

CIVIL PENALTIES ON NONPROFIT INSTITUTIONS UNDER THE ATOMIC ENERGY ACT OF 1954

JUNE 23, 2000.—Ordered to be printed

Mr. BLILEY, from the Committee on Commerce,
submitted the following

R E P O R T

[To accompany H.R. 3383]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, to whom was referred the bill (H.R. 3383) to amend the Atomic Energy Act of 1954 to remove separate treatment or exemption for nuclear safety violations by nonprofit institutions, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

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AMENDMENT

The amendments are as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. CIVIL PENALTIES.

(a) REPEAL OF AUTOMATIC REMISSION.—Section 234A b. (2) of the Atomic Energy Act of 1954 (42 U.S.C. 2282a(b)(2)) is amended by striking the last sentence.

(b) LIMITATION FOR NONPROFIT INSTITUTIONS.—Subsection d. of section 234A of the Atomic Energy Act of 1954 (42 U.S.C. 2282a(d)) is amended to read as follows:

“d. Notwithstanding subsection a., a contractor, subcontractor, or supplier described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code shall not be subject to a civil penalty for a violation under subsection a. in excess of the amount of any discretionary fee paid to such contractor, subcontractor, or supplier under the contract under which such violation occurs.”.

(c) EFFECTIVE DATE.—The amendments made by this Act shall not apply to any violation of the Atomic Energy Act of 1954 occurring under a contract entered into before the date of the enactment of this Act.

Amend the title so as to read:

A bill to amend the Atomic Energy Act of 1954 to remove an exemption from civil penalties for nuclear safety violations by non-profit institutions.

PURPOSE AND SUMMARY

The purpose of H.R. 3383 is to amend section 234A of the Atomic Energy Act of 1954 (P.L. 83–703, 42 U.S.C. §2011 et seq.), as amended, to remove the exemption of nonprofit Department of Energy (DOE) contractors from civil penalties for violating DOE rules, regulations, and orders relating to nuclear safety.

BACKGROUND AND NEED FOR LEGISLATION

The Price-Anderson Act (P.L. 85–256) was enacted in 1957 as an amendment to the Atomic Energy Act of 1954 (P.L. 83–703, 42 U.S.C. §2011 et seq.). The original Price-Anderson Act provided a limited indemnification of DOE contractors engaged in activities that involve the risk of a nuclear accident. The Price-Anderson Amendments Act of 1988 (P.L. 100–408) increased the amount of indemnification, made the inclusion of indemnification provisions mandatory on all DOE contracts, and created a system of civil penalties (i.e., fines) for DOE contractors that violate any DOE rule, regulation, or order relating to nuclear safety.

The provisions relating to civil penalties are contained in section 234A of the Atomic Energy Act of 1954, as amended. Such civil penalties provide a valuable and important enforcement tool for the DOE to ensure that its contractors pay proper attention to nuclear safety.

All for-profit DOE contractors are currently subject to the civil penalties as provided for in section 234A. However, section 234A(d) specifically exempts certain named nonprofit DOE contractors from civil penalties for nuclear safety violations. The named list of exempt nonprofit contractors includes the following: the University of Chicago (for activities associated with the Argonne National Laboratory); the University of California (for activities associated with Los Alamos, Lawrence Livermore, and Lawrence Berkeley National Laboratories); American Telephone and Telegraph Company (for

activities associated with Sandia National Laboratory); the Universities Research Association, Inc. (for activities associated with the FERMI National Laboratory); Princeton University (for activities associated with the Princeton Plasma Physics Laboratory); Associated Universities, Inc. (for activities associated with the Brookhaven National Laboratory); and Battelle Memorial Institute (for activities associated with the Pacific Northwest Laboratory).

In addition, section 234A(b)(2) of the Atomic Energy Act, as amended, allows the Secretary of Energy to provide for the automatic remission of any such civil penalties for all non-profit educational institutions. This administrative exemption for nonprofit educational institutions is implemented by DOE in 10 C.F.R. Part 820.20(d).

The hearing held by the Subcommittee on Oversight and Investigations on June 29, 1999, on Worker Safety at DOE Nuclear Facilities, provided testimony by the General Accounting Office witness on the need to eliminate both the statutory and administrative exemption of nonprofit contractors so as to hold all DOE contractors "equally accountable for violating nuclear safety rules." This hearing provided several examples of instances where poor safety performance by nonprofit contractors was tolerated without reduction in the contractor's performance fee. At this same hearing, the witness for the University of California, which operates several DOE laboratories, testified that elimination of the exemption for nonprofit institutions would be feasible as long as there was a limitation on the amount of civil penalties that could be imposed on the nonprofit contractors.

At the legislative hearing of the Energy and Power Subcommittee on March 22, 2000, witnesses from GAO, the Alliance for Nuclear Accountability, and the Natural Resources Defense Council all testified in favor of H.R. 3383 to eliminate the exemption for the nonprofit contractors. Both DOE and the University of California indicated that such legislation would be acceptable as long as there is a limitation on the amount of civil liability to which the non-profit educational institutions are exposed.

HEARINGS

The Subcommittee on Energy and Power held a legislative hearing on H.R. 3383 on March 22, 2000. The Subcommittee received testimony from: Ms. Mary Anne Sullivan, General Counsel, Department of Energy; the Honorable Richard A. Meserve, Chairman, Nuclear Regulatory Commission; the Honorable Jerrold R. Mande, Deputy Assistant Secretary for Labor, Occupational Safety and Health Administration; the Honorable John T. Conway, Chairman, Defense Nuclear Facilities Safety Board; Ms. Gary Jones, Associate Director for Energy, Resources, and Science Issues, Government Accounting Office; Dr. Charles Shank, Director, Lawrence Berkeley National Laboratory; Mr. Robert Van Ness, Assistant Vice President for Laboratory Administration, University of California; Ms. Maureen Eldredge, Program Director, Alliance for Nuclear Accountability; Dr. David Adelman, Project Attorney, Natural Resources Defense Council; and Mr. Richard Miller, Policy Analyst, PACE International Union.

COMMITTEE CONSIDERATION

On April 12, 2000, the Subcommittee on Energy and Power met in open markup session and approved H.R. 3383 for Full Committee consideration, as amended, by a voice vote. On May 17, 2000, the Committee on Commerce met in open markup session and ordered H.R. 3383 reported to the House, as amended, by a voice vote, a quorum being present.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. There were no record votes taken in connection with ordering H.R. 3383 reported. A motion by Mr. Bliley to order H.R. 3383 reported to the House, without amendment, was agreed to by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held both legislative and oversight hearings and made findings that are reflected in this report.

COMMITTEE ON GOVERNMENT REFORM OVERSIGHT FINDINGS

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Reform.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 3383, a bill to amend the Atomic Energy Act of 1954 to remove separate treatment or exemption for nuclear safety violations by nonprofit institutions, would result in no significant new or increased budget authority, entitlement authority, or tax expenditures or revenues.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 7, 2000.

Hon. TOM BLILEY,
*Chairman, Committee on Commerce,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional budget Office has prepared the enclosed cost estimate for H.R. 3383, a bill to amend the Atomic Energy Act of 1954 to remove an exemption from civil penalties for nuclear safety violations by nonprofit institutions.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Lisa Cash Driskill.

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

H.R. 3383—A bill to amend the Atomic Energy Act of 1954 to remove an exemption from civil penalties for nuclear safety violations by nonprofit institutions

H.R. 3383 would amend the Atomic Energy Act of 1954 to repeal the exemption from civil penalties for nuclear safety violations that currently applies to nonprofit institutions operating laboratories of the Department of Energy (DOE). Under the bill, nonprofit institutions that are operating DOE laboratories would be subject to penalties no greater than the amount that they are paid by DOE that exceeds their reimbursable costs (known as the discretionary fee). Thus, enactment of H.R. 3383 could result in an increase in governmental receipts, so pay-as-you-go procedures would apply. However, CBO estimates that any change in receipts would not be significant. The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

Currently, several nonprofit institutions (primarily universities) are exempt from paying civil penalties, assessed under the Price Anderson Act, for nuclear safety violations at DOE laboratories. According to DOE's Office of Enforcement and Investigation, over the last four years, nonprofit contractors have been assessed \$990,625 in penalties. All of those penalties have been waived, in accordance with current law. Under H.R. 3383, any future penalties would be paid to the Treasury. Based on penalties that have been assessed in the past, CBO expects that such revenues would be less than \$250,000 a year.

The CBO staff contacts are Lisa Cash Driskill (for federal costs) and Victoria Heid Hall (for the state and local impact). This estimate was approved by Robert A. Sunshine, Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

EXCHANGE OF COMMITTEE CORRESPONDENCE

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SCIENCE,
Washington, DC, June 7, 2000.

Hon. THOMAS J. BLILEY,
Chairman, Committee on Commerce, Rayburn House Office Building, Washington, DC.

DEAR TOM: On November 16, 1999, Representative Barton introduced H.R. 3383—a bill to amend the Atomic Energy Act of 1954 to remove separate treatment or exemption for nuclear safety violations by nonprofit institutions. The Commerce Committee Subcommittee on Energy and Power held a mark-up session on the bill on April 12, and forwarded to the Full Committee (Amended) by Voice Vote. The Commerce Committee held a mark-up session on May 17 and ordered the bill reported. The bill contains provisions that fall within the jurisdiction of the Committee on Science. In particular, H.R. 3383 impacts five civilian energy laboratories falling within the Committee on Science's jurisdiction pursuant to Rule X, clause 1(n)(1) of the Rules of the House.

In deference to your desire to bring this legislation before the House in an expeditious manner, I will not exercise this Committee's right to a sequential referral. Despite waiving its consideration of H.R. 3383, the Science Committee does not waive its jurisdiction over H.R. 3383. Additionally, the Science Committee expressly reserves its authority to seek conferees on any provisions that are within its jurisdiction during any House-Senate conference that may be convened on this legislation. I ask for your commitment to support any request by the Science Committee for conferees on H.R. 3383 as well as any similar or related legislation.

I request that you include this letter as part of the Record during consideration of the legislation on the House floor.

Thank you for your consideration and attention regarding these matters.

Sincerely,

F. JAMES SENBRENNER, Jr.,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON COMMERCE,
Washington, DC, June 7, 2000.

Hon. F. JAMES SENSENBRENNER, Jr.,
*Chairman, Committee on Science, House of Representatives, Ray-
burn House Office Building, Washington, DC.*

DEAR JIM: Thank you for your letter regarding your committee's jurisdictional interest in H.R. 3383, a bill to amend the Atomic Energy Act of 1954 to remove separate treatment or exemption for nuclear safety violations by nonprofit institutions.

I acknowledge your committee's jurisdiction over portions of this legislation and appreciate your cooperation in moving the bill to the House floor expeditiously. I agree that your decision to forego further action on the bill will not prejudice the Science Committee with respect to its jurisdictional prerogatives on this or similar legislation. I will include a copy of your letter and this response in the Committee's report on the bill and the Congressional Record when the legislation is considered by the House.

Thank you again for your cooperation.

Sincerely,

TOM BLILEY,
Chairman.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Civil penalties

Subsection (a) repeals the authority of the Secretary of Energy to grant nonprofit educational institutions an automatic remission for any civil penalties assessed under Section 234A of the Atomic Energy Act of 1954, as amended.

Subsection (b) provides language which replaces subsection 234A(d) of the Atomic Energy Act of 1954, as amended. This language eliminates the statutory exemption of the list of named nonprofit contractors from civil penalties. Taken in conjunction with subsection (a), these two subsections delete both the statutory and administrative exemption of nonprofit contractors from civil penalties and make the nonprofit contractors subject to such penalties.

However, the replacement language for section 234A(d) provides an upper limit on the amount of civil penalties that may be collected from a nonprofit contractor. This limit is the amount of the discretionary fee paid to the contractor under the contract under which the nuclear safety violation occurs. The term "discretionary fee" refers to that portion of the contract fee which is paid, or not, at the discretion of the DOE contracting officer based on the contractor's performance. This limitation on the amount of civil penalties was incorporated into H.R. 3833 during the April 12, 2000, Energy and Power Subcommittee markup in response to concerns raised at the March 22, 2000, legislative hearing on this bill. The Committee expects that DOE will use its existing rulemaking authority to define the application of this limitation on civil penalties to the various types of DOE contracts.

The references to section 501 of the Internal Revenue Code of 1986 are provided so that nonprofit institutions covered by this section are defined in a manner consistent with that used by the In-

ternal Revenue Service. This is the same definition already in use by DOE in its 10 C.F.R. Part 820.20(d) regulation.

Subsection (c) provides that the changes made by this section apply only prospectively, to new contracts and contract modifications entered into after the date of enactment of this Act.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) 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 (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):

SECTION 234A OF THE ATOMIC ENERGY ACT OF 1954

SEC. 234A. CIVIL MONETARY PENALTIES FOR VIOLATIONS OF DEPARTMENT OF ENERGY SAFETY REGULATIONS.—a. * * *

b. (1) * * *

(2) In determining the amount of any civil penalty under this subsection, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, ability to pay, effect on ability to continue to do business, any history of prior such violations, the degree of culpability, and such other matters as justice may require. [In implementing this section, the Secretary shall determine by rule whether nonprofit educational institutions should receive automatic remission of any penalty under this section.]

* * * * *

[d. The provisions of this section shall not apply to:

[(1) The University of Chicago (and any subcontractors or suppliers thereto) for activities associated with Argonne National Laboratory;

[(2) The University of California (and any subcontractors or suppliers thereto) for activities associated with Los Alamos National Laboratory, Lawrence Livermore National Laboratory, and Lawrence Berkeley National Laboratory;

[(3) American Telephone and Telegraph Company and its subsidiaries (and any subcontractors or suppliers thereto) for activities associated with Sandia National Laboratories;

[(4) Universities Research Association, Inc. (and any subcontractors or suppliers thereto) for activities associated with FERMI National Laboratory;

[(5) Princeton University (and any subcontractors or suppliers thereto) for activities associated with Princeton Plasma Physics Laboratory;

[(6) The Associated Universities, Inc. (and any subcontractors or suppliers thereto) for activities associated with the Brookhaven National Laboratory; and

[(7) Battelle Memorial Institute (and any subcontractors or suppliers thereto) for activities associated with Pacific Northwest Laboratory.]]

d. Notwithstanding subsection a., a contractor, subcontractor, or supplier described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code shall not be subject to a civil penalty for a violation under sub-

section a. in excess of the amount of any discretionary fee paid to such contractor, subcontractor, or supplier under the contract under which such violation occurs.

