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THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.: 507

Date: August 13, 1974 Time: 12:30 p.m.

FOR ACTION: Michael Duval
NSC/S
Fred Buzhardt
Bill Timmons

cc (for information): Warren K. Hendriks
Jerry Jones

FROM THE STAFF SECRETARY

DUE: Date: Wednesday, August 14, 1974 Time: 2:00 p.m.

SUBJECT: Enrolled Bill S. 3669 - Omnibus Atomic Energy Bill

ACTION REQUESTED:

___ For Necessary Action XX For Your Recommendations

___ Prepare Agenda and Brief ___ Draft Reply

___ For Your Comments ___ Draft Remarks

REMARKS: approve

Mike Duval 8/14

Please return to Kathy Tindle - West Wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Warren K. Hendriks
For the President

EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

AUG 13 1974

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 3669 - Omnibus atomic energy bill
Sponsor - Sen. Pastore (D) Rhode Island

Last Day for Action

August 17, 1974 - Saturday

Purpose

Authorizes AEC to transfer to foreign nations special nuclear materials in excess of existing statutory ceilings subject to disapproval within 60 days by a concurrent resolution of the Congress, extends the system of rewards for information on illegal uses of special nuclear materials, clarifies authority for a clearance program for persons having access to such materials, permits the exemption from licensing requirements of certain classes or quantities of special nuclear materials upon special findings as to risk, clarifies authority for approved States to license the use of nuclear materials, and extends the existing authority of AEC to require compulsory licensing of nuclear patents.

Agency Recommendations

Office of Management and Budget	Approval
Atomic Energy Commission	Approval
Department of State	Approval
Department of Defense	No objection
Department of the Treasury	No objection
Central Intelligence Agency	No objection
Department of Justice	Defers to AEC

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Discussion

This bill amends the Atomic Energy Act of 1954 and the Atomic Weapons Rewards Act of 1955 in a number of ways--all of which were proposed by AEC except two provisions noted below.

Atomic Weapons and Special Nuclear Materials Rewards Act

The bill would amend the Atomic Weapons Rewards Act of 1955 to change its title and to establish a system of rewards for information concerning the actual illegal introduction, manufacture, or acquisition of nuclear materials or weapons. Previously, the Act applied only to attempts to introduce, manufacture, or acquire such material.

The bill would extend the Act to cover the export or attempt to export such materials and to cover conspiracies to introduce, manufacture, acquire, or export such materials. It would also embody in the Act a change made by Reorganization Plan No. 4 of 1965, to place the determination of the entitlement of a reward in the Attorney General, rather than in an interagency Awards Board.

The Atomic Energy Act of 1954

The bill would clarify the authority of the AEC to institute measures to control and approve persons who have access to, or control over, substantial amounts of nuclear material. Under a recent Supreme Court decision, the authority over access to materials is in doubt, although the control over access to in-information is clear. These changes will clarify AEC's authority over access to nuclear materials and aid in protecting nuclear material and nuclear weapons from diversion to unauthorized uses.

The bill would clarify the authority of States, having a federally-approved program, to license persons for the distribution of nuclear byproduct material, which is useful in a great many commercial activities. As currently worded, present law may be read to limit such distribution only to persons with Federal licenses. Since the AEC carefully evaluates a State's nuclear program before approving it, protection against misuse of such materials should be sufficient.

S. 3669 would authorize the AEC to exempt from licensing requirements certain classes, quantities, or kinds of uses or users of

special nuclear materials; e.g., nuclear-powered cardiac pacemakers. Exemptions would be allowed after a finding by the AEC that they would not endanger national security or unreasonably risk public health and safety. In its views letter on the enrolled bill, AEC comments:

> "Developments in technology have led, and are expected to lead to the production and use of products and devices incorporating special nuclear material as a power source in such quantities and forms that an AEC license for the ultimate user may not be necessary (e.g. persons with cardiac pacemakers fueled with small amounts of plutonium-238)."

If materials are exempt under the above authority or if plutonium-238 is involved, the bill authorizes the AEC to issue export licenses even though there is no agreement for cooperation with the receiving nation.

The bill would amend the Act to provide that AEC's proposals to increase the existing statutory ceilings or change the duration or conditions for transferring special nuclear materials to the International Atomic Energy Agency or to other groups of nations would have to be submitted to the Congress. If Congress did not pass within 60 days of continuous session a concurrent resolution disapproving such a proposal, the change would go into effect. Currently, an act of Congress is required to make such changes. This provision would allow more flexibility in the administration of such transfers. In its views letter, AEC evaluates this provision as follows:

> "The Commission believes that elimination of the requirement that new legislation be passed to permit distribution of additional quantities of special nuclear material to IAEA and EURATOM, and addition of a more flexible method of establishing such amounts will provide the Commission with the flexibility now required to respond to the increasing nuclear power needs of the nations of EURATOM, and the nations who desire to obtain their nuclear power fuel through the IAEA. Moreover, the Commission recognizes that the review mechanism established by the Bill is consistent with the widely expressed Congressional view as to the desirability of ensuring that each house of Congress will have an adequate opportunity for careful and timely review of and

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> decision on, the additional quantities of special nuclear material and periods of time during which such quantities may be so distributed."

In its views letter on the enrolled bill, Justice indicates that it believes the concurrent resolution in S. 3669 violates the provisions of Article I, section 7 of the Constitution, since it is not a bill subject to the President's approval or his veto. After stating its reasoning, it observes: "Of course, we cannot deny that the practice of providing in statutes for amendment or repeal of legislative authority by concurrent resolution has continued for some years..." Subject to consideration of the observations made in its letter, Justice defers to the AEC as to whether the bill should be approved.

The concurrent resolution approach was not, of course, proposed by the Administration; and we share Justice's concern about its unconstitutionality. Nevertheless, we believe the bill should be approved despite its inclusion for the following reason. A similar provision already exists in law with respect to congressional disapproval of military agreements concerning nuclear weapons. In S. 3669, Congress is willing to permit AEC to transfer special nuclear materials to international organizations or groups of nations in excess of existing statutory ceilings without requiring an act of Congress to approve such transfers, but wants to retain some form of control over the transfers because of concern about granting too large a proportion of our uranium enrichment capacity to foreign nations and perhaps because of apprehension that the materials may be channelled into illegal uses. Under all the circumstances, we do not believe that Congress' desire for a measure of review is unwarranted, although unfortunate in form.

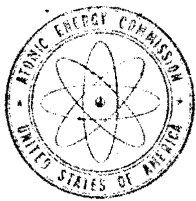
S. 3669 would extend for five years, until September 1, 1979, the AEC's existing authority to require the nonexclusive licensing of any privately owned patent if it finds that: (1) the invention is of "primary importance" in the production or utilization of special nuclear material or atomic energy; and (2) the licensing is of "primary importance" to effectuate the policies and purposes of the Atomic Energy Act. The Commission did not request this provision but supported its inclusion.

The AEC would then be empowered to use the invention itself or require its licensing to others upon payment of a reasonable royalty fee. While this power has never been used, it could

be important if companies which have developed a substantial amount of knowledge and experience with public assistance should refuse to share their expertise with others.

Assistant Director for
Legislative Reference

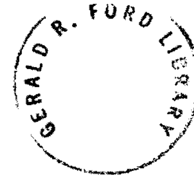
Enclosures



UNITED STATES
ATOMIC ENERGY COMMISSION
WASHINGTON, D.C. 20545

AUG 8 1974

Mr. Wilfred H. Rommel
Assistant Director for
Legislative Reference
ATTN: Mrs. Louise Garziglia
Legislative Reference Division
Office of Management and Budget



Dear Mr. Rommel:

The Atomic Energy Commission is pleased to respond to your request for its views and recommendations on Enrolled Bill, S. 3669, "[t]o amend the Atomic Energy Act of 1954, as amended, and the Atomic Weapons Rewards Act of 1955, and for other purposes."

The Atomic Energy Commission recommends that the President sign the Enrolled Bill.

The Commission believes the bill will aid the performance of its functions in a number of areas, including safeguards, foreign distribution of special nuclear material, licensing and regulation, distribution of by-product material, and patents.

It should be noted that there are four typographical errors in the Bill. The most significant involves the last section, which is erroneously designated "Section 6." The first two lines of the last section are as follows: "Section 6. Subsection 153 h. of the Atomic Energy Act of 1954, as amended, is amended to read as follows:". These lines should be: "Section 7. Subsection 161 i. of the Atomic Energy Act of 1954, as amended, is amended to read as follows:". Another error in the last section is the omission of the word "and" in subparagraph 161 i.(2), between "Act," and "to" (the 35th and 36th words in 161 i.(2)). There is also a typographical error in the "new" subparagraph 54 a.(i). The date "June 1, 1960" should be "July 1, 1960." Finally, the 34th word in subparagraph 54 b.(2) should be "for" rather than "of".

Section 1 amends the Atomic Weapons Rewards Act of 1955 by changing the title to "Atomic Weapons and Special Nuclear Materials Rewards Act," broadening the coverage of the Act, and making certain conforming and technical changes.

The Weapons Rewards Act presently covers, among other things, payment of rewards to persons furnishing original information with respect to the illegal attempted introduction into the United States or attempted

manufacture or acquisition therein of special nuclear material or an atomic weapon. The amendment would extend the coverage of the Act to information regarding (1) the actual introduction of special nuclear material or an atomic weapon into the United States, (2) actual manufacture or acquisition contrary to U.S. law, and (3) conspiracy to introduce or manufacture or acquire such material or weapon contrary to U.S. law. The amendment would also extend coverage to information with respect to the export, attempted export, or a conspiracy to export, special nuclear material or an atomic weapon contrary to the laws of the United States. The amendment would transfer from an interagency Awards Board to the Attorney General the authority to make awards. The statute would thus reflect the transfer to the Attorney General which was made by Reorganization Plan Number 4 of 1965. The amendment includes an explicit provision that a determination of an award made by the Attorney General shall be final and conclusive, and that no court shall have power or jurisdiction to review it.

Section 2 amends section 54 of the Atomic Energy Act. Subparagraph 54 a.(ii) has been added which provides that, notwithstanding the foregoing provisions of the subsection, the Commission may distribute to the International Atomic Energy Agency, or to any group of nations, such amounts of special nuclear materials and for such periods of time, other than those amounts and periods specified in subparagraph 54 a.(i), as are established by the Commission. However, before they are established by the Commission, such other amounts and periods shall be submitted to Congress and referred to the Joint Committee on Atomic Energy and a specified period of 60 days shall elapse. Any such other amounts and periods would not become effective if during such 60-day period Congress passes a concurrent resolution stating in substance that it does not favor the proposed action. The Joint Committee, prior to the elapse of the first 30 days of any such 60-day period, would submit a report to Congress of its views and recommendations respecting the proposed amounts and periods and an accompanying proposed concurrent resolution stating that Congress favors, or does not favor, the proposed amounts or periods.

The Commission believes that elimination of the requirement that new legislation be passed to permit distribution of additional quantities of special nuclear material to IAEA and EURATOM, and addition of a more flexible method of establishing such amounts will provide the Commission with the flexibility now required to respond to the increasing nuclear power needs of the nations of EURATOM, and the nations who desire to obtain their nuclear power fuel through the IAEA. Moreover, the Commission recognizes that the review mechanism established by the Bill is consistent with the widely expressed Congressional view as to the desirability of ensuring that each house of Congress will have an adequate opportunity for careful and timely review of and decision on, the

additional quantities of special nuclear material and periods of time during which such quantities may be so distributed.

The new subsections 54 b. and c. would liberalize the requirement of the present section 54, which prohibits the Commission itself from exporting, or issuing a license for, or otherwise authorizing, export of special nuclear material except under the terms of an agreement for cooperation arranged pursuant to section 123. These subsections would permit the Commission to export, and to authorize others to export, other than under an agreement for cooperation, special nuclear material in classes or quantities or of kinds of uses or users that had been exempted pursuant to subsection 57 d. as amended, and any quantity of plutonium containing 80 percent or more by weight of plutonium-238.

The new subsections would thus eliminate unnecessary expenditure of time and effort required to process license applications for export of special nuclear material for peaceful applications under the current provisions of the Act and the prohibition on exports of special nuclear material for peaceful purposes to countries which have not entered into agreements for cooperation when such exports would not adversely affect the common defense and security.

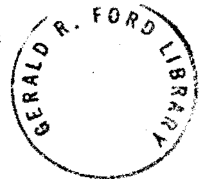
The provision permitting export of plutonium containing 80 percent or more by weight of plutonium-238 other than under an agreement for cooperation is consistent with the guidelines of the International Atomic Energy Agency which exempt plutonium-238 from the requirements of safeguards agreements under the Treaty on the Non-Proliferation of Nuclear Weapons.

Since it is not practical to utilize plutonium-238 as fissile material, because of the decay heat, adequate control of plutonium-238 exports can be exercised through the licensing process without the need for an agreement for cooperation.

Section 3 adds a new subsection 57 d. to the Atomic Energy Act. The subsection authorizes the Commission to exempt certain classes or quantities of special nuclear material or kinds of uses or users from the requirements for a license set forth in the Act when it makes a finding that the exemption of such classes or quantities of special nuclear material or such kinds of uses or users would not be inimical to the common defense and security and would not constitute an unreasonable risk to the health and safety of the public.

Developments in technology have led, and are expected to lead to the production and use of products and devices incorporating special nuclear material as a power source in such quantities and forms that an AEC license for the ultimate user may not be necessary (e.g. persons with cardiac pacemakers fueled with small amounts of plutonium-238).

Section 4 amends section 81 of the Atomic Energy Act to make clear that byproduct material may be made available to persons licensed by Agreement States as well as to persons licensed by the Commission. A narrow reading of section 81 as it is now worded may limit such distribution only to persons licensed by the Commission. A substantial number of states (24 at the end of FY 1973) are now Agreement States and they are all active in evaluating applications for licenses for receipt of byproduct material. Byproduct material is useful in a great number of commercial activities ranging from radiographs of welds to analyses of air and river water with respect to potential environmental problems. When the Commission enters into an agreement with a state under section 274 of the Act, the State's standards and procedures for licensing nuclear materials, including byproduct material, are very carefully evaluated. Therefore, there is no reason to differentiate between those persons authorized under Agreement States and AEC licensees. Thus, the proposed amendment of section 81 would be a logical, conforming change facilitating the distribution of byproduct material.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Section 5 makes conforming technical changes.

Section 6 amends subsection 153 h. of the Atomic Energy Act by extending the operation of section 153 from September 1, 1974 to September 1, 1979. The section essentially provides that either the Commission or a private party may institute a proceeding to compel a patent owner to license a patent for a reasonable royalty.

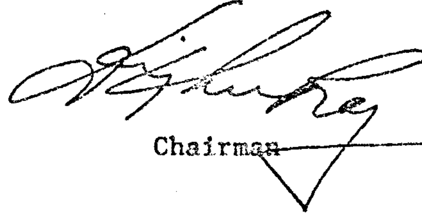
The original authority of the Commission to compel the licensing of certain patents was based on subsection 11 c. of the Atomic Energy Act of 1946. In its present form, the authority has been in the Atomic Energy Act since 1954. It was enacted for a five-year period to assure that a limited number of companies could not establish a dominant patent position to exclude others desiring to enter the field. As participation broadened, it was intended that the authority would be allowed to lapse. Subsequent five-year extensions in 1959, 1964, and 1969 have extended the provisions to those patents based on applications filed prior to September 1, 1974.

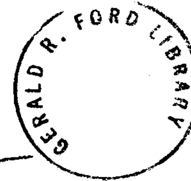
While the industrial base is now broader than at the time of the initial legislation in 1954 and the extensions in 1959, 1964, and 1969, it is still limited in certain fields to a relatively few companies. In addition, important new developments in atomic energy are just emerging from the research phase to a possible commercial phase. As examples of such new fields, we note fast breeder reactors, the uranium enrichment field, and the laser fusion field. Furthermore, patenting may take place in areas directly affecting public health and safety. The section's authority, therefore, can still provide a useful "standby" safeguard to private industry and the public.

Section 7 amends subsection 161 i. of the Atomic Energy Act to clarify and make explicit the authority of the Commission to institute a clearance program for inquiry into the associations and backgrounds of persons who have access to or control over significant quantities of special nuclear material.

Although Chapter 12 of the Atomic Energy Act provides in section 145 authority for the security clearance program for access to Restricted Data and other classified information, it speaks only in terms of access to information and not of access to or control over materials. Without legislation explicitly authorizing a clearance program for persons having access to or control over unclassified special nuclear material, questions may be raised as to the legal validity of such a program. We believe that this section and the amendment of the Atomic Weapons Rewards Act will aid the Commission's program of safeguarding special nuclear material and atomic weapons from diversion to unauthorized uses.

Sincerely,





Chairman

DEPARTMENT OF STATE

Washington, D.C. 20520

AUG 9 - 1974

Honorable Roy L. Ash
Director, Office of Management
and Budget
Washington, D.C. 20503

Dear Mr. Ash:

This is in response to your request for the views of the Department of State on an enrolled bill (S.3669) captioned "An Act to Amend the Atomic Energy Act of 1954, as Amended, and the Atomic Weapons Rewards Act of 1955, and for Other Purposes". The enrolled bill affects the responsibilities of the Department of State in two respects.

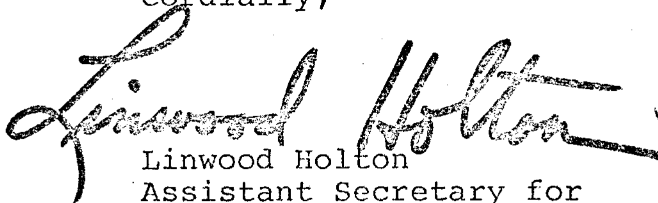
First, Section 2 would amend Section 54 of the Atomic Energy Act of 1954, as amended, to authorize the distribution of special nuclear material to the International Atomic Energy Agency (IAEA) or to any group of nations (such as EURATOM) in such amounts and for such period of time as are established by the Atomic Energy Commission, provided that the Commission's proposals are submitted to Congress and 60 days have elapsed during which Congress may approve or disapprove the proposal by concurrent resolution. Since existing law requires an act of Congress authorizing each proposed quantity for distribution, the effect of the amendment would be to streamline the requirements for cooperation with IAEA and groups of nations. We would have preferred that authority to distribute materials to the IAEA be delegated to the AEC with less stringent provisions for Congressional review, but nevertheless consider the enrolled bill to be an improvement over existing law. We take note of the provision for Congressional disapproval by concurrent resolution and are aware of the views expressed by the Justice Department in other contexts as to the constitutionality of such provisions. However, we do not consider that this issue is sufficient cause for a veto and defer to the Department of Justice on the need for a signing statement.

Second, Section 2 of the enrolled bill adds to Section 54 of the Atomic Energy Act of 1954, as amended, provisions which would facilitate the distribution to persons outside the United States of certain categories of special nuclear mate-

rials which are, or are determined by the AEC to be, not inimical to the common defense and security and would not constitute an unreasonable risk to the health and safety of the public. This provision will enable the distribution of special nuclear material for use in such devices as heart pacemakers and was proposed by the AEC. The Department of State fully supports its enactment into law.

Accordingly, the Department of State recommends approval of the enrolled bill by the President and defers to the Department of Justice for its views on the constitutional issues that are raised.

Cordially,



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Linwood Holton
Assistant Secretary for
Congressional Relations

GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
WASHINGTON, D. C. 20301

12 August 1974

Honorable Roy L. Ash
Director, Office of Management
and Budget
Washington, D. C. 20503

Dear Mr. Ash:

This is in response to your request for the views of the Department of Defense comments on the enrolled enactment of S. 3669, 93d Congress, "To amend the Atomic Energy Act of 1954, as amended and the Atomic Weapons Rewards Act of 1955, and for other purposes."

The legislation would amend several sections of the above Acts as follows:

-- expand the provisions of the Atomic Weapons Rewards Act of 1955.

-- expand the authority of the Commission to distribute special nuclear materials to groups of nations (e. g. EURATOM) subject to Congressional overwatch.

-- authorize the Commission to distribute plutonium containing 80 percent or more Pu^{238} and other special nuclear materials to individuals outside the United States (Pu^{238} is used in nuclear powered heart pacemakers).

-- extend the provisions covering patent applications pertaining to non-military utilization of atomic energy to 1979.

-- expand the authority of the Commission to protect Restricted Data and to guard against the loss or diversion of special nuclear material.

The Department of Defense has reviewed this legislation and has no objection to its enactment

Sincerely,

Martin R. Hoffmann

THE GENERAL COUNSEL OF THE TREASURY

WASHINGTON, D.C. 20220

AUG 6 1974

Director, Office of Management and Budget
Executive Office of the President
Washington, D.C. 20503

Attention: Assistant Director for Legislative Reference

Sir:

Your office has asked for the views of this Department on the enrolled enactment of S. 3669, "To amend the Atomic Energy Act of 1954, as amended, and the Atomic Weapons Rewards Act of 1955, and for other purposes."

The only provisions of the proposed legislation of interest to this Department are contained in the first section of the enrolled enactment. That section would, among other things, amend the Atomic Weapons Rewards Act of 1955 to reflect in its text the transfer of the functions of the Award Board to the Attorney General which transfer was accomplished by Reorganization Plan No. 4 of 1965. Prior to that time, the authority to grant awards was vested in the Board, which consisted of the Secretary of the Treasury, the Secretary of Defense, the Attorney General, the Director of Central Intelligence, and one member of the Atomic Energy Commission.

The Department would have no objection to a recommendation that the enrolled enactment be approved by the President insofar as the foregoing provisions are concerned.

Sincerely yours,

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Richard R. Albrecht

General Counsel

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

6 August 1974

Mr. Wilfred H. Rommel
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D. C. 20503

Dear Mr. Rommel:

This is in response to your letter of 5 August requesting our comments and recommendations on enrolled bill S. 3669 which amends the Atomic Energy Act of 1954 and the Atomic Weapons Rewards Act of 1955.

The portions of S. 3669 that amend the Atomic Energy Act of 1954 deal principally with foreign distribution of special nuclear material and as such reflect the judgment of the Congress on this policy issue. These matters are beyond the jurisdictional interests of the Central Intelligence Agency and I accordingly have no objection to them.

Under the Atomic Weapons Rewards Act of 1955 as presently constituted and as amended by S. 3669, the Director of Central Intelligence is to effect payment of any awards made thereunder out of funds appropriated or available for the administration of the National Security Act of 1947. The instant amendments do not affect this provision of the 1955 Act and I therefore have no comment on or objection to them.

Sincerely,

W. E. Colby
Director

ASSISTANT ATTORNEY GENERAL
LEGISLATIVE AFFAIRS

Department of Justice
Washington, D.C. 20530

AUG 9 1974

Honorable Roy L. Ash
Director, Office of Management
and Budget
Washington, D. C. 20503

Dear Mr. Ash:

In compliance with your request I have examined a facsimile of the enrolled bill S. 3669 (93rd Cong., 2d Sess.) "To amend the Atomic Energy Act of 1954, as amended, and the Atomic Weapons Rewards Act of 1955, and for other purposes."

Section 2 of the enrolled bill would amend Section 54 of the Atomic Energy Act of 1954, as amended, to provide that:

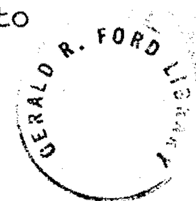
> ...that any such proposed amounts and periods shall not become effective if during such sixty-day period the Congress passes a concurrent resolution stating in substance that it does not favor the proposed action...

It is the position of the Department of Justice that this concurrent resolution veto provision violates the provisions of Article I, section 7 of the Constitution.

The language of the Constitution clearly indicates that the veto power of the President was intended to apply to all actions of Congress which have the force of law. It would be difficult to conceive of language and history which could more clearly require that all such concurrent action of the two Houses be subject to either the President's approval or his veto. Two provisions of Article I, section 7 are involved. Thus, the Constitution provides first that every bill which passes the House of Representatives and the Senate, shall, before it becomes a law, be presented to the President for his approval or disapproval. If disapproved it does not become law unless repassed by a two-thirds vote of each House (Art. I, Sec. 7, clause 2). At the Convention it was recognized that Congress might evade this provision by passing resolutions rather than bills. During the debate on this clause, James Madison observed that--

> "if the negative of the President was confined to bills; it would be evaded by acts under the form and name of Resolutions, votes ***."

Madison believed that additional language was necessary to pin this point down and therefore



> "proposed that 'or resolve' should be added after 'bill' *** with an exception as to votes of adjournment &c."

Madison's notes show that "after a short and rather confused conversation on the subject," his proposal was, at first, rejected. 2 M. Farrand, The Records of the Federal Convention of 1787 301-02 (1937 Rev. ed.) ("Farrand"). However, at the commencement of the following day's session, Mr. Randolph, "having thrown into a new form" Madison's proposal, renewed it and it passed by a vote of 9-1. 2 Farrand 303-05. Thus, the Constitution today provides in the last paragraph of Article I, section 7:

> "Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question Of Adjournment) shall be presented to the President ***; and before the Same shall take Effect, shall be approved by him, or being disapproved by him shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill."

The intent of this clause was clearly to prevent resolutions designed to evade the specified legislative procedure.

The purpose of the veto was not merely to prevent bad laws but to protect the powers of the President from inroads. Leading participants in the Convention of 1787, such as James Madison, Gouverneur Morris and James Wilson, pointed out that the veto would protect the office of President against "encroachments of the popular branch" and guard against the legislature "swallowing up all the other powers." 2 Farrand 299-300, 586-87. In The Federalist (No. 73), Hamilton states that the primary purpose of conferring the veto power on the President is "to enable him to defend himself." Otherwise he "might be gradually stripped of his authorities by successive resolutions, or annihilated by a signle vote."

If it is argued that this concurrent resolution veto provision is valid, then there seems to be no limit to the powers of Congress to upset the historic concept of executive-legislative relations by reserving the right

in legislation to amend or repeal the statute by concurrent resolution. This would avoid presentation of subsequent legislative decisions to the President as contemplated by Article I, Section 7. See R. Ginnane, The Control of Federal Administration by Congressional Resolutions and Committees, 66 Harv. L. Rev. 569, 594-95 (1953); J. P. Harris, Congressional Control of Administration 205-206, 238-40 (Brookings, 1964); Statement of Erwin N. Griswold, National Emergency, Hearings before the Senate Special Committee on the Termination of the National Emergency, 93rd Cong., 1st Sess., Part 3, 741-747 (1973); L. Henkin, Foreign Affairs and the Constitution 121 (Foundation Press, 1972). But see J. & A. Cooper, The Legislative Veto and the Constitution, 30 G.W.L. Rev. 467 (1962); The Constitution of the United States, Analysis and Interpretation, S. Doc. No. 39, 88th Cong., 1st Sess. 135 (1964).

Of course we cannot deny that the practice of providing in statutes for amendment or repeal of legislative authority by concurrent resolution has continued for some years. There are new proposals made in each Congress not only for legislative action by concurrent resolution but by the action of only one House or by one or more committees of Congress. An important example is section 5(c) of the War Powers Act, 87 Stat. 555 (1973), passed over the President's veto, despite a veto message including the statement that the concurrent resolution provision for terminating certain powers of the President was unconstitutional. State Dept. Bull., Nov. 26, 1973, p. 662. The House Committee Report on the War Powers Act (93-287) considered this question and, without making any attempt to come to grips with the language of the Constitution, concluded that the provision was valid because there was "ample precedent" for it. In support the report noted that most of the important legislation enacted for the prosecution of World War II provided for termination of powers upon adoption of concurrent resolutions, including the Lend-Lease Act, First War Powers Act, Emergency Price Control Act and others. See Ginnane, supra; Harris, supra. Admittedly, the Executive branch has not been entirely consistent as far as articulating its position has been concerned. E.g., R. Jackson, A Presidential Legal Opinion, 66 Harv. L. Rev. 1353 (1953). Nevertheless, we do not believe that the matter can be determined by recent usage alone. Although custom or practice can be a source of constitutional law, the cases indicate that this can occur if the test is ambiguous or doubtful but not where the practice is clearly incompatible with the supreme law of the land. McPherson v. Blacker,

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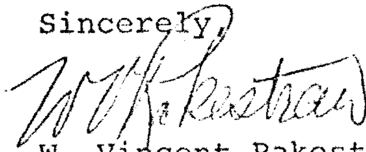
146 U.S. 1, 27 (1892); Inland Waterways v. Young, 309 U.S. 517, 525 (1940); Field v. Clark, 143 U.S. 649, 691 (1892); Nixon v. Sirica, 487 F. 2d 700, 730 (D.C. Cir. 1973) and cases cited therein (McKinnon, J., concurring in part). Here, as noted, the recent practice contradicts the clear text of Article I, section 7.

Moreover, if one is to look to constitutional precedent, the recent trend toward the use of Congressional veto devices is not the only relevant practice. The contemporaneous construction of the Constitution that was followed until recent times points in an entirely different direction. A careful analysis of the practice compiled by the Senate Judiciary Committee in 1897 beginning with the first Congress through the nineteenth century shows that concurrent resolutions were limited to matters "in which both House have a common interest, but with which the President has no concern." They never "embraced legislative provisions proper." S. Rep. No. 1335, 54th Cong., 1st Sess. 6 (1897). The report concluded that the Constitution requires that resolutions must be presented to the President when "they contain matter which is properly to be regarded as legislative in its character and effect." Id. at 8, quoted in part in 4 Hinds' Precedents of the House of Representatives § 3483.

It appears that it was not until 1919 that it was seriously suggested that Congress could make an affirmative policy or legislative decision by a concurrent resolution not presented to the President. Actual enactments of this kind did not begin until the 1930's. Ginnane, supra at 575. Thus, if any deference is to be given to practice and precedent, we believe that the practice begun with the adoption of the Constitution and continued uniformly for approximately 150 years is entitled to far greater weight than the more recent sporadic and often debated examples of lawmaking by concurrent resolution.

Subject to your consideration of the above observations, the Department of Justice defers to the Atomic Energy Commission as to whether this bill should receive Executive approval.

Sincerely,



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W. Vincent Rakestraw
Assistant Attorney General

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.: 507

Date: August 13, 1974 Time: 12:30 p.m.

FOR ACTION: Michael Duval
NSC/S
✓Fred Buzhardt
Bill Timmons

cc (for information): Warren K. Hendriks
Jerry Jones

FROM THE STAFF SECRETARY

DUE: Date: Wednesday, August 14, 1974 Time: 2:00 p.m.

SUBJECT: Enrolled Bill S. 3669 - Omnibus Atomic Energy Bill

ACTION REQUESTED:

____ For Necessary Action XX For Your Recommendations

____ Prepare Agenda and Brief ____ Draft Reply

____ For Your Comments ____ Draft Remarks

REMARKS:

No objection
J.C.

Please return to Kathy Tindle - West Wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Warren K. Hendriks
For the President

Calendar No. 951

93D CONGRESS *2d Session*	SENATE	REPORT No. 93-989

AEC OMNIBUS LEGISLATION—1974

REPORT

BY THE

JOINT COMMITTEE ON ATOMIC ENERGY

[To accompany S. 3669]

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JULY 9, 1974.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1974

38-010

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CONTENTS

		Page
I.	Background	2
II.	Hearings	2
III.	Committee comments	3
IV.	Cost of legislation	9
V.	Section-by-section analysis	10
VI.	Changes in existing law	11

93d Congress
2d Session

SENATE

Report
No. 93-989

AEC OMNIBUS LEGISLATION—1974

July 9, 1974.—Ordered to be printed

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

REPORT

[To accompany S. 3669]

The Joint Committee on Atomic Energy, having considered S. 3669, to amend the Atomic Energy Act of 1954, as amended, and the Atomic Weapons Rewards Act of 1955, hereby reports favorably thereon, with one amendment, and recommends that the bill do pass.

The amendment to the bill (S. 3669) adopted by the Joint Committee in open markup session, June 25, 1974, is as follows:

Delete the provisos beginning on page 4, line 10 and ending on page 5, line 4, and substitute therefor the following provisos:

> *Provided, however*, That, (i) notwithstanding this provision, the Commission is hereby authorized, subject to the provisions of section 123, to distribute to the Agency five thousand kilograms of contained uranium-235, five hundred grams of uranium-233, and three kilograms of plutonium, together with the amounts of special nuclear material which will match in amount the sum of all quantities of special nuclear materials made available by all other members of the Agency to June 1, 1960; and (ii) notwithstanding the foregoing provisions of this subsection, the Commission may distribute to the International Atomic Energy Agency, or to any group of nations, such other amounts of special nuclear materials and for such other periods of time as are established in writing by the Commission: *Provided, however*, That before they are established by the Commission pursuant to this subdivision (ii), such proposed amounts and periods shall be submitted to the Congress and referred to the Joint Committee and a period of sixty days shall elapse while Congress is in session (in computing such sixty days, there shall be excluded the days on which either House is not in session because of an adjournment of more than three days): *And provided further*, That any such proposed amounts and pe-

riods 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 action: *And provided further*, That prior to the elapse of the first thirty days of any such sixty-day period the Joint Committee shall submit a report to the Congress of its views and recommendations respecting the proposed amounts and periods and an accompanying proposed concurrent resolution stating in substance that the Congress favors, or does not favor, as the case may be, the proposed amounts or periods.

I. Background

On October 30, 1974 the Atomic Energy Commission forwarded to Congress a proposed amendment to Section 54 of the Atomic Energy Act of 1954, as amended. This proposal was incorporated in S. 3253, introduced by Senator Joseph Montoya (by request) on March 27, 1974. Representative Melvin Price, Chairman of the Joint Committee on Atomic Energy, introduced an identical bill, by request), H.R. 13896, on April 2, 1974.

On May 16, 1974, following hearings on April 30 before the Subcommittee on Agreements for Cooperation of the JCAE on H.R. 13896 and S. 3253, revised legislation was introduced in lieu of the earlier bills, by Senator Montoya as S. 3502, and by Chairman Price, for himself and Mr. Hosmer, as H.R. 14849.

On May 9, 1974, the Atomic Energy Commission transmitted to Congress a proposed 1974 Omnibus bill containing one amendment to the Atomic Energy Rewards Act of 1955, and five amendments to the Atomic Energy Act of 1954, as amended. The AEC's proposed legislation was introduced on May 20, 1974, by Chairman Price (by request) as H.R. 14901.

On May 23, 1974 Chairman Melvin Price introduced H.R. 14998, another amendment to the Atomic Energy Act of 1954, as amended.

Following full discussion in executive session, the Joint Committee combined these various legislative proposals into a single clean bill, introduced on June 17, 1974 by Chairman Price as H.R. 15416, and by Vice-Chairman Pastore as S. 3669 on June 19, 1974.

On June 18, 1974, the full Joint Committee conducted a hearing on H.R. 15416 and S. 3669. This was followed by an open mark-up session on June 25 during which the Joint Committee voted to approve these bills, with an amendment, and to adopt this Report thereon.

II. Hearings

On April 30, 1974, the Subcommittee on Agreements for Cooperation of the Joint Committee, Senator Montoya presiding, held a hearing on one of the provisions of this bill, embodied originally in H.R. 13896 and S. 3253, and subsequently modified and introduced as H.R. 14849 and S. 3502. Testifying on behalf of the AEC were: John A. Erlewine, General Manager; Abraham S. Friedman, Director, Division of International Programs; and Dixon B. Hoyle, Division of Programs. The subcommittee also heard from Dwight J. Porter, U.S. Ambassador to International Atomic Energy Agency (IAEA), Dr. Gerald Tape, U.S. Representative to IAEA, and Robert Webber, Department of State.

A hearing on H.R. 15416 was held by the full committee on June 18, 1974. The following witnesses appeared for the AEC: John A. Erlewine, General Manager, and Lester Rogers, Director of Regulatory Standards.

III. Committee Comments

The AEC has followed the practice of submitting proposed "omnibus" legislation to the Joint Committee from time to time in order to effect amendments to the Atomic Energy Act of 1954 and related legislation. The Joint Committee believes this is a necessary practice, to maintain current the statutory framework for the atomic energy program, and to serve legislative efficiency. The committee accordingly recommends enactment of H.R. 15416 and S. 3669. Comments concerning the rationale for individual sections of the bill are set forth in succeeding paragraphs.

SECTION 1. ATOMIC ENERGY REWARDS ACT OF 1955

This Act was enacted by the 84th Congress to establish a system to provide rewards for information concerning the illegal introduction into the United States, or the illegal manufacture or acquisition in the United States, of special nuclear material or atomic weapons. The proposed amendments would round out the existing substantive scope of the statute by permitting a reward for information as to: (1) the actual introduction, manufacture or acquisition as distinguished from an attempted introduction, manufacture or acquisition, of such material or weapon; (2) unlawful export or attempt to export such material or a weapon; and (3) a conspiracy to introduce, manufacture, acquire or export such material or a weapon.

Under the existing text of the Act, the authority to grant awards is vested in an Awards Board consisting of the Secretary of the Treasury, the Secretary of Defense, the Attorney General, the Director of Central Intelligence, and one member of the Atomic Energy Commission to be designated by that Commission. Reorganization Plan No. 4 of 1965 (79 Stat. 1321) transferred the functions of the Awards Board to the Attorney General. The proposed amendment would embody that transfer of authority in the text of the Act.

Since the proposed extension of the scope of the Rewards Act is closely associated with the program of the Atomic Energy Commission, under Section 161 i. of the Atomic Energy Act of 1954 (42 Stat. 2201(i)), to guard against the loss or diversion of special nuclear material and to prevent any use or disposition thereof inimical to the common defense and security, the proposed amendment would require that before making a reward under the Rewards Act, as amended, the Attorney General shall advise and consult with the Atomic Energy Commission.

The amendment includes an explicit provision that a determination made by the Attorney General shall be final and conclusive, and that no court shall have power or jurisdiction to review it. This clarifying provision is inserted in order to make sure that the Attorney General's

discretion in the exercise of the reward power shall not be subject to judicial review.

The existing provision of the Weapons Rewards Act would permit the grant of an award, in the case of an actual diversion, only if the diverted material were recovered. The amended provisions would make eligibility for an award independent of the actual recovery of the material. The amended language would reach any situation involving a diversion, an attempted diversion, or a conspiracy to divert.

In view of the broadened scope of the Rewards Act, its title would be changed to "Atomic Weapons and Special Nuclear Materials Rewards Act".

The Joint Committee believes that these amendments clarify and strengthen the provisions of the Atomic Rewards Act of 1955, and that, even though there has not yet been any case of an application for a reward under the existing legislation, they represent a prudent and timely extension of the safeguards program.

SECTION 2. SECTION 54 OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

A. Ceilings for Distribution of Special Nuclear Material to Groups of Nations

Section 54 addresses generally the terms for foreign distribution of special nuclear material pursuant to bilateral or multilateral agreements for cooperation. Regarding multilateral agreements. Section 7 of the International Atomic Energy Agency Participation Act of 1957 provided that the Atomic Energy Commission could distribute special nuclear material (SNM) to the International Atomic Energy Agency (IAEA) or other groups of nations only upon specific authorization by Congress. This provision, which was incorporated into Section 54 of the Atomic Energy Act of 1954, as amended, was accompanied by authoziation for the distribution to IAEA of 5,000 kilograms of uranium–235, together with an amount which matches the sum of such material made available to the IAEA by all other members by July 1, 1960 (an additional 70 kilograms).

The Commission is authorized by Section 5 of the Euratom Cooperation Act of 1958, as amended, to distribute to the European Atomic Energy Community (Euratom) that quantity of contained uranium–235 necessary to support the fuel cycle of power reactors in the Community having installed capacity of 35,000 megawatts of electric energy, together with 25,000 kilograms of contained uranium–235 and 1,500 kilograms of plutonium for other peaceful purposes.

Distributions of special nuclear material to individual nations are provided for by the terms of their respective bilateral agreements for cooperation under Section 123 of the Atomic Energy Act. Such proposed agreements and changes to them must be submitted to the Joint Committee on Atomic Energy for review before becoming effective. Each bilateral agreement, except for that with Canada, includes a provision for a ceiling on the amount of special nuclear material which may be distributed by the U.S. to the other party to the agreement. Thus the U.S. Congress has in the past maintained oversight and control over foreign distribution of special nuclear material, through the Joint Committee review period for bilateral agreements and through

the requirement for stautory approval for distributions to groups of nations.

Overseas distributions of enriched uranium for use in fueling power reactors do not generally involve transfers of U.S. Government supplies of natural uranium. The enriched uranium is usually enriched from uranium feed stock supplied by the customer, which may be obtained from United States private suppliers or suppliers in foreign nations. To date, most overseas customers have obtained their uranium feed supplies from non-U.S. suppliers. Thus, what is being exported are in essence, portions of U.S. uranium enrichment capacity, rather than domestic raw material reserves.

On October 30, 1973, the Atomic Energy Commission forwarded to the Congress a legislative proposal which would delete the statutory requirement that Congress authorize distributions of special nuclear material to groups of nations. Since no absolute ceilings are specified in the IAEA and Euratom Agreements for Cooperation, enactment of the Commission proposal would leave the Congress with no formal control over the quantity of such material which may be distributed. The AEC would be required only to keep the JCAE fully and currently informed in regard to plans for distribution, in accordance with Section 202 of the Atomic Energy Act.

The existing U.S. capacity for enrichment of uranium is expected to be fully committed within a few days of this report. Prospects for increasing the capacity are uncertain at this time. While some U.S. industrial groups are considering entry into this field, no firm plans for domestic private enrichment capacity appear to have been made at this time. Furthermore, the AEC has not yet made a decision as to whether or when to program its installation of new capacity.

In light of this situation, and the increasingly critical nature of energy fuels to our nation's future, the Joint Committee does not feel it would be wise at this time to relax to the suggested extent the congressional controls over commitment of the meager margin of capacity still available. The committee has acted, through other legislation, to strengthen the statutory framework provided for in Section 123 of the Atomic Energy Act of 1954, as amended, regarding international agreements for peaceful cooperation in nuclear energy. The Joint Committee believes that, in view of the importance of nuclear power in meeting the world's energy deficit and increasing demands for a sharing in the benefits to be derived from peaceful nuclear applications, Congress must maintain a clear-cut mechanism for deliberate and responsible participation in the sensitive areas of international dissemination of nuclear fuel as well as nuclear technology.

Accordingly, the Joint Committee, by unanimous consent in the open markup session, amended Section 2 of the bill to retain the present ceilings on amounts of special nuclear material which the AEC is authorized to distribute to the International Atomic Energy Agency, and to provide for congressional review of any proposed increases in the amounts of special materials or for changes in the duration of agreements to distribute such material. That is equivalent to the review provided for agreements for cooperation.

It is not the Joint Committee's intention to delay or prevent arrangements for fueling reactors of other nations, so long as the amounts

involved do not jeopardize U.S. supplies, and so long as the Congress has the opportunity for a searching review of the proposed use and the safeguards associated therewith. The Commission is urged to plan well enough ahead in establishing the ceilings on such distributions so that too frequent revisions are not required. About a two-year period is suggested for planning. The Commission is again urged to take prompt action to assure adequate capacity will be available in the future for the nation's and the world's growing needs.

B. Export of Exempted and Other Special Nuclear Material

The proposed amendment would also add new subsections 54b. and 54c. (the original Section 54 having been redesignated as Subsection 54a.), which would permit the Commission to itself export, or to authorize others to export special nuclear material other than under an agreement of cooperation in certain circumstances. As noted above, the Commission is presently authorized to issue licenses to export special nuclear material only under an agreement for cooperation arranged pursuant to Section 123 of the Act.

A large percentage of special nuclear material export license applications involve small amounts of materials. In 1972, of the 114 licenses to export special nuclear material which had been issued, 39 licenses were for quantities of less than one gram each, 12 were for quantities of 1.0–2.0 grams, six for 2.1–3.0 grams, and one for quantities of 3.1–5.0 grams. Most of these were for material fabricated into such forms as standards, targets, fission chambers, isotopic heat sources, or neutron sources. Such peaceful applications of small amounts of special nuclear material can be expected to increase in the future.

The amendments to Section 54 of the Atomic Energy Act would permit the Commission to export, and authorize export by others of special nuclear material in quantities or for classes of uses or users that had been exempted pursuant to Section 57 d. as amended by section 3 of this bill, and to any quantity of plutonium containing 80 percent or more by weight of plutonium–238 other than under an agreement for cooperation.

With respect to exempted quantities or classes of uses or users of special nuclear material, the authority to authorize export other than under an agreement for cooperation would permit (but not require) the Commission to authorize transfer and use of such quantities or classes by persons exempted from licensing requirements on an international basis as well as in the domestic area. The authority to export and to authorize others to export plutonium containing 80 percent or more by weight of plutonium–238 other than under an agreement for cooperation would extend to bulk form of plutonium–238 as well as plutonium–238 in exempted quantities. Since it is not practical to utilize any quantity of plutonium–238 as fissile material, the Joint Committee believes that control of bulk quantities of plutonium–238 can be exercised adequately through the export licensing process without the need for an agreement for cooperation. The provision is consistent with the guidelines of the International Atomic Energy Agency for exempting plutonium-238 from safeguards requirements of agreements under the Non-Proliferation Treaty. The Commission would be prohibited from distributing any plutonium–238 if, in its opinion, such distribution would be inimical to the common defense

and security. Furthermore, in exercising its authority under this provision, the Joint Committee expects that the Commission would first determine that the export of any such quantities or classes of special nuclear material would not be inconsistent with the obligations of the United States under any treaty or international arrangement, including the Treaty on the Nonproliferation of Nuclear Weapons. The Joint Committee also expects that the Commission, in considering the distribution of any quantities of bulk plutonium–238, will include in its deliberation in each case a determination that a prospective recipient has made adequate provision for safeguarding the public health and safety.

SECTION 3. EXEMPTION FROM THE REQUIREMENTS FOR LICENSE FOR CERTAIN CLASSES OR QUANTITIES OF SPECIAL NUCLEAR MATERIALS

Section 3 of H.R. 15416 would amend Section 57 of the Atomic Energy Act of 1954, as amended, by adding a new subsection d. which would authorize the Commission to exempt certain classes or quantities of special nuclear material or kinds of uses or users from the requirements for a license when the Commission makes a finding that such exemption will not constitute an unreasonable risk to the common defense and security or to the health and safety of the public. The Act currently provides such authority to the Commission with respect to the exemption from the requirements for license for quantities of source material which, in its opinion, are unimportant (section 62) and classes or quantities of byproduct material or kinds of uses or users when it finds that the exemption will not constitute an unreasonable risk to the common defense and security or to the health and safety of the public (Section 81). Examples of useful products containing source or byproduct material which have been made generally available without adverse effects upon the public health and safety or the common defense and security include aircraft counterweights, fire detectors, and various types of electron tubes.

Developments in technology have produced and can be expected to continue to produce useful products and devices incorporating special nuclear material as a power source for which a specific or general license would not be necessary (for the ultimate user) for the protection of the public health and safety or the common defense annd security. Perhaps the most widely known example of such product is the surgically-implanted cardiac pacemaker fueled with plutonium–238, used to provide cardiac stimulation in the treatment of "heart-block". These devices typically utilize .5 grams or less of plutonium–238. Other products utilizing plutonium-powered batteries can be found in space applications, marine instruments, and remote location instrumentation.

The Joint Committee notes that the Commission would be required, in exercising its exemption authority pursuant to the subject legislation, to comply with the applicable provisions of the National Environmental Policy Act of 1969 including the requirement for preparation of an environmental impact statement pursuant to Section 102 (2)(c) of that Act insofar as the implementation constitutes a major Federal action significantly affecting the quality of the human environment.

The Commission would generally exercise its exemption authority under the legislation through rule-making proceedings by which classes of uses or users, or persons possessing a specified class or quantity of special nuclear material, would be exempt from licensing requirements by regulation, rather than by exemption of particular persons on a case-by-case basis. Thus, the environmental impact statement prepared in connection with the rule-making proceeding would address, among other things, the cumulative environmental impact of the exemption of the class, quantity or use of special nuclear material, including the question of ultimate disposal and the environmental impact associated with such disposal.

The Joint Committee believes it desirable that the Commission be provided with the exemption authority discussed above.

SECTION 4. CLARIFICATION OF SECTION 81, OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

Section 81 addresses domestic distribution of byproduct material, i.e.; radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material (examples are cobalt–60, tritium, and promethium–147). The proposed amendment would make it clear that persons licensed by Agreement States under Section 274 of the Act are on the same footing as AEC licensees as to distribution of such materials.

SECTION 6. COMPULSORY PATENT LICENSING EXTENSION

Authority to compel the licensing of certain patents is found in Section 153 of the Atomic Energy Act of 1954, as amended. The section applies to patents which the Atomic Energy Commission declares to be "affected with the public interest," and was initially limited to patents, the applications for which were filed prior to September 1, 1959. In 1959 the authority was extended to applications filed prior to September 1, 1964. In 1964, the authority was extended to those filed prior to September 1, 1969, and in 1969 was extended to those filed prior to September 1, 1974.

Section 153 provides that the Commission may, after giving the patent owner an opportunity for hearing, grant a nonexclusive license on any privately owned patent, the application for which is filed prior to September 1, 1974, if

(1) the invention is of "primary importance" in the production or utilization of special nuclear material or atomic energy; and

(2) the licensing is of "primary importance" to effectuate the polices and purpose of the Atomic Energy Act.

Under those conditions, the Commission is also granted a license to use the invention in performing any of its powers under the Act.

The authority has not been exercised to date. Since the patent owner whose patent is declared affected with the public interest is entitled to a "reasonable royalty fee" for any use licensed under Section 153, the net effect of the procedures of Section 153 is to deny a patent owner the right to possible injunctive relief for non-Government use.

While the industrial base is broader than at the time of the initial legislation in 1954 and the extensions in 1959, 1964, and 1969, it is still limited and certain fields of atomic energy appear to be concentrated in a relatively few companies. In addition, in certain areas industrial application is just emerging from the research phase to a possible commercial phase. While patent incentives are a necessary and desirable stimulus to the development of peacetime uses of atomic energy, it nevertheless is desirable to extend the authority to applications filed during an additional five-year period to assure against enlarging particular preferred legal patent positions of the limited number of companies who may have developed a substantial amount of their experience at public expense. Moreover, existence of the authority may have a salutary effect in preventing situations in the atomic energy industry where a company would refuse to license others at reasonable royalties. It would also provide a safeguard to private industry against injunctive action in situations where a costly installation might infringe a patent embraced within Section 153.

SECTON 7. MATERIALS ACCESS APPROVAL AUTHORITY

This section would amend subsection 161 i. (2) of the Atomic Energy Act of 1954, as amended, to clarify and make explicit the authority of the Commission to conduct a program for approval of persons to have access to, or control over, significant quantities of special nuclear material.

The Commission has under consideration a program which would require that persons having access to or control over significant quantities of special nuclear material be subject to material access approval. Certain statutory authority applicable to safeguards has been granted under subsection 63 b., Section 65, and subsections 161 h. and 161 i., but a decision of the United States Supreme Court suggests that explicit statutory authority would be required to institute a material access approval program for safeguards purposes. *Schneider* v. *Smith*, 390 U.S. 17 (1968). Although Chapter 12 of the Atomic Energy Act provides authority for the security clearance program for access to Restricted Data and other classified information, it speaks only in terms of access to information and not of access to or control over materials. Unless legislation is enacted explicitly authorizing a material access approval program with respect to materials, a question my be raised as to the validity of such a program under the *Schneider* decision. The proposed amendment of subsection 161 i. (2) would authorize the Commission to designate activities which require material access approval because they involve quantities of material which are important to the common defense and security.

IV. Cost of Legislation

Pursuant to Clause 7 of Rule XIII of the Rules of the House of Representatives, the Joint Committee has determined, based on its review of AEC's analysis of the budgetary impact of the proposed legislation, that AEC will not incur any predictable additional costs as a result of carrying out the legislation included in sections 1, 2, 3, 4,

5, and 6 of the bill. At the present time, however, it is not possible to estimate what additional costs AEC will incur as a result of carrying out the legislation contained in section 7. While it is anticipated that there would be some increase in the number of man-years devoted to the safeguards program, the extent of the increase cannot at present be defined as it depends in large measure on the nature of the safeguards to be imposed, the prospective growth of the industry, the extent of the investigation which would be involved in the material access approval program, and the fees to be charged for these investigations.

V. Section-by-Section Analysis

Section 1 of the bill would amend the Atomic Rewards Act of 1955 to authorize rewards for furnishing of information with respect to actual introduction or actual manufacture or acquisition of special nuclear material or an atomic weapon, as well as attempts to introduce, manufacture, or acquire. Section 1 also includes authorization for rewards for information concerning the export, attempted export, or conspiracy to introduce, manufacture, acquire, or export special nuclear material or an atomic weapon.

Section 1 would amend the Atomic Rewards Act of 1955 to place the determination of entitlement to a reward in the hands of the Attorney General, in consultation with the AEC, rather than an Awards Board.

Finally, Section 1 would change the title of the Act from "Atomic Rewards Act of 1955" to "Atomic Weapons and Special Nuclear Materials Rewards Act."

Section 2 of the bill would amend section 54 of the Atomic Energy Act of 1954, as amended, to provide for a revised procedure by which proposed increases in the amounts of special nuclear material authorized for distribution to the International Atomic Energy Agency, or other groups of nations, or proposed changes in the duration of agreements for such distribution, would hereafter be reviewed by the Congress. This section adds provisions to section 54, now redesignated as subsection 54a., to provide for submission to the Congress and referral to the Joint Committee of any such proposed increase in ceiling or change in duration; for a 60-day review period in the Congress during the first 30 days of which the Joint Committee shall report its views and recommendations to the Congress together with a proposed concurrent resolution favoring, or not favoring, as the case may be, the proposal; and to give to a concurrent resolution of disfavor the legal effect of barring the execution of the proposed increase or change in duration.

Section 2 of the bill also adds new language, in the form of subsection 54b., and 54c., to permit the AEC to itself export, or to authorize others to export, special nuclear material other than under an agreement for cooperation. This authority would extend only to: (1) Plutonium which contains 80% or more by weight of plutonium–238, and (2) small amounts of special material exempted in accordance with new subsection 57 d.

Section 3 of the bill would amend Section 57 of the Atomic Energy Act of 1954, as amended, to exempt minimal quantities of special nuclear material from licensing requirements. Such authority already

exists for source and byproduct materials under Sections 62 and 81 of the Atomic Energy Act of 1954, as amended.

Section 4 of the bill clarifies the language of Section 81 of the Atomic Energy Act of 1954, as amended, to make it clear that the provisions of that section apply also to applicants who are licensed by Agreement States, pursuant to Section 274.

Section 5 makes editorial changes to Sections 123, 124 and 125 of the Atomic Energy Act of 1954, as amended. The purpose of section 5 is to provide consistency with section 2 of this bill.

Section 6 of the bill would amend Section 153 of the Atomic Energy Act of 1954, as amended, by deleting, in subsections 153 h., the figure "1974" and substituting therefore the figure "1979". The effect of this section is to extend for 5 years the compulsory patent licensing provisions of the Act. This would be the fourth 5-year extension of these provisions.

Section 7 of the bill would amend subsection 161 i. of the Atomic Energy Act of 1954, as amended, by adding language which will make it clear that the Atomic Energy Commission has express statutory authority to institute a materials access approval program for safeguards purposes.

VI. 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 enclosed in black brackets and new matter is printed in italic; and existing law in which no change is proposed is shown in roman):

* * * * * * *

ATOMIC WEAPONS REWARDS ACT OF 1955

That this Act may be cited as the [Atomic Weapons Rewards Act of 1955] *"Atomic Weapons and Special Nuclear Materials Rewards Act."*

Sec. 2. Any person who furnishes orginal information to the United States—

(a) leading to the finding or other acquisition by the United States of [any] special nuclear material or *an* atomic weapon which has been introduced into the United States[,] or [which has been] manufactured or acquired therein contrary to the laws of the United States, or

(b) with respect to *the introduction or* [an] attempted introduction into the United States or *the manufacture or acquisition or* [an] attempted manufacture or acquisition [therein of any] *or a conspiracy to introduce into the United States or to manufacture or acquire* special nuclear material or *an* atomic weapon contrary to the laws of the United States, or

(c) *with respect to the export or attempted export or a conspiracy to export, special nuclear material or an atomic weapon from the United States contrary to the laws of the United States*, shall be rewarded by the payment of an amount not to exceed $500,000.

SEC. 3. [An Awards Board consisting of the Secretary of the Treasury (Who shall be the Chairman), the Secretary of Defense, the Attorney General, the Director of Central Intelligence, and of one member of the Atomic Energy Commission designated by that Commission, shall determine whether any person furnishing information to the United States is entitled to any award and the amount thereof to be paid pursuant to Section 2. In determining whether any person furnishing information to the United States is entitled to an award and the amount of such award, the Board shall take into consideration—

[(a) whether or not the information is of the type specified in Section 2, and

(b) whether the person furnishing the information was an officer or employee of the United States and, if so, whether the furnishing of such information was in the line of duty of that person. Any reward of $50,000 or more shall be approved by the President.]

The Attorney General shall determine whether a person furnishing information to the United States is entitled to a reward and the amount to be paid pursuant to Section 2.

Before making a reward under this section the Attorney General shall advise and consult with the Atomic Energy Commission.

A reward of $50,000 or more may not be made without the approval of the President.

SEC. 5. (a) *The Attorney General* [The Board established under section 3] is authorized to hold such hearings and make, promulgate, issue, rescind, and amend such rules and regulations as may be necessary to carry out the purpose of this Act.

(b) A determination made by the Attorney General under section 3 of this Act shall be final and conclusive and no court shall have power or jurisdiction to review it.

SEC. 6. Any awards granted under section 3 of this Act shall be certified by the *Attorney General* [Awards Board] and, together with the approval of the President in those cases where such approval is required, transmitted to the Director of Central Intelligence for payment out of funds appropriated or available for the administration of the National Security Act of 1947, as amended.

* * * * * * *

ATOMIC ENERGY ACT OF 1954, AS AMENDED

SEC. 54. FOREIGN DISTRIBUTION OF SPECIAL NUCLEAR MATERIAL.—

* * * * * * *

a. The commission is authorized to cooperate with any nation or group of nations by distributing special nuclear material and to distribute such special nuclear material, pursuant to the terms of an agreement for cooperation to which such nation or group of nations is a part and which is made in accordance with section 123. Unless hereafter otherwise authorized by law the Commission shall be compensated for special nuclear material so distributed at no less than the Commission's published charges applicable to the domestic distribution of such material, except that the Commission to assist and encourage research on peaceful uses or for medical therapy may so

distribute without charge during any calendar year only a quantity of such material which at the time of transfer does not exceed in value $10,000 in the case of one nation or $50,000 in the case of any group of nations. The Commission may distribute to the International Atomic Energy Agency, or to any group of nations, only such amounts of special nuclear materials and for such periods of time as are authorized by Congress: *Provided, however*, That, (i) notwithstanding this provision, the Commission is hereby authorized, subject to the provisions of section 123, to distribute to the Agency five thousand kilograms of contained uranium–235, five hundred grams of uranium–233, and three kilograms of plutonium, together with the amounts of special nuclear material which will match in amount the sum of all quantities of special nuclear materials made available by all other members of the Agency to June 1, 1960[.]*; and (ii) notwithstanding the foregoing provisions of this subsection, the Commission may distribute to the International Atomic Energy Agency, or to any group of nations, such other amounts of special nuclear materials and for such other periods of time as are established in writing by the Commission: Provided, however, That before they are established by the Commission pursuant to this subdivision (ii), such proposed amounts and periods shall be submitted to the Congress and referred to the Joint Committee and a period of sixty days shall elapse while Congress is in session (in computing such sixty days, there shall be excluded the day on which either House is not in session because of an adjournment of more than three days); And provided further, That any such proposed amounts and periods 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 action; and Provided, further, that prior to the elapse of the first thirty days of any such sixty-day period the Joint Committee shall submit a report to the Congress of its views and recommendations respecting the proposed amounts and periods and an accompanying proposed concurrent resolution stating in substance that the Cogress favors, or does not favor, as the case may be, the proposed amounts or periods.*

"The Commission may agree to repurchase any special nuclear material distributed under a sale arrangement pursuant to this [section] *subsection* which is not consumed in the course of 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 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 the use of special nuclear material which was leased or sold pursuant to this [section] *subsection*. Under any such agreement, the Commission shall purchase only such material as is delivered to the Commission during any period when there is in effect a guaranteed purchase price for the same material produced in a nuclear reactor by a person licensed under section 104, established by the Commission pursuant to section 56, and the price to be paid shall be the price so established by the Commission and in effect for the same material delivered to the Commission."

"*b. Notwithstanding the provisions of sections 123, 124, and 125, the Commission is authorized to distribute to any person outside the United States (1) plutonium containing 80 percent or more by weight of plutonium-238 and (2) other special nuclear material when it has, in accordance with subsection 57d. exempted certain classes or quantities of such other special nuclear material or kinds of uses or users thereof from the requirements for a license set forth in this chapter. Unless hereafter otherwise authorized by law, the Commission shall be compensated for special nuclear material so distributed at not less than the Commission's published charges applicable to the domestic distribution of such material. The Commission shall not distribute any plutonium containing 80 percent or more by weight of plutonium-238 to any person under this subsection if, in its opinion, such distribution would be inimical to the common defense and security. The Commission may require such reports regarding the use of material distributed pursuant to the provisions of this subsection as it deems necessary.*"

"*c. The Commission is authorized to license or otherwise permit others to distribute special nuclear material to any person outside the United States under the same conditions, except as to charges, as would be applicable if the material were distributed by the Commission.*"

* * * * * * *

"SEC. 57. PROHIBITION.—

* * * * * * *

"*d. The Commission is authorized to establish classes of special nuclear material and to exempt certain classes or quantities of special nuclear material or kinds of uses or users from the requirements for a license set forth in this section when it makes a finding that the exemption of such classes or quantities of special nuclear material or such kinds of uses or users would not be inimical to the common defense and security and would not constitute an unreasonable risk to the health and safety of the public.*"

* * * * * * *

"SEC. 81. DOMESTIC DISTRIBUTION.—No person may transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, own, possess, import, or export any byproduct material, except to the extent authorized by this section or by section 82. The Commission is authorized to issue general or specific licenses to applicants seeking to use byproduct material for research and development purposes, for medical therapy, industrial uses, agricultural uses, or such other useful applications as may be developed. The Commission may distribute, sell, loan, or lease such byproduct material as it owns to [licensees] *qualified applicants* with or without charge: *Provided, however*, That for byproduct material to be distributed by the Commission for a charge, the Commission shall establish prices on such equitable basis as, in the opinion of the Commission, (a) will provide reasonable compensation to the Government for such material, (b) will not discourage the use of such material or the development of sources of supply of such material independent of the Commission, and (c) will encourage research and development. In distributing such material, the Commission shall give preference to applicants proposing to use such material either in the conduct of research and development or in the medical therapy. [Licensees of the Commission may distribute byproduct material only to applicants therefor who are licensed by the Commission to receive such byproduct material.] The Commission shall not permit the distribution of any byproduct material to any licensee, and shall recall or order the recall of any distributed material from any licensee who is not equipped to observe or who fails to observe such safety standards to protect health as may be established by the Commission or who uses such material in violation of law or regulation of the Commission or in a manner other than as disclosed in the application therefor or approved by the Commission. The Commission is authorized to establish classes of byproduct material and to exempt certain classes or quantities of material or kinds of uses or users from the requirements for a license set forth in this section when it makes a finding that the exemption of such classes or quantities of such material or such kinds of uses or users will not constitute an unreasonable risk to the common defense and security and to the health and safety of the public."

* * * * * * *

"SEC. 123. COOPERATION WITH OTHER NATIONS.—No cooperation with any nation or regional defense organization pursuant to sections 53, *54a.*, 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. 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 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;".

* * * * * * *

"SEC. 124. INTERNATIONAL ATOMIC POOL.—The President is authorized to enter into an international arrangement with a group of nations providing for international cooperation in the nonmilitary applications of atomic energy and he may thereafter cooperate with that group of nations pursuant to sections *54a.*, 57, 64, 82, 103, 104, or 144a; *Provided, however*, That the cooperation is undertaken pursuant to an agreement for cooperation entered into in accordance with section 123."

* * * * * * *

"SEC. 125. COOPERATION WITH BERLIN.—The President may authorize the Commission to enter into agreements for cooperation with the Federal Republic of Germany in accordance with section 123, on behalf of Berlin, which for the purposes of this Act comprises those

areas over which the Berlin Senate exercises jurisdiction (the United States, British, and French sectors) and the Commission may thereafter cooperate with Berlin pursuant to sections *54a.*, 57, 64, 82, 103, or 104: *Provided*, That the guaranties required by section 123 shall be made by Berlin with the approval of the allied commandants."

* * * * * * *

"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, [1974] *1979.*"

* * * * * * *

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

* * * * * * *

"i. prescribe such regulations or orders as it may deem necessary (1) to protect Restricted Data received by any person in connection with any activity authorized pursuant to this Act, (2) to guard against the loss or diversion of any special nuclear material acquired by any person pursuant to section 53 or produced by any person in connection with any activity authorized pursuant to this Act, and to prevent any use or disposition thereof which the Commission may determine to be inimical to the common defense and security, *including regulations or orders designating activities, involving quantities of special nuclear material which in the opinion of the Commission are important to the common defense and security, that may be conducted only by persons whose character, associations and loyalty shall have been investigated under standards and specifications established by the Commission and as to whom the Commission shall have determined that permitting each such person to conduct the activity will not be inimical to the common defense and security*, and (3) to govern any activity authorized pursuant to this Act, including standards and restrictions governing the design, location, and operation of facilities used in the conduct of such activity, in order to protect health and to minimize danger to life or property;".

○

93d Congress
2d Session

HOUSE OF REPRESENTATIVES

REPORT
No. 93-1155

AEC OMNIBUS LEGISLATION—1974

REPORT

BY THE

JOINT COMMITTEE ON ATOMIC ENERGY

[To accompany H.R. 15416]

JUNE 26, 1974.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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U.S. GOVERNMENT PRINTING OFFICE

99-006 WASHINGTON : 1974

S. 3669

GERALD R. FORD LIBRARY

Ninety-third Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Monday, the twenty-first day of January, one thousand nine hundred and seventy-four

An Act

To amend the Atomic Energy Act of 1954, as amended, and the Atomic Weapons Rewards Act of 1955, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Atomic Weapons Rewards Act of 1955 is amended as follows:

(a) The initial section of the Act is amended by striking out the words "Atomic Weapons Rewards Act of 1955" and by substituting in lieu thereof "Atomic Weapons and Special Nuclear Materials Rewards Act."

(b) Sections 2, 3, and 5 of the Act are amended to read as follows:

"SEC. 2. Any person who furnishes original information to the United States—

"(a) leading to the finding or other acquisition by the United States of special nuclear material or an atomic weapon which has been introduced into the United States or manufactured or acquired therein contrary to the laws of the United States, or

"(b) with respect to the introduction or attempted introduction into the United States or the manufacture or acquisition or attempted manufacture or acquisition of, or a conspiracy to introduce into the United States or to manufacture or acquire, special nuclear material or an atomic weapon contrary to the laws of the United States, or

"(c) with respect to the export or attempted export, or a conspiracy to export, special nuclear material or an atomic weapon from the United States contrary to the laws of the United States,

shall be rewarded by the payment of an amount not to exceed $500,000.

"SEC. 3. The Attorney General shall determine whether a person furnishing information to the United States is entitled to a reward and the amount to be paid pursuant to section 2. Before making a reward under this section the Attorney General shall advise and consult with the Atomic Energy Commission. A reward of $50,000 or more may not be made without the approval of the President.".

"SEC. 5. (a) The Attorney General is authorized to hold such hearings and make, promulgate, issue, rescind, and amend such rules and regulations as may be necessary to carry out the purposes of this Act.

"(b) A determination made by the Attorney General under section 3 of this Act shall be final and conclusive and no court shall have power or jurisdiction to review it.".

(c) Section 6 of the Act is amended by deleting the words "Awards Board" and by substituting in lieu thereof the words "Attorney General".

SEC. 2. Section 54 of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"SEC. 54. FOREIGN DISTRIBUTION OF SPECIAL NUCLEAR MATERIAL.—a. The Commission is authorized to cooperate with any nation or group of nations by distributing special nuclear material and to distribute such special nuclear material, pursuant to the terms of an agreement for cooperation to which such nation or group of nations is a party and which is made in accordance with section 123. Unless hereafter otherwise authorized by law the Commission shall be compensated for special nuclear material so distributed at not less than the Commission's published charges applicable to the domestic distribution of such material, except that the Commission to assist and encourage research on peaceful uses or for medical therapy may so distribute

without charge during any calendar year only a quantity of such material which at the time of transfer does not exceed in value $10,000 in the case of one nation or $50,000 in the case of any group of nations. The Commission may distribute to the International Atomic Energy Agency, or to any group of nations, only such amounts of special nuclear materials and for such period of time as are authorized by Congress: *Provided, however*, That, (i) notwithstanding this provision, the Commission is hereby authorized, subject to the provisions of section 123, to distribute to the Agency five thousand kilograms of contained uranium-235, five hundred grams of uranium-233, and three kilograms of plutonium, together with the amounts of special nuclear material which will match in amount the sum of all quantities of special nuclear materials made available by all other members of the Agency to June 1, 1960; and (ii) notwithstanding the foregoing provisions of this subsection, the Commission may distribute to the International Atomic Energy Agency, or to any group of nations, such other amounts of special nuclear materials and for such other periods of time as are established in writing by the Commission: *Provided, however*, That before they are established by the Commission pursuant to this subdivision (ii), such proposed amounts and periods shall be submitted to the Congress and referred to the Joint Committee and a period of sixty days shall elapse while Congress is in session (in computing such sixty days, there shall be excluded the days on which either House is not in session because of an adjournment of more than three days): *And provided further*, That any such proposed amounts and periods 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 action: *And provided further*, That prior to the elapse of the first thirty days of any such sixty-day period the Joint Committee shall submit a report to the Congress of its views and recommendations respecting the proposed amounts and periods and an accompanying proposed concurrent resolution stating in substance that the Congress favors, or does not favor, as the case may be, the proposed amounts or periods. The Commission may agree to repurchase any special nuclear material distributed under a sale arrangement pursuant to this subsection 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 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 the use of special nuclear material which was leased or sold pursuant to this subsection. Under any such agreement the Commission shall purchase only such material as is delivered to the Commission during any period when there is in effect a guaranteed purchase price for the same material produced in a nuclear reactor by a person licensed under section 104, established by the Commission pursuant to section 56, and the price to be paid shall be the price so established by the Commission and in effect for the same material delivered to the Commission.

CORRECTED SHEET

"b. Notwithstanding the provisions of sections 123, 124, and 125, the Commission is authorized to distribute to any person outside the United States (1) plutonium containing 80 per centum or more by weight of plutonium-238, and (2) other special nuclear material when it has, in accordance with subsection 57 d., exempted certain classes or quantities of such other special nuclear material or kinds of uses or users thereof from the requirements for a license set forth in this chapter. Unless hereafter otherwise authorized by law, the Commission shall be compensated for special nuclear material so distributed at not less than the Commission's published charges applicable to the domestic distribution of such material. The Commission shall not distribute any plutonium containing 80 per centum or more by weight of plutonium-238 to any person under this subsection if, in its opinion, such distribution would be inimical to the common defense and security. The Commission may require such reports regarding the use of material distributed pursuant to the provisions of this subsection as it deems necessary.

"c. The Commission is authorized to license or otherwise permit others to distribute special nuclear material to any person outside the United States under the same conditions, except as to charges, as would be applicable if the material were distributed by the Commission.".

SEC. 3. Section 57 of the Atomic Energy Act of 1954, as amended, is amended by adding at the end thereof the following new subsection:

"d. The Commission is authorized to establish classes of special nuclear material and to exempt certain classes or quantities of special nuclear material or kinds of uses or users from the requirements for a license set forth in this section when it makes a finding that the exemption of such classes or quantities of special nuclear material or such kinds of uses or users would not be inimical to the common defense and security and would not constitute an unreasonable risk to the health and safety of the public.".

SEC. 4. Section 81 of the Atomic Energy Act of 1954, as amended, is amended by deleting the word "licensees" and inserting in lieu thereof the words "qualified applicants" in the third sentence of such section and by deleting the fifth sentence of such section.

SEC. 5. Sections 123, 124, and 125 of the Atomic Energy Act of 1954, as amended, are amended by substituting the term "54 a." for the term "54.".

SEC. 6. Subsection 153 h. of the Atomic Energy Act of 1954, as amended, is amended by striking the figure "1974" and substituting therefor the figure "1979".

SEC. 7. Subsection 161 i. of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"i. prescribe such regulations or orders as it may deem necessary (1) to protect Restricted Data received by any person in connection with any activity authorized pursuant to this Act, (2) to guard against the loss or diversion of any special nuclear material acquired by any person pursuant to section 53 or produced by any person in connection with any activity authorized pursuant to this Act, to prevent any use or disposition thereof which the Commission may determine to be inimical to the common defense and security, including regulations or orders designating activities, involving quantities of special nuclear material which in the

opinion of the Commission are important to the common defense and security, that may be conducted only by persons whose character, associations, and loyalty shall have been investigated under standards and specifications established by the Commission and as to whom the Commission shall have determined that permitting each such person to conduct the activity will not be inimical to the common defense and security, and (3) to govern any activity authorized pursuant to this Act, including standards and restrictions governing the design, location, and operation of facilities used in the conduct of such activity, in order to protect health and to minimize danger to life or property;".

Speaker of the House of Representatives.

Vice President of the United States and
President of the Senate.

August 6, 1974

Dear Mr. Director:

The following bills were received at the White House on August 6th:

S.J. Res. 228
S. 2296
S. 3669
H.R. 14012
H.R. 15074

Please let the President have reports and recommendations as to the approval of these bills as soon as possible.

Sincerely,

GERALD R. FORD LIBRARY

Robert D. Linder
Chief Executive Clerk

The Honorable Roy L. Ash
Director
Office of Management and Budget
Washington, D. C.