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United States Senate

COMMITTEE ON
ENERGY AND NATURAL RESOURCES

WASHINGTON, DC 20510

March 20, 1987

The Honorable Lando W. Zech, Jr.
Chairman
U.S. Nuclear Regulatory Commission
1717 H Street, N.W.
Washington, D.C. 20555

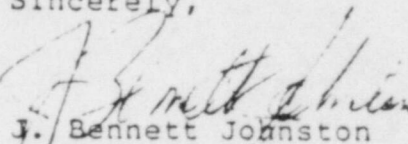
Dear Mr. Chairman:

As you know, the Committee on Energy and Natural Resources held a hearing on reauthorization and extension of the Price-Anderson Act on March 18, 1987. We would like to receive written testimony from the Nuclear Regulatory Commission to be included in the printed hearing record. I would ask that your written testimony address the need for extension of the Act in general, as well as address the provisions of S. 748, which I introduced in the Senate on March 17.

I am requesting that we receive your written testimony by close of business, March 30, so that we will have it available when we begin markup of S. 748 on April 1. It would be helpful if you could also provide the legal memorandum requested in my letter of March 17 by that date.

Thank you for your prompt response to this request.

Sincerely,


J. Bennett Johnston
Chairman

JBj:mlw

3/24...To OCA to Prepare Response for Signature of Chairman'
Date due: Mar 27.....Cpys to: RF, EDO...Note: Response will
be coordinated with the OGC.... 2297

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PDR COMMS NRCC
CORRESPONDENCE PDR

S. 748

IN THE SENATE OF THE UNITED STATES

Mr. JOHNSTON (for himself, Mr. McC'LURE, and Mr. DOMENICI) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To amend the Atomic Energy Act of 1954, as amended, to establish a comprehensive, equitable, reliable, and efficient mechanism for full compensation of the public in the event of an accident resulting from activities undertaken under contract with the Department of Energy involving nuclear materials.

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

SHORT TITLE

4 SECTION 1. This Act may be cited as the "Price-Under-
5 son Act Amendments Act of 1987".

FINDINGS AND PURPOSES

SEC. 2. (a) The Congress finds and declares that—

(1) an equitable, efficient, reliable, and comprehensive system, established in advance of any accident involving nuclear materials subject to the Atomic Energy Act of 1954, as amended, that provides a mechanism for full compensation of the public in the event of such an accident is in the public interest;

(2) the basic framework established under section 170 of the Atomic Energy Act of 1954, as amended, and the essential elements of that approach, have achieved those fundamental objectives and, accordingly, should be retained;

(3) the responsibility of the Federal Government for the storage, disposal, and transportation of, and research and development on, radioactive waste makes it imperative that the Federal Government explicitly assume its responsibility in this Act to provide full, equitable, and efficient compensation to the public for all damages and injuries arising out of a nuclear incident relating to such activities, including activities pursuant to the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101 et seq.) and activities authorized as Waste Isolation Pilot Project (Project 77-13-f) pursuant to fiscal

1 year 1980 Department of Energy for National Security
2 Programs Appropriations (Public Law 96-164); and

3 - (4) based upon the experience gained in imple-
4 menting the present system of providing compensation
5 for accidents involving nuclear materials, and in light
6 of developments that have taken place since the Con-
7 gress last extended and amended such system, it is ap-
8 propriate and in the public interest for the Congress to
9 consider such experience and developments and to
10 make such changes as will advance the fundamental
11 objectives set forth in clause (1).

12 (b) The purposes of this Act are to—

13 (1) establish an equitable, efficient, reliable, and
14 comprehensive system, in advance of any accident re-
15 sulting from activities undertaken under contract with
16 the Department of Energy involving nuclear materials,
17 which provides a mechanism for full compensation of
18 the public in the event of such an accident for both
19 present and future nuclear material activities; and

20 (2) incorporate in such system the experience
21 gained and the developments that have taken place
22 since the Congress last extended and amended the
23 system.

1 INDEMNIFICATION AGREEMENTS FOR ACTIVITIES UNDER-
2 TAKEN UNDER CONTRACT WITH THE DEPARTMENT
3 OF ENERGY

4 SEC. 3. Section 170 d. of the Atomic Energy Act of
5 1954, as amended, is amended to read as follows:

6 "d. (1)(A) In addition to any other authority the Secre-
7 tary of the Department of Energy (hereinafter in this section
8 referred to as the Secretary) may have, the Secretary is au-
9 thorized until August 1, 2007, to enter into agreements of
10 indemnification with its contractors for the construction or
11 operation of production or utilization facilities or other activi-
12 ties under contracts for the benefit of the United States in-
13 volving activities under the risk of public liability for a sub-
14 stantial nuclear incident.

15 "(B)(i) The authority conferred upon the Secretary pur-
16 suant to subparagraph (A) to enter into agreements of indem-
17 nification with contractors shall include contracts entered into
18 by the Secretary for the purpose of carrying out such activi-
19 ties as the Secretary is authorized to undertake, pursuant to
20 this Act or any other law, involving the storage or disposal of
21 spent nuclear fuel, high-level radioactive waste, or transuran-
22 ic waste, including the transportation of such materials to a
23 storage or disposal site or facility, and the construction and
24 operation of any such site or facility. For all such activities,
25 the authority conferred upon the Secretary pursuant to sub-

1 section 170 d. (1)(A) shall be the exclusive means of indemni-
2 fication under this section.

3 “(ii) For the purpose of compensating public liability
4 claims, as defined in section 11 w. of this Act, arising out of
5 activities involving the storage or disposal of spent nuclear
6 fuel, high-level radioactive waste, or transuranic waste pro-
7 duced as a result of the generation of electricity in a civilian
8 nuclear power reactor, including the transportation of such
9 materials to a storage or disposal site or facility, and the
10 construction and operation of any such site or facility, the
11 Secretary shall make available such funds as may be neces-
12 sary, in an amount not to exceed \$6,000,000,000, from the
13 nuclear waste fund established pursuant to section 302 of the
14 Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222).

15 “(iii) Public liability claims arising out of activities in-
16 volving the storage or disposal of all other spent nuclear fuel,
17 high-level radioactive waste, or transuranic waste not speci-
18 fied in clause (ii), including the transportation of such materi-
19 als to a storage or disposal site or facility, and the construc-
20 tion and operation of any such site or facility, shall be com-
21 pensated in accordance with the provisions of this Act, and
22 from the same source of funds applicable to all other contrac-
23 tors indemnified pursuant to this subsection.

24 “(iv)(I) In the event of a nuclear incident that arises out
25 of or results from or occurs in the course of activities under-

1 taken by the Secretary in connection with the storage or dis-
2 posal of spent nuclear fuel, high-level radioactive waste, or
3 transuranic waste, including the transportation of such mate-
4 rials to a storage or disposal site or facility, and the construc-
5 tion and operation of any such site or facility, the Secretary
6 shall determine the extent to which such incident involves
7 materials produced as a result of the generation of electricity
8 in a civilian nuclear power reactor, or materials resulting
9 from other activities, or both, and based upon such determi-
10 nation, render a decision as to the appropriate source of
11 funds, in accordance with clauses (ii) and (iii), to be used in
12 compensating public liability claims.

13 “(II) The funds to be used to compensate public liability
14 claims pursuant to this subparagraph shall be provided in a
15 manner and in such amounts as are appropriate to ensure
16 that the funds necessary to compensate such claims are
17 shared on a pro rata basis, in accordance with the determina-
18 tion rendered pursuant to subclause (I). The decision on the
19 sources of such funds shall be final and conclusive. Within
20 ninety days of the date of enactment of the Price-Anderson
21 Act Amendments Act of 1987, the Secretary shall promul-
22 gate standards and regulations for making the determinations
23 required under this subparagraph.

24 “(2) In agreements of indemnification entered into pur-
25 suant to subsection 170 d. (1), the Secretary may require its

1 contractor to provide and maintain financial protection of
2 such a type and in such amounts as the Secretary shall deter-
3 mine to be appropriate to cover public liability arising out of
4 or in connection with the contractual activity, and shall in-
5 demnify the persons indemnified against such claims above
6 the amount of the financial protection required, in an amount
7 not to exceed \$6,000,000,000, excluding costs of investigat-
8 ing and settling claims and defending suits for damage in the
9 aggregate for all persons indemnified in connection with such
10 contract and for each nuclear incident: *Provided*, That this
11 amount of indemnity shall be reduced by the amount of the
12 financial protection that the Secretary requires of the
13 contractor.

14 “(3) In the case of nuclear incidents occurring outside
15 the United States, the amount of the indemnity provided by
16 the Secretary pursuant to this subsection shall not exceed
17 \$100,000,000.

18 “(4) The provisions of this subsection may be applicable
19 to lump sum as well as cost type contracts and to contracts
20 and projects financed in whole or in part by the Secretary.

21 “(5) A contractor with whom an agreement of indemni-
22 fication has been executed and who is engaged in activities
23 connected with the underground detonation of a nuclear ex-
24 plosive device shall be liable, to the extent so indemnified
25 under this section, for injuries or damage sustained as a

1 result of such detonation in the same manner and to the same
2 extent as would a private person acting as principal, and no
3 immunity or defense founded in the Federal, State, or munici-
4 pal character of the contractor or of the work to be performed
5 under the contract shall be effective to bar such liability."

6 AGGREGATE LIABILITY FOR A SINGLE NUCLEAR INCIDENT

7 SEC. 4. Section 170 e. of the Atomic Energy Act of
8 1954, as amended, is amended by deleting the subsection
9 designation "e" and inserting in its place "e (1)" and adding
10 the following new subsections to read as follows:

11 "e. (2)(A) With respect to nuclear incidents involving
12 contractors with whom the Secretary has entered into an
13 agreement of indemnification, pursuant to subsection 170 d.,
14 the aggregate liability for a single nuclear incident of persons
15 indemnified, including the reasonable costs of investigating
16 and settling claims and defending suits for damage, shall not
17 exceed \$6,000,000,000.

18 "(B) In the event of a nuclear incident involving
19 damages in excess of the amount of aggregate liability, the
20 Congress will thoroughly review the particular incident, in
21 accordance with the procedures set forth in subsection 170 i.,
22 and will, in accordance with such procedures, take whatever
23 action is necessary, including approval of appropriate com-
24 pensation plans, to compensate the public in full for all public
25 liability claims resulting from a disaster of such magnitude.

1 “(3) With respect to any nuclear incident occurring out-
 2 side of the United States to which an agreement of indemnifi-
 3 cation entered into under the provisions of subsection 170 d.
 4 is applicable, such aggregate liability shall not exceed the
 5 amount of \$100,000,000 together with the amount of finan-
 6 cial protection required of the contractor.”.

7 CONGRESSIONAL REVIEW OF COMPENSATION PLANS

8 SEC. 5. Section 170 i. of the Atomic Energy Act of
 9 1954, as amended, is amended by deleting the subsection
 10 designation “i” and inserting in its place “i (1)” and adding
 11 the following new subsections to read as follows:

12 “i. (2) After any nuclear incident covered by an indem-
 13 nity agreement under subsection 170 d. which will probably
 14 require payments by the United States under this section, the
 15 Secretary shall make a survey of the causes and extent of
 16 damage, and shall submit such report forthwith to the Con-
 17 gress, to the Congressmen of the affected districts, to the
 18 Senators of the affected States, and, except for information
 19 which would cause serious damage to the national defense of
 20 the United States, to the public, to the parties involved, and
 21 to the courts. The Secretary shall report annually to the
 22 Congress on the operations under this section.

23 “(3) Upon a determination by a court, pursuant to sub-
 24 section 170 o., that public liability from a single nuclear inci-
 25 dent covered by an indemnity agreement under subsection
 26 170 d. may exceed the aggregate liability under subsection

1 170 e., the President of the United States shall, within ninety
2 days after such determination, submit to the Congress—

3 “(A) a report setting forth the causes and extent
4 of damage and the estimated requirements for full, eq-
5 uitable, and efficient compensation and relief of all
6 claimants;

7 “(B) one or more compensation plans, containing
8 a recommendation or recommendations as to the relief
9 to be provided; and

10 “(C) any additional legislative authorities neces-
11 sary to implement such compensation plan or plans.

12 “(4) Any compensation plan transmitted to the Congress
13 pursuant to paragraph (3) shall bear an identification number
14 and shall be transmitted to both Houses of Congress on the
15 same day and to each House while it is in session.

16 “(5) No such compensation plan may be considered ap-
17 proved for purposes of subsection 170 e. (2) unless between
18 the date of transmittal and the end of the first period of sixty
19 calendar days of continuous session of Congress after the
20 date on which such action is transmitted to such House, each
21 House of Congress passes a resolution described in paragraph
22 7 of this subsection.

23 “(6) For the purpose of paragraph 5 of this subsection—

24 “(A) continuity of session is broken only by an ad-
25 journment of Congress sine die; and

1 “(B) the days on which either House is not in ses-
 2 sion because of an adjournment of more than three
 3 days to a day certain are excluded in the computation
 4 of the sixty-day calendar period.

5 “(7)(A) This paragraph is enacted by Congress—

6 “(i) As an exercise of the rulemaking power of the
 7 Senate and the House of Representatives, respectively,
 8 and as such it is deemed a part of the rules of each
 9 House, respectively, but applicable only with respect to
 10 the procedure to be followed in that House in the case
 11 of resolutions described by clause (B) and it supersedes
 12 other rules only to the extent that it is inconsistent
 13 therewith; and

14 “(ii) with full recognition of the constitutional
 15 right of either House to change the rules (so far as re-
 16 lating to the procedure of that House) at any time, in
 17 the same manner and to the same extent as in the case
 18 of any other rule of the House.

19 “(B) For purposes of this paragraph, the term ‘resolu-
 20 tion’ means only a resolution of either House of Congress the
 21 matter after the resolving clause of which is as follows:
 22 “That the approves the compensation plan
 23 numbered submitted to the Congress on
 24 , 19 ”, the first blank space therein being
 25 filled with the name of the resolving House and the other

1 blank spaces being appropriately filled; but does not include a
2 resolution which specifies more than one compensation plan.

3 “(C) A resolution once introduced with respect to a
4 compensation plan shall immediately be referred to a commit-
5 tee (and all resolutions with respect to the same compensa-
6 tion plan shall be referred to the same committee) by the
7 President of the Senate or the Speaker of the House of Rep-
8 resentatives, as the case may be.

9 “(D)(i) If the committee to which a resolution with re-
10 spect to a compensation plan has been referred has not re-
11 ported it at the end of twenty calendar days after its referral,
12 it shall be in order to move either to discharge the committee
13 from further consideration of such resolution or to discharge
14 the committee from further consideration with respect to such
15 compensation plan which has been referred to the committee.

16 “(ii) A motion to discharge may be made only by an
17 individual favoring the resolution, shall be highly privileged
18 (except that it may not be made after the committee has re-
19 ported a resolution with respect to the same compensation
20 plan), and debate thereon shall be limited to more than one
21 hour, to be divided equally between those favoring and those
22 opposing the resolution. An amendment to the motion shall
23 not be in order, and it shall not be in order to move to recon-
24 sider the vote by which the motion was agreed to or dis-
25 agreed to.

1 “(iii) If the motion to discharge is agreed to or disagreed
2 to, the motion may not be renewed, nor may another motion
3 to discharge the committee be made with respect to any
4 other resolution with respect to the same compensation plan.

5 “(E)(i) When the committee has reported, or has been
6 discharged from further consideration of, a resolution, it shall
7 be at any time thereafter in order (even though a previous
8 motion to the same effect has been disagreed to) to move to
9 proceed to the consideration of the resolution. The motion
10 shall be highly privileged and shall not be debatable. An
11 amendment to the motion shall not be in order, and it shall
12 not be in order to move to reconsider the vote by which the
13 motion was agreed to or disagreed to.

14 “(ii) Debate on the resolution referred to in clause (i) of
15 this subparagraph shall be limited to not more than ten
16 hours, which shall be divided equally between those favoring
17 and those opposing such resolution. A motion further to limit
18 debate shall not be debatable. An amendment to, or motion
19 to recommit, the resolution shall not be in order, and it shall
20 not be in order to move to reconsider the vote by which such
21 resolution was agreed to or disagreed to.

22 “(F)(i) Motions to postpone, made with respect to the
23 discharge from committee, or the consideration of a resolu-
24 tion or motions to proceed to the consideration of other busi-
25 ness, shall be decided without debate.

1 “(ii) Appeals from the decision of the Chair relating to
2 the application of the rules of the Senate or the House of
3 Representatives, as the case may be, to the procedures relat-
4 ing to a resolution shall be decided without debate.”.

5

WAIVER OF DEFENSES

6

SEC. 6. (a) Section 170 n. (1) of the Atomic Energy Act
7 of 1954, as amended, is amended—

8

(1) by adding “or” at the end of subparagraph (c);

9

(2) by adding the following new paragraph (d):

10

“(d) arises out of or results from or occurs in the
11 course of activities undertaken by the Secretary, in-
12 cluding activities undertaken by contract, in connection
13 with the storage or disposal of high-level radioactive
14 waste, spent nuclear fuel, or transuranic waste, includ-
15 ing the transportation of such materials to a storage or
16 disposal site or facility, and the construction and oper-
17 ation of any such site or facility.”.

18

(b) Subsection n. of section 170 of the Atomic Energy
19 Act of 1954, as amended, is amended—

20

(1) in paragraph (1) by—

21

(A) inserting after “the Commission” the fol-
22 lowing: “or the Secretary, as appropriate.”; and

23

(B) striking out “a Commission” in clause (c)
24 and insert in lieu thereof “a Department of
25 Energy”; and

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1 REPORT TO JOINT COMMITTEE BY COMMISSION

2 SEC. 8. Section 170 o. of the Atomic Energy Act of
3 1954, as amended, is amended in paragraph (3) by inserting
4 after "The Commission", both places such phrase appears
5 the following: "or the Secretary, as appropriate,".

6 DATE OF REPORT TO CONGRESS BY DEPARTMENT OF
7 ENERGY

8 SEC. 9. Section 170 p. of the Atomic Energy Act of
9 1954, as amended, is amended by inserting after "August 1,
10 1983," the following: "and the Secretary shall submit to the
11 Congress by August 1, 2003".

12 CONFORMING AMENDMENTS

13 SEC. 10. Subsections g., h., j., and m. of section 170 of
14 the Atomic Energy Act of 1954, as amended, are amended
15 by inserting after "The Commission" or "the commission"
16 wherever they appear the following: "or the Secretary, as
17 appropriate,".

18 SEC. 11. Subsection f. of section 170 of the Atomic
19 Energy Act of 1954, as amended, is amended by striking
20 "Commission" the first two times it appears and inserting in
21 lieu thereof "Commission or the Secretary, as appropriate."

22 SEC. 12. Section 170 n. (1) of the Atomic Energy Act
23 of 1954, as amended, is amended by inserting after "in no
24 event more than twenty years after the day of the nuclear
25 incident," the following "unless the incident is covered by an
26 indemnity agreement under subsection 170 d., in which case

1 in no event more than thirty years after the date of the
2 nuclear incident.”.

3 PUNITIVE DAMAGES

4 SEC. 13. Section 170 of the Atomic Energy Act of
5 1954, as amended, is further amended by adding a new sub-
6 section 170 r. as follows:

7 “r. (1)(A) No court may award exemplary or punitive
8 damages under State law in any action with respect to a
9 nuclear incident against a person on behalf of whom the
10 United States is obligated to make payments under an agree-
11 ment of indemnification covering such incident.

12 “(B) Subparagraph (A) applies to any nuclear incident
13 or evacuation covered by an agreement of indemnification
14 under—

15 “(2) Nothing in this subsection affects the authority of
16 any court to award exemplary or punitive damages under
17 State law in any instance other than an instance subject to
18 paragraph (1).”.

19 PRECAUTIONARY EVACUATIONS

20 SEC. 14. (a) Section 170 of the Atomic Energy Act of
21 1954, as amended, is amended by adding at the end thereof a
22 new subsection 170 s. as follows:

23 “s. The provisions of this section shall apply to any
24 legal liability arising out of or resulting from a precautionary
25 evacuation, as defined in section 11, dd., notwithstanding
26 that no nuclear incident has occurred.”.

1 (b) Section 11 of the Atomic Energy Act of 1954, as
2 amended, is amended by adding at the end thereof the follow-
3 ing new subsection:

4 "dd. The term 'precautionary evacuation' means an
5 evacuation of the public, where no nuclear incident has oc-
6 curred, that is ordered by an officer of a State or a political
7 subdivision of a State who—

8 "(1) is authorized by State law to order such an
9 evacuation; and

10 "(2) reasonably determines, at the time that such
11 evacuation is ordered, that such evacuation is neces-
12 sary to protect those evacuated from imminent danger
13 of bodily injury, sickness, disease, or death arising out
14 of or resulting from the radioactive, toxic, explosive, or
15 other hazardous properties of source, special nuclear,
16 or byproduct material, where such material is subject
17 to an agreement of indemnification entered into pursu-
18 ant to subsection 170 d."

○