Calendar No. 153

109TH CONGRESS, *1st Session* | SENATE | REPORT 109–99

PRICE–ANDERSON AMENDMENTS ACT OF 2005

JULY 1, 2005.—Ordered to be printed

Mr. INHOFE, from the Committee on Environment and Public Works, submitted the following

REPORT

[to accompany S. 865]

[Including cost estimate of the Congressional Budget Office]

The Committee on Environment and Public Works, to which was referred a bill (S. 865) to amend the Atomic Energy Act of 1954 to reauthorize the Price-Anderson provisions, having considered the same, reports favorably thereon with amendment and recommends that the bill, as amended, do pass.

GENERAL STATEMENT AND BACKGROUND

This bill amends various sections of the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) to authorize continuation of the Price-Anderson provisions.

The Atomic Energy Act of 1954 assigned to the Atomic Energy Commission responsibility for protecting public health and safety from the hazards of radiation produced through nuclear technology. The Energy Reorganization Act of 1974 abolished the Atomic Energy Commission and created a new agency, the Nuclear Regulatory Commission (NRC or Commission), to take over its regulatory functions.

The Senate Committee on Environment and Public Works has jurisdiction over the nonmilitary environment regulation and control of atomic energy. This includes both legislative and oversight authority pertaining to the operations of the NRC.

Among the responsibilities entrusted to the Nuclear Regulatory Commission is the regulation of the nation's commercial nuclear

power plants, along with other civilian uses of radioactive materials. The mission of the NRC is to conduct an effective regulatory program that promotes the safe use of nuclear energy and materials, in a manner that protects the public health and safety and the human environment, and promotes the common defense and security.

Congress passed the Price-Anderson Act in 1957 to ensure that adequate funds would be available to compensate victims of a nuclear accident. It also recognized that the risk of extraordinary liability that companies would incur if a nuclear accident were to happen would render insurance costs prohibitively high, and thwart the development of nuclear energy.

The original Price-Anderson Act authorized government indemnification for only 10 years, until August 1, 1967. Congress extended the Act, in 1965 and 1975 for additional 10 year periods, and a third time in 1988, for an additional 15 years.

Under the 1988 extension, the Department of Energy and the Nuclear Regulatory Commission have authority to issue indemnification agreements only until August 1, 2002. However, it was extended for commercial nuclear reactors through December 31, 2003 by the fiscal year 2003 omnibus continuing resolution (P.L. 108–7). Existing reactors will continue to operate under the current Price-Anderson liability system even without further extension, but any new reactors would not be covered.

The original Price-Anderson legislation that was enacted in 1957 provided up to $500 million indemnification for both Federal weapons contractors and commercial nuclear power plant operators. In addition to the $500 million government indemnification, commercial nuclear power plant operators were required to obtain as much additional insurance as they could. By pooling their resources, these civilian licensees were able to obtain an additional $60 million in private insurance. Thus, liability for military weapons contractors was capped at $500 million, and at $560 million for civilian commercial licensees

Over the years, Congress has made substantial changes in the way Price-Anderson operates. As currently constituted, Price-Anderson places a cap on liability for commercial nuclear facilities and activities licensed by the U.S. Nuclear Regulatory Commission, and allows for deferral of a portion of the payments such licensees must make.

The Price-Anderson Act requires owners of commercial reactors to assume all liability for damages to the public resulting from an 'extraordinary nuclear occurrence' and to waive most legal defenses they would otherwise have. However, in exchange, their liability will be limited to capped amounts established in the Act.

First, each licensed reactor must carry the maximum amount of insurance commercially available to pay any damages from a severe nuclear accident. That amount is currently $300 million.

Any damages exceeding that amount are to be assessed equally against all covered commercial reactors, up to $95.8 million per reactor (most recently adjusted for inflation by NRC in August 2004). Those assessments would be paid at an annual rate of no more than $10 million per reactor. According to the NRC, all of the na-

tion's 103 commercial reactors are currently covered by the Price-Anderson retrospective premium requirement.

Funding for public compensation following a major nuclear incident would therefore include the $300 million in insurance coverage carried by the reactor that suffered the incident, plus the $95.8 million in retrospective premiums from each of the 103 currently covered reactors, totaling $10.2 billion. On top of those payments, a 5 percent surcharge may also be imposed, raising the total per-reactor retrospective premium to $100.6 million and the total potential compensation for each incident to about $10.7 billion. Under Price-Anderson, the nuclear industry's liability for an incident is capped at that amount, which varies depending on the number of covered reactors, amount of available insurance, and an inflation adjustment that is made every 5 years.

The Act provides that in the event that actual damages from an accident are in excess of this amount, Congress will "thoroughly review" the incident and take such action as is necessary to provide "full and prompt compensation to the public."

S. 865 extends coverage for commercial reactors until August 1, 2025, increases the annual premium payments from $10,000,000 to $15,000,000 per reactor and addresses modular reactors with a total generating capacity of 1,300 megawatts as a single reactor.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title.

This Act may be cited as the "Price-Anderson Amendments Act of 2005."

Sec. 2. Treatment of modular reactors.

Section 170(b) of the Atomic Energy Act of 1954 (42 U.S.C. 2210(b)) is amended for the purposes of providing Price-Anderson liability coverage to a nuclear plant consisting of multiple small reactors. Under this section, multiple small reactors at a plant (100–300 megawatts each, up to a total of 1,300 megawatts) would be considered a single reactor.

Sec. 3. Extension of indemnification authority.

Section 170(c) of the Atomic Energy Act of 1954 (42 U.S.C. 2210(c)) is amended to authorize the Price-Anderson liability coverage for new commercial reactors through December 31, 2025.

Sec. 4. Reports.

Section 170(p) of the Atomic Energy Act of 1954 (42 U.S.C. 2210(p)) is amended to require NRC and DOE report to Congress by August 1, 2023, on the need for further Price-Anderson extensions and modifications.

Sec. 5. Maximum assessment.

Section 170 of the Atomic Energy Act of 1954 (42 U.S.C. 2210) is amended so that the total retrospective premium for each reactor would be set at the current level of $95.8 million and the limit on per-reactor annual payments raised to $15 million, with both to be adjusted for inflation every 5 years after August 1, 2004.

Sec. 6. Effective date.

The amendments would take effect upon enactment.

LEGISLATIVE HISTORY

The Price-Anderson Act is the primary Federal statute governing the public liability, compensation, indemnity, and insurance coverage for nuclear accidents. The Act (Sec. 170 of the Atomic Energy Act of 1954 as amended (42 U.S.C. 2210)) was first passed in 1957. The 'Price-Anderson' Act derives its name from its two primary sponsors Rep. Melvin Price (D-IL) and Sen. Clinton P. Anderson (D-NM). It has been renewed three times by Congress, in 1965 and in 1975, for successive 10-year periods, in 1988 for a fifteen-year period and was extended for commercial nuclear reactors through December 31, 2003 by the fiscal year 2003 omnibus continuing resolution (P.L. 108–7). Senator Voinovich (R-OH) and Senator Inhofe (R-OK) introduced the current Act known as S. 865, "Price-Anderson Amendments Act of 2005", on April 20, 2005. It was then referred to the Senate Committee on Environment and Public Works. A full committee business meeting was held on June 8, 2005, and the committee ordered S. 865, the Price-Anderson Amendments Act of 2005 as amended, to be reported to the full Senate.

HEARINGS

Since the committee approved legislation on December 9th 2003, it has held annual oversight hearings. There was one general hearing held on S. 865 during the 109th Congress. Witnesses included: Nils J. Diaz, Chairman, U.S. Nuclear Regulatory Commission; Edward McGaffigan, Jr., Commissioner, U.S. Nuclear Regulatory Commission; Gregory B. Jaczko, Commissioner, U.S. Nuclear Regulatory Commission; Jim Wells, Director, Natural Resources and the Environment, Government Accountability Office; Marilyn C. Kray, President, NuStart Energy Development; Dr. Edwin Lyman, Senior Staff Scientist, Global Security Program, Union of Concerned Scientists.

ROLLCALL VOTES

The Committee on Environment and Public Works met to consider S. 865 on June 8, 2005. The committee voted favorably to report S. 865 by voice vote with Senator Barbara Boxer asking to reported as a nay vote.

REGULATORY IMPACT STATEMENT

In compliance of section 11(b) of rule XXVI of the Standing Rules of the Senate, the committee finds that S. 865 does not create any additional regulatory burdens, nor will it cause any adverse impact on the personal privacy of individuals.

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), the committee finds that S. 865 would increase the maximum retrospective and annual premiums collected from NRC to cover damages resulting from a nuclear accident.

COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Control Act requires that a statement of the cost of the reported bill, prepared by the Congressional Budget Office, be included in the report. That statement follows:

S. 865, Price-Anderson Amendments Act of 2005, As ordered reported by the Senate Committee on Environment and Public Works on June 8, 2005

S. 865 would amend and extend certain provisions of the Price-Anderson Act, which governs insurance and liability coverage of nuclear facilities. That act provides financial protection in the event of a nuclear accident for facilities with Nuclear Regulatory Commission (NRC) licenses issued by December 31, 2003. The bill would extend liability coverage to any facilities issued licenses by December 31, 2025. It also would define nuclear sites with more than one nuclear facility as a single facility for the purposes of determining the amount of financial protection offered and premiums required under the act.

CBO estimates that enacting S. 865 would have no direct effect on the Federal budget primarily because any payments by the Federal Government in connection with a nuclear accident would require additional legislation. The Price-Anderson Act provides a framework for liability coverage in the event of a nuclear accident but does not automatically trigger any Federal payments if a nuclear accident occurs. If damages resulting from a nuclear accident exceed the liability coverage established by the Price-Anderson Act (about $10.7 billion), the act requires that the Congress determine how remaining damages would be paid. Options could include additional assessments on the nuclear industry or Federal appropriations. These Price-Anderson Act provisions apply to both NRC licensees and Department of Energy (DOE) contractors working at nuclear facilities.

S. 865 contains an intergovernmental and private-sector mandate as defined in the Unfunded Mandates Reform Act (UMRA), but CBO estimates the costs of that mandate would not exceed the thresholds for intergovernmental or private-sector entities established in that act ($62 million and $123 million, respectively, in 2005, adjusted annually for inflation).

Under current law, in the event that losses from a nuclear incident exceed the required amount of private insurance, NRC licensees (both public and private) are assessed a charge to cover the shortfall in damage coverage. The bill would increase the maximum annual premium from $10 million to $15 million. Raising the maximum annual premium would increase the costs of an existing mandate and would thereby impose an intergovernmental and private-sector mandate under UMRA. Because the probability of a nuclear accident resulting in losses exceeding the amount of private insurance coverage is low, CBO estimates that the annual costs for public and private entities of complying with the mandate would probably not be substantial over the next 5 years.

Estimate Prepared By: Federal Costs: Lisa Cash Driskill and Jimin Chung; State and Local Impact: Lisa Ramirez-Branum; Private-Sector Impact: Selena Caldera.

Estimate Approved By: Robert A. Sunshine, Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW

In compliance with section 12 of rule XXVI 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:

ATOMIC ENERGY ACT OF 1954

* * * * * * *

CHAPTER 1. DECLARATION, FINDINGS, AND PURPOSE

SECTION 1. DECLARATION.—Atomic energy is capable of application for peaceful as well as military purposes. It is therefore declared to be the policy of the United States that—

a. * * *

* * * * * * *

SEC. 170. INDEMNIFICATION AND LIMITATION OF LIABILITY.—

a. * * *

* * * * * * *

b. AMOUNT AND TYPE OF FINANCIAL PROTECTION FOR LICENSEES.—(1) The amount of primary 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: (A) the cost and terms of private insurance, (B) the type, size, and location of the licensed activity and other factors pertaining to the hazard, and (C) 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 primary financial protection required shall be the maximum amount available at reasonable cost and on reasonable terms from private sources (excluding the amount of private liability insurance available under the industry retrospective rating plan required in this subsection). Such primary financial protection may include private insurance, private contractual indemnities, self-insurance, other proof of financial responsibility, or a combination of such measures and shall be subject to such terms and conditions as the Commission may, by rule, regulation, or order, prescribe. The Commission shall require licensees that are required to have and maintain primary financial protection equal to the maximum amount of liability insurance available from private sources to maintain, in addition to such primary financial protection, private liability insurance available under an industry retrospective rating plan providing for premium charges

deferred in whole or major part until public liability from a nuclear incident exceeds or appears likely to exceed the level of the primary financial protection required of the licensee involved in the nuclear incident: *Provided,* That such insurance is available to, and required of, all of the licensees of such facilities without regard to the manner in which they obtain other types or amounts of such primary financial protection: *And provided further:* That the maximum amount of the standard deferred premium that may be charged a licensee following any nuclear incident under such a plan shall not be more than [$63,000,000] *$95,800,000* (subject to adjustment for inflation under subsection t.), but not more than [$10,000,000 in any 1 year] *$15,000,000 in any 1 year (subject to adjustment for inflation under subsection t.)*, for each facility for which such licensee is required to maintain the maximum amount of primary financial protection: *And provided further,* That the amount which may be charged a licensee following any nuclear incident shall not exceed the licensee's pro rata share of the aggregate public liability claims and costs (excluding legal costs subject to subsection o. (1)(D), payment of which has not been authorized under such subsection) arising out of the nuclear incident. Payment of any State premium taxes which may be applicable to any deferred premium provided for in this Act shall be the responsibility of the licensee and shall not be included in the retrospective premium established by the Commission.

(2)(A) The Commission may, on a case by case basis, assess annual deferred premium amounts less than the standard annual deferred premium amount assessed under paragraph (1)—

(i) for any facility, if more than one nuclear incident occurs in any one calendar year; or

(ii) for any licensee licensed to operate more than one facility, if the Commission determines that the financial impact of assessing the standard annual deferred premium amount under paragraph (1) would result in undue financial hardship to such licensee or the ratepayers of such licensee.

(B) In the event that the Commission assesses a lesser annual deferred premium amount under subparagraph (A), the Commission shall require payment of the difference between the standard annual deferred premium assessment under paragraph (1) and any such lesser annual deferred premium assessment within a reasonable period of time, with interest at a rate determined by the Secretary of the Treasury on the basis of the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the date that the standard annual deferred premium assessment under paragraph (1) would become due.

(3) The Commission shall establish such requirements as are necessary to assure availability of funds to meet any assessment of deferred premiums within a reasonable time when due, and may provide reinsurance or shall otherwise guarantee the payment of such premiums in the event it appears that the amount of such premiums will not be available on a timely

basis through the resources of private industry and insurance. Any agreement by the Commission with a licensee or indemnitor to guarantee the payment of deferred premiums may contain such terms as the Commission deems appropriate to carry out the purposes of this section and to assure reimbursement to the Commission for its payments made due to the failure of such licensee or indemnitor to meet any of its obligations arising under or in connection with financial protection required under this subsection including without limitation terms creating liens upon the licensed facility and the revenues derived therefrom or any other property or revenues of such licensee to secure such reimbursement and consent to the automatic revocation of any license.

(4)(A) In the event that the funds available to pay valid claims in any year are insufficient as a result of the limitation on the amount of deferred premiums that may be required of a licensee in any year under paragraph (1) or (2), or the Commission is required to make reinsurance or guaranteed payments under paragraph (3), the Commission shall, in order to advance the necessary funds—

(i) request the Congress to appropriate sufficient funds to satisfy such payments; or

(ii) to the extent approved in appropriation Acts, issue to the Secretary of the Treasury obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be agreed to by the Commission and the Secretary of the Treasury.

(B) Except for funds appropriated for purposes of making reinsurance or guaranteed payments under paragraph (3), any funds appropriated under subparagraph (a)(i) shall be repaid to the general fund of the United States Treasury from amounts made available by standard deferred premium assessments, with interest at a rate determined by the Secretary of the Treasury on the basis of the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the date that the funds appropriated under such subparagraph are made available.

(C) Except for funds appropriated for purposes of making reinsurance or guaranteed payments under paragraph (3), redemption of obligations issued under subparagraph (A)(ii) shall be made by the Commission from amounts made available by standard deferred premium assessments. Such obligations shall bear interest at a rate determined by the Secretary of the Treasury by taking into consideration the average market yield on outstanding marketable obligations to the United States of comparable maturities during the months preceding the issuance of the obligations under this paragraph. The Secretary of the Treasury shall purchase any issued obligations, and for such purpose the Secretary of the Treasury may use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, United

States Code, and the purposes for which securities may be issued under such chapter are extended to include any purchase of such obligations. The Secretary of the Treasury may at any time sell any of the obligations acquired by the Secretary of the Treasury under this paragraph. All redemptions, purchases, and sales by the Secretary of the Treasury of obligations under this paragraph shall be treated as public debt transactions of the United States.

(5)(A) For purposes of this section only, the Commission shall consider a combination of facilities described in subparagraph (B) to be a single facility having a rated capacity of 100,000 electrical kilowatts or more.

(B) A combination of facilities referred to in subparagraph (A) is 2 or more facilities located at a single site, each of which has a rated capacity of 100,000 electrical kilowatts or more but not more than 300,000 electrical kilowatts, with a combined rated capacity of not more than 1,300,000 electrical kilowatts.

c. INDEMNIFICATION OF [LICENSES] *LICENSEES* BY NUCLEAR REGULATORY COMMISSION.—The Commission shall, with respect to licenses issued between August 30, 1954, and [December 31, 2003] *December 31, 2025*, for which it requires financial protection of less than $560,000,000, 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, excluding 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 [December 31, 2003] *December 31, 2025*, the requirements of this subsection shall apply to any license issued for such facility subsequent to [December 31, 2003] *December 31, 2025*.

* * * * * * *

p. REPORTS TO CONGRESS.—The Commission and the Secretary shall submit to the Congress by [August 1, 1998] *August 1, 2023*, detailed reports concerning the need for continuation or modification of the provisions of this section, taking into account the condition of the nuclear industry, availability of private insurance, and the state of knowledge concerning nuclear safety at that time, among other relevant factors, and shall include recommendations as to the repeal or modification of any of the provisions of this section.

* * * * * * *

t. INFLATION ADJUSTMENT.—(1) The Commission shall adjust the amount of the maximum *total and annual* standard deferred premium under subsection b. (1) not less than once during each 5-year period following [the date of the enactment of the Price-Anderson Amendments Act of 1988] *August 1, 2004*, in accordance

with the aggregate percentage change in the Consumer Price Index since—

(A) [such date of enactment] *August 1, 2004*, in the case of the first adjustment under this subsection; or

(B) the previous adjustment under this subsection.

* * * * * * *

○