Ohio, are still the exclusive provider of toll enriching services. The Private Ownership of Special Nuclear Materials Act authorized the Commission to enter into arrangements for the furnishing of enrichment services to domestic licensees and to others abroad; the applicable provisions were set forth in subsection 161 v., as follows:

> v. (A) enter into contracts with persons licensed under sections 53, 63, 103 or 104 for such periods of time as the Commission may deem necessary or desirable to provide, after December 31, 1968, for the producing or enriching of special nuclear material in facilities owned by the Commission; and
>
> (B) enter into contracts to provide, after December 31, 1968, for the producing or enriching of special nuclear material in facilities owned by the Commission in accordance with and within the period of an agreement for cooperation arranged pursuant to section 123 while comparable services are made available pursuant to paragraph (A) of this subsection: *Provided,* That (i) prices for services under paragraph (A) of this subsection shall be established on a nondiscriminatory basis; (ii) prices for services under paragraph (B) of this subsection shall be no less than prices under paragraph (A) of this subsection; and (iii) any prices established under this subsection shall be on a basis which will provide reasonable

compensation to the Government: *And provided further,* That the Commission, to the extent necessary to assure the maintenance of a viable domestic uranium industry, shall not offer such services for source or special nuclear materials of foreign origin intended for use in a utilization facility within or under the jurisdiction of the United States. The Commission shall establish criteria in writing setting forth the terms and conditions under which services provided under this subsection shall be made available including the extent to which such services will be made available for source or special nuclear material of foreign origin intended for use in a utilization facility within or under the jurisdiction of the United States:

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Provided, That before the Commission establishes such criteria, the proposed criteria shall be submitted to the Joint Committee, and a period of forty-five days shall elapse while Congress is in session (in computing the forty-five days there shall be excluded the days in which either House is not in session because of adjournment for more than three days) unless the Joint Committee by resolution in writing waives the conditions of, or all or any portion of, such forty-five-day period.

Pursuant to the requirement of this subsection, proposed criteria were submitted by the Commission in June 1966, and following extensive hearings by the committee were adopted on December 23, 1966. Among other things, these criteria set forth the basis for the price to be charged for the enrichment services and specified a ceiling price of $30 per separative work unit; the ceiling price was made subject to escalation for power and labor costs.

COMMITTEE COMMENTS

On November 10, 1969, the President announced that he had asked the AEC to operate its diffusion plants as a separate organizational entity within the AEC "in a manner which approaches more closely a commercial enterprise." The White House release stated that the President's decision was "based on his belief that the Federal Government's responsibility for uranium enrichment as the owner-operator of the Nation's only enrichment facilities eventually should be ended." It further stated that the President would not seek legislation at this time to authorize sale of the facilities to private industry.

The chairman of the Joint Committee issued a statement the

same day in response to the release from the White House. Included in his comments were the following remarks:

> Before the Congress would even consider taking such a major step, there isn't the slightest doubt in my mind that it would want to put any such proposal under a microscope in order to assure the protection of the public interest.
>
> I want to assure interested members of the public that any significant proposed changes in ownership of the plants will be the subject of full, complete, and comprehensive Joint Committee public hearings to consider all of the factors involved before the legislative branch approves, disapproves, or modifies any such proposals.

It was clear then, as it is now, that the transfer of the gaseous diffusion plants to private ownership cannot be legally effected without an enabling statute. The President has not as yet proposed any legislation to accomplish his intended purpose.

On June 11, 1970, the Commission submitted to the Joint Committee a proposed amendment to the existing criteria for pricing enriching services and a proposed increase in the price per separative work unit. The proposed amendment to the criteria was submitted pursuant to the requirement in subsection 161 v. that before the Commission establishes criteria—including revisions to criteria theretofore estab-

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lished—"the proposed criteria shall be submitted to the Joint Committee and a period of 45 days shall elapse while Congress is in session * * * unless the Joint Committee, by resolution in writing waives the conditions of * * * such 45-day period." The proposed increase in price would change the price of a separative work unit from $26 to $28.70. Proposed increases in price within duly established criteria are not required by subsection 161 v. to be submitted to the Joint Committee for review.

The amendment to the criteria proposed by the Commission would change the basis for computing the charge for separative work from one of cost recovery by AEC to a basis which, according to the AEC, would be more closely comparable to a commercial operation. Essentially, as set forth in the amendment to the criteria, the new basis for pricing would consist of the following:

> In recognition of the commercial nature of the primary market to be served, and of the fact that the existing facilities were constructed primarily for noncommercial markets, AEC's charge for enriching services will be established at the

level estimated to be equivalent to the charge for separative work performed in new uranium enrichment facilities designed, constructed, and operated primarily to meet commercial markets, using debt-equity ratios, rates of return on investment, and appropriate allowances for Federal corporate income taxes, State and local taxes and insurance deemed by the Commission to be appropriate for a private industrial enriching enterprise.

AEC will review periodically the charge for enriching services on the basis of (*a*) updated projections of the cost of separative work produced in a new enriching plant and (*b*) the cost of money in the private sector of the economy. As a result of such reviews, AEC will make any appropriate revisions in the charge for enriching services in accordance with (the foregoing basis but within the limitations of the ceiling price of $30 plus escalation for the cost of power and labor).

Public hearings were held by the Joint Committee on June 16 and 17, 1970, to consider the AEC submittal of amended criteria. On June 16, testimony was received from the following witnesses:

Commissioner Wilfrid E. Johnson
Commissioner James T. Ramey
Commissioner Theos J. Thompson
Joseph F. Hennessey, General Counsel
John P. Abbadessa, Controller

On June 17, representatives of the General Accounting Office appeared and provided preliminary views on the salient aspects of the AEC submittal.

These representatives were:

Dean K. Crowther, Assistant Director, Civil Division (AEC Audit)
Daniel F. Stanton, supervisory auditor
Thomas P. McCormick, supervisory auditor

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Also, on July 16, an executive hearing was held by the committee to receive testimony from the AEC on the classified aspects of the gas centrifuge process for uranium enrichment.

The public hearings are printed in the Joint Committee publication entitled "Uranium Enrichment Pricing Criteria—Hearings June 16 and 17, 1970." This print also contains the comments of a number of individuals and companies in the nuclear industry; the committee invited the expression of views by interested people and organizations.

The criteria that the Commission had adopted in December 1966,

and which have been in use since, had been carefully reviewed by the General Accounting Office and by the Joint Committee before they were established.[1] These criteria accurately implemented the fundamental concept apparent during the 1964 hearings [2] preceding the enactment into law of subsection 161 v. and during the 1966 hearings [1] prior to the establishment of the criteria, and described in the Joint Committee's report accompanying the Private Ownership Act.[3] This fundamental concept was that the price to be charged by the AEC should be based on the recovery of appropriate Government costs averaged over a period of years in order to provide a stable pricing situation. Additionally, the legislative background discloses the following underlying intent, which GAO in its July 17, 1970, report to the Joint Committee correctly describes as follows:

> The legislative history of this subsection 161 v. shows an intent to fix a charge based generally upon the recovery of the Government's costs as stated on page 2 of the House Report 1702. The only concern of the Joint Committee on Atomic Energy was that the reduction or possible elimination of military needs for enriched uranium might cause the prices required to recover costs to increase so significantly that the development of atomic power would be impeded. The statements on page 18 of the House report with respect to flexibility and consideration of the national interest are directed specifically and solely to this particular problem.
>
> In our opinion, the statements concerning flexibility and national interest would indicate that they relate only to the recovery of less-than-full costs and merely create one exception to the earlier positive statement on page 2 of the report that the charge for enriching uranium will be "based generally upon the cost of doing necessary processing or separative work in the Government's diffusion plants." We think the statement on page 2 reasonably could be interpreted as reflecting an intent to preclude the setting of prices so as to recover more than the Government's full costs over a period of time. * * *

The criteria established by the Commission in December 1966 complied with the provisions and the spirit of subsection 161 v. of

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[1] "Uranium Enrichment Services Criteria and Related Matters", JCAE hearings, 89th Cong., second sess., August 1966.

[2] "Private Ownership of Special Nuclear Materials, 1964", JCAE hearings, 88th Cong., second sess., June 1964.

[3] Senate Report No. 1325, House Report No. 1702, 88th Cong., second sess., dated August 5, 1964.

the Atomic Energy Act. The Commission proposed to implement the

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Government cost factors in the criteria by employing an averaging technique to be applicable for the period 1966 through 1975. The Commission's criteria also provided (par. 5(d)) for a ceiling price of $30 subject only to escalation for the costs of electric power and labor. In establishing the price the AEC planned to utilize a contingency factor to provide for risks of operation and estimates. In regard to the Commission's plan the GAO, in a 1966 report to the Joint Committee, expressed the view that:

> * * * the provisions having an effect on pricing afford a reasonable basis for recovering, over a long term of operation, the Government's cost of furnishing enrichment services * * * we believe that the proposed ceiling charge is adequate to permit recovery of appropriate Government costs projected over a number of years.

Following further study and computations, the AEC announced on September 21, 1967, that the price it would charge for enriching services would be $26 per separative work unit, subject to change on 6 months' notice but within the guaranteed $30 ceiling, plus the escalation, factor. In reply to the specific request of the Joint Committee, the GAO stated in a letter report of September 25, 1967, to the Joint Committee that the announced $26 price was "adequate to permit recovery of appropriate Government costs projected over a number of years and is consistent with the Commission's criteria published in the Federal Register on December 23, 1966." The GAO also commented as follows:

> Further, considering that the charge also provides a margin for contingencies, we do not see a basis for asserting that a subsidy is being provided to the domestic or foreign nuclear industries, or any portion thereof.

Thus, the criteria and the implementing price fully accorded with the legislative intent underlying the provisions of subsection 161 v. of the Atomic Energy Act.

As soon as the Joint Committee received AEC's proposed amendment to the criteria on June 11, 1970, it requested the General Accounting Office to subject the submittal to a very careful review. The Report to the Joint Committee by the Comptroller General on July 17, 1970, contains the results of the GAO review. The report states that based on GAO's interpretation of the legislative history of subsection 161 v. the proposed amendment to the

basis for pricing does not appear to be consistent with the intention of the Congress. Among other things, GAO states:

> Because of the questionable need for, and the applicability of, the proposed criteria and GAO doubts as to its clear authorization, GAO does not believe the proposed criteria should be adopted without further action by the Congress.

In the judgment of the Joint Committee, the recently proposed changes to the basis for pricing enriching services are contrary to law because they are clearly inconsistent with the intent of the Congress. The purpose of 161 v. was to provide for reasonable compensation to the Government on the basis of the recovery of appropriate Government costs averaged over a period of years. The new criteria scrap this basis. The substitute so-called criteria are composed of a number of

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ambiguous factors related to a fancifully conceived, privately owned plant of the future. The excessive vagueness of the new criteria also contravene the will of the Congress because under the statute proposed criteria are required to be submitted to the Joint Committee for review and the intent was to give the Congress the opportunity to review something that had some definite meaning or predictable range of consequences.

With the new so-called criteria vague enough to be essentially meaningless, the proposed new price of $28.70 may, under the revised criteria, be increased at any time or times without further revisions to the criteria requiring submittal to the committee. Such increases would apparently be motivated by the desire to increase potential enrichment revenues sufficiently to make private investment in the existing or new enriching plants more attractive —at the expense of the fuel buyer and the public. And, when it suits the AEC, any additional amendment to the criteria could readily be proposed to raise the ceiling price of $30; such a proposal could easily be justified if the presently proposed criteria are established, on the ground that the $30 factor relates to the Government's costs whereas the principal basis for pricing does not. The $30 ceiling factor would doubtlessly only temporarily be endured; once the major hurdle represented by a pricing system based on the recovery of the Government's cost is surmounted, the road ahead to major price increases would be a clear one.

Under the purview of subsection 161 v. as intended by the Congress, and under the criteria in effect since 1966—which would continue in effect under the revision proposed in the bill—any submittal of revised criteria to raise the $30 ceiling would have to be

supported by a showing of substantial increase in Government costs, aside from power and labor costs which are now covered by escalation factors.

Aside from the question of legality, in the Committee's judgment it is unnecessary and unwise to advance a new and ambiguous formula for pricing nuclear enriching services as a precedent to selling the Government-owned diffusion plants. Hypothetical estimates of prices under commercial-type operation can be made independently of a change in the present statutory basis for computing the enrichment services charge. The GAO noted that what the AEC had recommended by way of criteria changes was not essential to the fundamental policy—commercial-like operation—which it was intended to implement. The report stated:

> We believe that, with respect to the new criteria providing for operating and cost experience on a commercial basis that will assist private industry in making decisions regarding the possible transfer to private industry of enrichment plants, data concerning the projected operation of a conceptual plant can be accumulated with equal facility under either [existing or proposed] criteria.

AEC testified in June that Government accounting practices for the gaseous diffusion plants would continue to be performed in the usual Government cost-accounting mode and comparison with the new criteria would be through supplementing financial statements to yield "commercial" pricing data. It is obvious that so-called commercial statistics are a function of accounting techniques and, however useful they may be, there is no basis for the argument that the development

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of hypothetical cost factors would justify modification of the entire pricing structure.

Under the criteria in effect since 1966, which are consistent with the letter and spirit of subsection 161 v., the AEC, in order to smooth out unnecessary fluctuations, computed cost data over a 10-year period—1966 to 1975. Such 10-year period represented a "reasonable period of time" within the intent of the Congress as apparent from the legislative history of subsection 161 v. Such period, together with the allocation of costs to standby and excess capacity, were approved by the GAO in 1966 and 1967 as consistent with the criteria and as adequate to assure recovery of Government costs. In its current report GAO expresses the opinion that a price increase may be warranted. The Committee

is agreeable to an appropriate increase in price under the criteria established and in use since 1966.

The Joint Committee believes it advisable for the Commission, within the context of the applicable criteria, to reassess the enrichment services charge at such fixed intervals and utilizing such averaging periods as, in the opinion of the Commission, are reasonably calculated to assure recovery of appropriate Government costs, with relative price stability, and the contingency factors necessary to provide for cost variations.

The Joint Committee is deeply concerned about the Commission's presently proposed amendment to the criteria. It constitutes a deliberate effort to thwart the will of Congress and it would accelerate the inflationary trend in the price of all other fuels. Heretofore, the stable pricing system for enriching uranium has represented a steadying influence against the upward fluctuations in the prices of other fuels.

The bill would amend subsection 161 v. to support and affirm with greater clarity the intention of the Congress as correctly discerned by the GAO in its July 17, 1970, report. The Committee expects that this reiteration of congressional intent would preclude any further attempt to deviate from the purpose of the statute.

Under the clarified version of subsection 161 v., it is intended that the criteria in effect since 1966 will continue to be in effect unless and until the Commission proposes revisions thereto that conform to the requirements of the statute and submits them to the Committee for the 45-day review period. The Committee recommends that the Commission consult with the General Accounting Office in regard to any such proposed revisions that it may deem desirable. The Joint Committee would be kept fully informed, and any report furnished the Commission by the GAO would also be made available to the Committee.

SECTION-BY-SECTION ANALYSIS

Section 1 of the bill amends paragraph (4) of subsection 31 a. of the Atomic Energy Act of 1954, as amended, which now reads as follows:

> (4) utilization of special nuclear material, atomic energy, and radioactive material and processes entailed in the utilization or production of atomic energy or such material for all other purposes, *including industrial uses,* the generation of [p. 25] usable energy, and *the demonstration of the practical value of utilization or production facilities for industrial or commercial purposes;* and (italic added)

The italicized portions would be re-worded to accord with the subsequent provisions of the bill respecting the elimination of the concept of a finding of "practical value" and concerning the licensing of utilization and production facilities for industrial or commercial purposes. The phrase "including industrial uses" would be revised to "including industrial or commercial uses" and the phrase "the demonstration of the practical value of utilization or production facilities for industrial or commercial purposes" would be changed to "the demonstration of advances on the commercial or industrial application of atomic energy." These changes are essentially technical in nature; they do not effect any major substantive alteration of subsection 31 a. of the Act.

Section 2 of the bill amends the second sentence of section 56 of the Atomic Energy Act of 1954, as amended, which now provides:

> The Commission shall also establish for such periods of time as it may deem necessary but not to exceed ten years as to any such period, guaranteed purchase prices for uranium enriched in the isotope 233 produced in a nuclear reactor by a person licensed *under section 104* and delivered to the Commission within the period of the guarantee. (Italic added.)

The italicized phrase would be revised to "under section 103 or section 104". With respect to guaranteed purchase prices for U233, which the Commission has recently established for a 5-year period, it is appropriate and advisable that these apply to licensed nuclear facilities, including, as provided for in the bill, those licensed under section 103.

Section 3 of the bill amends section 102 of the Atomic Energy Act of 1954, as amended, to eliminate the requirement for a finding by the Commission "that any type of utilization or production facility has been sufficiently developed to be of practical value for industrial or commercial purposes" as a condition precedent to the "commercial" licensing of such type of facility under section 103.

Under the revised section 102, all utilization and production facilities for industrial or commercial purposes, with two exceptions, would be subject to licensing under section 103. The two exceptions would be (1) facilities constructed or operated under an arrangement with the Commission entered into under the cooperative power reactor demonstration program, unless the applicable law required licensing under section 103, and (ii) facilities covered by a subsection 104b. construction permit or operating license before and at the time the bill is enacted into law. In regard to (i), the bases for arrangements under the cooperative power reactor demonstration program, which program has for many years

been separately covered in the AEC's authorization acts, are carefully reviewed by this committee. Should it be desirable in the case of any contemplated future cooperative demonstration project to require that the nuclear facility involved be licensed under section 103 instead of subsection 104b., this could be done in the enabling statute. In regard to (ii), the committee believes it would impose an unnecessary hardship on subsection 104b.

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licensees to compel them to convert their permits to section 103 licenses; the matter of potential antitrust review of certain subsection 104 licenses is specifically dealt with in section 6 of the bill, and is discussed below, and it appears to the committee that no useful purpose could be served by compelling any conversion to section 103. The committee here visualizes that amendments, as such, to an existing subsection 104b. license will not affect the exception to section 103 licensing. If, however, the facility is to be modified to such a degree as to constitute a new or substantially different facility, as provided in a regulation or order issued by the Commission, the exception to section 103 licensing is not intended to be applicable to the necessary license amendment. Aside from these two exception categories—demonstration facilities under the cooperative power reactor demonstration program and previously licensed 104b. facilities—any license for a utilization or production facility for industrial or commercial licenses would be issued under section 103, unless some future law otherwise specifically provides.

Section 4 of the bill amends the first sentence of subsection 103 a. of the Act which now reads as follows:

During the hearings pertaining to this legislation there was a suggestion that there ought to be a clearer indication of Congressional intent that section 272 of the Atomic Energy Act did not constitute a modification of the Federal Power Act. The Joint Committee very carefully considered this item and concluded that the legislative history of section 272 indicated quite clearly that the committee and the Congress had not intended thereby to modify or affect in any way the provisions of the Federal Power Act. The committee unanimously reconfirms this intention. In effect section 272 should be read as if the clause "to the extent therein provided" appeared at the end of the text.

> *Subsequent to a finding by the Commission as required in section 102,* the Commission may issue licenses to transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, use, import, or export under the terms of

an agreement for cooperation arranged pursuant to section 123, such type of utilization or production facility. (Italics added.)

The italicized clause would be deleted, since the requirement for a "practical value" finding would be eliminated. The concluding clause "such type of utilization or production facility" would be changed to "utilization or production facilities for industrial or commercial purposes." The revised version would provide for the issuance to persons of "commercial" licenses with respect to "utilization and production facilities for industrial or commercial purposes."

Section 5 of the bill would revise subsection 104 b. of the act to authorize the issuance of licenses under that subsection for utilization or production facilities for industrial or commercial purposes (i) where specifically authorized by law, or (ii) where the facility is constructed or operated under an arrangement with the Commission entered into under the cooperative power reactor demonstration program, and the applicable statutory authorization does not require licensing under section 103, or (iii) where the facility was theretofore licensed under subsection 104 b.

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In revising the text of subsection 104 b., the committee has retained the present requirement that "the Commission shall impose the minimum amount of such regulations and terms of license as will permit the Commission to fulfill its obligations under the Act," but deleted the balance of the present text because subsection 104 b. licenses would not be convertible to section 103 licenses under the bill, and because there is no longer any need to provide for priority of licenses "to those activities which will, in the opinion of the Commission, lead to major advances in the application of atomic energy for industrial or commercial purposes."

In retaining the present language respecting the imposition of the minimum amount of regulations and terms of license, the committee wishes to emphasize that the only purpose here was to reiterate, not to make new law; thus, requirements of applicable laws, such as the National Environmental Policy Act of 1969 (Public Law 91–190) and the Water Quality Improvement Act of 1970 (Public Law 91–224), enacted subsequent to the Atomic Energy Act of 1954, remain unaffected by the reiteration of this feature of the present provisions of subsection 104 b.

The bill does not affect in any way subsections 104 a., 104 c., or 104 d., or the caption of section 104, "Medical Therapy and Research and Development."

The committee is aware that university-licensees under subsection 104 c., and other licensees under subsections 104 a. or 104 c., sometimes use these reactors for industrial or commercial purposes. It is the intention of the committee that such insubstantial use not affect licensing under section 104; however, should the Commission find that any facility so licensed is being used substantially for industrial or commercial purposes, then the Commission shall determine whether such use is sufficiently substantial to entail licensing under section 103.

Section 6 of the bill clarifies and revises subsection 105 c. of the act. The bill does not affect in any way the important features contained in the provisions of subsections 105 a. and 105 b. of the 1954 act. These subsections remain separate, distinct and wholly unaffected by the proposed revised subsection 105 c. For example, the Attorney General's advice under the new subsection 105 c., and the participation by the Attorney General or his designee in the proceedings referred to in paragraph (5) of the subsection, would be completely separate and apart from any actions the Attorney General may deem advisable in relation to the antitrust laws referred to in subsection 105 a. Also, under paragraph (1) of the new subsection 105 c., the Attorney General may, in his discretion, should he consider that his advice might prejudice planned actions under the antitrust laws referred to in subsection 105 a., or for any other reason, render no advice to the Commission.

Paragraph (1) of revised subsection 105 c., requires the Commission promptly to transmit to the Attorney General a copy of any license application to construct or operate a utilization or production facility under section 103. Paragraph (1) also requires the Commission promptly to transmit to the Attorney General written requests for potential antitrust review which are made by any persons who intervened, or who sought by timely written notice to the Commission to intervene, in the construction permit proceeding for a facility licensed under subsection 104 b. prior to the enactment of the bill into law.

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The Attorney General would have "a reasonable time, but in no event to exceed 180 days after receiving a copy of such application or written request" to "render such advice to the Commission as he determines to be appropriate in regard to the finding to be made by the Commission" with respect to antitrust considerations. The committee expects full and expeditious cooperation by the applicant, the Commission and the Attorney General. To facilitate an early review by the Attorney General, the committee suggests that, promptly upon enactment into law of this bill, the Commission

and the Attorney General work out a suitable understanding in regard to the nature of the information the Attorney General would wish to have at the outset; the Commission could then plan to obtain the information from the applicant at the same time that the application is submitted to the Commission.

The advice which the Attorney General may provide would be advice which he "determines to be appropriate in regard to the finding to be made by the Commission." The advice need not necessarily fall within the orbit of the present clause "tend to create or maintain a situation inconsistent with the antitrust laws." If the Attorney General deems it to be appropriate, he need not render any advice, in which case he should so inform the Commission. If he renders advice, paragraph (1) requires that it include "an explanatory statement as to the reasons or basis therefor"; this requirement is only fair and reasonable, and it should help facilitate and expedite the subsequent procedure.

Paragraph (2) of revised subsection 105 c. provides that the potential antitrust review shall not apply to an application for a license to operate a utilization or production facility for which a construction permit was issued under section 103 "unless the Commission determines such review is advisable on the ground that significant changes have occurred in the licensee's activities or proposed activities subsequent to the previous review by the Attorney General and the Commission under this subsection in connection with the construction permit for the facility." The committee sees no sense in two such exercises unless there have been significant intervening changes. The committee expects that the Commission will consult with the Attorney General in regard to its determination respecting significant changes. The term "significant changes" refers to the licensee's activities or proposed activities; the committee considers that it would be unfair to penalize a licensee for significant changes not caused by the licensee or for which the licensee could not reasonably be held responsible or answerable.

The committee recognizes that applications may be amended from time to time, that there may be applications to extend or review a license, and also that the form of an application for a construction permit may be such that, from the applicant's standpoint, it ultimately ripens into the application for an operating license. The phrases "any license application", "an application for a license", and "any application" as used in the clarified and revised subsection 105 c. refer to the initial application for a construction permit, the initial application for operating license, or the initial application for a modification which would constitute a

new or substantially different facility, as the case may be, as determined by the Commission. The phrases do not include, for purposes of triggering subsection 105 c., other applications which may be filed during the licensing process.

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Paragraph (3) provides that with respect to any Commission permit issued under subsection 104 b. before enactment of the bill into law, any person who intervened or who sought by timely written notice to the Commission to intervene in the construction permit proceeding to raise the prelicensing antitrust issue will have the right to obtain an antitrust review under this subsection; to do this, such person must make a written request to the Commission within 25 days after the date of initial Commission publication in the Federal Register of notice of the filing of an application for an operating license for the facility or the date of enactment into law of this subsection, whichever is later. It is the committee's intent that such potentially eligible intervenors must be persons who could have qualified as intervenors under the Commission's rules at the time of the initial attempt to intervene if prelicensing antitrust review were then properly for Commission consideration.

Paragraph (4) provides that, upon the request of the Attorney General, the Commission shall furnish or cause to be furnished "such information as the Attorney General determines to be appropriate" for the advice he is to give. The committee expects that the Commission will make every reasonable effort to provide information sought by the Attorney General.

There is an important aspect that the committee considers must be recognized and especially dealt with in a prudent and responsible manner, and that is the matter of proprietary information or data. The system in subsection 105 c. as in connection with other aspects of the licensing procedure, should be such as to provide reasonable safeguards against any leaks or unwarranted dissemination of information or data of a proprietary nature provided by or in behalf of the applicant, and whether or not the applicant is the proprietor.

Paragraph (5) requires that the Commission promptly publish in the Federal Register the advice it receives from the Attorney General. It further provides that if the Attorney General "advises that there may be adverse antitrust aspects and recommends that there be a hearing" that the Attorney General or his designee may participate as a party "in the proceedings thereafter held by the Commission on such licensing matter in connection with the subject matter of his advice." Such proceedings must be held by the

Commission if the Attorney General advises that there may be adverse antitrust aspects and recommends a hearing. Also, if he does not so advise and recommend, but antitrust issues are raised by another in a manner according with the Commission's rules or regulations, the Commission would be obliged to give such consideration thereto as may be required by the Administrative Procedure Act and the Commission's rules or regulations. Paragraph (5) requires that the Commission "give due consideration to the advice received from the Attorney General and to such evidence as may be provided during the proceedings in connection with such subject matter." Whether or not the Attorney General appears as a party, all advice and information provided by the Attorney General that is utilized by the Commission in arriving at its finding must be made a matter of record. Paragraph (5) further requires that the Commission "make a finding as to whether the activities under the license would create or maintain a situation inconsistent with the antitrust laws as specified in subsection 105a." This finding by the Commission is required only in those cases where

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the Attorney General advises there may be adverse antitrust aspects or antitrust issues are raised by another in a manner according with the Commission's rules and regulations.

With respect to the above finding, although the words "reasonable probability" do not appear in the standard, the concept of reasonable probability is intended to be a silent partner to the factors in the standard. The standard must be considered in the focus of reasonable probability—not certainty or possibility.

The standard pertains to the activities of the license applicant. The activities of others, such as designers, fabricators, manufacturers, or suppliers of materials or services, who, under some kind of direct or indirect contractual relationship may be furnishing equipment, materials or services for the licensed facility would not constitute "activities under the license" unless the license applicant is culpably involved in activities of others that fall within the ambit of the standard.

Paragraph (6) provides that if the Commission finds "the activities under the license would create or maintain a situation inconsistent with the antitrust laws as specified in subsection 105 a." that the Commission "shall also consider, in determining whether the license should be issued or continued, such other factors, including the need for power in the affected area, as the Commission in its judgment deems necessary to protect the public interest." On the basis of all its findings—the finding under paragraph (5) and its findings under paragraph (6)—the Com-

mission would have the authority "to issue or continue a license as applied for, to refuse to issue a license, to rescind a license or amend it, and to issue a license with such conditions as it deems appropriate." While the Commission has the flexibility to consider and weigh the various interests and objectives which may be involved, the committee does not expect that an affirmative finding under paragraph (5) would normally need to be overriden by Commission findings and actions under paragraph (6). The Committee believes that, except in an extraordinary situation, Commission-imposed conditions should be able to eliminate the concerns entailed in any affirmative finding under paragraph (5) while, at the same time, accommodating the other public interest concerns found pursuant to paragraph (6). Normally, the committee expects the Commission's actions under paragraph (5) and (6) will harmonize both antitrust and such other public interest considerations as may be involved. In connection with the range of Commission discretion, the committee notes that pursuant to subsection 105 a. the Commission may also take such licensing action as it deems necessary in the event a licensee is found actually to have violated any of the antitrust laws. Of course, in the event the Commission's findings under paragraph (5) is in the negative, the Commission need not take any further action regarding antitrust under subsection 105 c.

Paragraph (7) of revised subsection 105c. substantively carries over from the present text the exception that the Commission "with the approval of the Attorney General, may except from any of the requirements of this subsection such classes or types of licenses as the Commission may determine would not significantly affect the applicant's activities under the antitrust laws."

Paragraph (8) endeavors to deal sensibly with those applications for a construction permit which, upon the enactment of the bill into law,

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would have to be converted to applications under section 103. In some cases, there might well be hardships caused by delays due to the new requirement for a potential antitrust review under revised subsection 105 c. Paragraph (8) would authorize the Commission, after consultation with the Attorney General, to determine that the public interest would be served by the issuance of a permit containing conditions to assure that the results of a subsequently conducted antitrust review would be given full force and effect. Paragraph (8) similarly applies to applications for an operating license in connection with which a written request for an antitrust review is made as provided for in paragraph (3).

Section 7 of the bill effects a perfecting change in subsection 161 n. of the act to delete the reference to a finding of practical value.

Section 8 of the bill changes several words in the first proviso of subsection 161 v. to support the intention of the Congress when this subsection was enacted into law. The clarified provision expressly indicates that the prices for enriching services "shall be on a basis of recovery of the Government's costs over a reasonable period of time." As the legislative history of this statute discloses, and as the Comptroller General has discerned in his report to the Joint Committee on July 17, 1970, it was intended that the price to be charged by the AEC for toll enrichment should be based on the recovery of appropriate Government costs averaged over a period of years. Under the clarified version of subsection 161 v., the committee intends that the criteria in effect since 1966 will continue to be in effect subject to any Commission proposed revisions thereto that conform to the requirement of the statute and are submitted to the committee for its review. The committee expects that the Commission will consult with the General Accounting Office in regard to any such proposed revisions.

Section 9 of the bill amends subsection 182 c. to delete the phrase "within transmission distance" and to amend the general notice provision.

Section 10 of the bill amends the first sentence of subsection 191 a. which now requires that of the three members of any Atomic Safety and Licensing Board two members "shall be technically qualified," and the third "shall be qualified in the conduct of administrative proceedings". Section 10 would permit two members to have "such technical or other qualifications as the Commission deems appropriate to the issues to be decided"; the third member would continue to be one "qualified in the conduct of administrative proceedings."

Section 11 of the bill revises the present text of subsection 274 h. to abolish the Federal Radiation Council and to provide for contractual arrangements with the National Council on Radiation Protection and Measurements and with the National Academy of Sciences. Under the revised text, any Government agency designated by the President for the purpose would be authorized and directed to enter into and administer an arrangement with the National Council on Radiation Protection and Measurements for a comprehensive and continuing review of basic radiation protection standards, and the scientific bases therefor, pertinent to the health and safety aspects of exposure to radioactivity resulting from the development, use or control of atomic energy. Any Government

agency designated by the President for the purpose would also be authorized to enter into and administer an arrangement with the National Academy of Sciences for a comprehensive and continuing review of the biological

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effects of radiation on man and the ecology in order to obtain information pertinent to basic radiation protection standards. The revised subsection 274 h. specifies that the respective arrangements shall require the conduct by the National Council on Radiation Protection and Measurements and by the National Academy of Sciences, respectively, of a number of functions relative to the fields of radiation and the biological effects of radiation. Under the arrangements the National Committee on Radiation Protection and Measurements and the National Academy of Sciences will concern themselves essentially with information and matters relative to the "hard" sciences, as distinguished from sociological or "soft" science considerations. The latter considerations would be identified and dealt with by the Government agency having authority to establish radiation protection standards. All matters pertaining to basic radiation protection standards pertinent to the health and safety aspects of exposure to radioactivity resulting from the development, use or control of atomic energy would be promptly reported to the Joint Committee. The contracting Government agency may, in the discretion of the President, be any Government agency or agencies; the contractual arrangements may be administered by any Government agency or agencies designated by the President.

CHANGES IN EXISTING LAW

In accordance with clause (3) of rule XIII of the Rules of the House of Representatives, changes in existing law recommended by the bill accompanying this report are shown as follows (deleted matter is shown in black brackets and new matter is printed in italic):

PUBLIC LAW 83–703

[ATOMIC ENERGY ACT OF 1954 AS AMENDED]

"SEC. 31. RESEARCH ASSISTANCE.—

* * * * * * *

"a. (4) utilization of special nuclear material, atomic energy, and radioactive material and processes entailed in the utilization or production of atomic energy or such material for all other pur-

poses, including industrial *or commercial* uses, the generation of usable energy, and the demonstration of [the practicable value of utilization or production facilities for industrial or commercial purposes] *advances in the commercial or industrial application of atomic energy;* and

* * * * * * *

"SEC. 56. GUARANTEED PURCHASE PRICES.—

"The Commission shall establish guaranteed purchase prices for plutonium produced in a nuclear reactor by a person licensed under section 104 and delivered to the Commission before January 1, 1971. The Commission shall also establish for such periods of time as it may deem necessary, but not to exceed ten years as to any such period, guaranteed purchase prices for uranium enriched in the isotope 233 produced in a nuclear reactor by a person licensed under *section 103 or*

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section 104 and delivered to the Commission within the period of the guarantee. Guaranteed purchase prices established under the authority of this section shall not exceed the Commission's determination of the estimated value of plutonium or uranium enriched in the isotope 233 as fuel in nuclear reactors, and such prices shall be established on a nondiscriminatory basis: *Provided,* That the Commission is authorized to establish such guaranteed purchase prices only for such plutonium or uranium enriched in the isotope 233 as the Commission shall determine is produced thrcugh the use of special nuclear material which was leased or sold by the Commission pursuant to section 53.

"SEC. 102. [FINDING OF PRACTICAL VALUE] UTILIZATION AND PRODUCTION FACILITIES FOR INDUSTRIAL OR COMMERCIAL PURPOSES.—

[Whenever the Commission has made a finding in writing that any type of utilization or production facility has been sufficiently developed to be of practical value for industrial or commercial purposes, the Commission may thereafter issue licenses for such type of facility pursuant to section 103.]

"a. Except as provided in subsection b. and c., or otherwise specifically authorized by law, any license hereafter issued for a utilization or production facility for industrial or commercial purposes shall be issued pursuant to section 103.

"b. Any license hereafter issued for a utilization or production facility for industrial or commercial purposes, the construction or operation of which was licensed pursuant to subsection 104b. prior

to enactment into law of this subsection, shall be issued under subsection 104b.

"c. Any license for a utilization or production facility for industrial or commercial purposes constructed or operated under an arrangement with the Commission entered into under the Cooperative Power Reactor Demonstration Program shall, except as otherwise specifically required by applicable law, be issued under subsection 104b."

"SEC. 103. COMMERCIAL LICENSES.—

"a. [Subsequent to a finding by the Commission as required in section 102, the Commission may] *The Commission is authorized to* issue licenses *to persons applying therefor* to transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, use, import, or export under the terms of an agreement for cooperation arranged pursuant to section 123, [such type of utilization or production facility] *utilization or production facilities for industrial or commercial purposes.* Such licenses shall be issued in accordance with the provisions of chapter 16 and subject to such conditions as the Commission may by rule or regulation establish to effectuate the purposes and provisions of this Act."

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"SEC. 104. MEDICAL THERAPY AND RESEARCH AND DEVELOPMENT.—

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"b. [The Commission is authorized to issue licenses to persons applying therefor for utilization and production facilities involved in

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the conduct of research and development activities leading to the demonstration of the practical value of such facilities for industrial or commercial purposes. In issuing licenses under this subsection, the Commission shall impose the minimum amount of such regulations and terms of license as will permit the Commission to fulfill its obligations under this Act to promote the common defense and security and to protect the health and safety of the public and will be compatible with the regulations and terms of license which would apply in the event that a commercial license were later to be issued pursuant to section 103 for that type of facility. In issuing such licenses, priority shall be given to those activities which will, in the opinion of the Commission, lead to major advances in the application of atomic energy for industrial or commercial purposes.] *As provided for in subsection 102 b. or 102 c.,*

or where specifically authorized by law, the Commission is authorized to issue licenses under this subsection to persons applying therefor for utilization and production facilities for industrial and commercial purposes. In issuing licenses under this subsection, the Commission shall impose the minimum amount of such regulations and terms of license as will permit the Commission to fulfill its obligations under this Act."

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"SEC. 105. ANTITRUST PROVISIONS.—

* * * * * * *

"c. [Whenever the Commission proposes to issue any license to any person under section 103, it shall notify the Attorney General of the proposed license and the proposed terms and conditions thereof, except such classes or types of licenses, as the Commission, with the approval of the Attorney General, may determine would not significantly affect the licensee's activities under the antitrust laws as specified in subsection 105 a. Within a reasonable time, in no event to exceed 90 days after receiving such notification, the Attorney General shall advise the Commission whether, insofar as he can determine, the proposed license would tend to create or maintain a situation inconsistent with the antitrust laws, and such advice shall be published in the Federal Register. Upon the request of the Attorney General, the Commission shall furnish or cause to be furnished such information as the Attorney General determines to be appropriate or necessary to enable him to give the advice called for by this section.]

"*(1) The Commission shall promptly transmit to the Attorney General a copy of any license application provided for in paragraph (2) of this subsection, and a copy of any written request provided for in paragraph (3) of this subsection; and the Attorney General shall, within a reasonable time, but in no event to exceed 180 days after receiving a copy of such application or written request, render such advice to the Commission as he determines to be appropriate in regard to the finding to be made by the Commission pursuant to paragraph (5) of this subsection. Such advice shall include an explanatory statement as to the reasons or basis therefor.*

"*(2) Paragraph (1) of this subsection shall apply to an application for a license to construct or operate a utilization or production facility under section 103, provided, however, that paragraph (1) shall not apply to an application for a license to operate a utilization or production*

facility for which a construction permit was issued under section 103 unless the Commission determines such review is advisable on the ground that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous review by the Attorney General and the Commission under this subsection in connection with the construction permit for the facility.

"(3) With respect to any Commission permit for the construction of a utilization or production facility issued pursuant to subsection 104 b. prior to the enactment into law of this subsection, any person who intervened or who sought by timely written notice to the Commission to intervene in the construction permit proceeding for the facility to obtain a determination of antitrust considerations or to advance a jurisdictional basis for such determination shall have the right, upon a written request to the Commission, to obtain an antitrust review under this section of the application for an operating license. Such written request shall be made within 25 days after the date of initial Commission publication in the Federal Register of notice of the filing of an application for an operating license or the facility or the date of enactment into law of this subsection, whichever is later.

"(4) Upon the request of the Attorney General, the Commission shall furnish or cause to be furnished such information as the Attorney General determines to be appropriate for the advice called for in paragraph (1) of this subsection.

"(5) Promptly upon receipt of the Attorney General's advice, the Commission shall publish the advice in the Federal Register. Where the Attorney General advises that there may be adverse antitrust aspects and recommends that there be a hearing, the Attorney General or his designee may participate as a party in the proceedings thereafter held by the Commission on such licensing matter in connection with the subject matter of his advice. The Commission shall give due consideration to the advice received from the Attorney General and to such evidence as may be provided during the proceedings in connection with such subject matter, and shall make a finding as to whether the activities under the license would create or maintain a situation inconsistent with the antitrust laws as specified in subsection 105 a.

"(6) In the event the Commission's finding under paragraph (5) is in the affirmative, the Commission shall also consider, in determining whether the license should be issued or continued, such other factors, including the need for power in the affected area, as the Commission in its judgment deems necessary to protect public interest. On the basis of its findings, the Commission

shall have the authority to issue or continue a license as applied for, to refuse to issue a license, to rescind a license or amend it, and to issue a license with such conditions as it deems appropriate.

"(7) The Commission, with the approval of the Attorney General, may except from any of the requirements of this subsection such classes or types of licenses as the Commission may determine would not significantly affect the applicant's activities under the antitrust laws as specified in subsection 105 a.

"(8) With respect to any application for a construction permit on file at the time of enactment into law of this subsection, which permit would be for issuance under section 103, and with respect to any application for an operating license in connection with which a written request for an anti-

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trust review is made as provided for in paragraph (3), the Commission, after consultation with the Attorney General, may, upon determination that such action is necessary in the public interest to avoid unnecessary delay, establish by rule or order periods for Commission notification and receipt of advice differing from those set forth above and may issue a construction permit or operating license in advance of consideration of and findings with respect to the matters covered in this subsection, provided, that any construction permit or operating license so issued shall contain such conditions as the Commission deems appropriate to assure that any subsequent findings and orders of the Commission with respect to such matters will be given full force and effect.

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SEC. 161. GENERAL PROVISIONS.—

* * * * * * *

"n. delegate to the General Manager or other officers of the Commission any of those functions assigned to it under this Act except those specified in sections 51, 57 b., 61, [102 (with respect to the finding of practical value),] 108, 123, 145 b. (with respect to the determination of those persons to whom the Commission may reveal Restricted Data in the national interest), 145 f., and 161 a.;

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"SEC. 161. GENERAL PROVISIONS.—

* * * * * * *

"v. (A) enter into contracts with persons licensed under sections 53, 63, 103 or 104 for such periods of time as the

Commission may deem necessary or desirable to provide, after December 31, 1968, for the producing or enriching of special nuclear material in facilities owned by the Commission; and

"(B) enter into contracts to provide, after December 31, 1968, for the producing or enriching of special nuclear material in facilities owned by the Commission in accordance with and within the period of an agreement for cooperation arranged pursuant to section 123 while comparable services are made available pursuant to paragraph (A) of this subsection:

Provided, That (i) prices for services under paragraph (A) of this subsection shall be established on a nondiscriminatory basis; (ii) prices for services under paragraph (B) of this subsection shall be no less than prices under paragraph (A) of this subsection; and (iii) any prices established under this subsection shall be on a basis [which will provide reasonable compensation to the Government] *of recovery of the Government's costs over a reasonable period of time:* * * *

"SEC. 182. LICENSE APPLICATIONS.—

* * * * * * *

"c. The Commission shall not issue any license *under section 103* for a utilization or production facility for the generation of commercial power [under section 103,] until it has given notice in writing to such regulatory agency as may have jurisdiction over the rates and services [of] *incident to* the proposed activity [, to municipalities, private utilities, public bodies, and cooperatives within transmission

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distance authorized to engage in the distribution of electric energy]*; until it has published notice of the application in such trade or news publications as the Commission deems appropriate to give reasonable notice to municipalities, private utilities, public bodies and cooperatives which might have a potential interest in such utilization or production facility;* and until it has published notice of such application once each week for four consecutive weeks in the Federal Register, and until four weeks after the last notice.

* * * * * * *

"SEC. 191. ATOMIC SAFETY AND LICENSING BOARD.—

"a. Notwithstanding the provisions of sections 7(a) and 8(a) of the Administrative Procedure Act, the Commission is authorized to establish one or more atomic safety and licensing boards, each

[composed] *comprised* of three members, [two of whom shall be technically qualified and] one of whom shall be qualified in the conduct of administrative proceedings [,] *and two of whom shall have such technical or other qualifications as the Commission deems appropriate to the issues to be decided,* to conduct such hearings as the Commission may direct and make such intermediate or final decisions as the Commission may authorize with respect to the granting, suspending, revoking or amending of any license or authorization under the provisions of this Act, any other provision of law, or any regulation of the Commission issued thereunder. The Commission may delegate to a board such other regulatory functions as the Commission deems appropriate. The Commission may appoint a panel of qualified persons from which board members may be selected."

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"SEC. 274. COOPERATION WITH STATES.—

* * * * * * *

"h. [There is hereby established a Federal Radiation Council, consisting of the Secretary of Health, Education, and Welfare, the Chairman of the Atomic Energy Commission, the Secretary of Defense, the Secretary of Commerce, the Secretary of Labor, or their designees, and such other members as shall be appointed by the President. The Council shall consult qualified scientists and experts in radiation matters, including the President of the National Academy of Sciences, the Chairman of the National Committee on Radiation Protection and Measurement, and qualified experts in the field of biology and medicine and in the field of health physics. The Special Assistant to the President for Science and Technology, or his designee, is authorized to attend meetings, participate in the deliberations of and to advise the Council. The Chairman of the Council shall be designated by the President, from time to time, from among the members of the Council. The Council shall advise the President with respect to radiation matters, directly or indirectly affecting health, including guidance for all Federal agencies in the formulation of radiation standards and in the establishment and execution of programs of cooperation with States. The Council shall also perform such other functions as the President may assign to it by Executive Order.]

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Any Government agency designated by the President is hereby authorized and directed to enter into and administer an arrangement with the National Council on Radiation Protection and

Measurements for a comprehensive and continuing review of basic radiation protection standards and the scientific bases therefor, pertinent to the health and safety aspects of exposure to radioactivity resulting from the development, use or control of atomic energy, and an arrangement with the National Academy of Sciences for a comprehensive and continuing review of the biological effects of radiation on man and the ecology in order to provide information pertinent to basic radiation protection standards. The respective scopes of the arrangements may, in the discretion of the President or the designated Government agency, also encompass exposure to the effects of radiation from sources other than the development, use or control of atomic energy. The respective arrangements shall require—

(1) the conduct by the National Council on Radiation Protection and Measurements of a full-scale review of the radiation protection guides presently in effect by virtue of the recommendations of the Federal Radiation Council, and of all available scientific information;

(2) the conduct by the National Academy of Sciences of a full-scale review of the biological effects of radiation, including all available scientific information;

(3) consultations between the National Council on Radiation Protection and Measurements and the National Academy of Sciences to assure effective coordination between these two bodies to serve the objective of the arrangements;

(4) consultations by the National Council on Radiation Protection and Measurements and by the National Academy of Sciences, respectively, with scientists outside and within the Government;

(5) the preparation and submittal by the National Council on Radiation Protection and Measurements to the President, or to the Government agency administering the arrangements, and to the Congress, by December 31, 1970, of its first complete report of its review activities, which shall also set forth its recommendations respecting basic radiation protection standards and the reasons therefor;

(6) the maintenance by the National Council on Radiation Protection and Measurements of reasonably thorough knowledge of scientific matters pertinent to basic radiation protection standards within the scope of the arrangement, including studies and research previously performed, currently in progress or being planned;

(7) such recommendations by the National Council on Radiation Protection and Measurements and the National

Academy of Sciences respecting the conduct of any studies or research directly or indirectly pertinent to the basic radiation protection standards, or the biological effects of radiation on man and the ecology, under the respective scope of each arrangement, as either body deems advisable from time to time;

(8) the furnishing of scientific information and advice by the National Council on Radiation Protection and Measurements and by the National Academy of Sciences, within the respective scopes of the arrangements, to the President, Government agencies, the

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States, and others, at the request of the President or the Government agency administering the arrangements;

(9) the furnishing of scientific information and advice by the National Council on Radiation Protection and Measurements and by the National Academy of Sciences, within the respective scopes of the arrangements, to the Congress pursuant to the request of any Committee of the Congress;

(10) the preparation and transmittal to the President or to the Government agency administering the arrangements, and to the Congress, by the National Council on Radiation Protection and Measurements and by the National Academy of Sciences, at the end of each calendar year subsequent to 1970, of a report covering their respective review activities during the year; the report by the National Council on Radiation Protection and Measurements shall also set forth any significant scientific developments relative to basic radiation protection standards, including any recommendations, and the report by the National Academy of Sciences shall set forth any significant scientific developments bearing on the biological effects of radiation on man and the ecology, including recommendations;

(11) the preparation and transmittal to the President, or to the Government agency administering the arrangements, and to the Congress, by the National Council on Radiation Protection and Measurements of a prompt report of any significant changes which it deems advisable to recommend in regard to its previous recommendations respecting basic radiation protection standards or the scientific bases therefor and not theretofore identified in its reports; and

(12) the conduct of the activities of the National Council on Radiation Protection and Measurements and of the National Academy of Sciences, under the respective arrange-

ments, in accordance with high substantive and procedural standards of sound scientific investigation and findings.

Reports received from the National Council on Radiation Protection and Measurements and the National Academy of Sciences under the arrangements shall be promptly published by the Government agency administering the arrangements. All recommendations, in such reports by the National Council on Radiation Protection and Measurements, respecting basic radiation protection standards pertinent to the health and safety aspects of exposure to radioactivity resulting from the development, use or control of atomic energy, shall be carefully considered by any Government agency having authority to establish such standards, and, within a reasonable period of time, such Government agency shall submit to the Joint Committee a report setting forth in detail its determinations respecting the recommendations and the measures, revisions, or other actions it proposes to take, adopt, or effect in relation to the recommendations.

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1.1x(2) JOINT COMMITTEE ON ATOMIC ENERGY

S. REP. No. 91–1247, 91st Cong., 2d Sess. (1970)

AMENDING THE ATOMIC ENERGY ACT OF 1954, AS AMENDED, TO ELIMINATE THE REQUIREMENT FOR A FINDING OF PRACTICAL VALUE, TO PROVIDE FOR PRELICENSING ANTITRUST REVIEW OF PRODUCTION AND UTILIZATION FACILITIES, AND TO EFFECTUATE CERTAIN OTHER PURPOSES PERTAINING TO NUCLEAR FACILITIES

SEPTEMBER 29, 1970.—Ordered to be printed

Mr. PASTORE, from the Joint Committee on Atomic Energy, submitted the following

REPORT

[To accompany S. 4141]

The Joint Committee on Atomic Energy, having considered S. 4141, an original committee bill to amend the Atomic Energy Act

of 1954, as amended, and for other purposes, report favorably thereon and recommend that the bill do pass.

SUMMARY OF BILL

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1.1x(3) CONGRESSIONAL RECORD, VOL. 116 (1970)

1.1x(3)(a) Sept. 30: Considered and passed House, pp. 34309–34321

AMENDING ATOMIC ENERGY ACT OF 1954

Mr. HOLIFIELD. Mr. Speaker, I move that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 18679) to amend the Atomic Energy Act of 1954, as amended, to eliminate the requirement for a finding of practical value, and for other purposes.

The motion was agreed to.

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the bill H.R. 18679, with Mr. BURKE of Massachusetts in the chair.

The Clerk read the title of the bill.

By unanimous consent, the first reading of the bill was dispensed with.

The CHAIRMAN. Under the rule, the gentleman from California (Mr. HOLIFIELD) will be recognized for 30 minutes and the gentleman from California (Mr. HOSMER), will be recognized for 30 minutes.

The Chair recognizes the gentleman from California (Mr. HOLIFIELD).

Mr. HOLIFIELD. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, the bill before us, H.R. 18679, covers three main features and several items that are needed to update, clarify, and improve the provisions of the Atomic Energy Act of 1954, as heretofore amended.

The bill was unanimously adopted by the Joint Committee on Atomic Energy, which I have the honor to chair. It was reported out by our committee without a dissenting vote. The legislation it embodies is distilled essence from a number of legislative proposals during the past several years, considerable testimony and submitted comments by representatives of the Government, industry, and other interested groups and, finally, very thorough consideration by the joint committee.

I will briefly summarize the contents of H.R. 18679, and then I, and my fellow committee members of the House, will be pleased to answer any questions that may be raised.

First, the bill would erase from the Atomic Energy Act of 1954 the requirement that the Atomic Energy Commission must make a finding of practical value before nuclear powerplants or other nuclear facilities may be licensed for industrial or commercial purposes. The Commission has not yet made a finding of practical value for any type of nuclear facility, and consequently nuclear powerplants are still being licensed as research and development facilities. The concept of a finding of practical value as a condi-

tion precedent to commercial licensing appeared to be a good idea in 1954, when the generation of electrical energy through the use of nuclear reactors was just a promising prospect for the distant future. Now, this concept serves no useful purpose. It is simply an unnecessary roadblock to the commercial licensing of nuclear powerplants. The bill removes this hurdle. Pursuant to section 6 of the bill, nuclear facilities—defined in the Atomic Energy Act as utilization and production facilities—that are to be used for industrial or commercial purposes, would have to be licensed accordingly, unless some future law otherwise specifically authorizes or a particular application is covered by either of the two small exception categories specified in revised section 102 of the Atomic Energy Act.

In amending the Atomic Energy Act to remove the concept of a finding, the bill clarifies and revises the present provisions of subsection 105(c) of the act, relative to prelicensing antitrust review of applications for nuclear facilities for commercial or industrial purposes. The revised subsection 105(c), as spelled out in section 6 of the bill and as further explained in the report accompanying the bill, represents many hours of careful consideration by the committee and its staff. Particularly close attention was devoted to all the ingredient details. In the committee's unanimous judgment, the procedure set forth in section 6 of the bill is reasonable, fair, and workable. It subjects applications for nuclear powerplants to a process involving a review by the Attorney General and then a finding by the Atomic Energy Commission as to whether the activities under the license would create or maintain a situation inconsistent with the antitrust laws. The Attorney General has up to 180 days to render advice to the Commission, and if the Attorney General recommends that there may be adverse antitrust aspects and recommends that there be a hearing, the Commission must conduct a hearing and give due consideration to the advice received from the Attorney General and also to such evidence as may be provided during the proceeding; and the Commission must then make a finding as to whether the activities under the license would create or maintain a situation inconsistent with the antitrust laws as specified in subsection 105(a) of the Atomic Energy Act. Additionally, if the Attorney General does not so advise and recommend, but antitrust issues are raised by another in a manner according with the Commission's rules or regulations, the Commission would be obliged to give such consideration thereto as may be required by the Administrative Procedure Act and the Commission's rules and regulations. In the latter regard, the committee intends that, in any event, the Commission's rules and regulations will set a fixed period in which such issues may be raised. It is hoped that this period will coincide with and not extend beyond the specified period in which the Attorney General's advice may be rendered. The bill contemplates that all aspects of the antitrust considerations constituting part of the Commission's total licensing procedure, including the ultimate findings by the Commission, would be dealt with in such a way as not to impose an additional delaying factor. We believe a separate board can be utilized by the Commission in connection with such antitrust considerations. This feature of the total licensing process should be completed by the Commission before the radiological health and safety matters are concluded in the licensing procedure.

I must emphasize, and it must be borne in mind, that this whole antitrust feature of the Atomic Energy Commission's licensing procedure will be completely separate and apart from the application of the antitrust laws now on the statute books. The antitrust laws, and the authorities and re-

sponsibilities of the Attorney General and others by virtue of these laws or in connection therewith, and the implementation of these laws, remain completely unaffected by the antitrust review dealt with in section 6 of the bill. The antitrust laws referred to in subsection 105(a) of the Atomic Energy Act are not qualified, limited, extended, or interfered with in any way whatsoever.

The second main feature of the bill is the amendment to the Atomic Energy Act contained in section 8 of the bill. When I use the word "amendment" I

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overstate somewhat, because the committee's recommended change in language as set forth in section 8 merely is intended to assure that the original intent of Congress underlying the present wording of the statute will continue to be complied with by the Atomic Energy Commission.

Section 8 of the bill amends subsection 161(v) of the Atomic Energy Act which was added by the Private Ownership of Special Nuclear Materials Act of 1964. It relates to the furnishing by the AEC of uranium enrichment services—increasing the percentage of fissionable isotopes in natural uranium so that the enriched material can be used as fuel in nuclear reactors. The 1964 amendment provided that the AEC was to establish prices for that service "on a basis which will provide reasonable compensation to the Government." It further provided that the AEC was to establish written criteria for the furnishing of that service and the prices to be charged. The legislative background clearly indicated that it was intended that the basis for the charges would be the Government's costs.

In compliance with the statutory mandate and in keeping with the legislative history, including hearings and the joint committee report accompanying the statute, the AEC proposed and the joint committee after further extensive hearings concurred in, criteria which provided for prices based on the recovery of appropriate Government costs over a reasonable period of time. These criteria were formally established and remained in effect. In June of this year, the AEC proposed radically revised criteria which are not based on the recovery of the Government's costs. AEC has proposed shifting from pricing based on recovery of Government costs to charges based on a hypothetical, privately owned plant of the future, using assumed factors for construction costs, capital structure, operating costs, and profits that are not pinned down in terms of numbers or dollars. In other words, the new criteria are completely rubbery and can serve to justify whatever prices AEC may decide on from time to time.

The process for enriching uranium is under Government monopoly. There is no similar commercial operation. The concept of charging for enriching services performed by the Government on the basis of appropriate cost recovery is consistent with traditional methods of Government pricing for materials and services made available to others. The U.S. Government is not a profitmaking operation, and neither the joint committee nor the Congress, in authorizing the AEC to perform this service, intended to create a profitmaking operation.

The committee has consistently obtained the advice of the General Accounting Office on this subject. In 1966, the GAO reported that the then proposed and subsequently adopted, criteria relative to pricing provided a reasonable basis for recovering the Government costs. In 1967, after reviewing the actual price to be charged, the GAO reported that such price—$26 per unit—was adequate to recover appropriate costs and was consistent with the established criteria. In response to the joint committee's request for a review of AEC's proposed change in cri-

teria, the GAO reported that the revised criteria do not appear to be consistent with the intention of the Congress. GAO also expressed the opinion that there is doubt that AEC's revised criteria are authorized.

Before I end my brief discussion of this feature, I would like to emphasize the amendment in this bill may not prevent price increases. AEC's new price may also be justified on the basis of the old criteria. The amendment will assure that any price charged is on the basis of recovery of the Government's costs—factors which at any point in time are known or ascertainable—concrete factors—not hypothetical, assumed factors which can easily be twisted and stretched to conform to any intended price. Just, fair and reasonable criteria can assure not only the validity of the price, based on the recovery of appropriate Government costs over a reasonable period of time, but also reasonable price stability so essential to reliable, long-range planning necessarily employed in the electric power industry. This is what Congress intended in 1964 and this is what section 8 of the bill will assure—no more and no less.

Section 11 covers the third principal feature of the bill. This section of H.R. 18679 would enlist the preeminent scientific talents of the National Council on Radiation Protection and Measurements and the National Academy of Sciences in a comprehensive and coordinated effort to review the presently applicable basic radiation protection standards, and the scientific bases therefor, pertinent to the health and safety aspects of exposure to radioactivity resulting from the development, use, or control of atomic energy.

Any Government agency designated by the President would be authorized and directed to enter into and administer arrangements with two uniquely qualified bodies under which they would conduct full-scale reviews on a continuing and comprehensive basis, furnish annual and other reports of their findings, and submit their recommendations. The National Academy of Sciences would conduct a comprehensive and continuing review of the biological effects of radiation on man and the ecology in order to provide information pertinent to basic radiation protection standards. The arrangement with the National Council on Radiation Protection and Measurements would essentially focus on radiation protection standards. Pursuant to section 11, the arrangements would provide for the conduct of the activities of the National Council on Radiation Protection and Measurements and of the National Academy of Sciences in accordance with high substantive and procedural standards of sound scientific investigation and findings; among other things, this should assure that all interested and qualified individuals and groups would have the opportunity to present information and views to these bodies.

If Reorganization Plan No. 3 becomes law, the President could, for example, designate the Environmental Protection Agency created by that plan as the contracting or administering agency for the Government. Both the National Council on Radiation Protection and Measurements and the National Academy of Sciences have advised the joint committee informally that they would be pleased to enter into arrangements contemplated by section 11.

Under the bill, reports by the National Council on Radiation Protection and Measurements and the National Academy of Sciences would be promptly published, and all recommendations in such reports pertinent to the health and safety aspects of exposure to radioactivity resulting from the development, use or control of atomic energy would have to be carefully considered by any Government agency having authority to establish such standards. Additionally, within a reasonable period of time, each of such Government agencies would be required to submit a report to the

Congress setting forth in detail its determinations respecting the recommendations by the National Council and the Academy, and the measures, revisions, or other actions it plans to take, adopt, or effect in relation to the recommendations. Such agencies would, of course, be free to continue to avail themselves of any expert outside advice.

The Joint Committee believes that the public can only be reassured by the knowledge that the finest scientific brains in the country are keeping abreast of scientific developments on a continuing and comprehensive basis, and providing recommendations in regard to basic radiation protection standards. The Joint Committee unanimously believes that such a solid basis incident to the establishment of basic radiation protection standards would be invaluable.

I should like to have inserted in the RECORD at this point the section-by-section analysis of the bill, as contained in the committee's accompanying report. This material, together with the remainder of the report—all of which should be perused by anyone deeply interested in all the aspects of the bill and its background—elaborates on each section. The section-by-section analysis also contains a paragraph which the committee specially wished to add to lay to rest any concern that section 272 of the Atomic Energy Act, which relates to commercially licensed nuclear powerplants, was intended to modify or affect in any way the provisions of the Federal Power Act. It was not so intended, and the committee unanimously reaffirms this. Incidentally, this explanatory paragraph, which appears on page 27 of the report accompanying the bill was intended to precede the paragraph starting with the words "section 4 of the bill."

The material follows:

SECTION-BY-SECTION ANALYSIS

Section 1 of the bill amends paragraph (4) of subsection 31 a. of the Atomic Energy Act of 1954, as amended, which now reads as follows:

"(4) utilization of special nuclear material, atomic energy, and radioactive material and processes entailed in the utilization or production of atomic energy or such material for all other purposes, *including industrial uses*, the generation of usable

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energy, and *the demonstration of the practical value of utilization or production facilities for industrial or commercial purposes;* and" (italic added)

The italicized portions would be re-worded to accord with the subsequent provisions of the bill respecting the elimination of the concept of a finding of "practical value" and concerning the licensing of utilization and production facilities for industrial or commercial purposes. The phrase "including industrial uses" would be revised to "including industrial or commercial uses" and the phrase "the demonstration of the practical value of utilization or production facilities for industrial or commercial purposes" would be changed to "the demonstration of advances on the commercial or industrial application of atomic energy." These changes are essentially technical in nature; they do not effect any major substantive alteration of subsection 31 a. of the Act.

Section 2 of the bill amends the second sentence of section 56 of the Atomic Energy Act of 1954, as amended, which now provides:

"The Commission shall also establish for such periods of time as it may deem necessary but not to exceed ten years as to any such period, guaranteed purchase prices for uranium enriched in the isotope 233 produced in a nuclear reactor by a person licensed *under section 104* and delivered to the Commission within the period of the guarantee." (Italic added.)

The italicized phrase would be revised to "under section 103 or section 104". With respect to guaranteed purchase prices for U233, which the Commission has recently established for a 5-year period, it is appropriate and advisable that these apply to licensed nuclear facilities, including, as provided for in the bill, those licensed under section 103.

Section 3 of the bill amends section 102 of the Atomic Energy Act of 1954, as amended, to eliminate the requirement for a finding by the Commission "that any type of utilization or production facility has been sufficiently developed to be of practical value for industrial or commercial purposes" as a condition precedent to the "commercial" licensing of such type of facility under section 103.

Under the revised section 102, all utilization and production facilities for industrial or commercial purposes, with two exceptions, would be subject to licensing under section 103. The two exceptions would be (i) facilities constructed or operated under an arrangement with the Commission entered into under the cooperative power reactor demonstration program, unless the applicable law required licensing under section 103,

and (ii) facilities covered by a subsection 104b. construction permit or operating license before and at the time the bill is enacted into law. In regard to (i), the bases for arrangements under the cooperative power reactor demonstration program, which program has for many years been separately covered in the AEC's authorization acts, are carefully reviewed by this committee. Should it be desirable in the case of any contemplated future cooperative demonstration project to require that the nuclear facility involved be licensed under section 103 instead of subsection 104b., this could be done in the enabling statute. In regard to (ii), the committee believes it would impose an unnecessary hardship on subsection 104b. licensees to compel them to convert their permits to section 103 licenses; the matter of potential antitrust review of certain subsection 104 licenses is specifically dealt with in section 6 of the bill, and is discussed below, and it appears to the committee that no useful purpose could be served by compelling any conversion to section 103. The committee here visualizes that amendments, as such, to an existing subsection 104b. license will not affect the exception to section 103 licensing. If, however, the facility is to be modified to such a degree as to constitute a new or substantially different facility, as provided in a regulation or order issued by the Commission, the exception to section 103 licensing is not intended to be applicable to the necessary license amendment. Aside from these two exception categories—demonstration facilities under the cooperative power reactor demonstration program and previously licensed 104b. facilities—any license for a utilization or production facility for industrial or commercial licenses would be issued under section 103, unless some future law otherwise specifically provides.

Section 4 of the bill amends the first sentence of subsection 103 a. of the Act which now reads as follows:

During the hearings pertaining to this legislation there was a suggestion that there ought to be a clearer indication of Congressional intent that section 272 of the Atomic Energy Act did not constitute a modification of the Federal Power Act. The Joint Committee very carefully considered this item and concluded that the legislative history of section 272 indicated quite clearly that the committee and the Congress had not intended thereby to modify or affect in any way the provisions of the Federal Power Act. The committee unanimously reconfirms this intention. In effect section 272 should be read as if the clause "to the extent therein provided" appeared at the end of the text.

"*Subsequent to a finding by the Commission as required in section 102,* the Commission may issue licenses to transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, use, import, or export under the terms of an agreement for cooperation arranged pursuant to section 123, such type of utilization or production facility." (Italics added.)

The italicized clause would be deleted, since the requirement for a "practical value" finding would be eliminated. The concluding clause "such type of utilization or production facility" would be changed to "utilization or production facilities for industrial or commercial purposes." The revised version would provide for the issuance to persons of "commercial" licenses with respect to "utilization and production facilities for industrial or commercial purposes."

Section 5 of the bill would revise subsection 104 b. of the act to authorize the issuance of licenses under that subsection for utilization or production facilities for industrial or commercial purposes (i) where specifically authorized by law, or (ii) where the facility is constructed or operated under an arrangement with the Commission entered into under the cooperative power reactor demonstration program, and the applicable statutory authorization does not require licensing under section 103, or (iii) where the facility was theretofore licensed under subsection 104 b.

In revising the text of subsection 104b, the committee has retained the present requirement that "the Commission shall impose the minimum amount of such regulations and terms of license as will permit the Commission to fulfill its obligations under the Act," but deleted the balance of the present text because subsection 104b licenses would not be convertible to section 103 licenses under the bill, and because there is no longer any need to provide for priority of licenses "to those activities which will, in the opinion of the Commission, lead to major advances in the application of atomic energy for industrial or commercial purposes."

In retaining the present language respecting the imposition of the minimum amount of regulations and terms of license, the committee wishes to emphasize that the only purpose here was to reiterate, not to make new law; thus, requirements of applicable laws, such as the National Environmental Policy Act of 1969 (Public Law 91-190) and the Water Quality Improvement Act of 1970 (Public Law 91-224), enacted subsequent to the Atomic Energy Act of 1954, remain unaffected by the reiteration of this feature of the present provisions of subsection 104b.

The bill does not affect in any way subsections 104a, 104c, or 104d, or the caption of section 104, "Medical Therapy and Research and Development."

The committee is aware that university-licensees under subsection 104c, and other licensees under subsections 104a or 104c, sometimes use these reactors for industrial or commercial purposes. It is the intention of the committee that such insubstantial use not affect licensing under section 104; however, should the Commission find that any facility so licensed is being used substantially for industrial or commercial purposes, then the Commission shall determine whether such use is sufficiently substantial to entail licensing under section 103.

Section 6 of the bill clarifies and revises sub-

section 105 c. of the act. The bill does not affect in any way the important features contained in the provisions of subsections 105 a. and 105 b. of the 1954 act. These subsections remain separate, distinct and wholly unaffected by the proposed revised subsection 105 c. For example, the Attorney General's advice under the new subsection 105 c., and the participation by the Attorney General or his designee in the proceedings referred to in paragraph (5) of the subsection, would be completely separate and apart from any actions the Attorney General may deem advisable in relation to the antitrust laws referred to in subsection 105 a. Also, under paragraph (1) of the new subsection 105 c., the Attorney General may, in his discretion, should he consider that his advice might prejudice planned actions under the antitrust laws referred to in subsection 105 a., or for any other reason, render no advice to the Commission.

Paragraph (1) of revised subsection 105 c., requires the Commission promptly to transmit to the Attorney General a copy of any license application to construct or operate a utilization or production facility under section 103. Paragraph (1) also requires the Commission promptly to transmit to the Attorney General written requests for potential antitrust review which are made by persons who intervened, or who sought by timely written notice to the Commission to intervene, in the construction permit proceeding for a facility licensed under subsection 104 b. prior to the enactment of the bill into law.

The Attorney General would have "a reasonable time, but in no event to exceed 180 days after receiving a copy of such application or written request" to "render such advice to the Commission as he determines to be appropriate in regard to the finding to be made by the Commission" with respect to antitrust considerations. The committee expects full and expeditious cooperation by the applicant, the Commission and the Attorney General. To facilitate an early review by the Attorney General, the committee suggests that, promptly upon enactment into law of this bill, the Commission and the Attorney General work out a suitable understanding in regard to the nature of the information the Attorney General would wish to have at the outset, the Commission could then plan to obtain the information from the applicant at the same time that the application is submitted to the Commission.

The advice which the Attorney General may provide would be advice which he "determines to be appropriate in regard to the finding to be made by the Commission." The advice need not necessarily fall within the orbit of the present clause "tend to create or maintain a situation *inconsistent with the antitrust laws.*" If the Attorney General deems it to be appropriate, he need not render any advice, in which case he should

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so inform the Commission. If he renders advice, subparagraph (1) requires that it include "an explanatory statement as to the reasons or basis therefor"; this requirement is only fair and reasonable, and it should help facilitate and expedite the subsequent procedure.

Paragraph (2) of revised subsection 105c. provides that the potential antitrust review shall not apply to an application for a license to operate a utilization or production facility for which a construction permit was issued under section 103 "unless the Commission determines such review is advisable on the ground that significant changes have occurred in the licensee's activities or proposed activities subsequent to the previous review by the Attorney General and the Commission under this subsection in connection with the construction permit for the facility." The committee sees no sense in two such exercises unless there have been significant intervening changes. The committee expects that the Commission will consult with the Attorney General in regard to its determination respecting significant changes. The term "significant changes" refers to the licensee's activities or proposed activities; the committee considers that it would be unfair to penalize a licensee for significant changes not caused by the licensee or for which the licensee could not reasonably be held responsible or answerable.

The committee recognizes that applications may be amended from time to time, that there may be applications to extend or review a license, and also that the form of an application for a construction permit may be such that, from the applicant's standpoint, it ultimately ripens into the application for an operating license. The phrases "any license application," "an application for a license," and "any application" as used in the clarified and revised subsection 105 c. refer to the initial application for a construction permit, the initial application for operating license, or the initial application for a modification which would constitute a new or substantially different facility, as the case may be, as determined by the Commission. The phrases do not include, for purposes of triggering subsection 105 c., other applications which may be filed during the licensing process.

Paragraph (3) provides that with respect to any Commission permit issued under subsection 104 b. before enactment of the bill into law, any person who intervened or who sought by timely written notice to the Commission to intervene in the construction permit proceeding to raise the prelicensing antitrust issue will have the right to obtain an antitrust review under this subsection, to do this, such person must make a written request to the Commission within 25 days after the date of initial Commission publication in the Federal Register of notice of the filing of an application for an operating license for the facility or the date of enactment into law of this subsection, whichever is later. It is the committee's intent that such potentially eligible intervenors must be persons who could have

qualified as intervenors under the Commission's rules at the time of the initial attempt to intervene if prelicensing antitrust review were then properly for Commission consideration.

Paragraph (4) provides that, upon the request of the Attorney General, the Commission shall furnish or cause to be furnished "such information as the Attorney General determines to be appropriate" for the advice he is to give. The committee expects that the Commission will make every reasonable effort to provide information sought by the Attorney General.

There is an important aspect that the committee considers must be recognized and especially dealt with in a prudent and responsible manner, and that is the matter of proprietary information or data. The system in subsection 105 c. as in connection with other aspects of the licensing procedure, should be such as to provide reasonable safeguards against any leaks or unwarranted dissemination of information or data of a proprietary nature provided by or in behalf of the applicant, and whether or not the applicant is the proprietor.

Paragraph (5) requires that the Commission promptly publish in the Federal Register the advice it receives from the Attorney General. It further provides that if the Attorney General "advises that there may be adverse antitrust aspects and recommends that there be a hearing" that the Attorney General or his designee may participate as a party "in the proceedings thereafter held by the Commission on such licensing matter in connection with the subject matter of his advice." Such proceedings must be held by the Commission if the Attorney General advises that there may be adverse antitrust aspects and recommends a hearing. Also, if he does not so advise and recommend, but antitrust issues are raised by another in a manner according with the Commission's rules or regulations, the Commission would be obliged to give such consideration thereto as may be required by the Administrative Procedure Act and the Commission's rules or regulations. Paragraph (5) requires that the Commission "give due consideration to the advice received from the Attorney General and to such evidence as may be provided during the proceedings in connection with such subject matter." Whether or not the Attorney General appears as a party, all advice and information provided by the Attorney General that is utilized by the Commission in arriving at its finding must be made a matter of record. Paragraph (5) further requires that the Commission "make a finding as to whether the activities under the license would create or maintain a situation inconsistent with the antitrust laws as specified in subsection 105a." This finding by the Commission is required only in those cases where the Attorney General advises there may be adverse antitrust aspects or antitrust issues are raised by another in a manner according with the Commission's rules and regulations.

With respect to the above finding, although the words "reasonable probability" do not appear in the standard, the concept of reasonable probability is intended to be a silent partner to the factors in the standard. The standard must be considered in the focus of reasonable probability—not certainty or possibility.

The standard pertains to the activities of the license applicant. The activities of others, such as designers, fabricators, manufacturers, or suppliers of materials or services, who, under some kind of direct or indirect contractual relationship may be furnishing equipment, materials or services for the licensed facility would not constitute "activities under the license" unless the license applicant is culpably involved in activities of others that fall within the ambit of the standard.

Paragraph (6) provides that if the Commission finds "the activities under the license would create or maintain a situation inconsistent with the antitrust laws as specified in subsection 105 a." that the Commission "shall also consider, in determining whether the license should be issued or continued, such other factors, including the need for power in the affected area, as the Commission in its judgment deems necessary to protect the public interest." On the basis of all its findings—the finding under paragraph (5) and its finding under paragraph (6)—the Commission would have the authority "to issue or continue a license as applied for, to refuse to issue a license, to rescind a license or amend it, and to issue a license with such conditions as it deems appropriate." While the Commission has the flexibility to consider and weigh the various interests and objectives which may be involved, the committee does not expect that an affirmative finding under paragraph (5) would normally need to be overridden by Commission findings and actions under paragraph (6). The Committee believes that, except in an extraordinary situation, Commission-imposed conditions should be able to eliminate the concerns entailed in any affirmative finding under paragraph (5) while, at the same time, accommodating the other public interest concerns found pursuant to paragraph (6). Normally, the committee expects the Commission's actions under paragraph (5) and (6) will harmonize both antitrust and such other public interest considerations as may be involved. In connection with the range of Commission discretion, the committee notes that pursuant to subsection 105 a. the Commission may also take such licensing action as it deems necessary in the event a licensee is found actually to have violated any of the antitrust laws. Of course, in the event the Commission's finding under paragraph (5) is in the negative, the Commission need not take any further action regarding antitrust under subsection 105 c.

Paragraph (7) of revised subsection 105c. substantively carries over from the present

text the exception that the Commission "with the approval of the Attorney General, may except from any of the requirements of this subsection such classes or types of licenses as the Commission may determine would not significantly affect the applicant's activities under the antitrust laws."

Paragraph (8) endeavors to deal sensibly with those applications for a construction permit which, upon the enactment of the bill into law, would have to be converted to applications under section 103. In some cases, there might well be hardships caused by delays due to the new requirement for a potential antitrust review under revised subsection 105 c. Paragraph (8) would authorize the Commission, after consultation with the Attorney General, to determine that the public interest would be served by the issuance of a permit containing conditions to assure that the results of a subsequently conducted antitrust review would be given full force and effect. Paragraph (8) similarly applies to applications for an operating license in connection with which a written request for an antitrust review is made as provided for in paragraph (3).

Section 7 of the bill effects a perfecting change in subsection 161 n. of the act to delete the reference to a finding of practical value.

Section 8 of the bill changes several words in the first proviso of subsection 161 v. to support the intention of the Congress when this subsection was enacted into law. The clarified provision expressly indicates that the prices for enriching services "shall be on a basis of recovery of the Government's costs over a reasonable period of time." As the legislative history of this statute discloses, and as the Comptroller General has discerned in his report to the Joint Committee on July 17, 1970, it was intended that the price to be charged by the AEC for toll enrichment should be based on the recovery of appropriate Government costs averaged over a period of years. Under the clarified version of subsection 161 v., the committee intends that the criteria in effect since 1966 will continue to be in effect subject to any Commission proposed revisions thereto that conform to the requirement of the statute and are submitted to the committee for its review. The committee expects that the Commission will consult with the General Accounting Office in regard to any such proposed revisions.

Section 9 of the bill amends subsection 182 c. to delete the phrase "within transmis-

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sion distance" and to amend the general notice provision.

Section 10 of the bill amends the first sentence of subsection 191 a. which now requires that of the three members of any Atomic Safety and Licensing Board two members "shall be technically qualified," and the third "shall be qualified in the conduct of administrative proceedings". Section 10 would permit two members to have "such technical or other qualifications as the Commission deems appropriate to the issues to be decided"; the third member would continue to be one "qualified in the conduct of administrative proceedings."

Section 11 of the bill revises the present text of subsection 274 h to abolish the Federal Radiation Council and to provide for contractual arrangements with the National Council on Radiation Protection and Measurements and with the National Academy of Sciences. Under the revised text, any Government agency designated by the President for the purpose would be authorized and directed to enter into and administer an arrangement with the National Council on Radiation Protection and Measurements for a comprehensive and continuing review of basic radiation protection standards, and the scientific bases therefor, pertinent to the health and safety aspects of exposure to radioactivity resulting from the development, use or control of atomic energy. Any Government agency designated by the President for the purpose would also be authorized to enter into and administer an arrangement with the National Academy of Sciences for a comprehensive and continuing review of the biological effects of radiation on man and the ecology in order to obtain information pertinent to basic radiation protection standards. The revised subsection 274 h. specifies that the respective arrangements shall require the conduct of the National Council on Radiation Protection and Measurements and by the National Academy of Sciences, respectively, of a number of functions relative to the fields of radiation and the biological effects of radiation. Under the arrangements the National Committee on Radiation Protection and Measurements and the National Academy of Sciences will concern themselves essentially with information and matters relative to the "hard" sciences, as distinguished from sociological or "soft" science considerations. The latter considerations would be identified and dealt with by the Government agency having authority to establish radiation protection standards. All matters pertaining to basic radiation protection standards pertinent to the health and safety aspects of exposure to radioactivity resulting from the development, use or control of atomic energy would be promptly reported to the Joint Committee. The contracting Government agency may, in the discretion of the President, be any Government agency or agencies; the contractual arrangements may be administered by any Government agency or agencies designated by the President.

At this point I want to depart from my prepared script to say that this country is facing a crisis in electrical energy. We must double the electrical generating capacity of this country within the next 10 years, and then double that again in the succeeding 10

years.

We Members in this Capitol know that just a week ago we had half of the lights turned off in the Capitol because of reduced availability of power in this area. I am telling you that this whole country faces that situation; we are facing brownouts and blackouts unless we get these electrical plants into operation—these new additional generating capacities.

Now, I am speaking today for nuclear power alone. I am saying that we are going to have to have electricity from uranium, from coal, from oil, and from gas. We are going to need every kilowatt we can produce from all of these substances, and we are going to have to revise our methods so that present contaminating effluents are removed.

Now, the public is going to have to pay for that, and they will pay for it. If we want a clean environment we are going to have to pay for it, and the public will pay for it through increased rates, and I think they will want to pay for it.

Already we have had brownouts and blackouts.

I tell you, we will never—never solve the problem of pollution itself without adequate nonpolluting energy. I do not care whether the problem is cleaning up our water, or taking the particulates out of smokestacks so we can have clean air, or whether it is solidifying old automobiles into small masses to be disposed of properly or recycled for some reuse of material—it does not make any difference what field of pollution we face, we are going to have to have adequate, economical, and clean electricity to solve that problem. We are just kidding ourselves if we overlook this basic fact.

This is one of the reasons we are here on the floor of the House today—to see, in connection with this bill I am explaining, that we do have an adequate chance to get these plants into operation without a lot of interference from people who do not have a sufficient understanding of the technical problems involved or about the technical safeguards that have been engineered into nuclear plants.

These people, who are ignorant in some instances and misinformed in many cases, do not realize the obstructive harm they are doing.

Seventy percent of electrical energy is used in industry which provides their jobs.

Thirty percent of electrical energy is used for local and residential services. It runs their appliances, their refrigerators, and their air conditioners.

When the brownouts and blackouts hit their communities they will suddenly realize the foolishness of their actions. Then it may be too late. It takes 4, 5, and 6 years to build a modern generating plant. You cannot wave a wand and create electricity.

Mr. EDMONDSON. Mr. Chairman, will the gentleman yield?

Mr. HOLIFIELD. I yield to the gentleman.

Mr. EDMONDSON. Mr. Chairman, I want to commend the chairman of the committee for what he has just said, and said very forcefully and very honestly, as to the energy crisis confronting this country.

The chairman of the Joint Committee on Atomic Energy has demonstrated to me through the years the capacity and the ability to see down the road as far as anybody I know in the House. When the gentleman tells us that our power requirements are going to double in 10 years, I think he is, if anything, understating what the situation is.

Mr. HOLIFIELD. The gentleman will agree with me, coming from a gas-producing area, that there is going to be a shortage of gas this winter.

There is already a shortage of coal and delays in the delivery of coal. You cannot get a contract today for coal longer than 1 or 2 years. The customary time used to be 5 and 10 years for coal contracts for delivery at a specified time.

On the average, the cost of coal has gone up about 56 percent in the last 18 months. The cost of imported residual low sulfur content oil has almost doubled. So these are some of the factors that are building up to an actual and serious scarcity of energy.

The fact that the coal is not being delivered, pursuant to contracts to these electrical plants, as it has been in the past, is another factor.

These are the factors that make me believe we are going to have serious blackouts and brownouts in this country before we realize it.

Mr. EDMONDSON. We are already having them, as the chairman well knows, and we are going to have more of them this winter and next summer, regardless of what we do.

What we must do is to address ourselves to this problem as rapidly as possible.

I know that the chairman did not intend to omit, when he listed the principal sources of power, another source, which he has always supported vigorously, and that is hydroelectric power.

Mr. HOLIFIELD. That is right. Let me say, I did not mention it because it only amounts to a very few percent of the total electric supply. It is important as it can be, because it is clean and because it is cheap. Every hydroelectric facility in the Nation should be utilized because we are going to need every kilowatt that we can get.

Mr. EDMONDSON. I agree wholeheartedly with what the chairman is saying. I think he has emphasized it at a most appropriate time. I congratulate the gentleman on his presentation.

Mr. HOLIFIELD. I will append to my remarks some very pertinent excerpts from national papers and magazines on the national fuel shortage:

NATIONAL FUEL SHORTAGE

I. COAL

TVA had invited coal supply bids at the same time as the nuclear but none were forthcoming, and apparently it wouldn't have mattered anyway. TVA said its cost analysis showed that a coal-fired plant would have had to have coal at 19c/million Btu to be competitive with the nuclear power-production costs. This would have been the equivalent of about $4.30/ton of average coal and TVA said recent coal bids it has received have been about twice that price. ("Nucleonics Week," September 3, 1970.)

During the 3½ years elapsing between our studies, the change in the cost of coal as burned completely negates any assertion that "coal alone could provide the nation with economical and dependable fuel for generation." In March 1966, our system average coal cost was 26.9c per million Btu. By December 1969 it had increased to 30.9c. By July, 1970, our coal cost had reached 42.1c. (Duke Power Company—letter of August 31, 1970 in response to Sporn Report.)

TVA reports that its coal delivery schedules

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are not being met. It says stockpiles to feed the coalburning generating plants that produce 80 per cent of the system's electric power are reaching critically low levels.

The utility, which has already established a priority schedule for winter "brownouts," reports that unless coal deliveries are increased and the decline in stockpiles halted, sharp power cutbacks are inevitable.

Dover, Ohio registered a 65 per cent increase in its coal prices in the first six months of this year.

In Hamilton, Ohio, the electric company a year ago paid $4.97 a ton for coal, plus $3 transportation. Last month, the utility received bids of $10.25 and $11.25 a ton, plus $4.20 for transportation. ("New York Times"—September 28, 1970.)

II. OIL

Braintree Electric Light Department's shortages started a few weeks ago when its old contract for oil expired. Braintree had been paying $1.78 a barrel for oil. Now its oil is supplied on a day-to-day basis at $3.65 a barrel, and there is no guarantee of delivery.

Braintree has appealed to 25 oil firms all the way down to New Jersey to bid on a new contract. But no one is interested.

In Montpelier, Vt., Alan Weiss, the superintendent of schools, says that the schools' supplier makes no guarantee that he can provide enough oil this year. To conserve fuel, Montpelier schools may have to hire a custodian to keep thermostats down at night.

Changes in the international situation started price soaring in May this year. By September 1, 1970, the price has zoomed to $2.72 a barrel; and the spot (non-contracted) price had risen to as much as $3.85 a barrel—almost double the price in May ($1.80). ("Christian Science Monitor"—September 28, 1970.)

During the past year, the city of Vineland Electric Utility converted to oil to meet state air pollution regulations. We now use 90,000 gallons dai The supplier has cut back delivery to 50,000 gallons daily September 1 and

will promise no oil whatsoever after October 1, 1970. We have contacted six or seven of the biggest suppliers. None will offer any oil in October. Coal is also unavailable. Unless the U.S. Government orders priority to utilities for oil deliveries after October 1, we face shut down of 80 per cent of our plant production which will mean most of our customers will be without light and power service. (Vineland Electric Utility Company, Vineland, N.J. telegram of August 21, 1970 to American Public Power Association.)

The "Inflation Alert" reported that prices of industrial fuel oil rose at an annual rate of 48% during the first half of 1970, and bituminous coal prices increased at an annual rate of 56%. ("Inflation Alert"—August 7, 1970 published by President Nixon's Council of Economic Advisers.)

Mr. JONES of Alabama. Mr. Chairman, will the gentleman yield?

Mr. HOLIFIELD. I yield to the gentleman.

Mr. JONES of Alabama. Mr. Chairman, I, too, want to commend the gentleman from California and particularly for the knowledge the gentleman has about the energy situation which confronts us, and which will be with us certainly for the next decade.

At the present time, the building or construction period is some 6 years that it takes to build a plant producing say, 500,000 kilowatts. So there is need for great haste. I am pleased that the chairman of the committee, the gentleman from California (Mr. HOLIFIELD) has pointed out to the committee the dire necessity of hastening the production of atomic energy and fissionable material that is going to be required along with other impediments that face us in supplying the fuel that is necessary for the generation of power.

Certainly, if we are going to live in the comfort of the past, we are going to have to recognize and confront the problem, and the sooner the better.

Again I want to express my appreciation for the vast amount of work that you have done in the past in accumulating the knowledge, practices, and policies that have been sound and rewarding to the American people.

Mr. HOLIFIELD. I thank the gentleman from Alabama.

Mr. WOLFF. Mr. Chairman, will the gentleman yield?

Mr. HOLIFIELD. I yield to the gentleman from New York.

Mr. WOLFF. I thank the gentleman. I wish to join in the statements that have been made in congratulating the gentleman in the well for his leadership in this field. However, I feel there are one or two points that should be given consideration in addition to the great need for power in this country. I am sure the gentleman is, and always has been, a champion of the protection of our environment at the same time as an advocate of nuclear power. Serious questions have been raised regarding the effect on our environment and our ecology that nuclear power presents. On this score I have wondered if the gentleman in the well would comment on Reorganization Plan No. 3, which has just passed the House, which actually separates the functions of the AEC. This is a development I have been trying to achieve in Congress for some time. I believe it is important that we separate the functions of the AEC which in the past has had the responsibility for both promoting nuclear power as well as acting as the policeman of nuclear power.

According to the Environmental Protection Act, which is established under the Reorganization Plan No. 3:

There are hereby transferred to the Secretary to be administered by him through the Administrator of the Environmental Protection Administration all functions, powers, and duties—

. . . consist of establishing and enforcing environmental standards and safeguards for the protection of the general environment from radioactive material which standards are defined to mean: limits on radiation exposures or levels, or concentrations of or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material.

Mr. HOLIFIELD. The answer to the gentleman is "yes." The gentleman knows that I handled Reorganization Plan No. 3 on Monday of this week. The gentleman has read a section from the plan. It does transfer people who set the environmental radiation stand-

ards over from the Atomic Energy Commission into the Environmental Protection Agency. I was just about to address myself to the third section of the bill having covered the first two, because it deals in substance in this area.

The gentleman from California knows of the gentleman's longstanding interest in this matter, and the gentleman I think can feel today quite satisfied that the changes that are proposed to be made by the Presidential reorganization plan are along the lines that he has been advocating.

Mr. WOLFF. I thank the gentleman.

Mr. HOLIFIELD. I will address myself to that section which pertains to the radiation protection of the people. Section 11 covers the third principal feature of the bill. This section of H.R. 18679 would enlist the preeminent scientific talents of the National Council on Radiation Protection and Measurements and the National Academy of Sciences in a comprehensive and coordinated effort to review the statutorily applicable radiation protection standards and the scientific bases thereof.

The National Academy of Sciences, by the way, was established in 1863 under President Abraham Lincoln's administration. That is how old that institution is. The National Council on Radiation Protection and Measurements was established in 1929. It is composed of some 65 or 70 distinguished scientists from all over the United States, from the universities, fields of medicine, and many other fields.

These people serve without special compensation. They serve as members of an honorable body chartered by Congress, they are most knowledgeable in the field of radiation and its biological effects.

The National Academy of Sciences has an equally distinguished list of scientists. They are particularly interested in the effects of radiation on humans. Their recommendations will have to be considered and I hope the agencies will be guided by them.

We want to allay forever the fears of the ignorant and uninformed as to the source of recommendations for the standards of allowable and permissible radiation from any of these reactors. We want the people to know what the expert bodies recommend and not have to rely only on bureaucrats or administrators in Government. We want to go to the source of the greatest fund of wisdom in this field that there is in the world, because some of these people are also members of the International Commission on Radiological Protection and these bodies work in harmony. So, we can go no further than that toward protecting the people of the United States.

I believe the people will place their trust in the most eminent bodies of scientists that exist in the world.

I hope they will refuse to be scared and deceived by the few sensation-seeking, biased pseudo-scientists that are obstructing and delaying the production of electricity.

I also wish to say to many of the new converts to antipollution causes that they should weigh carefully their opposition to generating plants whether they are fossil fueled or nuclear. They should consider the futility of solving all of our environmental pollution problems without an abundant supply of electrical energy.

Mr. MIZE. Mr. Chairman, will the gentleman yield?

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Mr. HOLIFIELD. I yield to the gentleman from Kansas.

Mr. MIZE. Mr. Chairman, coming from the State of Kansas, I can say we are quite interested in the disposition of atomic waste, as it appears possibly one of the best places to put these atomic wastes is in the saltbeds, which qualify as a sort of garbage pail for this material.

My question is, when a license is

granted one of these privately-owned nuclear powerplants, who has the responsibility of determining where that waste material will be taken?

Mr. HOLIFIELD. The Atomic Energy Commission has the responsibility for the health and safety of the people of America in that respect as in other radiological respects. The responsibility has been placed in them by statute.

Mr. MIZE. With the AEC?

Mr. HOLIFIELD. Yes.

Mr. MIZE. I thank the gentleman from California.

Mr. HALL. Mr. Chairman, will the gentleman yield?

Mr. HOLIFIELD. I yield to the gentleman from Missouri.

Mr. HALL. Mr. Chairman, I appreciate the gentleman yielding.

Mr. Chairman, I believe the accolades and commendations to the members of the committee are deserved for bringing in these changes in the Atomic Energy Act of 1954. They are well deserved.

I have studied the bill, and I have read the report. I am personally interested in this, and I admire the work of the committee. There is just one thing that bothers me a little about this, and I wonder if the gentleman would expound on it a little more than he did in his obvious haste to dispatch our business today. That is, the first concept, the finding of practical value. This committee and this House are very familiar with the need and the formulae for developing cost-benefit ratios. I full well understand the exclusions that are earned in many of the research and development projects for the Atomic Energy Commission and laboratories and so forth, but it would seem to me on the face of it, reading no deeper than I have and not being privy to an intense study of the hearings, that a little explanation is in order as to why we are eliminating the practical value concept right at the time when we should be applying it to each commercial firm that we want to license.

Mr. HOLIFIELD. It is a little difficult to explain, but I think the gentleman will understand. Congress is eliminating the need for an administrative finding of practical value. We are not waiting for the AEC to make this finding. We are eliminating the necessity for making a finding of practical value, because in the judgment of this committee, in a real sense, these nuclear reactors have achieved practical value. They are being bought, without Government subsidy, by utilities all over the Nation, and therefore we feel these reactors should come under regular commercial practices.

It is a little bit confusing, because it was a part of the act of 1954, which did not envision arriving so soon at the point we are now at. It is in effect a stamp of approval by the Congress that no longer should these reactors be considered as research and development reactors and therefore potentially eligible for research and development subsidies. Light water reactors have arrived. They are now of utility and commercial value.

Mr. HALL. The gentleman is convinced that he has, in the wording of the legislation before us, done just that?

Mr. HOLIFIELLD. That is right.

Mr. HALL. The gentleman has explained it adequately to me. As I understand it, we are eliminating the double negative, having proved through the years since 1954 that this is of commercial value, and hereafter licensing will be direct but they will still be subject to the antitrust laws, et cetera.

Mr. HOLIFIELD. Yes. It will take its place in private industry.

Mr. EDMONDSON. Mr. Chairman, will the gentleman yield?

Mr. HOLIFIELD. I yield to the gentleman from Oklahoma.

Mr. EDMONDSON. I have just one point. In making this change in the law the committee is not recommending and the Congress is not in any way

relaxing or lifting any of the safety requirements which are in the law?

Mr. HOLIFIELD. No. The gentleman makes a valuable contribution. The AEC is still responsible for the radiological safety and health of the people and will continue, under this committee's jurisdiction, to watch that very closely. I am glad the gentleman brought up that point.

Mr. Chairman, I reserve the remainder of my time.

Mr. HOSMER. Mr. Chairman. I yield myself such time as I may consume.

Mr. Chairman, the distinguished chairman of the Joint Committee on Atomic Energy has ably summarized the principal features of H.R. 18679. I would like to add a few brief comments.

In my judgment, each of the three principal features of this bill is timely and important.

The advisability of removing the requirement of a finding of practical value before nuclear powerplants can be commercially licensed has been endorsed by every single witness who testified before our committee during the hearings held last year and this year on this subject. No one needs it or wants it. There is simply no reason to retain it. It is not only useless, but has grown into a major source of irritation and controversy—preventing, as it has, the commercial licensing of nuclear facilities that are being industrially or commercially employed. The bill excises this licensing wart.

Opening the door to routine commercial licensing involved a close look at a related provision of the Atomic Energy Act of 1954; namely, subsection 105(c). This provision, normally characterized as prelicensing antitrust review, is written simply in terms of advice from the Attorney General. And the nature and scope of the advice are described in a broad-brush, imprecise, clause. The committee concluded that it was imperative to clarify and revise the present text of subsection 105(c). H.R. 18679 does this. The proposed revision of subsection 105(c) in the bill clarifies the antitrust review standard and explicitly describes the Commission's authority and responsibility in relation to advice from the Attorney General. The committee and its staff spent many hours on the standard and the procedures described in the clarified, revised version of subsection 105(c). The resulting product is a fair, reasonable compromise which the committee unanimously approved. Frankly, I do not like each and every ingredient aspect of subsection 105(c) in the bill, and I do not know a single committee member who does. However, there are many aspects which I do favor, and this, too, represents the opinion of each of my colleagues on the committee. In its totality—as a package product—revised subsection 105(c) represents a desirable improvement of the present provisions, and I, together with all the members of the joint committee, support it.

As for the aspects that I favor, let me briefly point to a few:

First. Paragraph (1) of subsection (c) provides that the Attorney General's advice must include an explanatory statement as to the reasons or basis therefor.

Second. Paragraph (2) of subsection (c) calls for the antitrust review in connection with the application for a construction permit, and provides that it is not to be repeated at the operating license stage "unless the Commission determines such review is advisable on the ground that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous review by the Attorney General and the Commission under this subsection in connection with the construction permit for the facility."

Third. By virtue of subsection 102(b), AEC licenses issued prior to enactment of the bill into law maintain their status as 104(b) licenses.

Fourth. The report accompanying

the bill clearly expresses the important intention that the standard applies to the activities of the license applicant. As stated in the report:

> The activities of others, such as designers, fabricators, manufacturers, or suppliers of materials or services who, under some kind of direct or indirect contractual relationship may be furnishing equipment, materials or services for the licensed facility would not constitute "the activities under the license" unless the license applicant is considerably involved in activities of others that fall within the ambit of the standard.

Thus, unless the license applicant is seemingly in a collusion or conspiracy situation with respect to suppliers or others, its license application would not be encumbered or held up by any antitrust considerations pertaining to the activities of others.

Fifth. Paragraph (8) of subsection (c) enables the Commission to avoid delaying the issuance of licenses in certain cases, pending the antitrust review. The committee intends that this flexibility be benevolently and sensibly used to help avoid unnecessary delays in the scheduling of needed power plants. In connection with paragraph (8), I must mention for the record another important com-

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mittee concern and related intention. It is not intended that a construction permit proceeding that is in progress at the time the bill becomes law be begun anew procedurally because of the new section 103 status. That would be foolish and self-defeating in this time of power shortages, or for that matter at any other time. We want to see this licensing procedure as an aid in obtaining a safe and adequate supply of power to the people—not an impediment. We want no snags whatsoever to cause delay because of licensing. We expect no lack of attention to this matter whatsoever on the part of the Atomic Energy Commission. Rather, it is intended that the Commission, by rule or regulation, provide for a sensible transition into the section 103 licensing posture so that, to the fullest extent reasonably practicable, the measures and substance of the licensing proceeding theretofore conducted will continue to be recognized and utilized and delay held to a minimum.

The purpose here is to avoid hardships as specified at the top of page 32 of our report on this bill. Now, hardships are not limited to, say, situations where the utility involved might risk bankruptcy by any delay. What the committee is talking about here is things that might delay or impede bringing necessary and desirable power to the utility system. In short, hardship in the sense of this bill has a very broad and liberal connotation.

I want to make it perfectly clear that the principle of no impediment and no delay applicable to the transition to the provisions of this bill applies equally to pending construction permit applications and to pending operating license proceedings. There is need for expediency in both instances.

Sixth. The change in section 10 of the bill introduces greater flexibility in the composition of atomic safety and licensing boards. This flexibility should be utilized in accordance with the Commission's discretion; it is not intended for example, that the Commission's judgment respecting the qualifications of members of a board should be opened to challenge in relation to the nature of the matters that may be considered in the antitrust review. Nor, for example, is it intended that all three members of a board must be present at all times during the conduct of a board's business. Incidentally, Chairman HOLIFIELD and I have been much concerned with the apparent recent trend toward procrastination, and administrative and legal roadblocks, in the overall licensing system. We are worried about the apparently deteriorating licensing situation, and have recently written a letter to Dr. Seaborg which I would like to have inserted in the RECORD at this point.

Before leaving this feature, I, too,

want to join Chairman HOLIFIELD in emphasizing the fact that this whole antitrust review in the Commission's licensing procedure in no way extends, impairs, amends, or affects any of the antitrust laws or prevents their application. This major point is underwritten by subsection 105(a) of the Atomic Energy Act, which remains unchanged. By like token, this bill in no way enlarges the substance of the antitrust review in any respect over the provisions of the existing law for commercial licenses. What we are trying to do is clear away procedural uncertainties in the manner in which both the Justice Department and the AEC are to proceed.

The second feature of the bill—the statutory basis for the Commission's charges for uranium enriching services—is not really directed at the recently announced increase in price from $26 to $28.70 per separative unit. The price increase may represent an appropriate price adjustment in the light of the criteria for pricing that the Commission has consistently used since subsection 161(v) became law in 1964.

The bill merely changes several words in subsection 161(v) to reaffirm with greater clarity the underlying intention, as evidenced by the legislative history and as correctly discerned by the Comptroller General in his recent report, that AEC's charges are to be based on the recovery of Government costs averaged over a period of years. AEC's new criteria not only conflicted with the congressionally intended application of subsection 161(v), but they are unnecessarily vague and essentially meaningless. They really do not serve any useful purpose and they provide the appearance of potential for maladministration or mischief.

The third feature of the bill—to utilize on a continuing and comprehensive basis the unique talents of the National Council on Radiation Protection and Measurements and the National Academy of Sciences—I view as even more uniformly acceptable and less controversial these days than motherhood. The Federal Radiation Council, which we recognize statutorily in subsection 274(h) of the Atomic Energy Act has not really done its job as effectively as was originally contemplated by the committee and the Congress. The abolition of the Council, as a result of section 11 of the bill which emphasizes the need to enlist our most preeminent scientists in the determination of appropriate basic radiation protection standards, coincides with the President's intention to abolish the Council under the Reorganization Plan No. 3 on which the House took some favorable action earlier this week.

Mr. Chairman, in summary, the legislation before us will do three things.

First, it will eliminate, as Members have heard, the practical value requirement found in the Atomic Energy Act of 1954. Sixteen years ago, when we passed this act, the state of the technology as to generating nuclear power was rather new, and every license that has been issued for a nuclear power reactor in this country has been issued as a research and development or experimental reactor license.

The act provided that when nuclear power achieved practical value and practical value was found to exist—not by the Congress but by the AEC—then new plants were to be licensed under commercial procedures, and when that occurred, as a prelicensing requirement, there was to be an antitrust investigation by the Justice Department to make certain that in this large new technology everyone had an opportunity to enjoy some of the benefits, principally because the Government had put so much money into it.

Technology has proceeded, and now it is quite obvious that nuclear power has commercial value, and this seems to have overtaken the present law, and we propose to take this anachronism out of the law. As we do so, that brings in this feature about prelicensing investigation from an antitrust

standpoint. We are not trying to take it out. What we are trying to do is to specify the procedures which will be employed for the first time, both by the Justice Department and by the AEC, so that the licensing of this great source of power will not be impeded, and power can go on the line and be available to our people.

In short, we are trying to take a step forward here to avoid blackouts and brownouts so far as nuclear power is concerned. I believe we have done it in a careful way.

I wish to congratulate the chairman of the Joint Committee on Atomic Energy for being able to negotiate this through the shoals of what might otherwise have been a private power versus public power fight, on account of the various interests involved. He skillfully avoided that.

Congratulations can also be accepted by the other members of the committee for negotiating this in such a way that the legislation could be brought to the floor without disagreement among the Republicans or the Democrats, the Senate Members or the House Members, so far as this legislation is concerned.

The second thing that the bill does is simply to say that since Uncle Sam is the only source of enriched uranium for the fuel for the Nation's power reactors and, in fact, the world's power reactors, this enriched uranium from the AEC's great gaseous diffusion plants will be made available on the usual basis. When Uncle Sam performs a service he is supposed to be paid for it, in an amount equivalent to the cost of doing business, and no more than that. That is quite a sensible way to operate. There apparently was some lack of clarity with respect to this requirement that the bill here seeks to dispel and make clear.

The third thing, as has been pointed out, is that this bill simply says whoever in the U.S. Government—it is about to be this new Environmental Protection Agency—whoever it is—that establishes the basic standards for radiation protection of the general public relative to nuclear activities shall do so not on any arbitrary basis. It will not just be left up to some bureaucrat who is a good paper shuffler but really does not know much about radiation considerations. Whoever it is who has responsibility to set Federal standards, is required by this Congress at least to go to two places for advice—the two places with the most qualified experts in the world for proper advice on this very important subject. One is the National Academy of Sciences and the other the National Council on Radiation Protection and Measurements.

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This is an excellent piece of legislation, in my opinion, and I trust that we will have the support of the House when the time comes for a vote.

(Mr. McCULLOCH, at the request of Mr. HOSMER, was given permission to extend his remarks at this point in the RECORD.)

Mr. McCULLOCH. Mr. Chairman, I rise to associate myself with the views so clearly articulated by Mr. HOSMER.

As a member of the joint committee, I know first-hand of the need for H.R. 18679 and of the careful work of our committee in arriving at the legislative proposal now before us.

I particularly want to underscore Mr. HOSMER's remarks about the fair and reasonable compromise that revised subsection 105(c) represents. This was a most difficult item for the committee to chart precisely. Potential issues in the sensitive, public-private power area seemed to be lurking behind each seeming suitable alternative. But the committee persevered, and ultimately unanimously arrived at a reasonable, workable compromise procedure which, I think, all fair-minded persons and groups should consider fair, nondiscriminatory, and appropriate.

I fully support H.R. 18679.

Mr. ANDERSON of Illinois. Mr.

Chairman, will the gentleman yield?

Mr. HOSMER. I am glad to yield to the gentleman from Illinois, a member of the committee.

Mr. ANDERSON of Illinois. When this matter was presented to the Committee on Rules yesterday, in a prepared statement that was delivered at that time to our committee by the distinguished chairman of the Joint Committee on Atomic Energy (Mr. HOLIFIELD) he said:

> The ranking minority member of the Joint Committee on Atomic Energy is invariably the essence of sagacity, perspicacity, wit, aplomb, and brevity.

He has earned that accolade, which was given him on that occasion, by his performance in the well of the House this afternoon.

I should like, as a member of the Joint Committee, to join him in support of this legislation.

Mr. HOSMER. Let me say I think the gentleman was wise to get unanimous consent to revise and extend his remarks, because he went pretty far out on a limb with respect to the gentleman in the well.

Mr. KYL. Mr. Chairman, will the gentleman yield?

Mr. HOSMER. I am glad to yield to the gentleman.

Mr. KYL. I thank the gentleman for yielding.

I would like to take advantage of this occasion and take advantage of the sagacity and perspicacity and the erudition of the gentleman in the well to get an answer to a couple of questions.

Permit me to premise it in this fashion. We now have in the space of about 25 miles on one of our Great Lakes one atomic energy power generation plant about ready to go into operation and another under construction. The people there or some of the people there are considerably worried that the warm water generated by these plants will keep the ice shelf from freezing along the shore and therefore the beaches and dunes and properties might be destroyed by winter storms. They also worry about the atmospheric questions, and so on.

My question is specifically this: Are we actually progressing in the method of obtaining efficiency from the heat generation in these plants so that in fact the volume of hot water is being significantly reduced?

Mr. HOSMER. Let me answer the gentleman in this way: Any time you produce electric power you are converting one form of energy into another form of energy. The process is not 100-percent efficient. Today in the plants that are fired by coal and oil the efficiency is about 40 percent. That means that 60 percent of the B.t.u.'s out of the fuel that is burned goes into the environment.

And, generally, they either go up a stack or they will go into some condenser cooling water. In the case of a conventionally-fired plant they go both ways. In the case of nuclear plants, we have a new technology whereby we are able to get about 35 percent efficiency which means a few more B.t.u.'s dispersed into the environment. Since you do not discharge heat through a stack in a nuclear plant essentially all of the waste heat goes into the condenser cooling water. So, you are putting more of the heat into these areas by a nuclear plant than by a conventional plant. But as efficiency improves, of course, it will equalize. Moreover, this heated water is dispersed as a result of the cold water going into these areas and the overall ambient temperature will be about the same.

The three plants which the gentleman from Iowa mentioned in the area of Lake Michigan together undoubtedly put into Lake Michigan a minuscule quantity of heat compared to that which the sun daily puts into Lake Michigan just by shining on it. But instead of putting it all over the lake they put it in at these three relatively restricted locations, and in that immediate location there is some heating of the water over the normal tempera-

ture of the lake. However, as it spreads out, it equalizes the ambient temperature.

Unfortunately, the Federal Government has informally proposed a standard that the ambient temperature can only be exceeded by 1 degree in discharging water at any particular point. That, of course, is virtually impossible.

When it rains, the city of Chicago could not discharge into Lake Michigan the water from its storm drains under that regulation, because that storm water is at least 3 or 4 degrees above the ambient temperature of the lake. So, you would always have to pay some price to get rid of the storm water in the city of Chicago, and you have to pay some price by way of some potential changes in natural conditions in order to have power. However, net value should always be considered in regard to the price.

Mr. WOLFF. Mr. Chairman, will the gentleman yield?

Mr. HOSMER. I yield to the gentleman from New York.

Mr. WOLFF. On that same question there appears an article in the New York Times that states as follows:

> The National Environmental Policy Act, signed last year with great fanfare, will be of very little use unless President Nixon tells his subordinates that it means exactly what it says. The Atomic Energy Commission, for one, has a notion that in licensing nuclear plants it has no authority even to consider a threat of thermal pollution, though the Act clearly enjoins all Government agencies to weigh environmental factors in their decisions.

Are the factors of thermal pollution considered by the Atomic Energy Commission in the licensing of a plant?

Mr. HOSMER. Let me say to the gentleman that the New York Times in this case, as often in other cases, in search of some desirable objective, leaves a lot to be desired in the way it approaches these matters.

In the licensing procedure that has been established under the law and the procedure that has been followed up until the passage of the National Environmental Policy Act, the AEC was directed, authorized and had the power in its licensing proceedings to consider only matters having to do with radiation. But let me say that with the passage of this Environmental Policy Act, all governmental agencies, including the AEC, are required to take into consideration all environmental matters in connection with the major actions which they might take. The AEC interpreted the licensing of a nuclear powerplant as a major action and, therefore, it does, under this law, refer the papers and the situation to the Environmental Quality Council, the Department of the Interior, and all other interested Federal agencies.

Mr. HOLIFIELD. And to the States involved.

Mr. HOSMER. It is referred not only to these Federal agencies but to essentially any agency that has any relevant expertise at all for its recommendation with respect to the particular licensing procedure.

So, I say that the New York Times is substantially in error. It is way off course in this summary.

Mr. WOLFF. Mr. Chairman, will the gentleman yield?

Mr. HOSMER. I will yield further to the gentleman in just one moment, but first I want to yield to the gentleman from California.

Mr. HOLIFIELD. Mr. Chairman, I thank the gentleman for yielding, and I want to supplement what the gentleman says, because Congress passed the Water Quality Improvement Act of 1970 which continues the States' authority to control the water quality, and that includes whether it is too hot or too cold, as well as too dirty. The AEC must, as the gentleman says, take into consideration the Water Quality Improvement Act as well as the National Environmental Policy Act, which this Congress has passed.

Mr. HOSMER. The gentleman is entirely correct.

Mr. WOLFF. If the gentleman will yield, on that basis there seems to be somewhat of a conflict between the two

gentlemen.

Mr. HOSMER. There is no conflict

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whatsoever with respect to the advice of one of the Government agencies. The AEC follows those procedures with respect to the Water Quality Improvement Act, and it is met by the certification by the States of reasonable assurance that water quality standards will not be violated as is spelled out under that act.

Mr. WOLFF. If the gentleman will yield further, in the hearings that have been conducted at Shoreham, the hearing board referred over to the State the question of thermal pollution. Now, by referring it over to the State, am I to infer from that that this releases the Atomic Energy Commission from further consideration?

Mr. HOSMER. Of course not. The matter was referred to the State, insofar as the procedures were applicable, and its advice and certification are required under the Water Quality Improvement Act. The AEC on this same question also referred it over to the Interior Department and to other agencies and departments of the U.S. Government for such relevant advice on this same point that they were qualified to give in connection with this licensing procedure.

Mr. WOLFF. The hearing board will take into consideration, then, the advice of a State in making the final determination, or take into consideration the thermal pollution involved?

Mr. HOSMER. I think there should be a taking into consideration of environmental matters involved vis-a-vis the purpose and the need for a particular plant to produce electricity to meet the requirements of the community. In other words, there should be a balancing job in which nobody presumably will be allowed to get away with anything more than is reasonable in relation to the modus vivendi that has to be established in a high-energy society between the production of that energy and the environmental elements that are involved.

Mr. HOLIFIELD. If the gentleman will yield further, the AEC as a condition of granting a license requires that the applicant provide certification from the State in which the facility is located that it has met the water quality standards, and that came from the Committee on Public Works headed by the gentleman from California (Mr. JOHNSON).

Mr. HOSMER. I thank the gentleman for verifying exactly where the procedure is undergone.

Mr. ANDERSON of Illinois. Mr. Chairman, will the gentleman yield?

Mr. HOSMER. I yield to the gentleman from Illinois.

Mr. ANDERSON of Illinois. Mr. Chairman, I thank the gentleman from California for yielding.

I was going to merely amplify the point that I think has already now been made by the chairman of the committee, that in the actual writing of the construction permit the Atomic Energy Commission actually does write into each construction permit that is issued, each permit and operating license for a nuclear plant, an expressed condition that within 3 years of the date of this Water Quality Improvement Act that the licensee must submit to the AEC certification from the State involved that the discharges from the plant are or are planned to be within the applicable water quality standards, as they are promulgated by the State or other authority. So that is an expressed written condition in the licensing permit granted by the Atomic Energy Commission.

Mr. HUTCHINSON. Mr. Chairman, will the gentleman yield?

Mr. HOSMER. I yield to the gentleman.

Mr. HUTCHINSON. The gentleman referred in his remarks, and the chairman of the committee, to the prelicensing antitrust investigation by the Department of Justice.

My question is: Is this done prior to

the construction permit or is it to be done prior to the operation permit?

Mr. HOSMER. My answer to that is in the report and it explains it. In connection with the application for the construction permit, that is the initial action. The antitrust investigation is made in the scope that is provided in the Atomic Energy Act.

Then, if the construction permit is granted and the antitrust procedures have been met, it will take up to 5 or 6 years for the plants to be built. As it nears the end of that construction period, the utility will go in for an operating license.

Now, unless there has been a significant change in the antitrust circumstances, it is not intended that there be a review de novo of the antitrust considerations. Only if there has been a substantial change in this regard, would it be intended that there be another investigation.

As a matter of fact, with respect to the pending applications for construction permits, but where the permit is not yet issued, the Atomic Energy Commission will establish such procedures to assure that this whole business does not have to be de novo, but that the equities on either side can be met without delaying the issuance of the construction permit.

Mr. HUTCHINSON. Mr. Chairman, will the gentleman yield?

Mr. HOSMER. I am delighted to yield to the gentleman.

Mr. HUTCHINSON. I certainly thank the gentleman for the clarification.

Perhaps the gentleman now in the well may have surmised that my question was prompted by the experience of two plants in my district in the State of Michigan. To the best of my knowledge, there never was any objection from anybody at the time the construction permit was granted. But now that the utility seeks an operation permit, the question of thermal pollution has completely tied up one of these plants. My concern was that this antitrust investigation would not amount to the same thing so that the utility could be permitted to expend millions of dollars in the construction of the plant.

Mr. HOSMER. The gentleman's concern is certainly well founded. We are trying to accomplish this with respect to this antitrust business.

The objections that have been made in the plants that the gentleman has referred to, have been made on any ground that could possibly be dredged up by people who either are just dead set against any nuclear power or who want to hold those particular plants for ransom for the installation of cooling towers and for the installation of certain very sophisticated type of radiation protection equipment.

Mr. Chairman, I have no further requests for time.

Mr. PRICE of Illinois. Mr. Chairman, concern has been expressed that this legislation would permit the Atomic Energy Commission to exempt a license applicant from the necessity of correcting an antitrust abuse included in a Commission finding where the Commission finds that the need for power in the area or other factors are overriding.

The committee, as stated in the report, expects the Commission normally to take care of both the need for energy as well as to remedy the situation where there has been an affirmative finding under paragraph (5). The report on page 31 in this respect states:

> While the Commission has the flexibility to consider and weigh the various interests and objectives which may be involved, the committee does not expect that an affirmative finding under paragraph (5) would normally need to be overriden by Commission findings and actions under paragraph (6). The Committee believes that, except in an extraordinary situation, Commission-imposed conditions should be able to eliminate the concerns entailed in any affirmative finding under paragraph (5) while, at the same time, accommodating the other public interest concerns found pursuant to paragraph (6). Normally, the committee expects the Commission's actions under paragraphs (5) and (6) will harmonize both antitrust and such

other public interest considerations as may be involved.

Considerations involving "the need for power in the affected area" or "other factors" will not permit the Commission to ignore an adverse antitrust finding under paragraph (5) of subsection 105(c).

Paragraph (6) provides that the Commission may issue a license which is so conditioned as to require subsequent corrective action in regard to antitrust problems while allowing the construction or operation of the facilities by the applicant to go forward. Paragraph (6) gives the Commission the opportunity to help cure deficiencies from an antitrust standpoint while enabling timely construction and operation of nuclear power facilities. On the other hand, there may be situations where the Commission might conclude that the public interest would be better served by delaying the issuance of a license until antitrust problems are solved.

The bill provides for the creation of a separate board to hear antitrust issues, and as the report on the bill notes:

The committee anticipates that all the functions contemplated by these paragraphs would be carried out before the radiological health and safety review and determination process is completed, so that the entire licensing procedure is not further extended in time by reason of the added antitrust review function.

Paragraph (5) does not preclude in any manner the right of the Department of Justice to pursue antitrust suits, civil

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or criminal in nature, in the courts, whether or not there are involved parties, facts, or issues that were, or are being, considered by the Commission and nothing in the bill would preclude or limit the intervention or participation of the Department of Justice in proceedings before other regulatory agencies where antitrust issues are involved, and irrespective of whether they involve parties, facts, or issues pertinent to Commission proceeding.

The intent in this regard is made clear in the report on the bill which states:

The bill does not affect in any way the important features contained in the provisions of subsections 105 a. and 105 b. of the 1954 act. These subsections remain separate, distinct and wholly unaffected by the proposed revised subsection 105 c.

The CHAIRMAN. There being no further requests for time, the Clerk will read.

The Clerk read as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That paragraph (4) of subsection 31 a. of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"(4) utilization of special nuclear material, atomic energy, and radioactive material and processes entailed in the utilization or production of atomic energy or such material for all other purposes, including industrial or commercial uses, the generation of usable energy, and the demonstration of advances in the commercial or industrial application of atomic energy; and".

SEC. 2. The second sentence of section 56 of the Atomic Energy Act of 1954, as amended, is amended to read as follows: "The Commission shall also establish for such periods of time as it may deem necessary, but not to exceed ten years as to any such period, guaranteed purchase prices for uranium enriched in the isotope 233 produced in a nuclear reactor by a person licensed under section 103 or section 104 and delivered to the Commission within the period of the guarantee."

SEC. 3. Section 102 of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"SEC. 102. UTILIZATION AND PRODUCTION FACILITIES FOR INDUSTRIAL OR COMMERCIAL PURPOSES.—

"a. Except as provided in subsections b. and c., or otherwise specifically authorized by law, any license hereafter issued for a utilization or production facility for industrial or commercial purposes shall be issued pursuant to section 103.

"b. Any license hereafter issued for a utilization or production facility for industrial or commercial purposes, the construction or operation of which was licensed pursuant to subsection 104 b. prior to enactment into law of this subsection, shall be issued under subsection 104 b.

"c. Any license for a utilization or production facility for industrial or commercial products constructed or operated under an arrangement with the Commission entered into under the Cooperative Power Reactor Demonstration Program shall, except as otherwise specifically

required by applicable law, be issued under subsection 104 b."

SEC. 4. The first sentence of subsection 103 a. of the Atomic Energy Act of 1954, as amended, is amended to read as follows: "The Commission is authorized to issue licenses to persons applying therefor to transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, possess, use, import, or export under the terms of an agreement for cooperation arranged pursuant to section 123, utilization or production facilities for industrial or commercial purposes",

SEC. 5. Subsection 104 b. of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"b. As provided for in subsection 102 b. or 102 c., or where specifically authorized by law, the Commission is authorized to issue licenses under this subsection to persons applying therefor for utilization and production facilities for industrial and commercial purposes. In issuing licenses under this subsection, the Commission shall impose the minimum amount of such regulations and terms of license as will permit the Commission to fulfill its obligations under this Act."

SEC. 6. Subsection 105 c. of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"c. (1) The Commission shall promptly transmit to the Attorney General a copy of any license application provided for in paragraph (2) of this subsection, and a copy of any written request provided for in paragraph (3) of this subsection; and the Attorney General shall, within a reasonable time, but in no event to exceed 180 days after receiving a copy of such application or written request, render such advice to the Commission as he determines to be appropriate in regard to the finding to be made by the Commission pursuant to paragraph (5) of this subsection. Such advice shall include an explanatory statement as to the reasons or basis therefor.

"(2) Paragraph (1) of this subsection shall apply to an application for a license to construct or operate a utilization or production facility under section 103: *Provided, however,* That paragraph (1) shall not apply to an application for a license to operate a utilization or production facility for which a construction permit was issued under section 103 unless the Commission determines such review is advisable on the ground that significant changes in the licensee's activities or proposed activities have occurred subsequent to the previous review by the Attorney General and the Commission under this subsection in connection with the construction permit for the facility.

"(3) With respect to any Commission permit for the construction of a utilization or production facility issued pursuant to subsection 104 b. prior to the enactment into law of this subsection, any person who intervened or who sought by timely written notice to the Commission to intervene in the construction permit proceeding for the facility to obtain a determination of antitrust considerations or to advance a jurisdictional basis for such determination shall have the right, upon a written request to the Commission, to obtain an antitrust review under this section of the application for an operating license. Such written request shall be made within 25 days after the date of initial Commission publication in the Federal Register of notice of the filing of an application for an operating license for the facility or the date of enactment into law of this subsection, whichever is later.

"(4) Upon the request of the Attorney General, the Commission shall furnish or cause to be furnished such information as the Attorney General determines to be appropriate for the advice called for in paragraph (1) of this subsection.

"(5) Promptly upon receipt of the Attorney General's advice, the Commission shall publish the advice in the Federal Register. Where the Attorney General advises that there may be adverse antitrust aspects and recommends that there be a hearing, the Attorney General or his designee may participate as a party in the proceedings thereafter held by the Commission on such licensing matter in connection with the subject matter of his advice. The Commission shall give due consideration to the advice received from the Attorney General and to such evidence as may be provided during the proceedings in connection with such subject matter, and shall make a finding as to whether the activities under the license would create or maintain a situation inconsistent with the antitrust laws as specified in subsection 105 a.

"(6) In the event the Commission's finding under paragraph (5) is in the affirmative, the Commission shall also consider, in determining whether the license should be issued or continued, such other factors, including the need for power in the affected area, as the Commission in its judgment deems necessary to protect the public interest. On the basis of its findings, the Commission shall have the authority to issue or continued a license as applied for, to refuse to issue a license, to rescind a license or amend it, and to issue a license with such conditions as it deems appropriate.

"(7) The Commission, with the approval of the Attorney General, may except from any of the requirements of this subsection such classes or types of licenses as the Commission may determine would not significantly affect the applicant's activities under the antitrust laws as specified in subsection 105 a.

"(8) With respect to any application for a construction permit on file at the time of enactment into law of this subsection, which permit would be for issuance under section 103, and with respect to any application for an operating license in connection with which a written request for an antitrust review is made as provided for in paragraph (3), the Com-

mission, after consultation with the Attorney General, may, upon determination that such action is necessary in the public interest to avoid unnecessary delay, establish by rule or order periods for Commission notification and receipt of advice differing from those set forth above and may issue a construction permit or operating license in advance of consideration of and findings with respect to the matters covered in this subsection: *Provided*, That any construction permit or operating license so issued shall contain such conditions as the Commission deems appropriate to assure that any subsequent findings and orders of the Commission with respect to such matters will be given full force and effect."

SEC. 7. Subsection 161 n. of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"n. delegate to the General Manager or other officers of the Commission any of those functions assigned to it under this Act except those specified in section 51, 57 b., 61, 108, 123, 145 b. (with respect to the determination of those persons to whom the Commission may reveal Restricted Data in the national interest), 145 f., and 161 a.;"

SEC. 8. The first proviso in subsection 161 v. of the Atomic Energy Act of 1954, as amended, is amended to read as follows: *Provided*, That (i) prices for services under paragraph (A) of this subsection shall be established on a nondiscriminatory basis; (ii) prices for services under paragraph (B) of this subsection shall be no less than prices under paragraph (A) of this subsection; and (iii) any prices established under this subsection shall be on a basis of recovery of the Government's costs over a reasonable period of time:"

SEC. 9. Subsection 182 c. of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"c. The Commission shall not issue any license under section 103 for a utilization or production facility for the generation of commercial power until it has given notice in writing to such regulatory agency as may have jurisdiction over the rates and services incident to the proposed activity; until it has published notice of the application in

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such trade or news publications as the Commission deems appropriate to give reasonable notice to municipalities, private utilities, public bodies, and cooperatives which might have a potential interest in such utilization or production facility; and until it has published notice of such application once each week for four consecutive weeks in the Federal Register, and until four weeks after the last notice."

SEC. 10. The first sentence of subsection 191 a. of the Atomic Energy Act of 1954, as amended, is amended to read as follows: "Notwithstanding the provisions of 7(a) and 8(a) of the Administrative Procedure Act, the Commission is authorized to establish one or more atomic safety and licensing boards, each comprised of three members, one of whom shall be qualified in the conduct of administrative proceedings and two of whom shall have such technical or other qualifications as the Commission deems appropriate to the issues to be decided, to conduct such hearings as the Commission may direct and make such intermediate or final decisions as the Commission may authorize with respect to the granting, suspending, revoking or amending of any license or authorization under the provisions of this Act, any other provision of law, or any regulation of the Commission issued thereunder."

SEC. 11. Subsection 274 h. of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"h. Any Government agency designated by the President is hereby authorized and directed to enter into and administer an arrangement with the National Council on Radiation Protection and Measurements for a comprehensive and continuing review of basic radiation protection standards, and the scientific bases therefor, pertinent to the health and safety aspects of exposure to radioactivity resulting from the development, use or control of atomic energy, and an arrangement with the National Academy of Sciences for a comprehensive and continuing review of the biological effects of radiation on man and the ecology in order to provide information pertinent to basic radiation protection standards. The respective scopes of the arrangements may, in the discretion of the President or the designated Government agency, also encompass exposure to the effects of radiation from sources other than the development, use or control of atomic energy. The respective arrangements shall require—

"(1) the conduct by the National Council on Radiation Protection and Measurements of a full-scale review of the radiation protection guides presently in effect by virtue of the recommendations of the Federal Radiation Council, and of all available scientific information;

"(2) the conduct by the National Academy of Sciences of a full-scale review of the biological effects of radiation, including all available scientific information;

"(3) consultations between the National Council on Radiation Protection and Measurements and the National Academy of Sciences to assure effective coordination between these bodies to serve the objective of the arrangements;

"(4) consultations by the National Council on Radiation Protection and Measurements and by the National Academy of Sciences, respectively, with scientists outside and within the Government;

"(5) the preparation and submittal by the National Council on Radiation Protection and Measurements to the President, or to the Government agency administering the arrange-

ments, and to the Congress, by December 31, 1970, of its first complete report of its review activities, which shall also set forth its recommendations respecting basic radiation protection standards and the reasons therefor;

"(6) the maintenance by the National Council on Radiation Protection and Measurements of reasonably thorough knowledge of scientific matters pertinent to basic radiation protection standards within the scope of the arrangement, including studies and research previously performed, currently in progress or being planned;

"(7) such recommendations by the National Council on Radiation Protection and Measurements and the National Academy of Sciences respecting the conduct of any studies or research directly or indirectly pertinent to the basic radiation protection standards, or the biological effects of radiation on man and the ecology, under the respective scope of each arrangement, as either body deems advisable from time to time;

"(8) the furnishing of scientific information and advice by the National Council on Radiation Protection and Measurements and by the National Academy of Sciences, within the respective scopes of the arrangements, to the President, Government agencies, the states, and others, at the request of the President or the Government agency administering the arrangements;

"(9) the furnishing of scientific information and advice by the National Council on Radiation Protection and Measurements and by the National Academy of Sciences, within the respective scopes of the arrangements, to the Congress pursuant to the request of any Committee of the Congress;

"(10) the preparation and transmittal to the President or to the Government agency administering the arrangements, and to the Congress, by the National Council on Radiation Protection and Measurements and by the National Academy of Sciences, at the end of each calendar year subsequent to 1970, of a report covering their respective review activities during the year; the report by the National Council on Radiation Protection and Measurements shall also set forth any significant scientific developments relative to basic radiation protection standards, including any recommendations; and the report by the National Academy of Sciences shall set forth any significant scientific developments bearing on the biological effects of radiation on man and the ecology including recommendations;

"(11) the preparation and transmittal to the President, or to the Government agency administering the arrangements, and to the Congress, by the National Council on Radiation Protection and Measurements, of a prompt report of any significant changes which it deems advisable to recommend in regard to its previous recommendations respecting basic radiation protection standards or the scientific bases therefor and not theretofore identified in its reports; and

"(12) the conduct of the activities of the National Council on Radiation Protection and Measurements and of the National Academy of Sciences, under the respective arrangements, in accordance with high substantive and procedural standards of sound scientific investigation and findings.

"Reports received from the National Council on Radiation Protection and Measurements and the National Academy of Sciences under the arrangements shall be promptly published by the Government agency administering the arrangements. All recommendations, in such reports by the National Council on Radiation Protection and Measurements, respecting basic radiation protection standards pertinent to the health and safety aspects of exposure to radioactivity resulting from the development, use or control of atomic energy, shall be carefully considered by any Government agency having authority to establish such standards and, within a reasonable period of time, such Government agency shall submit to the Joint Committee a report setting forth in detail its determinations respecting the recommendations and the measures, revisions, or other actions it proposes to take, adopt, or effect in relation to the recommendations."

Mr. HOLIFIELD (during the reading). Mr. Chairman, I ask unanimous consent that the bill be considered as read, printed in the RECORD, and open to amendment at any point.

The CHAIRMAN. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. HOLIFIELD. Mr. Chairman, the committee has no amendments to offer and knows of no amendments.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly the Committee rose, and the Speaker having resumed the chair, Mr. BURKE of Massachusetts, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the bill (H.R. 18679) to amend the Atomic Energy Act of 1954, as amended, to eliminate the requirement for a finding of practical value, and for other purposes, pursuant to House Resolution 1227, he reported the bill back to the House.

The SPEAKER. Under the rule, the previous question is ordered.

The question is on engrossment and

third reading of the bill.

The bill was ordered to be engrossed and read a third time, and was read the third time.

The SPEAKER. The question is on the passage of the bill.

The question was taken; and the Speaker announced that the ayes appeared to have it.

Mr. HOSMER. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER. Evidently a quorum is not present.

The Doorkeeper will close the doors, the Sergeant at Arms will notify absent Members, and the Clerk will call the roll.

The question was taken; and there were—yeas 346, nays 0, not voting 83, as follows:

* * * * *

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So the bill was passed.

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1.1x(3)(b) Dec. 2: Considered, amended and passed Senate, pp. 39619–39623

AMENDMENT OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

Mr. MANSFIELD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 1273, H.R. 18679.

The PRESIDING OFFICER. The bill will be stated by title.

The LEGISLATIVE CLERK. A bill (H.R. 18679) to amend the Atomic Energy Act of 1954, as amended, to eliminate the requirement for a finding of practical value, and for other purposes.

The PRESIDING OFFICER. Without objection, the Senate will proceed to its consideration.

Mr. PASTORE. Mr. President, the bill we are considering today is identical to a bill that was reported unanimously by the Joint Committee on Atomic Energy, which bore the number S. 4141. This bill was reported by the 18-member Joint Committee on Atomic Energy without a single dissenting vote. It contains three features. Two of the features would bring up to date and revise the provisions of the Atomic Energy Act of 1954, as heretofore amended.

The third feature of the bill was intended to assure that the National Academy of Sciences and the National Council on Radiation Protection and Measurements would continue to be consulted, as presently required by subsection 274h of the Atomic Energy Act, in connection with radiation matters and the formulation of radiation standards—but not infrequently or from time to time, as heretofore, but on a continuing and comprehensive basis. This feature is contained in section 11, the concluding section of H.R. 18679.

Section 11, to which I have referred, Mr. President, was drafted before the President submitted to the Congress his Reorganization Plan No. 3, which proposed the creation of the Environmental Protection Agency. H.R. 18679 was reported out by the joint committee before the President's reorganization plan successfully cleared the Congress.

May we have order, Mr. President, so that we do not have to raise our voices?

The PRESIDING OFFICER. The Senate will be in order.

Mr. PASTORE. I have had several discussions concerning this section with

my distinguished colleagues, Senator HART of Michigan, Senator MUSKIE of Maine, and Senator AIKEN of Vermont; and I might say at this juncture that Senator AIKEN was one of the master architects of the bill that is before us today.

In view of the establishment of the Environmental Protection Agency, and the presently governing statutes, including subsection 274h of the Atomic Energy Act, a question has arisen as to the necessity for section 11 at this time.

I have also had some discussion with Mr. BeLieu of the White House, who is very much interested in this particular section.

I want to make it abundantly clear that at no time was it the intention of the Joint Committee to interfere with the transfer of functions to the Environmental Protection Agency.

It has always been the concern of the Joint Committee on Atomic Energy in all of its dealings in atomic energy matters to consider public health and safety foremost. This continues to be the objective of the committee and will always be the objective of the committee as long as I am a member, and as long as its other distinguished members are associated with the committee —and beyond that its responsibilities under section 202 of the Atomic Energy Act, including the committee's responsibility in relation to the implementation of subsection 274h.

Everything considered, I am now going to move that section 11 be deleted from the bill—the entire section—and I send to the desk an amendment to accomplish that purpose.

The PRESIDING OFFICER. The amendment will be stated.

The legislative clerk read as follows:

On page 9, line 23, delete the following: The entire section 11 of the bill, from page 9, line 23, through page 14, line 15 inclusive.

Mr. PASTORE. Mr. President, I want to make it abundantly clear that, having removed this section—and this is agreeable to the Senator from Michigan (Mr. HART), the Senator from Maine (Mr. MUSKIE), the Senator from Vermont (Mr. AIKEN), and myself, and I have discussed it also with the chairman of the Joint Committee, Representative HOLIFIELD, who acquiesced in my judgment—our committee will look into the operation of the EPA relative to atomic energy. Other committees can look into it with respect to matters within their jurisdiction, and we think that the ecology of the country will be protected.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Rhode Island.

Mr. AIKEN. Mr. President, I might add that while I believe that this radiation section does not deserve the condemnation some people have placed on it, nevertheless, it is not necessary at this time. It can be considered next year, or other means to accomplish the same end can be taken up next year.

The other two sections of the bill are necessary, and it is very important that we get them through with the least possible delay. Therefore, I have agreed, in the interests of harmony and the early enactment of this bill, that we strike the provision relating to radiation, and proceed with the other parts, which are quite necessary, in my opinion.

Mr. PASTORE. I thank the Senator from Vermont. I think at this juncture, in view of what I have said, I ought to explain what section 11 actually did.

Senators must realize that at the time we were working on this bill—and this was unanimous on the part of the 18 members of the Joint Committee on Atomic Energy—the Environmental Protection Agency had not yet been established. As a matter of fact, Reorganization Plan No. 3 had only been submitted.

In view of that fact, all we could do was give the President the authority to assign the responsibility to enter into the arrangements to any agency he

desired, and in all probability, of course, he would have selected the agency which is now the Environmental Protection Agency.

But section 11 went beyond that. It directed that any agency the President would designate should enter into a long-term contract with two preeminent scientific bodies, one of them being the National Academy of Sciences. Now, what is the National Academy of Sciences? It was created in 1863 by an act of Congress signed by Abraham Lincoln. It is a nonprofit organization, it does not pay taxes, and it consists of the leading scientists

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of the country. Where else would we go to an impartial scientific verdict, and sound recommendations?

What were they supposed to do? They were supposed to—on a continuing and comprehensive basis—make studies of the biological effects of radiation on individuals in our society and on the ecology. That is essentially all it amounted to.

We also named the National Council on Radiation Protection and Measurements. And who are they? They were first established in 1929, and are, again, nonprofit, do not pay taxes, have no ax to grind, and are an impartial body of the best scientific minds in the country that could give proper scientific advice and recommendations to the Agency.

These scientific bodies are going to do that anyway—and they are doing it now; but in view of the fact that the Agency was established after this bill was reported out, and is just coming into being, I believe the best procedure would be to eliminate this feature from this bill at this time, and give the Agency a chance to get its feet on the ground and begin to work out its problems; and later on, if we have to go into it, as the Senator from Vermont has said, we can do that after we return in January.

The two features that the Senator from Vermont has talked about, apart from section 11, are two things that need to be done, and I am going to explain them.

The first feature of the bill deals with the present rigid requirement that, before the Commission may issue a commercial license for a nuclear powerplant or for other industrially or commercially useful nuclear facilities, it must make a finding that the type of facility "has been sufficiently developed to be of practical value for industrial or commercial purposes." The Atomic Energy Commission has not yet made a finding of practical value for any type of nuclear facility and, therefore, nuclear powerplants are still being licensed as research and development facilities. Developments to date have overtaken the need for any finding of practical value by the Commission. There is simply no reason to retain in the Atomic Energy Act the concept that such a finding must precede commercial licensing. Accordingly, H.R. 18679 erases this concept from the 1954 act and paves the way for the commercial licensing of nuclear facilities.

In accomplishing this objective, the Joint Committee had to take a close look at a related provision in the Atomic Energy Act of 1954; namely, the text of subsection 105c. of that act. That subsection presently provides that whenever the Commission proposes to issue a commercial license, it shall notify the Attorney General of the proposed license and the proposed terms and conditions thereof. The Attorney General would then be obliged to advise the Commission "whether, insofar as he can determine, the proposed license would tend to create or maintain a situation inconsistent with the antitrust laws"; his advice would be published in the Federal Register.

I may say at this juncture that this whole thing was discussed with members of the Justice Department.

This provision—subsection 105 c.—is separate and apart from subsection

105 a. of the Atomic Energy Act of 1954 which clearly states at the very outset that "Nothing contained in this Act shall relieve any person from the operation of the following acts as amended" and there then follows a specification of the antitrust laws and the Federal Trade Commission Act. Subsection 195 a. would remain wholly unchanged and unaffected by the enactment into law of the bill now before the Senate.

Because the language and potential effect of the existing subsection 105 c. are not sufficiently clear, the committee decided to clarify and revise this phase of the Commission's licensing process. H.R. 18679 does this. Revised subsection 105 c. clarifies the antitrust review standard and specifically describes what the Commission is to do in relation to the advice received from the Attorney General. The end product is the result of the committee's exploration of every facet of the background of this provision, and of the committee's judgment respecting the scope and type of review that AEC ought to conduct. The committee and its staff spent many, many hours on this aspect of the bill, and I can assure the Senate that we consider very carefully the considerable testimony, comments and opinions we received from interested agencies, associations, companies and individuals, including representatives from the Antitrust Division of the Justice Department, from privately owned utilities, and from public and cooperative power interests. The end product, as delineated in H.R. 18679, is a carefully perfected compromise by the committee itself; I want to emphasize that it does not represent the position, the preference, or the input of any of the special pleaders inside or outside of the Government. In the committee's judgment, revised subsection 105 c., which the committee carefully put together to the satisfaction of all of its members, constitutes a balanced, moderate framework for a reasonable licensing review procedure.

I want to stress in the clearest possible way that subsection 105c. in no way extends, revises, impairs, modifies, or impinges on the antitrust laws of our statute books, or prevents or limits their full application. The authorities and responsibilities of the Attorney General and others by virtue of our antitrust laws remain completely uninterfered with and unaffected by the review functions dealt with in section 105 c.

I also want to underscore several other important intentions of the committee. Paragraph (8) of subsection 105 c. will enable the Commission to avoid delaying the issuance of permits or licenses in certain cases due to the antitrust review feature. This flexibility applies with respect to antitrust questions that are or may be raised at the initiative of the Attorney General or another; the objective is to help avoid unnecessary delays in the scheduling or operation of needed powerplants.

The committee further intends, aside from antitrust considerations, that construction permit proceedings in progress at the time the bill becomes law be continued as a section 103 proceeding with an absolute minimum of procedural delay. Although the bill does not specifically deal with the objective of avoiding delay incident to the change in posture from 104 b. to section 103 status, aside from antitrust considerations, it would be the height of folly to stretch out unnecessarily the increasingly long interval between an application for a construction permit and the regulatory decision on the permit. A few years ago, this period approximated 7 to 9 months. Now, the interval is closer to 18 months and has approached 2 years in some cases. The committee understands that in the normal routine there may be one or more cases where the construction permit proceedings have essentially been brought to a conclusion, except for the ultimate regulatory decision. The committee intends that the Commission

will, by appropriate rule, regulation, or order, pursuant to its discretion, suitably bridge the change to section 103 status so as to avoid, to the greatest extent reasonably practicable, any delays in the scheduling of needed powerplants or other needless hardships. There may, for example, be instances where an extension of the usual policy of granting regulatory permission to start or continue with construction items may avoid unnecessary delay, financial penalties, or other hardships. The Commission should use sound judgment to avoid or minimize such delay or hardship because of the conversion of the status of a 104b. application for a construction permit to one under section 103 of this bill. I am speaking, of course, of procedural steps —not health or safety issues. The joint committee would never acquiesce in any short cuts relative to health or safety matters. The "practical value" feature of the bill does not affect health and safety considerations in any way.

The second feature of H.R. 18679 would make a minor change in subsection 161 v., of the Atomic Energy Act. This subsection was added by the Private Ownership of Special Nuclear Materials Act which was passed in 1964. The subsection pertains to the furnishing of uranium enrichment services by the AEC. This service, which is performed through utilization of the Government's unique gaseous diffusion facilities, increases the percentage of fissionable isotopes in natural uranium so that the enriched material can be used as fuel in nuclear reactors. The 1964 amendment provided that the AEC was to establish prices for that service "on a basis which will provide reasonable compensation to the Government." It further provided that the AEC was to establish written criteria for the furnishing of the service and in support of the prices it would charge. The legislative history clearly indicated the intent of the committee and of Congress that the statutory basis for AEC's prices would be recovery of the Government's costs. The initial criteria established by the AEC—which have been in use until now—in fact provided for prices based on the recovery of appropriate Government costs over a reasonable period of time. However, several months ago, the AEC proposed radically revised criteria which are not based on the recovery of the Govern-

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ment's costs, but, rather, on factors related to a hypothetical plant of the future that would be privately owned. The new criteria are impossibly vague and can be used as apparent justification for almost any price at any time. When AEC submitted the proposed revised criteria to the committee in June, we sought and obtained the advice of the General Accounting Office. The Comptroller General reported to the committee that the revised criteria did not appear to be consistent with the intention of Congress. This is also the opinion of the joint committee. In effect, then, these new criteria are so vague as to remove the stability we have had in the pricing of uranium fuel and consequently to accelerate the inflationary trend in the prices of our other fuels. And they amount to a thwarting of the intention of Congress.

Section 8 of H.R. 18679 supports and reaffirms with even greater clarity the intention of Congress, as clearly discerned by the GAO in its July 17, 1970 report to the committee, that the Commission's charges for enriching services be based on the recovery of appropriate Government costs over a reasonable period of time.

Mr. President, at this time I yield to the distinguished Senator from Vermont.

Mr. AIKEN. Mr. President, first, I would like to commend the Senator from Rhode Island for his clear summary of the spirit and provisions of the bill before the Senate. The Joint Committee on Atomic Energy and the staff have worked long and hard in

order to get a good bill. We have a good bill, and it should be enacted.

Since the senior Senator from Rhode Island has clearly explained the provisions of this bill, I will not undertake to duplicate his efforts. I simply have one other statement to make.

I was concerned that the language of the bill clearly would result in the application of the antitrust laws in this country to the producers of electrical energy from nuclear plants. Therefore, I consulted with the Department of Justice quite freely and received their assurance that this is a good bill. I received a letter from them, dated November 9, 1970, signed by Richard W. McLaren, Assistant Attorney General, Antitrust Division, from which I read two paragraphs at this time:

It appears to us that the bill adopted by the Joint Committee, and its accompanying report, actually serve to strengthen the antitrust safeguards of the Atomic Energy Act.

The other paragraph states:

The Committee's intent seems clear: if AEC finds that a situation "inconsistent with the antitrust laws" would result from activities under a license, it may either (1) deny the license or (2) condition grant of the license on action by the applicant(s) to eliminate the inconsistency. If there is an urgent need for power in the area, attaching antitrust conditions to the license may be the preferable course of action for AEC to take in the public interest. For example, applicants for a license for a joint venture nuclear power plant could be granted a license by AEC to construct a vitally needed facility; however, grant of the license would be conditioned upon applicants' affording access to low cost power from the nuclear facility on reasonable terms to a utility theretofore excluded from participation, if exclusion of the latter would subject it to unreasonable competitive disadvantage.

Mr. President, I ask unanimous consent to have the entire letter printed in the RECORD.

There being no objection, the letter was ordered to be printed in the RECORD, as follows:

DEPARTMENT OF JUSTICE,
Washington, D.C., November 9, 1970.

Hon. GEORGE D. AIKEN,
U.S. Senate,
Washington, D.C.

DEAR SENATOR AIKEN: This responds to your request for the views of the Department of Justice on the provisions of S. 4141 relating to AEC pre-licensing review, in the form reported by the Joint Committee on Atomic Energy on September 29, 1970.

As you know, we have not felt that there is a pressing need for additional legislation concerning AEC's licensing procedures or for new legislation on the antitrust standards relating thereto. However, in deference to the views of others, including the Atomic Energy Commission, that legislation clarifying the procedures would be desirable, we have worked with the AEC and the Joint Committee to fashion appropriate amendments to the Atomic Energy Act in order to provide the greater specificity as to licensing procedures that is desired. We have also consulted with you and other members of the Joint Committee to assure that any changes made in the wording of the antitrust standard would be well-drafted legislation.

We are satisfied that the bill reported by the Joint Committee adequately takes into account antitrust considerations. While there would be a slight change of language, as between persistent law and S. 4141, in the antitrust standard to be applied in the licensing of nuclear facilities (the words "tend to" would be deleted from the present language of section 105c), we understand that this is intended to clarify, rather than effect any substantial change in, the antitrust safeguards of the Act. The Committee Report on S. 4141 (Senate Report No. 91-1247) makes clear that in licensing proceedings AEC is required to determine whether activities under the required license would (1) contravene the antitrust laws or (2) be incompatible with the policies clearly underlying these laws. In connection with the latter, the Committee Report notes (p. 15) that the AEC "has the duty . . . to be mindful of the general objective of strengthening free competition in private enterprise." Thus, we understand that S. 4141 enjoins AEC to estimate and appraise carefully any anticompetitive effects which would result from activities under a requested license. The AEC would determine not only whether the activities would "violate" the Sherman, Clayton, or Federal Trade Commission Acts, but also whether it is reasonably probable that situations or activities would result which would be incompatible with the policies of maintaining and fostering free competition which underlie those statutes.

It appears to us that the bill adopted by the Joint Committee, and its accompanying report, actually serve to strengthen the antitrust safeguards of the Atomic Energy Act. First, they reaffirm unequivocably the Congressional intent underlying existing provisions of the Act that antitrust implications of the granting by AEC of licenses be carefully assessed. Second, AEC itself would be required to make findings under the antitrust standards, something which it is not specifically required to do by the existing

statute. Third, the Committee Report on S. 4141 explains the meaning of the phrase "inconsistent with the antitrust laws." The explanation (pp. 14–15, 31) is fully in accord with the view which the Department of Justice has always held as to the meaning of this language but for which until now there has been no clear Congressional or judicial endorsement.

Finally, we think the new section 105c(6) will have very beneficial results. It enjoins AEC to use its licensing authority in order both to meet power needs and to assure that antitrust principles are observed. Since applicants will know that projects having anticompetitive effects will be subject to careful scrutiny by AEC and to possible delay if antitrust problems are present, there will be incentive for applicants to remove antitrust problems in the early stages of project planning. Not only will this be desirable from an antitrust standpoint, it will accelerate needed increases in power supply by expediting AEC's pre-licensing review. Section 105c(6) instructs AEC that, although there may be "need for power in the affected area," this need is not to override predictable adverse competitive effects of activities under a requested license except in the most exceptional cases. The Committee Report emphasizes (p. 31):

The Committee does not expect that an affirmative finding [of inconsistency with antitrust laws or policy] under paragraph 5 would normally be overridden by Commission findings and actions under paragraph (6). * * * Normally the committee expects the Commission's actions under paragraph (5) and (6) will harmonize both antitrust and such other public interest considerations as may be involved.

The inclusion of this provision should tend to reduce substantially the number of applications which will raise antitrust issues. Applicants will be motivated to resolve antitrust problems before commencement of AEC proceedings, otherwise AEC must ordinarily resolve them in the course of pre-licensing review, or deny the license.

The Committee's intent seems clear: if AEC finds that a situation "inconsistent with the antitrust laws" would result from activities under a license, it may either (1) deny the license or (2) condition grant of the license on action by the applicant(s) to eliminate the inconsistency. If there is an urgent need for power in the area, attaching antitrust conditions to the license may be the preferable course of action for AEC to take in the public interest. For example, applicants for a license for a joint venture nuclear power plant could be granted a license by AEC to construct a vitally needed facility; however, grant of the license would be conditioned upon applicants' affording access to low cost power from the nuclear facility on reasonable terms to a utility theretofore excluded from participation, if exclusion of the latter would subject it to unreasonable competitive disadvantage.

On the basis of our understanding of the purpose and meaning of S. 4141, as set forth above, the Department of Justice supports enactment of this legislation.

Sincerely yours,

RICHARD W. MCLAREN,
Assistant Attorney General, Antitrust Division.

Mr. AIKEN. Mr. President, with that assurance from the Department of Justice, and the cooperation of the entire Joint Committee on Atomic Energy, the bill was reported unanimously, so that I feel we should enact this legislation.

As for the part relating to radiation, it has been said it is not essential at this time. Personally, I think it would be desirable, but it is not essential and rather than engage in a long, drawn-out controversy now, it would be much better to take it up at the next session of Con-

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gress either in this form or in some other manner.

Mr. President, I hope that the bill will be passed without further delay.

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Rhode Island.

The amendment was agreed to.

Mr. CURTIS. Mr. President, I should like to commend the distinguished Senator from Rhode Island (Mr. PASTORE) for his excellent statement explaining this bill. I support this measure completely. This joint committee explored every facet in depth and there were many matters which required and received the utmost of attention and care.

As an example, let me call attention to page 27 of the committee report which makes clear that the Atomic Energy Act, as now on the books and as amended by this bill, neither causes nor intends to cause any change in the language or interpretation of the Federal Power Act relative to those utilities subject to the jurisdiction of the Federal Power Commission under that act.

Mr. METCALF. Mr. President, I have been concerned for many years about the growing trend toward ownership of large-scale nuclear powerplants by only a few large utilities. The specter of such a monopoly in the nuclear energy field has haunted many of us, and, as Senator AIKEN has said, the "gold rush" is on as the large private utility companies race to the Atomic Energy Commission to secure licenses for nuclear generating plants under so-called research and development sections of the Atomic Energy Act. Such research and development licenses as defined by the present Atomic Energy Act are not subject to rigid antitrust scrutiny, and the would-be monopolists were not wasting any time in obtaining a stranglehold on nuclear generating facilities while the smaller utilities looked on helplessly.

The Atomic Energy Act does contain stringent antitrust review provisions which apply to licenses issued for commercial nuclear generating plants. However, the AEC has not seen fit to make a finding that the multimillion dollar plants they have been licensing have any practical value, which is a requirement before a commercial license is issued under the terms of the act. This bill would eliminate the necessity of making a finding of practical value and compel AEC to issue only one type of license with stringent antitrust review requirements.

While this bill represents an important step forward in curing monopolistic conditions in the generation of electric power by atomic facilities, I was concerned about subsection 105(c)(6) in which it is stated:

> In the event the Commission's finding under paragraph 5 is in the affirmative, the Commission shall also consider, in determining whether the license should be issued or continued, such other factors, including the need for power in the affected area, as the Commission in its judgment deems relevant to the public interest.

The finding referred to in this language is a contravention of the antitrust provision of the act as amended by H.R. 18679.

It appeared to me that this section of the bill raised the possibility that an exemption from the antitrust provisions of the act could be secured by an applicant if AEC determined that the need for power or other factors overrode antitrust considerations. Therefore, on August 21, 1970, I wrote Assistant Attorney General Richard W. McLaren, Antitrust Division, Department of Justice, and asked him several questions concerning this language. He answered my questions in a letter dated September 2, 1970.

I asked him whether the proposed subsection 105(c)(6) would amount to an exemption from the antitrust provisions of the Atomic Energy Act. He replied:

> We do not think the proposed Subsection (c) (6) would amount to an exemption from the antitrust provisions in the Atomic Energy Commission Act. The Atomic Energy Commission is obliged to give consideration and effect to the advice of the Attorney General and the nation's policy in favor of a competitive economy. Indeed, the statement of policy at the outset of the Commission's Act specifically enjoins it to promote free competition in private enterprise. In our view, the cited language does not alter this.

I asked him how the Department construed the language "need for power in the affected area," and what "other factors" would be pertinent. He answered:

> It is difficult to state any definitive construction for 'need for power in the affected area,' other than the meaning plain in the words. The relevant question is not what the words mean, but how the need for power is to be integrated into the Commission's over-all licensing determination. In our opinion, the Commission would be obliged to make its decision on a licensing issue in accordance with the statement of policy at the outset of the Act. This statement of policy cleanly and comprehensively states the guiding considerations for Commission action in licensing and other areas. These considerations subsume the need for power.
>
> We would not think the AEC could "avoid the conditioning of licenses to cure adverse antitrust findings" simply upon a finding that there was a need for power in the affected area. Rather, we expect, and we believe that the Commission expects, that the Commission's conditioning authority could be used to cure competitive problems while allowing construction and utilization of facilities.

We must recognize, I think, that the basic directive to the Commission is to maximize the welfare of the population insofar as its activities in the nuclear field are concerned, and that all other stated considerations are subsidiary to this one. In some instances a project might be delayed for a period of time, even taking into account the nation's continuing need for power supply, on the judgment that, over the long run, more will be gained by correcting anticompetitive situations than by immediately issuing a license. Also, there may be occasions when a power plant will have to be put on stream quickly, competitive problems cured as much as is possible before licensing, but also cured after licensing, or corrected in part by non-licensing authorities.

This is simply to say that, like all other identified policies—such as preserving natural resources, promoting a favorable balance of payments, stimulating invention, and so forth—the competitive policy must be integrated into decisions designed to maximize the general public welfare. We are aware, as you are, that though the policy is fundamental to our economic system, it is not always easy to bring the decisions of government bodies fully into alignment with it. And we are aware that persons and firms who find competition uncomfortable may often attempt to induce a sacrifice of competition by calling upon other policies in a specious or overdrawn fashion. But we think these problems can be addressed without overstating the contribution of the competitive policy, or declining to recognize that it forms an integral part, not the whole, of our national policies.

Finally, I asked Mr. McLaren whether the AEC could make an adverse antitrust finding and then ignore it, rather than considering antitrust and other matters at the same time. He said that—

We do not think that the language of the bill to which you refer would permit the AEC to make an antitrust finding and then "ignore" it. We think, as your last question suggests, that the Commission would consider antitrust and other matters "at the same time," that is, in its overall determination of the best interests of the population.

I am satisfied that no exemption from the antitrust provisions of the Atomic Energy Act can be inferred from the language of subsection 105(c)(6). The interpretation given by the Department of Justice of this subsection makes it clear that AEC will be given the appropriate power to stop the monopolization of nuclear generating facilities and open the door to participation in such plants to all utilities when monopoly is a threat.

Mr. HART. Mr. President, as chairman of the Antitrust and Monopoly Subcommittee, I feel obliged to comment on the portion of the Atomic Energy Act amendment relating to prelicensing antitrust review of applications for nuclear facilities for commercial or industrial purposes.

Section 6 of the bill revises those provisions of subsection 105(c) to require the Commission to transmit applications for nuclear power plants to the Attorney General for review and also requires a finding by the AEC as to whether the activities under the license would create or maintain a situation inconsistent with the antitrust laws. If the Attorney General finds there may be adverse antitrust aspects, the Commission must conduct a hearing giving due consideration to the Attorney General's advice and then make a finding as to whether the activities under the license would create or maintain a situation inconsistent with the antitrust laws, as specified in subsection 105(c) of the Atomic Energy Act. In addition, any person may intervene in the construction permit proceedings, raising antitrust considerations—even if the Attorney General does not. The Commission would be required to afford the intervenor the opportunity to be heard.

Mr. President, I was concerned naturally as to the antitrust implications in this bill; and, therefore, posed several questions to the Assistant Attorney General in charge of the Antitrust Division. I will ask consent to incorporate this exchange of correspondence in the RECORD following my remarks. As will be seen, the Department of Justice does not believe that the bill in any sense weakens antitrust standards with respect to the licensing procedure. As I understand it, the Antitrust Division staff worked very closely with the Joint Atomic Energy Committee in assuring that the final

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product now before us does, in fact, protect antitrust considerations in the granting of licenses.

An area of this bill which gave me some concern was paragraph 6 of section 6 which states:

(6) In the event the Commission's finding under paragraph (5) is in the affirmative, the Commission shall also consider, in determining whether the license should be issued or continued, such other factors, including the need for power in the affected area, as the Commission in its judgment deems necessary to protect the public interest. On the basis of its findings, the Commission shall have the authority to issue or continue a license as applied for, to refuse to issue a license, to rescind a license or amend it, and to issue a license with such conditions as it deems appropriate.

The senior Senator from Vermont, as I understand it, also was concerned with this paragraph and queried the Antitrust Division with respect to whether or not the claim of a need for power would be expected to override antitrust considerations.

I believe that the senior Senator from Vermont received a reply from the Department of Justice which should allay any fears in this area and that this communication will be inserted into the RECORD of this debate.

In this regard, I also would like to insert in the RECORD a statement made by the Honorable MELVIN PRICE, of Illinois, during the House debate on this matter:

Mr. Chairman, concern has been expressed that this legislation would permit the Atomic Energy Commission to exempt a license applicant from the necessity of correcting an antitrust abuse included in a Commission finding where the Commission finds that the need for power in the area or other factors are overriding.

The committee, as stated in the report, expects the Commission normally to take care of both the need for energy as well as to remedy the situation where there has been an affirmative finding under paragraph (5). The report on page 31 in this respect states:

"While the Commission has the flexibility to consider and weigh the various interests and objectives which may be involved, the committee does not expect that an affirmative finding under paragraph (5) would normally need to be overridden by Commission findings and actions under paragraph (6). The Committee believes that, except in an extraordinary situation, Commission-imposed conditions should be able to eliminate the concerns entailed in any affirmative finding under paragraph (5) while, at the same time, accommodating the other public interest concerns found pursuant to paragraph (6). Normally, the committee expects the Commission's actions under paragraphs (5) and (6) will harmonize both antitrust and such other public interest considerations as may be involved."

Considerations involving "the need for power in the affected area" or "other factors" will not permit the Commission to ignore an adverse antitrust finding under paragraph (5) of subsection 105 (c).

It seems to me that the clear intent of this language in subsection 105(c)(6) is to enable the Atomic Energy Commission to expedite the licensing of nuclear power facilities while, at the same time, taking those steps necessary to cure adverse antitrust findings under the provisions of the act. If an adverse antitrust finding is made by the Commission, it may issue or continue a license when there is a "need for power in an area," but this issuance or continuance must be accompanied by appropriate conditions in the license which require the applicant to cure the adverse antitrust findings. If the applicant or holder of the license does not cure the antitrust findings, then the AEC may suspend or revoke the license regardless of the "need for power in the affected area."

Under no circumstances would the Commission be relieved of its responsibility to require applicants for licenses to conform to the antitrust provisions of the act and the antitrust laws generally. It would not seem likely that an applicant would continue the construction of a facility or begin construction while antitrust problems clouded the license, but if the Commission deems it necessary to give an applicant that choice then the "need for power in the affected area" allows the issuance of a conditioned license.

The other area of this bill that gave me some concern was whether paragraph (5) of section 6 might preclude the Department of Justice from pursuing antitrust remedies in the courts if

the Commission decided that a particular situation did not "create or maintain a situation inconsistent with the antitrust laws as specified in subsection 105(a) of the Atomic Energy Act."

The report, I believe, clearly shows that such was not the intent stating:

> Section 6 of the bill clarifies and revises subsection 105 c. of the act. The bill does not affect in any way the important features contained in the provisions of subsections 105 a. and 105 b. of the 1954 act. These subsections remain separate, distinct and wholly unaffected by the proposed revised subsection 105 c. For example, the Attorney General's advice under the new subsection 105 c., and the participation by the Attorney General or his designee in the proceedings referred to in paragraph (5) of the subsection, would be completely separate and apart from any actions the Attorney General may deem advisable in relation to the antitrust laws referred to in subsection 105 a. Also, under paragraph (1) of the new subsection 105 c., the Attorney General may, in his discretion, should he consider that his advice might prejudice planned actions under the antitrust laws referred to in subsection 105 a., or for any other reason, render no advice to the Commission.

The report also notes:

> Subsection 105(a) wisely emphasizes that "Nothing contained in this Act"—and this includes subsection 105(c)—"shall relieve any person from the operation" of the antitrust laws. It further provides that in the event a licensee is found to have violated the antitrust laws in the conduct of the licensed activities that "the Commission may suspend, revoke, or take such other action as it may deem necessary with respect to any license issued by the Commission under the provisions of this Act."

In addition, the Joint Committee noted:

> The antitrust laws within the ambit of subsection 105(c) of the bill are all the laws specified in subsection 105(a). These include the statutory provisions pertaining to the Federal Trade Commission, which normally are not identified as antitrust law. Accordingly, the focus for the Commission's finding will, for example, include consideration of the admonition in section 5 of the Federal Trade Commission Act, as amended, that "Unfair methods of competition in commerce, and unfair and deceptive acts in commerce, are declared unlawful."

Under the antitrust standard of the present act and S. 4141, the Commission is instructed to survey license applications in light of incipient antitrust possibilities. In other words, the AEC will look at factual situations having the probability of contravening the antitrust laws, and will also be looking at antitrust violations. It could well be that in passing on the antitrust aspects of license applications facts leading to separate antitrust suits by the Attorney General or others may be developed. If so, the Attorney General or others, including agencies such as the Federal Trade Commission, may take these facts to other forums for antitrust relief, including the appropriate courts or regulatory agencies. Nothing in S. 4141 precludes or impedes any antitrust action by the Attorney General or others, whether the relief sought is criminal or civil in nature.

The Atomic Energy Act is only a supplement to existing antitrust laws, and this will not be changed by the passage of S. 4141. No primary jurisdiction is vested in the AEC, and all forums of antitrust relief remain open for all parties at any time, whether or not the Commission may be considering similar or identical facts and issues in a licensing proceeding involving similar parties.

Moreover, other intervenors as well in the Commission proceedings would have the opportunity to exhaust their appellate remedies if they so desired.

Mr. President, nuclear power will be a most important contributor if we are to come anywhere near meeting the power demands of the very near future. However, already many of us are concerned about the growing concentration of ownership of our energy producers and over some apparently anticompetitive practices in many areas.

It would be a distressing development if nuclear power were allowed to grow—but brought with it monopolistic practices which had the effect of limiting the supply of power to some energy companies.

It is clear from the facts and opinions I have cited that it definitely is not

the intention of Congress in amending the AEC Act that this should occur.

I have raised this point only to add to the legislative history and to make even clearer Congress' intention that the antitrust standards apply to licensing of nuclear facilities, and I ask unanimous consent that the letter be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

AUGUST 28, 1970.

Mr. RICHARD W. MCLAREN,
Assistant Attorney General, Antitrust Division, Department of Justice, Washington, D.C.

DEAR MR. MCLAREN: I am very concerned over a provision contained in S. 4141 which was recently approved by the Joint Committee on Atomic Energy. As you know, this measure would amend the Atomic Energy Act of 1954 by eliminating the requirement for a finding of "practical value" in the licensing of nuclear power plants utilizing

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light water reactors and require licenses for all such reactors to be issued under Section 103 of the Act, which requires AEC to consider anticipatory antitrust matters.

However, S. 4141 changes the antitrust standard contained in Section 105(c) of the present Act and substitutes a new standard which would be applied to Section 103 licenses. Under the present language in 105(c), the Attorney General advises the Atomic Energy Commission whether "the proposed license would tend to create or maintain a situation inconsistent with the antitrust laws." S. 4141 would change the standard to whether "the activities under the license would create or maintain a situation inconsistent with the antitrust laws as specified in subsection 105(a)."

To the best of my knowledge, the language proposed as an antitrust standard in S. 4141 is not contained in any other federal statute and was not discussed during the hearings on practical value legislation by the Joint Committee. I would appreciate it if the Department of Justice could provide me with its interpretation of the proposed language in the following areas:

1. Does the proposed new standard represent a weakening of antitrust review over the licensing of nuclear power plants under Section 103 of the Atomic Energy Act?

2. Will the new standard apply to applicants who have received construction permits under challenge by intervenors on antitrust grounds when these applicants seek an operating license?

3. Is there a positive value to be gained by the consideration and implementation of antitrust policy by administrative agencies such as AEC in their decision-making process?

4. Does the Department of Justice see any need for a change in the antitrust standard of the present Atomic Energy Act?

5. Are there any statutory precedents for the new antitrust standard proposed in S. 4141?

6. The present language of Section 105(c) of the Atomic Energy Act is identical with language contained in the Surplus Property Act of 1944. Has the Department of Justice experienced any difficulty in administering the standard under the Surplus Property Act?

7. Would the new antitrust standard proposed by S. 4141 change or alter the interpretation placed on the present standard by the U.S. Court of Appeals for the District of Columbia in the *Statesville* decision, in which the standard was interpreted to mean "anticipatory antitrust review?"

I would appreciate prompt receipt of your answers to these questions together with any additional comments you might wish to make which would aid me in analyzing the significance of this proposed new antitrust review standard.

Sincerely,

PHILIP A. HART,
Chairman.

NOVEMBER 8, 1970.

Hon. PHILIP A. HART,
Chairman, Subcommittee on Antitrust and Monopoly, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: I have delayed somewhat in responding to your letter on S. 4141, because it was not clear what interpretation the Committee would give the words spelling out the anti-trust standard to be applied by the AEC in its licensing proceedings, to which you refer in your letter. The Committee has now prepared a report which would give these words an interpretation consistent with what we think appropriate. That is, the Commission is to make its determination on competitive consequences of activity under the license pursuant to the guidance of both the specific provisions of the antitrust laws, and the policies which underlie these provisions. With this understanding, I can now reply to your questions better than I could before. I will take the questions in order.

First, I do not think that the new standard represents a weakening of antitrust review over the licensing of nuclear power plants under Section 103 of the Atomic Energy Act.

You will note that the Attorney General can give advice on such terms as he deems appropriate with respect to the determination the Commission must make concerning competitive issues (revised Sec. 105c(1)). This provision allows a scope for advice as broad as that now contained in Section 103.

The provision for the Commission's finding on competitive issues does lack the "tend to" language of the language now in Section 103, but we do not consider this a weakening of the

standard. One of the antitrust laws to which the standard refers is Section 7 of the Clayton Act, which deals with the question whether corporate joinders, joint ventures, and the like may substantially lessen competition or tend to create a monopoly. This statute has been interpreted to reach tendencies toward concentration in their incipiency. Thus, we think there is sufficient authority within the antitrust laws, and within the policies which underlie them, for dealing with incipient situations, without the addition of an additional "tend to" standard in the legislation. Indeed, the "tend to" standard contained in Section 103 is largely redundant.

Also, we had never expected to deal with the most remote and tangential of possibilities. A commonsense approach to the problem will lead one to deal with significant probabilities of anticompetitive effect, whether the standard were to read "tend to be inconsistent with," or "inconsistent with," and the revised report makes clear that the Commission would deal with significant probabilities of effects contrary to the provisions and policies of the antitrust laws.

Thus, the present content of antitrust law and policy, a straightforward reading of the test, and the language of the report all lead to dealing with significant probabilities of anticompetitive effects, far short of certainty This is, in our opinion, all that is required.

Second, S. 4141 spells out the situations under which the new standard would apply at the operating licensing stage to applicants who have received construction permits. Subsection 105c (2) specifies that if the construction license is issued prior to enactment of S. 4141, those who have challenged the license on antitrust grounds would have standing to challenge them at the operating license stage. If the construction permit were to be issued after the passage of legislation, a determination of changed circumstances would be required to sustain antitrust review at the operating license stage.

Third, we think there is a very definite value to be gained in administrative agencies such as the AEC considering and implementing antitrust policies in their decision-making processes. Federal licensing and regulatory agencies directly affect a very large volume of the nation's commerce. Their decision can aid the economy to become more competitive, or detract from its competitiveness. We think it essential that they tailor their decisions so as to serve the nation's general economic policy in favor of competition.

Fourth, we do not see a pressing need for a change in the antitrust standard of the present Atomic Energy Act. However, others have wished to clarify the procedures for giving and considering antitrust advice, and we have not objected to this. Thus, while we do not think that new legislation on antitrust standards is necessary, we have not objected, and do not object, to the enactment of well-drafted new legislation.

Fifth, we are not aware of direct statutory precedents for the antitrust standard proposed in S. 4141. However, as your letter implies, the kinship of the language to that used in the Federal Property and Administrative Services Act is obvious.

Sixth, we have not experienced difficulty in determining whether the antitrust test of the Surplus Property Act could be applied in a realistic fashion to sales of Government property under that Act. We have observed instances in which the giving of such advice caused the agency desiring to sell the property to make decisions it otherwise might not have made. These decisions were sometimes preceded by discussions with the agency. This was anticipated when the standard was inserted in the Act, and is to be expected. Otherwise, the standard would have no effect.

Seventh, we do not think that the standard proposed in S. 4141 would alter the interpretation of the U.S. Court of Appeals interpreting the antitrust standard to mean "anticipatory antitrust review."

Sincerely yours,

RICHARD W. MCLAREN,
Assistant Attorney General, Antitrust Division.

The PRESIDING OFFICER (Mr. MURPHY). The bill is open to further amendment. If there be no further amendment to be proposed, the question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read the third time and passed.

Mr. PASTORE. Mr. President, I move that the vote by which the bill was passed be reconsidered.

Mr. BYRD of West Virginia and Mr. AIKEN moved to lay the motion on the table.

The motion was agreed to.

Mr. PASTORE. Mr. President, I ask unanimous consent that S. 4141 be indefinitely postponed.

The PRESIDING OFFICER. Without objection, S. 4141 is indefinitely postponed.

Mr. PASTORE. Mr. President, I ask unanimous consent that the Secretary of the Senate be authorized to make necessary technical and clerical corrections in the engrossment of the Senate amendment to H. R. 18679, and

that the bill, as passed, be printed.

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

Mr. PASTORE. Mr. President, I thank the distinguished majority leader, the Presiding Officer, the Senator from Vermont (Mr. AIKEN), and all my other colleagues.

Mr. MANSFIELD. Mr. President, the distinguished senior Senator from Rhode Island is to be highly commended for successfully steering this measure through the Senate. Its swift disposition speaks abundantly for the effective legislative skill of Senator PASTORE. The Senate is again most grateful.

The distinguished senior Senator from Vermont (Mr. AIKEN) is to be commended equally. His excellent support and assistance on this measure were indispensable. The Senate is again indebted to both of these outstanding Senators.

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1.1x(3)(c) Dec. 3: House agrees to Senate amendments, pp. 39818–39819

AMENDING ATOMIC ENERGY ACT OF 1954

Mr. HOLIFIELD. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the bill (H.R. 18679) to amend the Atomic Energy Act of 1954, as amended, to eliminate the requirement for a finding of practical value, and for other purposes, with a Senate amendment thereto, and concur in the Senate amendment.

The Clerk read the title of the bill.

The Clerk read the Senate amendment, as follows:

Page 9, strike out all after line 22 over to and including line 15 on page 14.

The SPEAKER. Is there objection to the request of the gentleman from California?

Mr. HOSMER. Mr. Speaker, reserving the right to object, and I shall not object, will the gentleman from California explain the purport of the Senate amendment?

Mr. HOLIFIELD. Mr. Speaker, if the gentleman will yield, I shall be glad to do so.

Mr. Speaker, on September 30, the House passed, by the vote of 345 to 0, H.R. 18679, a bill which would bring up to date and revise the provisions of the Atomic Energy Act of 1954 in several respects. This bill had been reported out by the 18-member Joint Committee on Atomic Energy without a dissenting vote.

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Yesterday, the Senate considered and passed H.R. 18679, after amending the bill to delete section 11. The amendment was proposed by the vice chairman of the Joint Committee on Atomic Energy, and this move was made with my acquiescence as chairman of the Joint Committee.

Section 11 merely emphasized that the uniquely expert consultative services of the National Academy of Sciences and the National Council on Radiation Protection and Measurements should continue to be utilized, as presently contemplated by subsection 274 h. of the Atomic Energy Act of 1954, as amended, in connection with the formulation of basic radiation protection standards pertinent to the health and safety aspects of exposure to radioactivity resulting from the development, use, or control of atomic energy. Section 11, however, stressed that these services should be applied on a continuing and comprehensive

basis, rather than—as heretofore—infrequently or from time to time. Section 11 further stressed that the scientific findings and advice provided by these preeminent scientific bodies were to be widely disseminated.

Section 11 would not have prevented the new Environmental Protection Agency or any Government agencies from consulting with and seeking the advice of any other outside experts they might select. Section 11, in no way, inhibited the furnishing of scientific advice. It supported it.

Furthermore, section 11 did not provide for the setting of standards by the National Academy of Sciences or the National Council on Radiation Protection and Measurements. Responsibility for setting standards would have continued to remain in the Executive —and in the hands of the Environmental Protection Agency, as desired by the President.

One further point should be registered. Section 11 did not add as a new requirement that the Joint Committee on Atomic Energy receive reports respecting the setting of standards pertinent to radioactivity resulting from the development, use or control of atomic energy. This requirement has been legally applicable for many years; it is contained in section 202 of the Atomic Energy Act of 1954, as amended.

In short, section 11 would not have interfered with the prerogatives of the President or the functions of the Environmental Protection Agency.

Nevertheless, as a courtesy to the new Environmental Protection Agency, I now urge the House to agree to the deletion of section 11 from H.R. 18679 —not because the provisions are not worthwhile or are not fully in the public interest—but simply to give the new Environmental Protection Agency a reasonable period of time in which to become organized and—without the need of explicit statutory directions—to proceed under its present authorities, including the authority in present subsection 274 h. of the Atomic Energy Act, to carry out the objectives of section 11.

This morning, I wrote a letter to the Administrator of the Environmental Protection Agency, informing him of these thoughts. I would like to read for the RECORD a copy of my letter to Mr. Ruckelshaus:

DECEMBER 3, 1970.

Hon. WILLIAM D. RUCKELSHAUS,
Administrator, Environmental Protection Agency, Washington, D.C.

DEAR MR. RUCKELSHAUS: Congratulations on your favorable reception by the Senate Committee on Public Works and on the Senate's speedy confirmation of your nomination.

Yesterday afternoon, in the Senate, Senator Pastore proposed an amendment to delete Section 11 from H.R. 18679. As you know, this Section would have revised the provisions of subsection 274 h. of the Atomic Energy Act. H.R. 18679, as thus amended, was then passed by the Senate.

As Senator Pastore stated in his presentation of the amendment, I had acquiesced in the judgment to delete the proposed revision to subsection 274 h. The amended version of H.R. 18679 will be considered in the House very soon, perhaps even later today, and I will support and urge the House to approve the amended version of H.R. 18679 which was passed by the Senate.

The deletion of Section 11 is really a courtesy to you and your Agency. I hope the contents of Section 11, the pertinent portion of the Joint Committee's report accompanying H.R. 18679, and my explanation to you of the Committee's underlying purpose will, in practical effect, remain tantamount to a word to the wise. I am also writing to the Director of the Office of Management and Budget to urge that he help assure the budgeting and allocation of sufficient funds to enable the consummation in the near future of the broadly-scoped arrangements contemplated by Section 11.

You are aware that the F.R.C. has existing agreements with the National Academy of Sciences and the National Council on Radiation Protection and Measurements. The Committee is deeply concerned that expert scientific advice on the problem of radiation tolerance should be secured on a continuing and comprehensive basis, and it knows of no better or more credible expert sources than these two distinguished bodies.

As soon as reasonably practicable after the Agency is sufficiently organized, please advise this Committee if there appear to be any problems that could interfere with the initiation of such arrangements with the National Academy of Sciences and the National Council on Radiation Protection and Measurements. Also, as a general matter and in accordance with the responsibilities provided for in Section 202 of the Atomic Energy Act, I request that the Agency

keep the Joint Committee fully informed, on a reasonably current basis, of significant events and activities pertaining to atomic energy.

This Committee wishes the Agency, under your leadership, great success in its efforts toward fulfillment of its important mission to protect the environment. With respect to atomic energy fields, this Committee stands ready to assist and cooperate in every reasonable way.

Sincerely,

CHET HOLIFIELD,
Chairman.

And, Mr. Speaker, I would like to include after my remarks the letter which I have directed to Mr. Ruckelshaus, and to include certain other extraneous and related matter.

The SPEAKER. Is there objection to the request of the gentleman from California?

There was no objection.

Mr. HOSMER. Mr. Speaker, further reserving the right to object, and I shall not do so, I rise to associate myself with the comments by the chairman of the Joint Committee on Atomic Energy, the gentleman from California (Mr. HOLIFIELD). I urge the amendment and passage of the bill as requested.

I, too, urge—for the reason advanced by him—that the House approve H.R. 18679, as amended in the Senate yesterday by deletion of section 11.

At the same time I wish to pose an important note of caution in regard to the intent underlying another feature of this bill. And, as a coauthor of this bill, I presume that I speak authoritatively. I understand that, in the course of the Senate's consideration of the bill yesterday, several exchanges of correspondence with the Antitrust Division of the Department of Justice were inserted in the RECORD and alluded to. I have not yet had an opportunity to read them, so I cannot comment definitely on the views and interpretations advanced in or in connection with these letters. I want to emphasize as strongly as I can that the following excerpt from the statement of presentation of the bill before the Senate by Senator PASTORE, vice chairman of the Joint Committee on Atomic Energy, is thoroughly accurate, and I should like to repeat it now for the RECORD:

Because the language and potential effect of the existing subsection 105c. are not sufficiently clear, the committee decided to clarify and revise this phase of the Commission's licensing process.

H.R. 18679 does this. Revised subsection 105 c. clarifies the antitrust review standard and specifically describes what the Commission is to do in relation to the advice received from the Attorney General. The end product is the result of the committee's exploration of every facet of the background of this provision, and of the committee's judgment respecting the scope and type of review that AEC ought to conduct.

The committee and its staff spent many, many hours on this aspect of the bill, and I can assure the Senate that we considered very carefully the considerable testimony, comments and opinions we received from interested agencies, associations, companies and individuals, including representatives of the Justice Department, from privately owned utilities, and from public and cooperative power interests.

The end product, as delineated in H.R. 18679, is a carefully perfected compromise by the committee itself; I want to emphasize that it does not respect the position, the preference, or the input of any of the special pleaders inside or outside of the Government. In the committee's judgment, revised subsection 105 c., which the committee carefully put together to the satisfaction of all of its members, constitutes a balanced, moderate framework for a reasonable licensing review procedure.

Thus, the views and opinions expressed in the letters from the Antitrust Division of the Department of Justice are not necessarily authoritative, and may or may not accurately represent the intent underlying the "practical value" provisions of H.R. 18679.

Mr. Speaker, I withdraw my reservation of objection.

The SPEAKER. Is there objection to the request of the gentleman from California?

There was no objection.

The Senate amendment was concurred in.

A motion to reconsider was laid on the table.

[p. 39819]

1.1y ATOMIC ENERGY COMMISSION APPROPRIATION AUTHORIZATION

August 11, 1971, P.L. 92–84, Title II, 3201, 85 Stat. 307

TITLE II

SEC. 201. (a) Subsection a. of section 31 of the Atomic Energy Act of 1954, as amended, is amended by (1) striking the word "and" from the end of paragraph (4) thereof; (2) striking from the end of paragraph (5) thereof the period and substituting therefor ": and" and (3) by adding thereto a new paragraph (6) to read as follows:

"(6) the preservation and enhancement of a viable environment by developing more efficient methods to meet the Nation's energy needs."

1.1y(1) JOINT COMMITTEE ON ATOMIC ENERGY

H.R. REP. No. 92–325, 92d Cong., 1st Sess. (1971)

AUTHORIZING APPROPRIATIONS FOR THE ATOMIC ENERGY COMMISSION FOR FISCAL YEAR 1972

JUNE 30, 1971.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. PRICE of Illinois, from the Joint Committee on Atomic Energy, submitted the following

REPORT

[To accompany H.R. 9388]

The Joint Committee on Atomic Energy, having considered the matter of authorizing appropriations for the Atomic Energy Commission for fiscal year 1972, hereby report the following bill, and recommend that the bill do pass.

[p. 1]

* * * * * * *

SECTION-BY-SECTION ANALYSIS

* * * * * * *

TITLE II

Section 201

Section 201 of this bill would amend Sections 31 and 33 of the Atomic Energy Act of 1954, as amended, to authorize the Commis-

sion to conduct research and development activities relating to the preservation and enhancement of a viable environment by developing more efficient methods to meet the Nation's energy needs.

Under existing authority contained in section 33, the Commission provides nonnuclear research for others in the fields of public health and safety which includes environmental matters. This research for others is provided on a reimbursable basis and is subject to certain statutory limitations which generally require a showing that AEC's special competence is particularly needed by those seeking the research assistance. Existing authority under section 31 does not permit AEC to conduct in its facilities for its own account research and development activities in nonnuclear missions.

The President, in his Energy Message of June 4, 1971, stated that the key to meeting the Nation's twin goals of supplying adequate energy and protecting the environment in the decades ahead will be a balanced and imaginative research and development program. He also said that the Atomic Energy Commission would perform related

[p. 74]

energy research which may be appropriate as part of the Nation's overall energy program.

The national laboratories of the AEC are major national assets which were created, exist, and are needed for AEC's nuclear missions. These laboratories are staffed by outstanding scientists in both the physical and life sciences and they are equipped with facilities that are unique in many respects. The amendments to sections 31 and 33 would allow the Commission to use these national laboratories, either for its own account or for others, to assist in the balanced and imaginative research and development efforts which are needed for the Nation to continue to know the blessings of both a high-energy civilization and a beautiful and healthy environment. Fields such as underground electric transmission and magnetohydrodynamic power cycles are illustrative examples of the variety of research projects which could be undertaken by AEC in these national laboratories.

No additional funds are requested because of these amendments. Rather the amendments simply provide additional authority for AEC to utilize the talent and scientific resources of its national laboratories to facilitate research and development for clean energy.

CHANGES IN EXISTING LAW

In compliance with clause (3) of rule XIII of the Rules of the House of Representatives, changes in existing law recommended by the bill accompanying this report are shown as follows (deleted material is enclosed in black brackets, new matter printed in italic, and existing law in which no charge is proposed is shown in roman):

PUBLIC LAW 83–703

[ATOMIC ENERGY ACT OF 1954, AS AMENDED]

"SEC. 31. RESEARCH ASSISTANCE.—

"a. * * *

* * * * * * *

"(4) utilization of special nuclear material, atomic energy, and radioactive material and processes entailed in the utilization or production of atomic energy or such material for all other purposes, including industrial or commercial uses, the generation of usable energy, and the demonstration of advances in the commercial or industrial application of atomic energy; [and]

"(5) the protection of health and the promotion of safety during research and production activities[.]; *and*

"*(6) the preservation and enhancement of a viable environment by developing more efficient methods to meet the Nation's energy needs.*

* * * * * * *

[p. 75]

1.1y(2) JOINT COMMITTEE ON ATOMIC ENERGY

H.R. REP. No. 92–249, 92d Cong., 1st Sess. (1971)

[Same as 1.1y(1)]

1.1y(3) CONGRESSIONAL RECORD, VOL. 117 (1971)

1.1y(3)(a) July 15: Considered and passed House, amended, p. H6764, H6801

Mr. PRICE of Illinois. Mr. Chairman, I yield myself 10 minutes.

* * * * *

TITLE II

Section 201 of the bill amends sections 31 and 33 of the Atomic Energy Act of 1954 without adding any costs to the AEC program. The amendments broaden the authority of the AEC to conduct environmental and energy-related research for others or under its own programs in areas other than those related strictly to nuclear missions. The dual need for protecting the environment and supplying adequate sources of clean electric power, and research and development programs to meet that need, were stressed by the President in his energy message to the Congress. The amendments in section 201 would provide additional authority for AEC to use the talent and resources of its national laboratories to facilitate research and development for clean energy from all energy sources.

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[p. H6764]

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The SPEAKER. The question is on the passage of the bill.

The bill was passed.

A motion to reconsider was laid on the table.

[p. H6801]

1.1y(3)(b) July 20: Considered and passed Senate, amended, p. S11502

[No Relevant Discussion on Pertinent Section]

1.1y(3)(c) July 27: House concurred in Senate amendments with amendment, p. H17189

[No Relevant Discussion on Pertinent Section]

1.1y(3)(d) July 31: Senate concurred in House amendment, p. S12694

[No Relevant Discussion on Pertinent Section]

1.2 PUBLIC HEALTH SERVICE ACT, AS AMENDED, 42 U.S.C. §§ 203, 215, 241, 242(b), (c), (d), (f), (i), (j), 243, 244, 244a, 245, 246, 247 (1970).

(See, "General 1.12a–1.12ah" for legislative history)

§ 203. Organization of Service

The Service shall consist of (1) the Office of the Surgeon General, (2) the National Institutes of Health, (3) the Bureau of Medical Services, and (4) the Bureau of State Services. The Surgeon General is authorized and directed to assign to the Office of the Surgeon General, to the National Institutes of Health, to the Bureau of Medical Services, and to the Bureau of State Services, respectively, the several functions of the Service, and to establish within them such divisions, sections, and other units as he may find necessary; and from time to time abolish, transfer, and consolidate divisions, sections, and other units and assign their functions and personnel in such manner as he may find necessary for efficient operation of the Service. No division shall be established, abolished, or transferred, and no divisions shall be consolidated, except with the approval of the Secretary. The National Institutes of Health shall be administered as a part of the field service. The Surgeon General may delegate to any officer or employee of the Service such of his powers and duties under this chapter except the making of regulations, as he may deem necessary or expedient.

July 1, 1944, c. 373, Title II, § 202, 58 Stat. 683; June 16, 1948, c. 481, § 6(b), 62 Stat. 469; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631.

§ 215. Detail of personnel to governmental departments, States and subdivisions, and certain institutions; payment of salaries and allowances

(a) The Secretary is authorized, upon the request of the head of an executive department, to detail officers or employees of the Service to such department for duty as agreed upon by the Secretary and the head of such department in order to cooperate in, or conduct work related to, the functions of such department or of the Service. When officers or employees are so detailed their salaries and allowances may be paid from working funds established as provided by law or may be paid by the Service from applicable appropriations and reimbursement may be made as agreed upon by the Secretary and the head of the executive department concerned. Officers detailed for duty with the Army, Air Force, Navy or Coast Guard shall be subject to the laws for the government of the service to which detailed.

(b) Upon the request of any State health authority or, in the case of work relating to mental health, any State mental health

authority, personnel of the Service may be detailed by the Surgeon General for the purpose of assisting such State or a political subdivision thereof in work related to the functions of the Service.

(c) The Surgeon General may detail personnel of the Service to nonprofit educational, research, or other institutions engaged in health activities for special studies of scientific problems and for the dissemination of information relating to public health.

(d) Personnel detailed under subsections (b) and (c) of this section shall be paid from applicable appropriations of the Service, except that, in accordance with regulations such personnel may be placed on leave without pay and paid by the State, subdivision, or institution to which they are detailed. The services of personnel while detailed pursuant to this section shall be considered as having been performed in the Service for purposes of the computation of basic pay, promotion, retirement, compensation for injury or death, and the benefits provided by section 213 of this title.

July 1, 1944, c. 373, Title II, § 214, 58 Stat. 690; July 3, 1946, c. 538, § 6, 60 Stat. 423; Oct. 12, 1949, c. 681, Title V, § 521(e), 63 Stat. 835; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. April 11, 1953, 18 F.R. 2053, 67 Stat. 631.

SUBCHAPTER II.—GENERAL POWERS AND DUTIES

Part A.—Research and Investigations

§ 241. Research and investigations generally

The Surgeon General shall conduct in the Service, and encourage, cooperate with, and render assistance to other appropriate public authorities, scientific institutions, and scientists in the conduct of, and promote the coordination of, research, investigations, experiments, demonstrations, and studies relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases and impairments of man, including water purification, sewage treatment, and pollution of lakes and streams. In carrying out the foregoing the Surgeon General is authorized to—

(a) Collect and make available through publications and other appropriate means, information as to, and the practical application of, such research and other activities;

(b) Make available research facilities of the Service to appropriate public authorities, and to health officials and scientists engaged in special study;

(c) Establish and maintain research fellowships in the Service with such stipends and allowances, including traveling and subsistence expenses, as he may deem necessary to procure the as-

sistance of the most brilliant and promising research fellows from the United States and abroad;

(d) Make grants-in-aid to universities, hospitals, laboratories, and other public or private institutions, and to individuals for such research or research training projects as are recommended by the National Advisory Health Council, or, with respect to cancer, recommended by the National Advisory Cancer Council, or, with respect to mental health, recommended by the National Advisory Mental Health Council, or, with respect to heart diseases, recommended by the National Advisory Heart Council, or, with respect to dental disease and conditions, recommended by the National Advisory Dental Research Council; and include in the grants for any such project grants of penicillin and other antibiotic compounds for use in such project; and make, upon recommendation of the National Advisory Health Council, grants-in-aid to public or nonprofit universities, hospitals, laboratories, and other institutions for the general support of their research and research training programs: *Provided,* That such uniform percentage, not to exceed 15 per centum, as the Surgeon General may determine, of the amounts provided for grants for research or research training projects for any fiscal year through the appropriations for the National Institutes of Health may be transferred from such appropriations to a separate account to be available for such research and research training program grants-in-aid for such fiscal year;

(e) Secure from time to time and for such periods as he deems advisable, the assistance and advice of experts, scholars, and consultants from the United States or abroad;

(f) For purposes of study, admit and treat at institutions, hospitals, and stations of the Service, persons not otherwise eligible for such treatment;

(g) Make available, to health officials, scientists, and appropriate public and other nonprofit institutions and organizations, technical advice and assistance on the application of statistical methods to experiments, studies, and surveys in health and medical fields;

(h) Enter into contracts during the fiscal year ending June 30, 1966, and each of the eight succeding fiscal years, including contracts for research in accordance with and subject to the provisions of law applicable to contracts entered into by the military departments under sections 2353 and 2354 of Title 10, except that determination, approval, and certification required thereby shall be by the Secretary of Health, Education, and Welfare; and

(i) Adopt, upon recommendation of the National Advisory Health Council, or, with respect to cancer, upon recommendation of the National Advisory Cancer Council, or, with respect to mental health, upon recommendation of the National Advisory Mental Health Council, or, with respect to heart diseases, upon recommendation of the National Advisory Heart Council, or, with respect to dental diseases and conditions, upon recommendations of the National Advisory Dental Research Council, such additional means as he deems necessary or appropriate to carry out the purposes of this section.

July 1, 1944, c. 373, Title III, § 301, 58 Stat. 691; July 3, 1946, c. 538, § 7(a, b), 60 Stat. 423; June 16, 1948, c. 481, § 4(e, f), 62 Stat. 467; June 24, 1948, c. 621, § 4(e, f), 62 Stat. 601; June 25, 1948, c. 654, § 1, 62 Stat. 1017; July 3, 1956, c. 510, § 4, 70 Stat. 490; Sept. 15, 1960, Pub.L. 86–798, 74 Stat. 1053; Oct. 17, 1962, Pub.L. 87–838, § 2, 76 Stat. 1073; Aug. 9, 1965, Pub.L. 89–115, § 3, 79 Stat. 448; Dec. 5, 1967, Pub.L. 90–174, § 9, 81 Stat. 540; and amended Oct. 30, 1970, Pub.L. 91–515, Title II, § 292, 84 Stat. 1308.

§ 242b. Research and demonstrations relating to health facilities and services—Grants and contracts for projects for research, experiments, or demonstrations and related training; cost limitation; wage rates, labor standards, and other conditions; payments

(a) (1) The Secretary is authorized—

(A) to make grants to States, political subdivisions, universities, hospitals, and other public or nonprofit private agencies, institutions, or organizations for projects for the conduct of research, experiments, or demonstrations (and related training), and

(B) to make contracts with public or private agencies, institutions, or organizations for the conduct of research, experiments, or demonstrations (and related training),

relating to the development, utilization, quality, organization, and financing of services, facilities, and resources of hospitals, facilities for long-term care, or other medical facilities (including, for purposes of this section, facilities for the mentally retarded, as defined in the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963), agencies, institutions, or organizations or to development of new methods or improvement of existing methods of organization, delivery, or financing of health services, including, among others—

(i) projects for the construction of units of hospitals, facilities for long-term care, or other medical facilities which

involve experimental architectural designs or functional layout or use of new materials or new methods of construction, the efficiency of which can be tested and evaluated, or which involve the demonstration of such efficiency, particularly projects which also involve research, experiments, or demonstrations relating to delivery of health services, and

(ii) projects for development and testing of new equipment and systems, including automated equipment, and other new technology systems or concepts for the delivery of health services, and

(iii) projects for research and demonstration in new careers in health manpower and new ways of educating and utilizing health manpower, and

(iv) projects for research, experiments, and demonstrations dealing with the effective combination or coordination of public, private, or combined public-private methods or systems for the delivery of health services at regional, State, or local levels, and

(v) projects for research and demonstrations in the provision of home health services.

(2) Except where the Secretary determines that unusual circumstances make a larger percentage necessary in order to effectuate the purposes of this subsection, a grant or contract under this subsection with respect to any project for construction of a facility or for acquisition of equipment may not provide for payment of more than 50 per centum of so much of the cost of the facility or equipment as the Secretary determines is reasonably attributable to research, experimental, or demonstration purposes. The provisions of clause (5) of the third sentence of section 291e(a) of this title and such other conditions as the Secretary may determine shall apply with respect to grants or contracts under this subsection for projects for construction of a facility or for acquisition of equipment.

(3) (A) Payments of any grants or under any contracts under this subsection may be made in advance or by way of reimbursement, and in such installments and on such conditions as the Secretary deems necessary to carry out the purposes of this subsection.

(B) The amounts otherwise payable to any person under a grant or contract made under this subsection shall be reduced by—

(i) amounts equal to the fair market value of any equipment or supplies furnished to such person by the Secretary for the purpose of carrying out the project with respect to which such grant or contract is made, and

(ii) amounts equal to the pay, allowances, traveling expenses, and related personnel expenses attributable to the performance of services by an officer or employee of the Government in connection with such project, if such officer or employee was assigned or detailed by the Secretary to perform such services,

but only if such person requested the Secretary to furnish such equipment or supplies, or such services, as the case may be.

Systems analysis of national health care plans; cost and coverage report on existing legislative proposals

(b) (1) (A) The Secretary shall develop, through utilization of the systems analysis method, plans for health care systems designed adequately to meet the health needs of the American people. For purposes of the preceding sentence, the systems analysis method means the analytical method by which various means of obtaining a desired result or goal is associated with the costs and benefits involved.

(B) The Secretary shall complete the development of the plans referred to in subparagraph (A), within such period as may be necessary to enable him to submit to the Congress not later than September 30, 1971, a report thereon which shall describe each plan so developed in terms of—

(i) the number of people who would be covered under the plan;

(ii) the kind and type of health care which would be covered under the plan;

(iii) the cost involved in carrying out the plan and how such costs would be financed;

(iv) the number of additional physicians and other health care personnel and the number and type of health care facilities needed to enable the plan to become fully effective;

(v) the new and improved methods, if any, of delivery of health care services which would be developed in order to effectuate the plan;

(vi) the accessibility of the benefits of such plan to various socioeconomic classes of persons;

(vii) the relative effectiveness and efficiency of such plan as compared to existing means of financing and delivering health care; and

(viii) the legislative, administrative, and other actions which would be necessary to implement the plan.

(C) In order to assure that the advice and service of experts in the various fields concerned will be obtained in the plans

authorized by this paragraph and that the purposes of this paragraph will fully be carried out—

(i) the Secretary shall utilize, whenever appropriate, personnel from the various agencies, bureaus, and other departmental subdivisions of the Department of Health, Education, and Welfare;

(ii) the Secretary is authorized, with the consent of the head of the department or agency involved, to utilize (on a reimbursable basis) the personnel and other resources of other departments and agencies of the Federal Government; and

(iii) the Secretary is authorized to consult with appropriate State or local public agencies, private organizations, and individuals.

(2) (A) The Secretary shall, in accordance with this paragraph, conduct a study of each legislative proposal which is introduced in the Senate or the House of Representatives during the Ninety-first Congress, and which undertakes to establish a national health insurance plan or similar plan designed to meet the needs of health insurance or for health services of all or the overwhelming majority of the people of the United States.

(B) In conducting such study with respect to each such legislative proposal, the Secretary shall evaluate and analyze such proposal with a view to determining—

(i) The costs of carrying out the proposal; and

(ii) the adequacy of the proposal in terms of (I) the portion of the population covered by the proposal, (II) the type health care provided, paid for, or insured against under the proposal, (III) whether, and if so, to what extent, the proposal provides for the development of new and improved methods for the delivery of health care and services.

(C) Not later than March 31, 1971, the Secretary shall submit to the Congress a report on each legislative proposal which he has been directed to study under this paragraph, together with an analysis and evaluation of such proposal.

Authorization of appropriations

(c) (1) There are authorized to be appropriated for payment of grants or under contracts under subsection (a) of this section, and for purposes of carrying out the provisions of subsection (b) of this section, $71,000,000 for the fiscal year ending June 30, 1971 (of which not less than $2,000,000 shall be available only for purposes of carrying out the provisions of subsection (b))

of this section, $82,000,000 for the fiscal year ending June 30, 1972, and $94,000,000 for the fiscal year ending June 30, 1973.

(2) In addition to the funds authorized to be appropriated under paragraph (1) to carry out the provisions of subsection (b) of this section there are hereby authorized to be appropriated to carry out such provisions for each fiscal year such sums as may be necessary.

July 1, 1944, c. 373, Title III, § 304, as added July 28, 1955, c. 417, § 3, 69 Stat. 382, and amended Aug. 2, 1956, c. 871, Title V, § 502, 70 Stat. 930; Dec. 5, 1967, Pub.L. 90–174, § 3(a), 81 Stat. 534; and amended June 30, 1970, Pub.L. 91–296, Title IV, § 401(b) (1) (A), 84 Stat. 352; Oct. 30, 1970, Pub.L. 91–515, Title II, §§ 201–203, 84 Stat, 1301, 1303.

§ 242c. National health surveys and studies—Determination of extent of illness and disability and related information; development and test of methods for obtaining current data; use and publication of information

(a) The Surgeon General is authorized (1) to make, by sampling or other appropriate means, surveys and special studies of the population of the United States to determine the extent of illness and disability and related information such as: (A) the number, age, sex, ability to work or engage in other activities, and occupation or activities of persons afflicted with chronic or other disease or injury or handicapping condition; (B) the type of disease or injury or handicapping condition of each person so afflicted; (C) the length of time that each such person has been prevented from carrying on his occupation or activities; (D) the amounts and types of services received for or because of such conditions; (E) the economic and other impacts of such conditions; (F) health care resources; (G) environmental and social health hazards; and (H) family formation, growth, and dissolution; and (2) in connection therewith, to develop and test new or improved methods for obtaining current data on illness and disability and related information. No information obtained in accordance with this paragraph may be used for any purpose other than the statistical purposes for which it was supplied except pursuant to regulations of the Secretary; nor may any such information be published if the particular establishment or person supplying it is identifiable except with the consent of such establishment or person.

Development of uniform system of health information and statistics

(b) The Secretary is authorized, directly or by contract, to undertake research, development, demonstration, and evaluation,

relating to the design and implementation of a cooperative system for producing comparable and uniform health information and statistics at the Federal, State, and local levels.

Publication of results

(c) The Surgeon General is authorized, at appropriate intervals, to make available, through publications and otherwise, to any interested governmental or other public or private agencies, organizations, or groups, or to the public, the results of surveys or studies made pursuant to subsection (a) of this section.

Authorization of appropriations

(d) There are authorized to be appropriated to carry out this section $15,000,000 for the fiscal year ending June 30, 1971, $20,000,000 for the fiscal year ending June 30, 1972, and $25,000,000 for the fiscal year ending June 30, 1973.

Cooperation with other Governmental or State agencies

(e) To assist in carrying out the provisions of this section the Surgeon General is authorized and directed to cooperate and consult with the Departments of Commerce and Labor and any other interested Federal Departments or agencies and with State health departments. For such purpose he shall utilize insofar as possible the services or facilities of any agency of the Federal Government and, without regard to section 5 of Title 41, of any appropriate State or other public agency, and may, without regard to section 5 of Title 41, utilize the services or facilities of any private agency, organization, group, or individual, in accordance with written agreements between the head of such agency, organization, or group, or such individual, and the Secretary of Health, Education, and Welfare. Payment, if any, for such services or facilities shall be made in such amounts as may be provided in such agreement.

July 1, 1944, c. 373, Title III, § 305, as added July 3, 1956, c. 510, § 3, 70 Stat. 490; and amended Oct. 30, 1970, Pub.L. 91–515, Title II, § 210, 84 Stat. 1303.

§ 242d. Graduate or specialized training for physicians, engineers, nurses, and other professional personnel—Appropriations

(a) There are authorized to be appropriated for the fiscal year ending June 30, 1957, and for each of the next twelve fiscal years, such sums as the Congress may determine, but not to exceed $4,500,000 for the fiscal year ending June 30, 1965, $7,000,000 for the fiscal year ending June 30, 1966, $8,000,000 for the fiscal year ending June 30, 1967, $10,000,000 each for the fiscal year ending June 30, 1968, and the two succeeding fiscal years,

$14,000,000 for the fiscal year ending June 30, 1971, $16,000,000 for the fiscal year ending June 30, 1972, and $18,000,000 for the fiscal year ending June 30, 1973, to cover the cost of traineeships for graduate or specialized training in public health for physicians, engineers, nurses, sanitarians, and other professional health personnel.

Awards of traineeships to individuals or institutions

(b) Traineeships under this section may be awarded by the Surgeon General either (1) directly to individuals whose applications for admission have been accepted by the public or other nonprofit institutions providing the training, or (2) through grants to such institutions.

Payments; time; conditions; limitations

(c) Payments under this section may be made in advance or by way of reimbursement, and at such intervals and on such conditions, as the Surgeon General finds necessary. Such payments to institutions may be used only for traineeships, and payments under this section with respect to any traineeship shall be limited to such amounts as the Surgeon General finds necessary to cover the cost of tuition and fees, and a stipend and allowances (including travel and subsistence expenses) for the trainee.

Advisory committee; composition and functions

(d) The Surgeon General shall appoint an expert advisory committee, composed of persons representative of the principal health specialties in the fields of public health administration and training, to advise him in connection with the administration of this section and section 242g of this title, including the development of program standards and policies and including, in the case of section 242g of this title, certification to the Surgeon General of projects which it has reviewed and approved.

Conference; representatives; appraisal of traineeships; report and recommendations

(e) The Surgeon General shall, between June 30, 1958, and December 1, 1958, call a conference broadly representative of the professional and training groups interested in and informed about training of professional public health personnel, and including members of the advisory committee appointed pursuant to subsection (d) of this section, to assist him in appraising the effectiveness of the traineeships under this section in meeting the needs for trained public health personnel; in considering modifications in this section, if any, which may be desirable to increase its effectiveness; and in considering the most effective

distribution of responsibilities between Federal and State governments with respect to the administration and support of public health training. The Surgeon General shall submit to the Congress, on or before January 1, 1959, a report of such conference, including any recommendations by it relating to the limitation, extension, or modification of this section. The Surgeon General shall, between June 30, 1963, and December 1, 1963, call a similar conference, and shall submit to the Congress, on or before January 1, 1964, a report of such conference, including any recommendations by it relating to the limitation, extension, or modification of this section. The Surgeon General shall, between June 30, 1967, and December 1, 1967, call a similar conference, and shall submit to the Congress, on or before January 1, 1968, a report of such conference, including any recommendations by it relating to the limitation, extension, or modification of this section.

Supervision of personnel or curriculum

(f) Except as otherwise provided in this section, nothing contained in this section shall be construed as authorizing any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over the personnel or curriculum of any training institution.

July 1, 1944, c. 373, Title III, § 306, as added Aug. 2, 1956, c. 871, Title I, § 101, 70 Stat. 923, and amended July 23, 1959, Pub.L. 86–105, § 1, 73 Stat. 239; Sept. 8, 1960, Pub.L. 86–720, § 1(b), 74 Stat. 820; Aug. 27, 1964, Pub.L. 88–497, § 2, 78 Stat. 613; Aug. 16, 1968, Pub.L. 90–490, Title III, § 302(b), 82 Stat. 789; and amended Mar. 12, 1970, Pub.L. 91–208, § 3, 84 Stat. 52; Oct. 30, 1970, Pub.L. 91–515, Title VI, § 601(b) (2), 84 Stat. 1311.

§242f. International cooperation—Use of health research and research training resources

(a) To carry out the purposes of clause (1) of section 2101 of Title 22, the Surgeon General may, in the exercise of his authority under this chapter and other provisions of law to conduct and support health research and research training, make such use of health research and research training resources in participating foreign countries as he may deem necessary and desirable.

Fellowships; equipment; meetings and conferences; interchange of scientists and experts; consultants; compensation and travel expenses

(b) In carrying out his responsibilities under this section the Surgeon General may—

(1) establish and maintain fellowships in the United States and in participating foreign countries;

(2) make grants to public institutions or agencies and to nonprofit private institutions or agencies in the United States and in participating foreign countries for the purpose of establishing and maintaining fellowships;

(3) make grants or loans of equipment, medical, biological, physical, or chemical substances or other materials, for use by public institutions or agencies, or nonprofit private institutions or agencies, or by individuals, in participating foreign countries;

(4) participate and otherwise cooperate in any international health research or research training meetings, conferences, or other activities;

(5) facilitate the interchange between the United States and participating foreign countries, and among participating foreign countries, of research scientists and experts who are engaged in experiments and programs of research or research training, and in carrying out such purpose may pay per diem compensation, subsistence, and travel for such scientists and experts when away from their places of residence at rates not to exceed those provided in section 73b—2 of Title 5 for persons in the Government service employed intermittently; and

(6) procure, in accordance with the provisions of section 55a of Title 5, the temporary or intermittent services of experts or consultants; individuals so employed shall receive compensation at a rate to be fixed by the Secretary, but not in excess of $50 per diem, including travel time, and while away from their homes or regular places of business may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 73b—2 of Title 5 for persons in the Government service employed intermittently.

Building construction prohibition

(c) The Surgeon General may not, in the exercise of his authority under this section, assist in the construction of buildings for research or research training in any foreign country.

Definitions

(d) For the purposes of this section—

(1) The term "health research" shall include, but not be limited to, research, investigations, and studies relating to causes and methods of prevention of accidents, including but not limited to highway and aviation accidents.

(2) The term "participating foreign countries" means those foreign countries which cooperate with the United States in carrying out the purposes of this section.

July 1, 1944, c. 373, Title III, § 308, as added July 12, 1960, Pub.L. 86–610, § 3, 74 Stat. 364.

§ 242i. Administration of grants in multigrant projects; promulgation or regulations

For the purpose of facilitating the administration of, and expediting the carrying out of the purposes of, the programs established by subchapter VII of this chapter, and sections 242b, 246(a), 246(b), 246(c), 246(d), and 246(e) of this title in situations in which grants are sought or made under two or more of such programs with respect to a single project, the Secretary is authorized to promulgate regulations—

(1) under which the administrative functions under such programs with respect to such project will be performed by a single administrative unit which is the administrative unit charged with the administration of any of such programs or is the administrative unit charged with the supervision of two or more of such programs;

(2) designed to reduce the number of applications, reports, and other materials required under such programs to be submitted with respect to such project, and otherwise to simplify, consolidate, and make uniform (to the extent feasible), the data and information required to be contained in such applications, reports, and other materials; and

(3) under which inconsistent or duplicative requirements imposed by such programs will be revised and made uniform with respect to such project;

except that nothing in this section shall be construed to authorize the Secretary to waive or suspend, with respect to any such project, any requirement with respect to any of such programs if such requirement is imposed by law or by any regulation required by law.

July 1, 1944, c. 373, Title III, § 310A, as added Oct. 30, 1970, Pub.L. 91–515, Title II, § 270, 84 Stat. 1306.

§ 242j. Annual report by Secretary on activities related to health facilities and services and expenditure of funds

On or before January 1 of each year, the Secretary shall transmit to the Congress a report of the activities carried on under the provisions of subchapter VII of this chapter and sections 242b, 242c, 246(a), 246(b), 246(c), 246(d), and 246(e) of this title together with (1) an evaluation of the effectiveness of such

activities in improving the efficiency and effectiveness of the research, planning, and delivery of health services in carrying out the purposes for which such provisions were enacted, (2) a statement of the relationship between Federal financing and financing from other sources of the activities undertaken pursuant to such provisions (including the possibilities for more efficient support of such activities through use of alternate sources of financing after an initial period of support under such provisions), and (3) such recommendations with respect to such provisions as he deems appropriate.

July 1, 1944, c. 373, Title III, § 310B, as added Oct. 30, 1970, Pub.L. 91–515, Title II, § 280, 84 Stat. 1307.

Part B.—Federal-State Cooperation

§ 243. General grant of authority for cooperation—Enforcement of quarantine regulations; prevention of communicable diseases

(a) The Secretary is authorized to accept from State and local authorities any assistance in the enforcement of quarantine regulations made pursuant to this chapter which such authorities may be able and willing to provide. The Secretary shall also assist States and their political subdivisions in the prevention and suppression of communicable diseases, shall cooperate with and aid State and local authorities in the enforcement of their quarantine and other health regulations and in carrying out the purposes specified in section 246 of this title, and shall advise the several States on matters relating to the preservation and improvement of the public health.

Comprehensive and continuing planning; training of personnel for State and local health work

(b) The Secretary shall encourage cooperative activities between the States with respect to comprehensive and continuing planning as to their current and future health needs, the establishment and maintenance of adequate public health services, and otherwise carrying out the purposes of section 246 of this title. The Secretary is also authorized to train personnel for State and local health work.

Problems resulting from disasters; emergencies; reimbursement of United States

(c) The Secretary may enter into agreements providing for cooperative planning between Public Health Service medical facilities and community health facilities to cope with health problems resulting from disasters, and for participation by Public Health Service medical facilities in carrying out such planning. He may also, at the request of the appropriate State or local authority,

extend temporary (not in excess of forty-five days) assistance to States or localities in meeting health emergencies of such a nature as to warrant Federal assistance. The Secretary may require such reimbursement of the United States for aid (other than planning) under the preceding sentences of this subsection as he may determine to be reasonable under the circumstances. Any reimbursement so paid shall be credited to the applicable appropriation of the Public Health Service for the year in which such reimbursement is received.

July 1, 1944, c. 373, Title III, § 311, 58 Stat. 693; Nov. 3, 1966, Pub.L. 89–749, § 5, 80 Stat. 1190; Dec. 5, 1967, Pub.L. 90–174, § 4, 81 Stat. 536; and amended Oct. 30, 1970, Pub.L. 91–515, Title II, § 282, 84 Stat. 1308.

§ 244. Health conferences

A conference of the health authorities of the several States shall be called annually by the Secretary. Whenever in his opinion the interests of the public health would be promoted by a conference, the Secretary may invite as many of such health authorities and officials of other State or local public or private agencies, institutions, or organizations to confer as he deems necessary or proper. Upon the application of health authorities of five or more States it shall be the duty of the Secretary to call a conference of all State and Territorial health authorities joining in the request. Each State represented at any conference shall be entitled to a single vote. Whenever at any such conference matters relating to mental health are to be discussed, the mental health authorities of the respective States shall be invited to attend.

July 1, 1944, c. 373, Title III, § 312, 58 Stat. 693; July 3, 1946, c. 538, § 8, 60 Stat. 424; Dec. 5, 1967, Pub.L. 90–174, § 12(b), 81 Stat. 541; and amended Oct. 30, 1970, Pub.L. 91–515, Title II, § 282, 84 Stat. 1308.

§ 244a. Birth and death statistics; annual collection; compensation for transcription

There shall be a collection of the statistics of the births and deaths in registration areas annually, the data for which shall be obtained only from and restricted to such registration records of such States and municipalities as in the discretion of the Secretary of Health, Education, and Welfare possess records affording satisfactory data in necessary detail, the compensation for the transcription of which shall not exceed 4 cents for each birth or death reported; or a minimum compensation of $25 may be allowed in the discretion of the Secretary of Health, Education, and Welfare,

in States or cities registering less than five hundred deaths or five hundred births during the preceding year.
July 1, 1944, c. 373, Title III, § 312a, as added Aug. 31, 1954, c. 1158, § 2, 68 Stat. 1025.

§ 245. Collection of vital statistics

To secure uniformity in the registration of mortality, morbidity, and vital statistics the Secretary shall prepare and distribute suitable and necessary forms for the collection and compilation of such statistics which shall be published as a part of the health reports published by the Secretary.
July 1, 1944, c. 373, Title III, § 313, 58 Stat. 693; and amended Oct. 30, 1970, Pub.L. 91–515, Title II, § 282, 84 Stat. 1308.

§ 246. Grants and services to States—Comprehensive health planning and services

(a) (1) In order to assist the States in comprehensive and continuing planning for their current and future health needs, the Secretary is authorized during the period beginning July 1, 1966, and ending June 30, 1973, to make grants to States which have submitted, and had approved by the Secretary, State plans for comprehensive State health planning. For the purposes of carrying out this subsection, there are hereby authorized to be appropriated $2,500,000 for the fiscal year ending June 30, 1967, $7,000,000 for the fiscal year ending June 30, 1968, $10,000,000 for the fiscal year ending June 30, 1969, $15,000,000 for the fiscal year ending June 30, 1970, $15,000,000 for the fiscal year ending June 30, 1971, $17,000,000 for the fiscal year ending June 30, 1972, and $20,000,000 for the fiscal year ending June 30, 1973.

(2) In order to be approved for purposes of this subsection, a State plan for comprehensive State health planning must—

(A) designate, or provide for the establishment of, a single State agency, which may be an interdepartmental agency, as the sole agency for administering or supervising the administration of the State's health planning functions under the plan;

(B) provide for the establishment of a State health planning council, which shall include representatives of Federal, State, and local agencies (including as an ex-officio member, if there is located in such State one or more hospitals or other health care facilities of the Veterans' Administration, the individual whom the Administrator of Veterans' Affairs shall have designated to serve on such council as the representative of the hospitals or other health care facilities of such Administration which are located in such State) and nongovern-

mental organizations and groups concerned with health, (including representation of the regional medical program or programs included in whole or in part within the State) and of consumers of health services, to advise such State agency in carrying out its functions under the plan, and a majority of the membership of such council shall consist of representatives of consumers of health services;

(C) set forth policies and procedures for the expenditure of funds under the plan, which, in the judgment of the Secretary are designed to provide for comprehensive State planning for health services (both public and private) and including home health care, including the facilities and persons required for the provision of such services, to meet the health needs of the people of the State and including environmental considerations as they relate to public health;

(D) provide for encouraging cooperative efforts among governmental or nongovernmental agencies, organizations and groups concerned with health services, facilities, or manpower, and for cooperative efforts between such agencies, organizations, and groups and similar agencies, organizations, and groups in the fields of education, welfare, and rehabilitation;

(E) contain or be supported by assurances satisfactory to the Secretary that the funds paid under this subsection will be used to supplement and, to the extent practicable, to increase the level of funds that would otherwise be made available by the State for the purpose of comprehensive health planning and not to supplant such non-Federal funds;

(F) provide such methods of administration (including methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary to be necessary for the proper and efficient operation of the plan;

(G) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time reasonably require, and will keep such records and afford such access thereto as the Secretary finds necessary to assure the correctness and verification of such reports;

(H) provide that the State agency will from time to time, but not less often than annually, review its State plan ap-

proved under this subsection and submit to the Secretary appropriate modifications thereof;

(I) effective July 1, 1968, (i) provide for assisting each health care facility in the State to develop a program for capital expenditures for replacement, modernization, and expansion which is consistent with an overall State plan developed in accordance with criteria established by the Secretary after consultation with the State which will meet the needs of the State for health care facilities, equipment, and services without duplication and otherwise in the most efficient and economical manner, and (ii) provide that the State agency furnishing such assistance will periodically review the program (developed pursuant to clause (i)) of each health care facility in the State and recommend appropriate modification thereof;

(J) provide for such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of and accounting for funds paid to the State under this subsection; and

(K) contain such additional information and assurances as the Secretary may find necessary to carry out the purposes of this subsection.

(3) (A) From the sums appropriated for such purpose for each fiscal year, the several States shall be entitled to allotments determined, in accordance with regulations, on the basis of the population and the per capita capital income of the respective States; except that no such allotment to any State for any fiscal year shall be less than 1 per centum of the sum appropriated for such fiscal year pursuant to paragraph (1). Any such allotment to a State for a fiscal year shall remain available for obligation by the State, in accordance with the provisions of this subsection and the State's plan approved thereunder, until the close of the succeeding fiscal year.

(B) The amount of any allotment to a State under subparagraph (A) for any fiscal year which the Secretary determines will not be required by the State, during the period for which it is available, for the purposes for which allotted shall be available for reallotment by the Secretary from time to time, on such date or dates as he may fix, to other States with respect to which such a determination has not been made, in proportion to the original allotments to such States under subparagraph (A) for such fiscal year, but with such proportionate amount for any of such other States being reduced to the extent it exceeds the sum the Secretary estimates such State needs and will be able to use during such period; and

the total of such reductions shall be similarly reallotted among the States whose proportionate amounts were not so reduced. Any amount so reallotted to a State from funds appropriated pursuant to this subsection for a fiscal year shall be deemed part of its allotment under subparagraph (A) for such fiscal year.

(4) From each State's allotment for a fiscal year under this subsection, the State shall from time to time be paid the Federal share of the expenditures incurred during that year or the succeeding year pursuant to its State plan approved under this subsection. Such payments shall be made on the basis of estimates by the Secretary of the sums the State will need in order to perform the planning under its approved State plan under this subsection, but with such adjustments as may be necessary to take account of previously made underpayments or overpayments. The "Federal share" for any State for purposes of this subsection shall be all, or such part as the Secretary may determine, of the cost of such planning, except that in the case of the allotments for the fiscal year ending June 30, 1970, it shall not exceed 75 per centum of such cost.

Project grants for areawide health planning; authorization of appropriations; prerequisites for grants; application; contents

(b) (1) (A) The Secretary is authorized, during the period beginning July 1, 1966, and ending June 30, 1973, to make, with the approval of the State agency administering or supervising the administration of the State plan approved under subsection (a) of this section, project grants to any other public or nonprofit private agency or organization (but with appropriate representation of the interests of local government where the recipient of the grant is not a local government or combination thereof or an agency of such government or combination) to cover not to exceed 75 per centum of the cost of projects for developing (and from time to time revising) comprehensive regional, metropolitan area, or other local area plans for coordination of existing and planned health services, including the facilities and persons required for provision of such services; and including the provision of such services through home health care except that in the case of project grants made in any State prior to July 1, 1968, approval of such State agency shall be required only if such State has such a State plan in effect at the time of such grants. No grant may be made under this subsection after June 30, 1970, to any agency or organization to de -elop or revise health plans for an area unless the Secretary determines that such agency or organization provides means for appropriate representation of the interests of the hospitals, other

health care facilities, and practicing physicians serving such area, and the general public. For the purposes of carrying out this subsection, there are hereby authorized to be appropriated $5,000,000 for the fiscal year ending June 30, 1967, $7,500,000 for the fiscal year ending June 30, 1968, $10,000,000 for the fiscal year ending June 30, 1969, $15,000,000 for the fiscal year ending June 30, 1970, $20,000,000 for the fiscal year ending June 30, 1971, $30,000,000 for the fiscal year ending June 30, 1972, and $40,000,000 for the fiscal year ending June 30, 1973.

(B) Project grants may be made by the Secretary under subparagraph (A) to the State agency administering or supervising the administration of the State plan approved under subsection (a) of this section with respect to a particular region or area, but only if (i) no application for such a grant with respect to such region or area has been filed by any other agency or organization qualified to receive such a grant, and (ii) such State agency certifies, and the Secretary finds, that ample opportunity has been afforded to qualified agencies and organizations to file application for such a grant with respect to such region or area and that it is improbable that, in the foreseeable future, any agency or organization which is qualified for such a grant will file application therefor.

(2) (A) In order to be approved under this subsection, an application for a grant under this subsection must contain or be supported by reasonable assurances that there has been or will be established, in or for the area with respect to which such grant is sought, an areawide health planning council. The membership of such council shall include representatives of public, voluntary, and nonprofit private agencies, institutions, and organizations concerned with health (including representatives of the interests of local government, of the regional medical program for such area, and of consumers of health services). A majority of the members of such council shall consist of representatives of consumers of health services.

(B) In addition, an application for a grant under this subsection must contain or be supported by reasonable assurances that the areawide health planning agency has made provision for assisting health care facilities in its area to develop a program for capital expenditures for replacement, modernization, and expansion which is consistent with an overall State plan which will meet the needs of the State and the area for health care facilities, equipment, and services without duplication and otherwise in the most efficient and economical manner.

Project grants for training, studies, and demonstration; authorization of appropriations

(c) The Secretary is also authorized, during the period beginning July 1, 1966, and ending June 30, 1973, to make grants to any public or nonprofit private agency, institution, or other organization to cover all or any part of the cost of projects for training, studies, or demonstrations looking toward the development of improved or more effective comprehensive health planning throughout the Nation. For the purposes of carrying out this subsection, there are hereby authorized to be appropriated $1,500,000 for the fiscal year ending June 30, 1967, $2,500,000 for the fiscal year ending June 30, 1968, $5,000,000 for the fiscal year ending June 30, 1969, $7,500,000 for the fiscal year ending June 30, 1970, $8,000,000 for the fiscal year ending June 30, 1971, $10,000,000 for the fiscal year ending June 30, 1972, and $12,000,000 for the fiscal year ending June 30, 1973.

Grants for comprehensive public health services; authorization of appropriations; State plans; allotments; payments to States; Federal share; allocation of funds

(d) (1) There are authorized to be appropriated $70,000,000 for the fiscal year ending June 30, 1968, $90,000,000 for the fiscal year ending June 30, 1969, $100,000,000 for the fiscal year ending June 30, 1970, $130,000,000 for the fiscal year ending June 30, 1971, $145,000,000 for the fiscal year ending June 30, 1972, and $165,000,000 for the fiscal year ending June 30, 1973, to enable the Secretary to make grants to State health or mental health authorities to assist the States in establishing and maintaining adequate public health services, including the training of personnel for State and local health work. The sums so appropriated shall be used for making payments to States which have submitted, and had approved by the Secretary, State plans for provision of public health services, except that, for any fiscal year ending after June 30, 1968, such portion of such sums as the Secretary may determine, but not exceeding 1 per centum thereof, shall be available to the Secretary for evaluation (directly or by grants or contracts) of the program authorized by this subsection and the amount available for allotments hereunder shall be reduced accordingly.

(2) In order to be approved under this subsection, a State plan for provision of public health services must—

(A) provide for administration or supervision of administration by the State health authority or, with respect to mental health services, the State mental health authority;

(B) set forth the policies and procedures to be followed in the expenditure of the funds paid under this subsection;

(C) contain or be supported by assurances satisfactory to the Secretary that (i) the funds paid to the State under this subsection will be used to make a significant contribution toward providing and strengthening public health services in the various political subdivisions in order to improve the health of the people; (ii) such funds will be made available to other public or nonprofit private agencies, institutions, and organizations, in accordance with criteria which the Secretary determines are designed to secure maximum participation of local, regional, or metropolitan agencies and groups in the provision of such services; (iii) such funds will be used to supplement and, to the extent practical, to increase the level of funds that would otherwise be made available for the purposes for which the Federal funds are provided and not to supplant such non-Federal funds; and (iv) the plan is compatible with the total health program of the State;

(D) provide for the furnishing of public health services under the State plan in accordance with such plans as have been developed pursuant to subsection (a) of this section;

(E) provide that public health services furnished under the plan will be in accordance with standards prescribed by regulations, including standards as to the scope and quality of such services;

(F) provide such methods of administration (including methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary to be necessary for the proper and efficient operation of the plan;

(G) provide that the State health authority or, with respect to mental health services, the State mental health authority, will from time to time, but not less often than annually, review and evaluate its State plan approved under this subsection and submit to the Secretary appropriate modifications thereof;

(H) provide that the State health authority or, with respect to mental health services, the State mental health authority, will make such reports, in such form and containing such information, as the Secretary may from time to time reasonably require, and will keep such records and afford

such access thereto as the Secretary finds necessary to assure the correctness and verification of such reports;

(I) provide for such fiscal control and fund accounting procedures as may be necessary to assure the proper disbursement of and accounting for funds paid to the State under this subsection;

(J) contain such additional information and assurances as the Secretary may find necessary to carry out the purposes of this subsection;

(K) provide for services for the prevention and treatment of drug abuse and drug dependence, commensurate with the extent of the problem; and

(L) provide for services for the prevention and treatment of alcohol abuse and alcoholism, commensurate with the extent of the problem.

(3) From the sums appropriated to carry out the provisions of this subsection the several States shall be entitled for each fiscal year to allotments determined, in accordance with regulations, on the basis of the population and financial need of the respective States, except that no State's allotment shall be less for any year than the total amounts allotted to such State under formula grants for cancer control, plus other allotments under this section, for the fiscal year ending June 30, 1967.

(4) (A) From each State's allotment under this subsection for a fiscal year, the State shall be paid the Federal share of the expenditures incurred during such year under its State plan approved under this subsection. Such payments shall be made from time to time in advance on the basis of estimates by the Secretary of the sums the State will expend on the basis of estimates by the Secretary of the sums the State will expend under the State plan, except that such adjustments as may be necessary shall be made on account of previously made underpayments or overpayments under this subsection.

(B) For the purpose of determining the Federal share for any State, expenditures by nonprofit private agencies, organizations, and groups shall, subject to such limitations and conditions as may be prescribed by regulations, be regarded as expenditures by such State or a political subdivision thereof.

(5) The "Federal share" for any State for purposes of this subsection shall be 100 per centum less that percentage which bears the same ratio to 50 per centum as the per capita income of such State bears to the per capita income of the United States; except that in no case shall such percentage be less than 33⅓ per centum or more than 66⅔ per centum, and except that the

Federal share for the Commonwealth of Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Virgin Islands shall be 66⅔ per centum.

(6) The Federal shares shall be determined by the Secretary between July 1 and September 1 of each year, on the basis of the average per capita incomes of each of the States and of the United States for the most recent year for which satisfactory data are available from the Department of Commerce, and such determination shall be conclusive for the fiscal year beginning on next July 1. The populations of the several States shall be determined on the basis of the latest figures for the population of the several States available from the Department of Commerce.

(7) At least 15 per centum of a State's allotment under this subsection shall be available only to the State mental health authority for the provision under the State plan of mental health services. Effective with respect to allotments under this subsection for fiscal years ending after June 30, 1968, at least 70 per centum of such amount reserved for mental health services and at least 70 per centum of the remainder of a State's allotment under this subsection shall be available only for the provision under the State plan of services in communities of the State.

Project grants for health services and related training; authorization of appropriations; review of application by appropriate areawide health planning agency

(e) There are authorized to be appropriated $90,000,000 for the fiscal year ending June 30, 1968, $95,000,000 for the fiscal year ending June 30, 1969, $80,000,000 for the fiscal year ending June 30, 1970, $109,500,000 for the fiscal year ending June 30, 1971, $135,000,000 for the fiscal year ending June 30, 1972, and $157,000,000 for the fiscal year ending June 30, 1973, for grants to any public or nonprofit private agency, institution, or organization to cover part of the cost (including equity requirements and amortization of loans on facilities acquired from the Office of Economic Opportunity or construction in connection with any program or project transferred from the Office of Economic Opportunity) of (1) providing services (including related training) to meet health needs of limited geographic scope or of specialized regional or national significance, or (2) developing and supporting for an initial period new programs of health services (including related training). Any grant made under this subsection may be made only if the application for such grant has been referred for review and comment to the appropriate area-wide health planning agency or agencies (or, if there is no

such agency in the area, then to such other public or nonprofit private agency or organization (if any) which performs similar functions) and only if the services assisted under such grant will be provided in accordance with such plans as have been developed pursuant to subsection (a) of this section.

Repeal

Subsec. (f) of this section repealed (less applicability to commissioned officers of the Public Health Service) by Pub.L. 91–648, Title IV, §§ 403, 404, Jan. 5, 1971, 84 Stat. 1925, effective sixty days after Jan. 5, 1971.

Interchange of personnel with States

(f) (1) For the purposes of this subsection, the term "State" means a State or a political subdivision of a State, or any agency of either of the foregoing engaged in any activities related to health or designated or established pursuant to subparagraph (A) of paragraph (2) of subsection (a) of this section; the term "Secretary" means (except when used in paragraph (3) (D) the Secretary of Health, Education, and Welfare; and the term "Department" means the Department of Health, Education, and Welfare.

(2) The Secretary is authorized, through agreements or otherwise, to arrange for assignment of officers and employees of States to the Department and assignment to States of officers and employees in the Department engaged in work related to health, for work which the Secretary determines will aid the Department in more effective discharge of its responsibilities in the field of health as authorized by law, including cooperation with States and the provision of technical or other assistance. The period of assignment of any officer or employee under an arrangement shall not exceed two years.

(3) (A) Officers and employees in the Department assigned to any State pursuant to this subsection shall be considered, during such assignment, to be (i) on detail to a regular work assignment in the Department, or (ii) on leave without pay from their positions in the Department.

(B) Persons considered to be so detailed shall remain as officers or employees, as the case may be, in the Department for all purposes, except that the supervision of their duties during the period of detail may be governed by agreement between the Department and the State involved.

(C) In the case of persons so assigned and on leave without pay—

(i) if the rate of compensation (including allowances) for their employment by the State is less than the rate of compensation (including allowances) they would be receiving had they continued in their regular assignment in the Department, they may receive supplemental salary payments from the Department in the amount considered by the Secretary to be justified, but not at a rate in excess of the difference between the State rate and the Department rate; and

(ii) they may be granted annual leave and sick leave to the extent authorized by law, but only in circumstances considered by the Secretary to justify approval of such leave.

Such officers and employees on leave without pay shall, notwithstanding any other provision of law, be entitled—

(iii) to continuation of their insurance under the Federal Employees' Group Life Insurance Act of 1954, and coverage under the Federal Employees Health Benefits Act of 1959, so long as the Department continues to collect the employee's contribution from the officer or employee involved and to transmit for timely deposit into the funds created under such Acts the amount of the employee's contributions and the Government's contribution from appropriations of the Department; and

(iv) (I) in the case of commissioned officers of the Service, to have their service during their assignment treated as provided in section 215(d) of this title for such officers on leave without pay, or (II) in the case of other officers and employees in the Department, to credit the period of their assignment under the arrangement under this subsection toward periodic or longevity step increases and for retention and leave accrual purposes, and, upon payment into the civil service retirement and disability fund of the percentage of their State salary, and of their supplemental salary payments, if any, which would have been deducted from a like Federal salary for the period of such assignment and payment by the Secretary into such fund of the amount which would have been payable by him during the period of such assignment with respect to a like Federal salary, to treat (notwithstanding the provisions of the Independent Offices Appropriation Act, 1959, under the head "Civil Service Retirement and Disability Fund") their service during such period, as service within the meaning of the Civil Service Retirement Act;

except that no officer or employee or his beneficiary may receive any benefits under the Civil Service Retirement Act, the Federal

Employees Health Benefits Act of 1959, or the Federal Employees' Group Life Insurance Act of 1954, based on service during an assignment hereunder for which the officer or employee or (if he dies without making such election) his beneficiary elects to receive benefits, under any State retirement or insurance law or program, which the Civil Service Commission determines to be similar. The Department shall deposit currently in the funds created under the Federal Employees' Group Life Insurance Act of 1954, the Federal Employees Health Benefits Act of 1959, and the civil service retirement and disability fund, respectively, the amount of the Government's contribution under these Acts on account of service with respect to which employee contributions are collected as provided in subparagraph (iii) and the amount of the Government's contribution under the Civil Service Retirement Act on account of service with respect to which payments (of the amount which would have been deducted under that Act) referred to in subparagraph (iv) are made to such civil service retirement and disability fund.

(D) Any such officer or employee on leave without pay (other than a commissioned officer of the Service) who suffers disability or death as a result of personal injury sustained while in the performance of his duty during an assignment hereunder, shall be treated, for the purposes of the Federal Employees' Compensation Act, as though he were an employee, as defined in such Act, who had sustained such injury in the performance of duty. When such person (or his dependents, in case of death) entitled by reason of injury or death to benefits under that Act is also entitled to benefits from a State for the same injury or death, he (or his dependents in case of death) shall elect which benefits he will receive. Such election shall be made within one year after the injury or death, or such further time as the Secretary of Labor may for good cause allow, and when made shall be irrevocable unless otherwise provided by law.

(4) Assignment of any officer or employee in the Department to a State under this subsection may be made with or without reimbursement by the State for the compensation (or supplementary compensation), travel and transportation expenses (to or from the place of assignment), and allowances, or any part thereof, of such officer or employee during the period of assignment, and any such reimbursement shall be credited to the appropriation utilized for paying such compensation, travel or transportation expenses, or allowances.

(5) Appropriations to the Department shall be available, in accordance with the standardized Government travel regulations

or, with respect to commissioned officers of the Service, the joint travel regulations, for the expenses of travel of officers and employees assigned to States under an arrangement under this subsection on either a detail or leave-without-pay basis and, in accordance with applicable law, orders, and regulations, for expenses of transportation of their immediate families and expenses of transportation of their household goods and personal effects, in connection with the travel of such officers and employees to the location of their posts of assignment and their return to their official stations.

(6) Officers and employees of States who are assigned to the Department under an arrangement under this subsection may (A) be given appointments in the Department covering the periods of such assignments, or (B) be considered to be on detail to the Department. Appointments of persons so assigned may be made without regard to the civil service laws. Persons so appointed in the Department shall be paid at rates of compensation determined in accordance with the Classification Act of 1949, and shall not be considered to be officers or employees of the Department for the purposes of (A) the Civil Service Retirement Act, (B) the Federal Employees' Group Life Insurance Act of 1954, or (C) unless their appointments result in the loss of coverage in a group health benefits plan whose premium has been paid in whole or in part by a State contribution, the Federal Employees Health Benefits Act of 1959. State officers and employees who are assigned to the Department without appointment shall not be considered to be officers or employees of the Department, except as provided in subsection (7), nor shall they be paid a salary or wage by the Department during the period of their assignment. The supervision of the duties of such persons during the assignment may be governed by agreement between the Secretary and the State involved.

(7) (A) Any State officer or employee who is assigned to the Department without appointment shall nevertheless be subject to the provisions of sections 203, 205, 207, 208, and 209 of Title 18.

(B) Any State officer or employee who is given an appointment while assigned to the Department, or who is assigned to the Department without appointment, under an arrangement under this subsection, and who suffers disability or death as a result of personal injury sustained while in the performance of his duty during such assignment shall be treated, for the purpose of the Federal Employees' Compensation Act, as though he were an employee, as defined in such Act, who had sustained such injury in the performance of duty. When such person (or his dependents,

in case of death) entitled by reason of injury or death to benefits under that Act is also entitled to benefits from a State for the same injury or death, he (or his dependents, in case of death) shall elect which benefits he will receive. Such election shall be made within one year after the injury or death, or such further time as the Secretary of Labor may for good cause allow, and when made shall be irrevocable unless otherwise provided by law.

(8) The appropriations to the Department shall be available, in accordance with the standardized Government travel regulations, during the period of assignment and in the case of travel to and from their places of assignment or appointment, for the payment of expenses of travel of persons assigned to, or given appointments by, the Department under an arrangement under this subsection.

(9) All arrangements under this subsection for assignment of officers or employees in the Department to States or for assignment of officers or employees of States to the Department shall be made in accordance with regulations of the Secretary.

Consultation with State authorities; failure to comply with statute or rules and regulations; definitions

(g) (1) All regulations and amendments thereto with respect to grants to States under subsection (a) of this section shall be made after consultation with a conference of the State health planning agencies designated or established pursuant to subparagraph (A) of paragraph (2) of subsection (a) of this section. All regulations and amendments thereto with respect to grants to States under subsection (d) of this section shall be made after consultation with a conference of State health authorities and, in the case of regulations and amendments which relate to or in any way affect grants for services or other activities in the field of mental health, the State mental health authorities. Insofar as practicable, the Secretary shall obtain the agreement, prior to the issuance of such regulations or amendments, of the State authorities or agencies with whom such consultation is required.

(2) The Secretary, at the request of any recipient of a grant under this section, may reduce the payments to such recipient by the fair market value of any equipment or supplies furnished to such recipient and by the amount of the pay, allowances, traveling expenses, and any other costs in connection with the detail of an officer or employee to the recipient when such furnishing or such detail, as the case may be, is for the convenience of and at the request of such recipient and for the purpose of carrying out the State plan or the project with respect to which the grant under

this section is made. The amount by which such payments are so reduced shall be available for payment of such costs (including the costs of such equipment and supplies) by the Secretary, but shall, for purposes of determining the Federal share under subsection (a) or (d) of this section, be deemed to have been paid to the State.

(3) Whenever the Secretary, after reasonable notice and opportunity for hearing to the health authority or, where appropriate, the mental health authority of a State or a State health planning agency designated or established pursuant to subparagraph (A) of paragraph (2) of subsection (a) of this section, finds that, with respect to money paid to the State out of appropriations under subsection (a) or (d) of this section, there is a failure to comply substantially with either—

(A) the applicable provisions of this section;

(B) the State plan submitted under such subsection; or

(C) applicable regulations under this section;

the Secretary shall notify such State health authority, mental health authority, or health planning agency, as the case may be, that further payments will not be made to the State from appropriations under such subsection (or in his discretion that further payments will not be made to the State from such appropriations for activities in which there is such failure), until he is satisfied that there will no longer be such failure. Until he is so satisfied, the Secretary shall make no payment to such State from appropriations under such subsection, or shall limit payment to activities in which there is no such failure.

(4) For the purposes of this section—

(A) The term "nonprofit" as applied to any private agency, institution, or organization means one which is a corporation or association, or is owned and operated by one or more corporations or associations, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual; and

(B) The term "State" includes the Commonwealth of Puerto Rico, Guam, American Samoa, the Trust of Territory of the Pacific Islands, the Virgin Islands, and the District of Columbia and the term "United States" means the fifty States and the District of Columbia.

July 1, 1944, c. 373, Title III, § 314, 58 Stat. 693; July 3, 1946, c. 538, § 9, 60 Stat. 424; June 16, 1948, c. 481, § 5, 62 Stat. 468; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Aug. 1, 1956, c. 852, § 18, 70 Stat. 910; July 22, 1958,

Pub.L. 85–544, § 1, 72 Stat. 400; Oct. 5, 1961, Pub.L. 87–395, § 2(a)–(d), 75 Stat. 824; Sept. 25, 1962, Pub.L. 87–688, § 4(a)–(1), 76 Stat. 587; Aug. 5, 1965, Pub.L. 89–109, § 4, 79 Stat. 436; Nov. 3, 1966, Pub.L. 89–749, § 3, 80 Stat. 1181; Dec. 5, 1967, Pub.L. 90–174, §§ 2(a)–(f), 3(b) (2), 8(a), (b), 12 (d), 81 Stat. 533–535, 540, 541; June 30, 1970, Pub.L. 91–296, Title I, § 111(b), Title IV, § 401(b) (1) (C), (D), 84 Stat. 340, 352; Oct. 27, 1970, Pub.L. 91–513, Title I, § 3(b), 84 Stat. 1241; Oct. 30, 1970, Pub.L. 91–515, Title II, §§ 220, 230, 240, 250, 260(a), (b), (c) (1), 282, 84 Stat. 1304–1306, 1308; and amended Dec. 31, 1970, Pub.L. 91–616, Title III, § 331, 84 Stat. 1853.

§ 247. Publication of health educational information

From time to time the Secretary shall issue information related to public health, in the form of publications or otherwise, for the use of the public, and shall publish weekly reports of health conditions in the United States and other countries and other pertinent health information for the use of persons and institutions engaged in work related to the functions of the Service.

July 1, 1944, c. 373, Title III, § 315, 58 Stat. 695, amended Oct. 30, 1970, Pub.L. 91–515, Title II, § 282, 84 Stat. 1308.

1.3 PUBLIC CONTRACTS, ADVERTISEMENTS FOR PROPOSALS FOR PURCHASES AND CONTRACTS FOR SUPPLIES OR SERVICES FOR GOVERNMENT DEPARTMENTS; APPLICATION TO GOVERNMENT SALES AND CONTRACTS TO SELL AND TO GOVERNMENT CORPORATIONS, AS AMENDED, 41 U.S.C. § 5 (1958).

[Referred to in 42 U.S.C. § 242c(e)]

41 § 5.

Unless otherwise provided in the appropriation concerned or other law, purchases and contracts for supplies or services for the Government may be made or entered into only after advertising a sufficient time previously for proposals, except (1) when the amount involved in any one case does not exceed $2,500, (2) when the public exigencies require the immediate delivery of the articles or performance of the service, (3) when only one source of supply is available and the Government purchasing or contracting officer shall so certify, or (4) when the services are required to be performed by the contractor in person and are (A) of a technical and professional nature or (B) under Government supervision and paid for on a time basis. Except (1) as authorized by section 1638 of Appendix to Title 50, (2) when otherwise authorized by law, or (3) when the reasonable value involved in any one case does not exceed $500, sales and contracts of sale by the Government shall be governed by the requirements of this section for advertising.

In the case of wholly owned Government corporations, this section shall apply to their administrative transactions only. R.S. § 3709; Aug. 2, 1946, c. 744, § 9(a), (c), 60 Stat. 809; June 30, 1949, c. 288, Title VI, § 602(f), formerly Title V, § 502(e), 63 Stat. 400, renumbered Sept. 5, 1950, c. 849, §§ 6(a), (b), 8(c), 64 Stat. 583; Aug. 28, 1958, Pub.L. 85–800, § 7, 72 Stat. 967.

1.4 RESEARCH AND DEVELOPMENT ACT, CONTRACTS, AS AMENDED, 10 U.S.C. §§ 2353, 2354 (1956)

[Referred to in 42 U.S.C. §§ 241(h)]

§ 2353. Contracts: acquisition, construction, or furnishing of test facilities and equipment

(a) A contract of a military department for research or development, or both, may provide for the acquisition or construction by, or furnishing to, the contractor, of research, developmental, or test facilities and equipment that the Secretary of the military department concerned determines to be necessary for the performance of the contract. The facilities and equipment, and specialized housing for them, may be acquired or constructed at the expense of the United States, and may be lent or leased to the contractor with or without reimbursement, or may be sold to him at fair value. This subsection does not authorize new construction or improvements having general utility.

(b) Facilities that would not be readily removable or separable without unreasonable expense or unreasonable loss of value may not be installed or constructed under this section on property not owned by the United States, unless the contract contains—

(1) a provision for reimbursing the United States for the fair value of the facilities at the completion or termination of the contract or within a reasonable time thereafter;

(2) an option in the United States to acquire the underlying land; or

(3) an alternative provision that the Secretary concerned considers to be adequate to protect the interests of the United States in the facilities.

(c) Proceeds of sales or reimbursements under this section shall be paid into the Treasury as miscellaneous receipts, except to the extent otherwise authorized by law with respect to property acquired by the contractor. Aug. 10, 1956, c. 1041, 70A Stat. 134.

§ 2354. Contracts: indemnification provisions

(a) With the approval of the Secretary of the military department concerned, any contract of a military department for research or development, or both, may provide that the United States will indemnify the contractor against either or both of the following, but only to the extent that they arise out of the direct performance of the contract and to the extent not compensated by insurance or otherwise:

(1) Claims (including reasonable expenses of litigation or settlement) by third persons, including employees of the contractor, for death, bodily injury, or loss of or damage to

property, from a risk that the contract defines as unusually hazardous.

(2) Loss of or damage to property of the contractor from a risk that the contract defines as unusually hazardous.

(b) A contract, made under subsection (a), that provides for indemnification must also provide for—

(1) notice to the United States of any claim or suit against the contractor for the death, bodily injury, or loss of or damage to property; and

(2) control of or assistance in the defense by the United States, at its election, of that suit or claim.

(c) No payment may be made under subsection (a) unless the Secretary of the department concerned, or an officer or official of his department designated by him, certifies that the amount is just and reasonable.

(d) Upon approval by the Secretary concerned, payments under subsection (a) may be made from—

(1) funds obligated for the performance of the contract concerned;

(2) funds available for research or development, or both, and not otherwise obligated; or

(3) funds appropriated for those payments. Aug. 10, 1956, c. 1041, 70A Stat. 134.

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