106TH CONGRESS
2d Session
HOUSE OF REPRESENTATIVES
REPORT
106–886

DATE EXTENSIONS

SEPTEMBER 25, 2000.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

R E P O R T

[To accompany H.R. 2641]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, to whom was referred the bill (H.R. 2641) to make technical corrections to title X of the Energy Policy Act of 1992, 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 all after the enacting clause and insert the following:

SECTION 1. DATE EXTENSIONS.

Section 1001 of the Energy Policy Act of 1992 (42 U.S.C. 2296a) is amended—

(1) in subsection (b)(1)(B)(i), by striking "2002" and inserting "2007";

(2) in subsection (b)(1)(B)(ii), by striking "placed in escrow not later than December 31, 2002," and inserting "incurred by a licensee after December 31, 2007,"; and

(3) in subsection (b)(2)(E)(i) by striking "July 31, 2005" and inserting "December 31, 2008".

Amend the title so as to read:

A bill to make date extensions.

PURPOSE AND SUMMARY

The purpose of H.R. 2641 is to amend title X of the Energy Policy Act of 1992, as amended (P.L. 102–486, 42 U.S.C. § 2296a) to extend for another five years the program of annual reimbursements from the Department of Energy (DOE) to the private sector licensees cleaning up uranium and thorium mill tailings sites under the authority of title II of the Uranium Mill Tailings Radiation Control Act of 1978 (P.L. 95–604, 42 U.S.C. § 7901 et seq.). The measure also revises the date when the Secretary of Energy determines whether there are any excess funds in the program, and eliminates the requirement for DOE to place in escrow funds to cover estimated post-2002 cleanup costs.

BACKGROUND AND NEED FOR LEGISLATION

Uranium and thorium mining and milling operations were initiated in the early 1940s to support the Manhattan Project to develop the nation's first nuclear weapons. More recent mining and millings operations were conducted to meet the needs of the Atomic Energy Commission and subsequent national defense and commercial nuclear power purposes. Uranium mill tailings are the sand-like waste product of the milling process. Mill tailings generally emit very low levels of radioactivity, but the tailings piles also contain various heavy metals that can be a source of groundwater contamination. The primary radioactive contaminant is radium, which emits radon gas.

In 1978, Congress passed the Uranium Mill Tailings Radiation Control Act of 1978 (P.L. 95–604, 42 U.S.C. § 7901 et seq.; UMTRCA). UMTRCA established two categories of mill tailings sites. Title I of UMTRCA deals with 22 designated inactive uranium processing sites, for which DOE was assigned the primary responsibility for cleaning up tailings. The costs of cleaning up title I sites are shared 90 percent by the Federal government and 10 percent by the affected State. Title II of UMTRCA deals with the processing sites that still held active licenses in 1978, when UMTRCA became law. The responsibility for cleaning up these title II active sites was assigned to the private licensees operating these milling sites. There was no provision in the original UMTRCA for Federal assistance for the active sites where uranium processing was conducted for the Federal government and where commingled tailings were generated.

Thorium production generated a much smaller volume of waste material, and occurred at only one site—the West Chicago mill operated by the Kerr-McGee Corporation. Like uranium, thorium was

also produced for both government and commercial purposes, and the wastes at the West Chicago site are commingled.

Subsequent to the enactment of UMTRCA, the General Accounting Office (GAO) recommended that the Federal government should provide financial assistance for the cleanup of the active title II processing sites because a portion of the tailings at these sites were generated for government purposes. Title X of the Energy Policy Act of 1992, as amended (P.L. 102–486, 42 U.S.C. § 2296a), established a reimbursement program in which the DOE pays the Federal government's share of cleanup costs to the licensees operating processing sites which were active in 1978. DOE determined there were 13 active uranium sites (located in six States: Colorado, New Mexico, South Dakota, Utah, Washington, and Wyoming) and one active thorium site (in Illinois) that qualify for title X reimbursement.

The 1992 Act specified a limit of $5.50 per dry short ton of tailings for uranium cleanup. This limit is adjusted for inflation. The Federal share at the uranium sites ranges from 11.5 percent to 81.3 percent, with the total federal reimbursement to all uranium licensees at the active sites limited to $270 million. Reimbursement for thorium cleanup was not limited on a per ton basis, but the total reimbursement for the single thorium licensee was limited to $40 million, with the restriction that the government share can be used only for offsite disposal. The government's share for the single thorium processing site is 55.2 percent.

When title X of the Energy Policy Act of 1992 was enacted, it was envisioned that cleanup of most of the title X sites would be completed by the year 2002. Therefore, a program was established to provide for reimbursement on an annual basis for cleanup costs actually incurred through the end of 2002. If there is any cleanup work remaining after 2002, the licensees are required to prepare plans for post-2002 remediation work. DOE is to review and approve those remediation plans and then place in escrow sufficient funds to cover estimated post-2002 cleanup costs in accordance with these approved remediation plans. Under title X, the Secretary is required to determine as of July 31, 2005, if any excess funds remain within the authorized program ceiling for uranium licensees. If the actual costs of cleanup exceed the $5.50 per dry short ton cap, the Secretary may reimburse such excess costs up to the authorized program ceiling. This discretionary distribution of excess funds is available only for the uranium licensees.

In 1996, Congress amended title X of UMTRCA (P.L. 104–259, 42 U.S.C. § 2296a) by increasing the cap for uranium reimbursement from $5.50 per ton to $6.25 per ton, and increasing the uranium program ceiling from $270 million to $350 million. Also, the cap for thorium reimbursement was raised from a total of $40 million to $65 million. In 1998, Congress again amended title X again (P.L. 105–388, 42 U.S.C. 2296a), increasing the ceiling for reimbursement to the thorium licensee from $65 million to $140 million.

The actual cleanup of these uranium and thorium processing sites is proving to be more costly and time consuming than originally envisioned in title X. As of April 2000, only two of the original 14 sites qualifying for title X reimbursement have been completed (i.e., the TVA site at Edgewater, South Dakota, and the ARCO Bluewater site at Grants, New Mexico). Significant work at

a majority of sites will continue after 2002. One of the primary factors driving these increases is the need for extensive groundwater remediation at several of the processing sites.

Under current law, the program of annual reimbursement will come to an end in 2002. Prior to the end of 2002, licensees will have to prepare remediation plans for post-2002 work, DOE will have to review and approve those plans, and then DOE will have to place sufficient funds in escrow to cover post-2002 cleanup costs. With significant cleanup work still ongoing at several sites, industry and DOE agree that the program of annual reimbursements should be extended for five more years, that the date for determination of any program excess should be adjusted accordingly, and that the current requirements for post-2002 cleanup plans, DOE review of those plans, and placement in escrow of estimated post-2002 cleanup funds should be eliminated. Additionally, industry argues that the per ton cap on uranium cleanup should be revised upward to reflect realistic cleanup costs, that the distribution of excess funds at the end of the program should be mandatory rather than at the Secretary's discretion, and that this distribution should include both the uranium and thorium licensees if their actual cleanup costs exceed either the per ton caps (for uranium licensees) or the program ceilings (for both uranium and thorium licensees). DOE is not supportive of the proposed change to the per ton cap for uranium, of eliminating the Secretary's discretion regarding distribution of excess funds at the end of the program, nor of changing the potential beneficiaries of such distribution.

As introduced, H.R. 2641 makes a number of changes to title X. It extends the original termination date for annual reimbursement payments by another five years, from December 31, 2002, to December 31, 2007. H.R. 2641 changes the date on which the Secretary determines whether any excess funds are available from July 31, 2005, to December 31, 2008. H.R. 2641 eliminates the requirement for the Secretary of Energy to place funds in escrow to cover estimated post-2002 cleanup costs. As introduced, H.R. 2641 would also replace the current cap for uranium reimbursement of $6.25 per dry short ton with a sliding scale, raising to $8.50 per ton in 2002, $9.50 per ton in 2004, and $10.00 per ton in 2005. Also, H.R. 2641 as introduced changes the limitations that apply to distribution of any excess funds by allowing the excess to be disbursed to all licensees, including the one thorium site, and by eliminating the Secretary's discretion on whether or not to reimburse these excess funds to the uranium and thorium licensees.

In testimony at the April 5, 2000, hearing of the Subcommittee on Energy and Power, DOE was supportive of the date extensions contained in H.R. 2641 and of eliminating the escrow requirement, but not supportive of raising the per ton caps for uranium or of removing the Secretary's discretion on how to spend any excess funds at the end of the program. In addition, several Subcommittee Members raised concerns that additional money spent on uranium and thorium cleanup might divert funding from the cleanup of the gaseous diffusion plants at Portsmouth and Paducah.

In response to these concerns, the Committee adopted an amendment which retained the date extensions in the introduced version of H.R. 2641, to extend the program of annual reimbursements by five more years, from December 31, 2002, to December 31, 2007. It

also extends the date for determination of any excess funds would be extended from July 31, 2005 to December 31, 2008. The existing requirement for DOE to place funds in escrow to cover post-2002 cleanup costs is eliminated. The Committee amendment makes no changes to the existing program caps for uranium and thorium cleanup, no change to the existing per ton caps for uranium cleanup, and no change to how excess funds may be distributed. The General Counsel of the Department of Energy wrote a letter dated July 25, 2000, in support of the Committee's amendment.

HEARINGS

The Subcommittee on Energy and Power held a hearing on H.R. 2641 on April 5, 2000. The Subcommittee received testimony from: Mr. James Fiore of the Department of Energy, Mr. Tom McDaniel of the Kerr-McGee Corporation, and Mr. Pat Morgan representing the Umetco Minerals Corporation.

COMMITTEE CONSIDERATION

On September 14, 2000, the Subcommittee on Energy and Power was discharged from the further consideration of H.R. 2641. On September 14, 2000, the Full Committee met in open markup session and approved H.R. 2641 for Full Committee consideration, as amended, by a voice vote.

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. 2641 reported. A motion by Mr. Bliley to order H.R. 2641 reported to the House, with an amendment, was agreed to by a voice vote.

The following amendment was agreed to by a voice vote: An amendment in the nature of a substitute by Mr. Largent, No. 1, to extend the dates of the uranium and thorium mill tailings cleanup program under title X of the Energy Policy Act of 1992.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held a legislative hearing 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. 2641, a bill to make technical corrections to title X of the Energy Policy Act of 1992, would result in no 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, September 18, 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. 2641, a bill to made date extensions.

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

Sincerely,

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

Enclosure.

H.R. 2641—A bill to make date extensions

H.R. 2641 would amend the Energy Policy Act by extending the authorization for federal reimbursement of certain remediation costs incurred by private operators of active uranium and thorium processing sites. The amount of reimbursement is tied to the amount of byproduct material at each site attributable to the sale of nuclear materials to the federal government. CBO estimates that enacting H.R. 2641 would have no significant effect on the federal budget. The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

Under current law, private operators can only be reimbursed for eligible costs incurred or approved by December 31, 2002. H.R. 2641 would extend that date to December 31, 2007. Current law also requires that the sum of costs for work approved to be undertaken after December 31, 2002, be appropriated into an escrow account by that date, for later disbursement as reimbursement claims are made. The bill would repeal the requirement for an escrow account, instead requiring only that costs eligible for reimbursement and expected to be incurred after December 31, 2007, be approved by the Department of Energy (DOE) prior to that date.

Reimbursements made to date total $302 million, including $72 million appropriated in fiscal year 2000. Based on information from DOE, CBO estimates that remediation work eligible for reimbursement will occur through 2016 and will require additional spending of between $87 million and $115 million. Because the bill would not affect the timing of any remediation work or the spending of

amounts to reimburse that work. CBO estimates that the bill would have no significant additional effect on the federal budget. H.R. 2461 would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply.

The CBO staff contact for this estimate is Lisa Cash Driskill. This estimate was approved by Peter H. Fontaine, Deputy 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.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

The legislation consists of only one section, which makes changes to section 1001 of the Energy Policy Act of 1992, as amended. Under the bill, the program of annual reimbursements will be extended five more years, from December 31, 2002, to December 31, 2007. Also, the date on which the Secretary of Energy must make a determination of any excess funds will be extended from July 31, 2005 to December 31, 2008. The existing requirement for DOE to place funds in escrow to cover post-2002 cleanup costs is eliminated. DOE will reimburse cleanup costs on an annual basis through the end of 2007. If there are still any licensees at that time with post-2007 cleanup costs, those licensees will have to submit remediation plans for post-2007 work. Upon DOE review and approval of those remediation plans, if any, DOE will pay the post-2007 costs directly without the need for escrow. Any funds remaining at the end of 2008 may then be distributed to the uranium licensees, at the Secretary's discretion as under existing law.

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 omit-

ted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

SECTION 1001 OF THE ENERGY POLICY ACT OF 1992

SEC. 1001. REMEDIAL ACTION PROGRAM.

(a) * * *

(b) REIMBURSEMENT.—

(1) IN GENERAL.—The Secretary of Energy shall, subject to paragraph (2), reimburse at least annually a licensee described in subsection (a) for such portion of the costs described in such subsection as are—

(A) * * *

(B) either—

(i) incurred by such licensee not later than December 31, [2002] *2007*; or

(ii) [placed in escrow not later than December 31, 2002,] *incurred by a licensee after December 31, 2007,* in accordance with a plan for subsequent decontamination, decommissioning, reclamation, and other remedial action approved by the Secretary.

(2) AMOUNT.—

(A) * * *

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(E) ADDITIONAL REIMBURSEMENT.—

(i) DETERMINATION OF EXCESS.—The Secretary shall determine as of [July 31, 2005] *December 31, 2008*, whether the amount authorized to be appropriated pursuant to section 1003, when considered with the $5.50 per dry short ton limit on reimbursement, exceeds the amount reimbursable to the licensees under subsection (b)(2).

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