The original documents are located in Box 37, folder "12/31/75 HR8631 Price-Anderson Act Amendments" of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library.

APPROVED
DEC 31 1975

signed 12/31/75

THE WHITE HOUSE

WASHINGTON

ACTION

Last Day: December 31

December 30, 1975

Posted 1/1

To Archives 1/2

MEMORANDUM FOR THE PRESIDENT

FROM: JIM CANNON

SUBJECT: H.R. 8631 - Price-Anderson Act Amendments

Attached for your consideration is H.R. 8631, sponsored by Representatives Price and Anderson, which would amend the Atomic Energy Act of 1954, as amended, to provide for the phaseout of governmental indemnity as a source of funds for public remuneration in the event of a nuclear incident.

The enrolled bill would:

-- Extend for ten years, until August 1, 1987 the existing governmental indemnity known as the Price-Anderson Act.

-- Provide a gradual transfer of indemnification from Government to private sources.

-- Provide an increase in the limit of licensees' liability.

-- Provide a limited extension of indemnity coverage outside the United States.

A detailed discussion of the provisions of the enrolled bill is provided in OMB's enrolled bill report at Tab A.

OMB, Max Friedersdorf, Counsel's Office (Lazarus) and I recommend approval of the enrolled bill.

RECOMMENDATION

That you sign H.R. 8631 at Tab B.

A

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

DEC 24 1975

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 8631 - Price Anderson Act Amendments
Sponsors - Rep. Price (D) Illinois and Rep. Anderson (R) Illinois

Last Day for Action

December 31, 1975 - Wednesday

Purpose

To amend the Price-Anderson Act to provide for: (1) its extension for ten years until August 1, 1987; (2) a gradual transfer of indemnification from Government to private sources; (3) an increase in the limit of licensees' liability and (4) a limited extension of indemnity coverage outside the United States.

Agency Recommendations

Office of Management and Budget	Approval
Energy Research and Development Administration	Approval
Nuclear Regulatory Commission	Approval (Informally)
Federal Energy Administration	Approval
Department of Commerce	No objection
Department of the Treasury	No objection
Department of Justice	Defer to NRC

Discussion

The Price-Anderson Act was enacted in 1957 and amended in 1965 and 1966. It was designed to protect the public and the emerging nuclear industry by assuring the availability of funds for the payment of claims in the unlikely event of a catastrophic nuclear incident. Among other things, that Act would indemnify nuclear licensees for their liability for damages in the event of a nuclear incident up to a total of $560 million per incident.

This figure represents $435 million of Government indemnification, plus $125 million of private insurance now available.

Other features of that Act included no-fault liability by the licensee and provisions for the advance payment of claims immediately upon occurrence of a nuclear incident. The Act is scheduled to expire on August 1, 1977.

Because of the long lead time involved in planning new commitments to nuclear power plants and the need to anticipate contractual arrangements, the Administration submitted a draft bill to Congress in June 1975. The enrolled bill is a modified version of this proposal and would amend the Price-Anderson Act as follows:

-- extends for ten years (from August 1, 1977 to August 1, 1987) the Nuclear Regulatory Commission's (NRC) authority to require financial protection of and to provide indemnification for its licensees. This extension would also apply to the authority of the Energy Research and Development Administration to enter into similar agreements with its contractors.

-- clarifies existing law to recognize that the total liability of a licensee may eventually be covered by private insurance. The Commission is required, within one year of enactment of this legislation, to determine the maximum amount of private liability insurance available. Considered in this determination would be any private insurance coverage funded by "deferred premiums." A "deferred premium" is one which nuclear facilities would be required to pay if a nuclear incident occurred which resulted in damages exceeding the amount of insurance financed by prepaid premiums, or the "base layer of insurance," up to $560 million.

   The Commission may also raise the limitation on liability of licensees if private insurance is available in excess of $560 million.

-- authorizes NRC to approve private insurance plans which include a "base layer of insurance" funded by prepaid premiums in addition to a "secondary layer of insurance" funded, only if necessary and

after an incident occurs, by deferred premiums paid on a pro rata basis by all nuclear facilities.

The bill would provide that such "deferred premiums" not exceed $5 million chargeable to each facility. The Commission could establish lower premiums for individual facilities depending on size, location and other hazard factors and as the total number of reactors licensed increases. This latter provision would reflect the fact that as the number of participants paying deferred premiums increases, the pro rata share of each facility can be decreased.

The bill would also authorize the Commission to allow facilities to fulfill some or all of the indemnity coverage they are required to provide by means other than insurance and still be eligible for "deferred premiums" coverage.

-- requires the Commission to develop a plan to assure payment of deferred premiums. The Commission would be authorized to specify the terms on which the Government would guarantee availability of funds despite any defaults. Measures to assure reimbursement, such as liens on property and revenues of a defaulting licensee and automatic revocation of any license, would be permitted.

-- requires that after a nuclear incident that would probably result in claims in excess of $560 million, the Commission make a survey of the causes and extent of damage, report its findings to the Joint Committee on Atomic Energy, the Representatives of the affected districts, and the Senators of the affected States. All information not detrimental to our national defense would be available to the public. Such a survey and report are now required only when any Government payments are probable. This revision takes into account the possibility that private indemnification could completely replace Government payments in the future.

-- extends the indemnity provisions of the bill to offshore nuclear power plants and to shipment between licensees in the United States which are routed beyond territorial waters.

-- increases from 10 to 20 years the effect of the statute of limitations with respect to claims arising from a nuclear incident.

-- reverses the present provision that allows reasonable costs of investigating, settling claims and defending damage suits to be included in the $560 million designated to pay claims. These expenses would now be in addition to the limit on liability.

-- modifies existing law by specifically requiring that in the event of an extraordinary nuclear occurrence, the Federal court having jurisdiction over public liability suits would specifically establish, in its plan for disbursement of funds to injured claimants, a system of priorities between claimants and classes of claims to assure the most equitable allocation of available funds.

-- requires the Commission to submit to the Congress by August 1, 1983, a report and recommendation concerning the need for continuation or modification of the Price-Anderson system based on relevant conditions at the time, including the conditions of the nuclear industry, availability of private insurance, and the state of knowledge of nuclear safety.

Similar legislation was passed by Congress in October 1974, but vetoed by you based on the unconstitutionality of a section which would have allowed the Congress to prevent the bill from becoming effective by passing a concurrent resolution within a specified time. That section is not in the enrolled bill.

James M. Frey
Assistant Director
for Legislative Reference

Enclosures

UNITED STATES
ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION
WASHINGTON, D.C. 20545

Mr. James M. Frey
Assistant Director for
Legislative Reference
Office of Management and Budget

Dear Mr. Frey:

The Energy Research and Development Administration is pleased to respond to your request for our views and recommendations regarding Enrolled Bill H.R. 8631, an Act "[t]o amend the Atomic Energy Act of 1954, as amended, to provide for the phaseout of governmental indemnity as a source of funds for public remuneration in the event of a nuclear incident, and for other purposes."

We strongly support this bill and recommend that the President sign it.

Essentially, this bill would extend for 10 years (to August 1, 1987) the existing governmental indemnity, known as the Price-Anderson Act (42 U.S.C. 2210), which provides for the indemnification of licensees and Government contractors in the unlikely event of a serious nuclear incident. At the same time, the bill is designed to provide for a phaseout of the governmental indemnity system so that ultimately any public liability claims would be covered by private insurance.

From its inception in 1957, the paramount purpose of the Price-Anderson indemnity system has been to protect the public. Large nuclear power plants are required to maintain the maximum amount of private insurance available, currently $125 million. In the event of a serious nuclear incident resulting in damages in excess of that amount, federal indemnity payments would be available to supplement insurance funds to an upper aggregate limit of $560 million. It should be stressed, however, that the safety record of the nuclear industry is unparalleled, there having been only one nuclear accident in 1961 which resulted in the death of one person with a consequent indemnity payment of $70,000.

In addition to its major purpose of extending the life of the Price-Anderson coverage for ten years, this enrolled bill would also make some salient changes in the existing Law, as follows: (a) the definition of "nuclear incident" (42 U.S.C. 2014q.) is broadened so as to cover off-shore nuclear power plants and transit of nuclear facilities outside U.S. territorial limits; (b) the phaseout of the existing governmental indemnity system would be achieved through the use of a retrospective rating plan to be used by the private liability insurance industry with the amount of deferred premiums required

thereunder being established under the amended statutory provision and the Government ultimately becoming only a guarantor for such deferred premiums (Sec. 3 of H.R. 8631, amending 42 U.S.C. 1076.); and (c) the amount of private insurance required by the Nuclear Regulatory Commission to be carried by a licensee might exceed $60 million and such insurance, together with indemnity payments, would defray public liability claims to a total aggregate up to $560 million. It is provided, however, that if a nuclear incident should result in claims exceeding that aggregate amount, the Congress could enact appropriate ad hoc disaster legislation (Sec. 6 of bill amending 42 U.S.C. 170e.).

Sincerely,

for Robert C. Seamans, Jr.
Administrator

FEDERAL ENERGY ADMINISTRATION
WASHINGTON, D.C. 20461

MEMORANDUM FOR: James M. Frey
Assistant Director
for Legislative Reference

FROM: Michael F. Butler
General Counsel
Federal Energy Administration

SUBJECT: Enrolled Bill - H.R. 8631

This is in response to your request for the views of the Federal Energy Administration on H.R. 8631, "To amend the Atomic Energy Act of 1954, as amended, to provide for the phaseout of governmental indemnity as a source of funds for public remuneration in the event of a nuclear incident, and for other purposes."

Extension of the "Price-Anderson" Act which provides Federal indemnity in case of an accident at a licensed nuclear facility was proposed by the Administration in this session of Congress. The Administration measure was designed to extend "Price-Anderson" for 10 years and to phaseout government indemnity and replace it by private insurance coverage. While containing some changes from the original Administration draft language, H.R. 8631 fully accomplishes the objectives of the original Administration proposal.

H.R. 8631 would extend "Price-Anderson" coverage for ten years. It is intended to protect the public in case of a nuclear accident at facilities licensed and regulated by the NRC. At present the nuclear industry maintains $125 million in private insurance coverage. Should damages in excess of that amount result from a nuclear incident, Federal indemnity payments would be available to supplement insurance funds up to the $560 million limit of liability which is provided for in the Act.

In addition, H.R. 8631 would amend the current law to provide for the eventual phaseout of government indemnity as private insurance becomes increasingly available through a retroactive

premium mechanism. The current $560 million limit of liability would float upward as new reactors are licensed by the NRC with no upper limit of liability for such private insurance coverage. Also, H.R. 8631 would extend indemnity coverage to certain nuclear incidents occuring outside U.S. territorial limits. All of these amendments to the current Act were proposed by the Administration in its original draft.

H.R. 8631 includes certain amendments agreed to by Congress which were not contained in the original Administration draft bill. Each of these amendments is considered to be primarily technical in nature, and, as a result, the changes adopted by Congress have not substantially altered the Administration's original proposal.

Five new amendments were agreed to by Congress. The first provides for Congressional review and appropriate action in connection with any accident resulting in damages in excess of $560 million. This incorporates into the Act a provision which has always been clearly expressed in the legislative history. FEA has no objection to this amendment.

The second change provides that the NRC accident report pertaining to any accident which might have damages in excess of $560 million, be made available to the public unless such disclosure would cause serious damage to the national defense of the United States. FEA has no objection to this amendment.

The third change would exclude from payment under the $560 million indemnity the costs for investigating and settling claims and the costs for defending damage suits. FEA has no objection to this amendment.

The fourth change would extend the maximum statute of limitation for damage claims from 10 to 20 years. FEA has no objection to this amendment.

The fifth change requires that the NRC accident report, pertaining to any accident which might have damages in excess of $560 million, be made available to Congressmen and Senators whose districts and States are affected by such accident. FEA has no objection to this amendment.

In conclusion, the FEA strongly recommends that this Act be endorsed by the President.

THE UNDER SECRETARY OF COMMERCE
Washington, D.C. 20230

DEC 22 1975

Honorable James T. Lynn
Director, Office of Management
and Budget
Washington, D. C. 20503

Attention: Assistant Director for Legislative Reference

Dear Mr. Lynn:

This is in reply to your request for the views of this Department concerning H.R. 8631, an enrolled enactment

> "To amend the Atomic Energy Act of 1954, as amended, to provide for the phaseout of governmental indemnity as a source of funds for public remuneration in the event of a nuclear incident, and for other purposes."

The principal purpose of H.R. 8631 is to extend the Price-Anderson Act for an additional 10-year period, and to phase out the Government's present role as an indemnitor in the event of a nuclear incident.

The provision in section 1 relating to the nuclear ship Savannah appears to be moot since the Savannah is not presently operating and there are no plans to operate it in the future.

This Department would have no objection to approval by the President of H.R. 8631.

Enactment of this legislation will not involve the expenditure of any funds by this Department.

Sincerely,

James A. Baker, III

James A. Baker, III

THE DEPUTY SECRETARY OF THE TREASURY

WASHINGTON, D.C. 20220

DEC 23 1975

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 H.R. 8631, "To amend the Atomic Energy Act of 1954, as amended, to provide for the phaseout of governmental indemnity as a source of funds for public remuneration in the event of a nuclear incident, and for other purposes."

The enrolled enactment would amend the Atomic Energy Act of 1954, as amended, which provides for an insurance program to protect the nuclear power industry from unlimited exposure to damage claims. The program protects the public against loss and damages up to $560 million resulting from a nuclear power accident and limits, to that same amount, the liability of the industry for damages from such an accident. The bill would extend for ten years, until August 1, 1987, the program of Federal insurance for the nuclear power industry.

The Department would have no objection to a recommendation that the enrolled enactment be approved by the President.

Sincerely yours,

Stephen S. Gardner

ASSISTANT ATTORNEY GENERAL
LEGISLATIVE AFFAIRS

Department of Justice
Washington, D.C. 20530

December 23, 1975

Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D. C. 20503

Dear Mr. Lynn:

In compliance with your request I have examined a facsimile of the enrolled bill H.R. 8631, 94th Cong., 1st Sess., "To amend the Atomic Energy Act of 1954, as amended, to provide for the phaseout of governmental indemnity as a source of funds for public remuneration in the event of a nuclear incident, and for other purposes."

The bill is in most respects identical with H.R. 15323, 93d Cong., on which the Department of Justice commented to you on October 9, 1974. A copy of those comments is attached. In that report this Department recommended Presidential disapproval on the basis of a provision--not contained in H.R. 8631--which would have enabled Congress to repeal the bill after its enactment by way of a concurrent resolution not presented to the President.

President Ford disapproved the bill. In his veto message of October 12, 1974, he stated that he would have been glad to approve the remaining sections of the bill if they had stood alone.

The major differences between this bill and H.R. 15323 are that this bill omits the provision to which the President objected, and that it extends the basic legislation for ten rather than five years. H. Rept. 94-648, p. 3. The bill contains several additional apparently minor variations from H.R. 15323. In view of the highly technical nature of the legislation, we are in no position to evaluate these variations in the short time limit for the review of enrolled

bills, especially since we have not been previously consulted in connection with it. Prima facie they do not appear to involve anything within the responsibilities or expertise of the Department of Justice.

The Department of Justice therefore defers to the views of the Nuclear Regulatory Commission as to whether this bill should receive Executive approval.

Sincerely,

Michael M. Uhlmann
Assistant Attorney General
Office of Legislative Affairs

Attachment

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

OCT 9 1974

Dear Mr. Ash:

In compliance with your request, I have examined a facsimile of the enrolled bill H.R. 15323, "To amend the Atomic Energy Act of 1954, as amended, to revise the method of providing for public remuneration in the event of a nuclear incident, and for other purposes."

The enrolled bill primarily would amend section 170 of the Atomic Energy Act, commonly referred to as the Price-Anderson Act. The Price-Anderson legislation was originally enacted to assure the availability of funds to satisfy liability claims in the event of a nuclear accident and to eliminate the deterrent to the use of atomic energy for power production posed by the prospect of such large liability. Broadly, these purposes have been achieved in the following manner. First, persons licensed to operate nuclear power reactors or other production and utilization facilities are required to have and maintain financial protection in the form of insurance or otherwise to cover liability claims resulting from a nuclear incident involving the facility. Generally the amount of financial protection required is equal to the amount of liability insurance available from private sources. Financial protection may include private insurance, private indemnities, self-insurance, other proof of financial responsibility, or a combination of such measures. Second, the Atomic Energy Commission is required to indemnify licensees against liability claims in excess of the financial protection required, up to $500,000,000. Finally, the public liability of indemnified licensees is limited to the sum of the amount of financial protection required and the amount of indemnity, not to exceed $560,000,000.

The Price-Anderson Act originally authorized the Commission to indemnify licensees for whom licenses were issued prior to August 1, 1967. This authority was subsequently extended by Public Law 89-210 to licenses issued prior to August 1, 1977. The enrolled bill would extend the basic Price-Anderson system for another ten-year period with three major changes: (1) a phasing out of governmental indemnity, (2) an increase in the amount to which liability is limited, and (3) an extension of indemnity coverage to certain nuclear incidents occurring outside the territorial limits of the United States.

You have specifically asked us to direct our attention to section 12 of the bill, which provides as follows:

> The provisions of this Act shall become effective thirty (30) days after the date on which the Joint Committee on Atomic Energy submits to the Congress an evaluation of the Reactor Study, entitled "An Assessment of Accident Risks in the U.S. Commercial Nuclear Power Plants," AEC Report Number WASH-1400, except that it shall not become effective if within the thirty (30) day period after the Joint Committee submits its evaluation, the Congress adopts a concurrent resolution disapproving the extension of the Price-Anderson Act.

The effect of this section is to enable a Committee of Congress and the two Houses of Congress to prevent the bill from ever becoming effective after it has been approved by the President: the former by not submitting an evaluation report, and the latter by passing a concurrent resolution disapproving extension of the Price-Anderson Act. For the reasons explained below, it is the view of this Department that section 12 is unconstitutional, and unsound as a matter of policy.

This provision violates the well-established principle that Committees of Congress cannot perform a legislative function (37 Op A.G. 56, 58 (1933)) and that concurrent resolutions of Congress not presented to the President cannot have any legal effect outside the confines of the Capitol. U.S. Constitution Art. 1, Sec. 7, clauses 2 and 3; S. Rept. 1335, 54th Cong. 1st Sess., p. 6. Beyond this, however, the bill has an aspect which to our knowledge is unprecedented. Past provisions for vetoes by concurrent resolution or by Committees have had the intended effect of controlling Executive action or of terminating existing legislation. Section 12 would prevent legislation presented to the President from ever becoming effective. In this the clause is unique, and raises a serious challenge to the integrity of the legislative process.

The presentation of legislation to the President pursuant to Article I, Section 7 constitutes a representation to the President by the Congress that the legislation is ready to become law — its effectiveness subject, on occasion, to external conditions precedent, but not to further deliberation by the Congress. Here, however, Congress takes the position that the President should approve the bill, but that Congress will await its examination of a Reactor study before it determines whether the legislation should take effect. Contrary to the Constitutional scheme, it seeks to force the President to make his final decision on the matter before the Congress — and, in the circumstances of this case, to expend his veto option without having before him certain material so relevant that the Congress is unwilling to act without it. We cannot see how the President can be expected to approve the bill in this posture.

We realize, of course, that Presidents have frequently approved encroachment clauses in vitally needed legislation, especially in appropriation and authorization acts. For a recent example see President Nixon's statement of August 5, 1974, relating to the Department of Defense Appropriation Authorization Act of 1975, 10 Weekly Compilation of Presidential Documents 1007 (1974). In our view, however, both the novelty and severity of the encroachment, and the effects of its unconstitutionality argue against a similarly tolerant attitude in this case. We think it particularly important to scotch this new type of encroachment on Executive perogative when it has first appeared, because its potential for future use is enormous. It is an attractive device for shifting initial responsibility for legislation to the President, and for giving Congress the political credit for legislation which it has not definitively passed. The doubtful constitutionality of encroachment clauses that have been allowed to pass in other statutes rarely affects private rights of citizens. Here, however, the unconstitutionality of section 12 may destroy the entire Price-Anderson Act structure and impair the validity of the financial guarantees it provides.

The Department of Justice recommends against Executive approval of the bill.

Sincerely,

(Signed) W. Vincent Rakestraw

W. Vincent Rakestraw
Assistant Attorney General
Office of Legislative Affairs

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

To J. Cavanaugh 12-24-75 11:15 a.m.

DEC 24 1975

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 8631 - Price Anderson Act Amendments
Sponsors - Rep. Price (D) Illinois and Rep. Anderson (R) Illinois

Last Day for Action

December 31, 1975 - Wednesday

Purpose

To amend the Price-Anderson Act to provide for: (1) its extension for ten years until August 1, 1987; (2) a gradual transfer of indemnification from Government to private sources; (3) an increase in the limit of licensees' liability and (4) a limited extension of indemnity coverage outside the United States.

Agency Recommendations

Office of Management and Budget	Approval
Energy Research and Development Administration	Approval
Nuclear Regulatory Commission	Approval (Informally)
Federal Energy Administration	Approval
Department of Commerce	No objection
Department of the Treasury	No objection
Department of Justice	Defer to NRC

Discussion

The Price-Anderson Act was enacted in 1957 and amended in 1965 and 1966. It was designed to protect the public and the emerging nuclear industry by assuring the availability of funds for the payment of claims in the unlikely event of a catastrophic nuclear incident. Among other things, that Act would indemnify nuclear licensees for their liability for damages in the event of a nuclear incident up to a total of $560 million per incident.

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: December 24 Time: 130pm

FOR ACTION: Glenn Schleede
Paul Leach
Max Friedersdorf
Ken Lazarus
Bill Seidman

cc (for information): Jack Marsh
Jim Cavanaugh

FROM THE STAFF SECRETARY

DUE: Date: December 29 Time: noon

SUBJECT:

H.R. 8631 - Price-Anderson Act Amendments

ACTION REQUESTED:

____ For Necessary Action
____ For Your Recommendations
____ Prepare Agenda and Brief
____ Draft Reply
__X__ For Your Comments
____ Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground floor 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.

K. R. COLE, JR.
For the President

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: December 24 Time: 130pm

FOR ACTION: Glenn Schleede
Paul Leach
Max Friedersdorf
Ken Lazarus
Bill Seidman

cc (for information): Jack Marsh
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FROM THE STAFF SECRETARY

DUE: Date: December 29 Time: noon

SUBJECT:

H.R. 8631 - Price Anderson Act Amendments

ACTION REQUESTED:

____ For Necessary Action ____ For Your Recommendations

____ Prepare Agenda and Brief ____ Draft Reply

__X__ For Your Comments ____ Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

Recommend approval Schleede

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DEC 24 RECD

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: December 24 Time: 130pm

FOR ACTION: Glenn Schleede
Paul Leach
Max Friedersdorf
Ken Lazarus
Bill Seidman

cc (for information): Jack Marsh
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SUBJECT:

H.R. 8631 - Price Anderson Act Amendments

ACTION REQUESTED:

____ For Necessary Action ____ For Your Recommendations

____ Prepare Agenda and Brief ____ Draft Reply

__X__ For Your Comments ____ Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

approval

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.

THE WHITE HOUSE

WASHINGTON

December 29, 1975

MEMORANDUM FOR: JIM CAVANAUGH

FROM: MAX FRIEDERSDORF

SUBJECT: H.R. 8631 - Price Anderson Act Amendments

The Office of Legislative Affairs has reviewed subject bill and recommends it be signed.

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: December 24 Time: 130pm

FOR ACTION: Glenn Schleede
Paul Leach
Max Friedersdorf
Ken Lazarus
Bill Seidman

cc (for information): Jack Marsh
Jim Cavanaugh

FROM THE STAFF SECRETARY

DUE: Date: December 29 Time: noon

SUBJECT:

H.R. 8631 - Price Anderson Act Amendments

ACTION REQUESTED:

____ For Necessary Action ____ For Your Recommendations

____ Prepare Agenda and Brief ____ Draft Reply

__X__ For Your Comments ____ Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

No objection. -- Ken Lazarus 12/29/75

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.

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.:

Date: December 24 Time: 130pm

FOR ACTION: Glenn Schleede
Paul Leach
Max Friedersdorf
Ken Lazarus
Bill Seidman

cc (for information): Jack Marsh
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FROM THE STAFF SECRETARY

DUE: Date: December 29 Time: noon

SUBJECT:

H.R. 8631 - Price Anderson Act Amendments

ACTION REQUESTED:

____ For Necessary Action ____ For Your Recommendations

____ Prepare Agenda and Brief ____ Draft Reply

__X__ For Your Comments ____ Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

OK PLL

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.

94TH CONGRESS
1st Session

HOUSE OF REPRESENTATIVES

REPORT
No. 94-648

AMENDMENTS TO THE PRICE-ANDERSON PROVISIONS OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED, TO PROVIDE FOR THE PHASEOUT OF GOVERNMENTAL INDEMNITY, AND RELATED MATTERS

REPORT

TOGETHER WITH

SEPARATE VIEWS

BY THE

JOINT COMMITTEE ON ATOMIC ENERGY

TO ACCOMPANY

H.R. 8631

NOVEMBER 10, 1975.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

57-006 WASHINGTON : 1975

CONTENTS

94TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
1st Session } { No. 94-648

AMENDMENTS TO THE PRICE-ANDERSON PROVISIONS OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED, TO PROVIDE FOR THE PHASE-OUT OF GOVERNMENTAL INDEMNITY, AND RELATED MATTERS

NOVEMBER 10, 1975.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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

REPORT

together with

SEPARATE VIEWS

[To accompany H.R. 8631]

The Joint Committee on Atomic Energy, having considered H.R. 8631, to amend sections 11 and 170 of the Atomic Energy Act of 1954, as amended, hereby reports favorably thereon, with amendments printed in italic in the bill, and recommends that the bill do pass.

SUMMARY

The Price-Anderson Act was enacted in 1957, and extended and amended in 1965 and 1966. The Act was designed to protect the public and the emerging nuclear industry by assuring the availability of funds for the payment of claims and by protecting the nuclear industry against unlimited liability in the unlikely event of a catastrophic nuclear accident. Funds would be made available to compensate the public for losses caused by a nuclear accident through a combination of private insurance and Government indemnity. Beginning in 1957, the Joint Committee has found on the basis of expert testimony, and it again finds now, that the likelihood that a serious nuclear accident will ever occur is extremely remote. Nevertheless, no one can correctly conclude that such an accident could never occur. For this reason, the need for the protection afforded by the Price-Anderson Act persists.

The bill meets this need by extending the Price-Anderson Act for an additional 10 years. Funds will be available to compensate the public under the Price-Anderson system for its losses in the unlikely event of a nuclear accident. Moreover the nuclear industry will be required to gradually assume greater financial risk through a system of private

insurance. Although the limit on the nuclear industry's liability is continued under the bill, that limit will eventually rise as the number of nuclear plants in operation increases and once the Government's responsibility as indemnitor is replaced by the system of private insurance.

I. Background

Among other things, the Act provides funds for public liability up to a total amount of $560 million in the event of a nuclear incident. This figure represents the sum of the amount of Government indemnity, fixed at $500 million by the Congress, and the then-existing (1957) maximum available private liability insurance, $60 million. The amount of private insurance has gradually risen, so that it stands now at $125 million; the Government's indemnity has commensurately decreased to $435 million. Other features included in the Act by the amendments of 1966 are no-fault liability and provisions for accelerated payment of claims immediately upon occurrence of a nuclear incident.

Since the enactment of the Price-Anderson Act, there has not been a single accident which has resulted in indemnity payments for public injury under its provision. This outstanding safety record has been accompanied by a gradual growth in the nuclear power industry. The Price-Anderson Act has served well its dual purpose of protection of the public and elimination of a potential deterrent to the establishment of a nuclear industry.

The Act is scheduled to expire on August 1, 1977. Because of the long-lead times involved in planning new commitments to nuclear power, the Joint Committee has been urged to consider the matter of extension and possible modification of the Act during the present session of Congress in order to prevent an unwarranted disruption in the planning process for nuclear powerplants, such as might result from uncertainty over the future of the Price-Anderson Act.

The question of whether to extend or modify the Price-Anderson system received extensive consideration during the 93d Congress. In July 1973, the Joint Committee requested the Commission to submit studies and alternative proposals in the indemnity area. In response to this call, the Atomic Energy Commission filed a staff study in January 1974 and the Columbia University Legislative Drafting Fund submitted an independent review sponsored by the Atomic Industrial Forum. Months of informal interchange among members of the Joint Committee, the Atomic Energy Commission, and their staffs, and representatives of private industry and the general public culminated in public hearings beginning on January 31, 1974. On April 22, 1974, the Atomic Energy Commission forwarded to the Congress proposed legislation which was introduced as H.R. 14408 by then-Chairman Melvin Price of the Joint Committee on Atomic Energy on April 25, 1974, and as S. 3452 by Senator John O. Pastore, then Vice-Chairman of the Joint Committee, on May 7, 1974. Additionally, a related bill, S. 3254 was introduced by Senator Mike Gravel on March 27, 1974.

Following public hearings, held on May 9, 10, 14, 15, and 16, 1974, the full committee met in executive session on June 11, 1974, and after careful consideration voted to submit a committee bill in lieu of the above-mentioned measures. The bill was introduced on June 11, 1974, by Mr. Price (for himself and Mr. Hosmer) as H.R. 15323. The Joint Committee met again on June 13, 1974, in open session and voted to report favorably on the bill with amendments by a rollcall vote of 11 to 2 (*Cf.* H.R. Rept. 93–1115). On July 10, the House of Representatives considered H.R. 15323 and passed the bill with three amendments by a vote of 360–43. The bill was sent to the Senate and referred to the Joint Committee on July 11. The Joint Committee met again in open session on July 22 and voted without dissent to delete two of the three House amendments, to perfect the third, and voted 9 to 1 to report the bill favorably to the Senate (*Cf.* S. Rept. 93–1027).

On August 8, 1974, the Senate passed H.R. 15323 by voice vote with three floor amendments, insisted on its amendments, and asked for a conference. The conferees met on August 14, 1974, and again on August 20, 1974, reaching agreement on the latter date, and agreed to report their recommendations to their respective Houses (H.R. Rept. 93–1306). One amendment which was deleted by the Conference Committee would have provided additional Price-Anderson coverage for accidents involving illegally diverted nuclear materials. In deleting the amendment, however, the Conference Committee called for a report on the consequences and feasibility of extending Price-Anderson protection to cover sabotage or the theft of nuclear materials.

The House of Representatives approved the conference measure on September 24, 1974; the Senate followed on September 30, 1974. The Act was then sent to the President on October 1, 1974. The President vetoed the measure on October 12, 1974, citing his approval of the substantive sections of H.R. 15323, and basing his veto on "the clear constitutional infirmity" of a provision in Section 12 of the bill allowing Congress to prevent it from becoming effective by passing a concurrent resolution within a specified time. The quoted phrase is from the President's veto message, which is reproduced in full as Appendix II. The President urged the Congress to reenact the measure without the offending provision. No further action was taken on the measure during the 93d Congress.

On June 9, 1975, the Nuclear Regulatory Commission submitted to the Joint Committee the report on the subject of sabotage and the theft of nuclear materials which had been requested by the Conference Committee on H.R. 15323.

On July 10, 1975, the Federal Energy Administration forwarded to the Congress proposed legislation which was introduced as H.R. 8631 by Mr. Price (for himself and Mr. Anderson of Illinois) on July 14, 1975. and as S.2568 by Senator Pastore (for himself and Mr. Baker) on October 28, 1975. These bills are identical to the bill which was passed by the 93d Congress with two exceptions: *First*, the provision which caused the President to veto the bill has been omitted; and *second*, the measure calls for a 10-year rather than a 5-year extension of the Act.

The bills were referred to the Joint Committee and hearings were held on September 23 and 24, 1975, to consider that measure and the question of whether the Price-Anderson system should be extended to cover sabotage and the theft of nuclear materials.

The Joint Committee met in open session on November 6, 1975, and after full discussion voted by a rollcall vote of 14 to 2 [1] to approve

[1] Senator Symington was necessarily absent from the mark-up session because of other official duties. He wishes this report to indicate that had he been present, he would have voted in the affirmative.

the bills with six technical amendments, together with a recommendation that the bills do pass. The Committee also adopted this report on H.R. 8631. This report repeats the substance of the Joint Committee reports prepared during the 93d Congress, and is intended to provide the definitive legislative history for the 1975 Price-Anderson revisions and amendments.

II. Hearings

Extensive hearings were held on the possible modification or extension of the Price-Anderson Act during the 93d Congress. During those hearings, the Joint Committee reviewed various studies of the Price-Anderson system and considered a number of specific legislative proposals for modifying and extending the Act. An informal planning committee, drawn from the Joint Committee staff, the Atomic Energy Commission, the legal profession, the commercial power and insurance industries, and public citizen groups, provided the Joint Committee and staff with valuable assistance in planning those hearings.

The following witnesses from the Atomic Energy Commission appeared before the Joint Committee to present testimony or to assist in the development of the record: Dr. Dixy Lee Ray, Chairman; William O. Doub, Commissioner; Marcus Rowden, General Counsel; L. Manning Muntzing, Director of Regulation; and Jerome Saltzman, Deputy Chief, Office of Antitrust and Indemnity, Directorate of Licensing.

Other non-governmental witnesses who appeared one or more times are:

Elmer Dee Anderson, Private Citizen, Valparaiso, Indiana.

Dr. W. H. Arnold, Jr., General Manager, PWR Systems Division, Westinghouse Electric Company.

George K. Bernstein, Federal Insurance Administrator, HUD.

Arthur C. Gehr, Atomic Industrial Forum.

Frank P. Grad, Director, Legislative Drafting Research Fund, Columbia University.

Harold P. Green, Professor of Law, National Law Center, George Washington University.

Gerald R. Hartman, Professor of Insurance and Risk, Temple University.

Joseph F. Hennessey, Bechhoefer, Snapp and Trippe, Washington, D.C.

Larry Hobart, Assistant General Manager, American Public Power Association.

Mrs. Judith H. Johnsrud, Central Pennsylvania Committee on Nuclear Power.

Dr. Chauncey Kepford, York, Pennsylvania, representing the Environmental Coalition on Nuclear Power.

Hubert H. Nexon, Senior Vice-President, Commonwealth Edison Company, representing Edison Electric Institute.

Norman C. Rasmussen, Department of Nuclear Engineering, Massachusetts Institute of Technology.

Charles A. Robinson, Jr., Corporate Counsel, National Rural Electric Cooperative Association.

Mrs. Laurie R. Rockett, Greenbaum, Wolff and Ernst, New York City, New York.

Ms. Ann Roosevelt, New York, on behalf of Friends of the Earth.

Richard A. Schmalz, Hartford Insurance Group, representing Nuclear Energy Liability Insurance Association.

Chauncey Starr, Electric Power Research Institute.

Mark Swann, New Park, Pennsylvania.

Martin Victor, V. P. and Secretary, Babcock & Wilcox Company.

Richard Walker, Partner, Arthur Andersen & Company.

Bruce L. Welch, Director, Environmental Studies, Friends Medical Science Research Center, Inc.

Further hearings were held by the Joint Committee on September 23 and 24, 1975, to consider the specific proposal H.R. 8631 and the sabotage and theft questions.

The Joint Committee heard testimony from a number of Government witnesses at those hearings. Testifying during the September 23 and 24 hearings were John Hill, Deputy Administrator of the Federal Energy Administration; Robert Fri, Deputy Administrator of the Energy Research and Development Administration; and William A. Anders, Chairman, Marcus A. Rowden, Commissioner, and Peter Strauss, General Counsel, of the Nuclear Regulatory Commission.

The following witnesses also appeared and presented testimony during the course of the hearings:

Senator Mike Gravel.

William F. Allen, Jr., President, Stone and Webster Engineering Corporation.

Morgan D. Dubrow, Staff Engineer, National Rural Electric Cooperative Association.

Larry Hobart, Assistant General Manager, American Public Power Association.

Alvin G. Kalmanson, Chairman, Committee on Atomic Energy of the Association of the Bar of the City of New York.

Dr. Chauncey Kepford, York, Pennsylvania, representing the Environmental Coalition on Nuclear Power.

Jeffrey W. Knight, Legislative Director, representing Friends of the Earth.

Ralph Nader and James Cubie, representing Congress Watch.

Hubert H. Nexon, Senior Vice President, Commonwealth Edison Company, representing Edison Electric Institute.

Burt C. Proom, General Manager, Nuclear Energy Liability-Property Insurance Association, representing the Nuclear Energy Liability-Property Insurance Association and the Mutual Atomic Energy Liability Underwriters.

John W. Simpson, Atomic Industrial Forum.

III. Provisions of Current Act

The Price-Anderson Act is incorporated in the Atomic Energy Act in Sections 2, 11, 53, and 170. Its major provisions are described below.

The Nuclear Regulatory Commission must require as a condition for certain licenses, including those for nuclear power plants, that the licensee maintain financial protection for payment of third party liability claims in the event of a nuclear accident, in the amount required by the Commission. The Commission at its discretion may require financial protection for other types of licenses. Similarly, the

Energy Research and Development Administration has discretion to require financial protection for its contractors. For any power reactor with an electric capacity of 100 MWe or more the Commission must require financial protection equal to the maximum available from private sources. Currently this is $125 million.

The Commission is also required to execute an indemnity agreement with each licensee required to maintain financial protection, agreeing to indemnify the licensee and any other parties liable for claims arising from a nuclear incident above the amount required, up to $500 million. The indemnity agreement extends for the life of the license (usually 40 years for power reactors). ERDA must execute a similar indemnity agreement with each of its contractors.

The aggregate liability for damages arising from a nuclear incident is limited to $560 million within the United States and $100 million plus the financial protection required of the licensee for incidents occurring outside the United States. All vendors, architect-engineers, subcontractors, and other parties are protected from liability by the omnibus feature of the licensee insurance and the Government indemnity.

Nonprofit educational institutions licensed to operate reactors are exempted from the financial protection requirement and are indemnified by the Commission for payment of claims exceeding $250,000, in an amount up to $500 million.

Damages to offsite property of the licensee are covered by the insurance and indemnity.

The Commission may require the inclusion, in any insurance contract or other proof of financial protection and in its indemnity agreements, of provisions waiving any defenses based upon conduct of the claimant or fault of the indemnified person, charitable or governmental immunity, or statutes of limitations which are shorter than a specified duration. The waivers apply in any instance where the Commission determines there has been an extraordinary nuclear occurrence, as defined by the Commission.

Provisions are also included for prompt payments to insured parties and for consolidation of all claims into a single Federal district court.

IV. Studies

Various groups have recently studied the problem of nuclear insurance and indemnity, and several reports and proposals were prepared. The studies and proposals and related material are included in a Joint Committee print of March 1974 entitled "Selected Materials on Atomic Energy Indemnity and Insurance Legislation."

The major studies were those by the Atomic Energy Commission and by the Legislative Drafting Research Fund of Columbia University. The latter, an independent study, resulted in a report of December 12, 1973, entitled "Major Issues of Financial Protection in Nuclear Activities". Among the proposals which are included in the Joint Committee print and which were discussed in the AEC and Columbia studies was a proposal by the nuclear liability insurance pools for a retrospective premium insurance plan. This plan, modified somewhat, became the basis of legislation considered by the 93d Congress and of the bill now being reported.

Other proposals included an AEC staff proposal for a contingent fee system, and proposals by former AEC General Counsel Joseph Hennessey, Professor Harold Green, and former Pennsylvania Insurance Commissioner Herbert S. Denenberg. These proposals are not discussed in this report, but can be found in the committee print described above, and were discussed during the hearings.

Senator Gravel's bill constituted an additional proposal which was considered in developing this legislation.

V. Need for Legislation

The Price-Anderson Act applies only to licenses issued prior to August 1, 1977. Nuclear power plants now in the planning and design phases would not receive construction permits until about 1977–1978. Thus there is uncertainty as to whether these plants would receive protection in the form of Government indemnity. Reactor manufacturers and architect-engineers are already requiring escape clauses in their contracts to permit cancellation in the event some form of protection from unlimited potential liability is not provided. Action is required soon to prevent disruption in utility plans for nuclear power.

The study by the Columbia University Legislative Drafting Research Fund examined the situation that would prevail if the Price-Anderson Act were to be allowed to expire. The study concluded that the resulting legal situation in the event of a nuclear incident would be chaotic. Injured parties would be subject to whatever tort law prevailed in the State in which the incident occurred or in which they suffered harm. There would be wide variation in the grounds for recovery, the standards of proof, and the defenses available to the defendants. Recovery would be uncertain and could be delayed for many years. The potential for unlimited liability might drive smaller manufacturers, architect-engineers, and component suppliers out of the nuclear business and could serve as a deterrent to entry by other firms. The report's conclusions were summarized as follows:

> The primary defect of this alternative is its failure to afford adequate protection to the public in terms of providing either a secure source of funds or a firm basis of legal liability. While it does have the theoretical advantage of placing no legal limit on the amount of protection available, as a practical matter, the public would be less assured of compensation than under the Price-Anderson Act. Adoption of this alternative would also, for the reasons discussed in Chapters 3 and 4, tend to discourage the participation of industry in the nuclear field. If in other respects Congress adopts a policy of continued encouragement, inaction with respect to financial protection will not advance, and will probably impede, this policy.
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> Assuming no significant change in the insurance patterns of the industry, this alternative also fails to meet the criterion of efficient and equitable cost allocation through risk spreading. With the possible exception of the approximately 100 million dollars insured by the insurance pools, the entire risk of an accident would fall, under the law of most states, either on the victim who was barred from recovery by a

technical defense, failure of proof, or inability of the defendant to pay a judgment, or on the particular utility involved and possibly its contractors or suppliers, and on their consumers. And the entire cost would arise after the accident had occurred. This alternative thus makes use of little, if any, intertemporal and, initially, virtually no interpersonal spreading. Interpersonal spreading might be achieved later as the companies held liable shifted the cost onto their consumers. Although the allocation of liability to the industry does appear to meet the third criterion of internalization, to the extent that victims of an accident are unable to recover from the industry, even this criterion is not met. Finally, because of the potential problems plaintiffs may encounter in seeking damages under state law, recovery is likely to involve excessive time and expense. In sum, this alternative meets only one of the four basic criteria, that of internalization of cost and meets that only in part.

The Joint Committee has received numerous letters from companies and organizations in the nuclear industry, urging extension of the Price-Anderson Act in its present or a modified form. These letters as well as testimony at the hearings have stressed the importance of the Act in removing a deterrent to development of the nuclear industry, and the need for prompt action to clarify the situation that will prevail after 1977.

The President in his veto message last year indicated his support for the substantive provisions of the legislation, and urged its reenactment without the provisions he considered constitutionally inappropriate. Following the veto, insurance and industry groups also urged the Joint Committee and its members to reenact the extension. The bill now being reported preserves the substantive provisions of that legislation. The committee considers the extension of the Price-Anderson Act during this session to be of great importance to the objectives of Project Independence as well as to the alleviation of the more immediate energy problems of the Nation. Uncertainty occasioned by further delay could well serve to exacerbate the difficulties which have led to numerous recent cancellations and postponements of powerplants, both nuclear and fossil fueled.

VI. Discussion of Bill

The bill provides for a 10-year extension of the Price-Anderson Act and for three major changes: (1) Phaseout of Government indemnity, (2) increase in limit of liability and (3) extension of indemnity coverage outside the territorial limits of the United States for certain limited activities, none of which involve indemnity for any shipment of nuclear technology abroad under an agreement for cooperation with nations or groups of nations. The Joint Committee wishes to stress that there are a number of features of the Price-Anderson Act which should be viewed as permanent. These include the mandatory insurance coverage, the no-fault provisions, the provisions for consolidation of claims in a single federal court and for advance payment of claims, the contractor indemnity provisions, and the mandatory retrospective premium system. These elements make

up a pattern of public protection which must be continued. The provision for termination in 1987 should be viewed as a device to ensure that Congress will reassess the situation prior to that time and make revisions as required, rather than as a congressional intent to provide for an eventual termination of the federal regulation of nuclear liability insurance.

The details of the bill are below.

A. Phaseout of Government Indemnity

Deferred Premium System

The bill provides specific authorization for the Commission to establish by rule, regulation or order the terms and conditions of the financial protection required of nuclear licensees. NRC is directed under this authority to require participation, by licensees who are required to maintain the maximum amount of financial protection, in an insurance retrospective rating plan whereby in the event of a nuclear incident resulting in damages exceeding the base layer of insurance, each licensee would be assessed a deferred premium which would be a prorated share of the excess damages. A maximum amount would be established which the retrospective premiums for each facility could not exceed. If, for instance, at some time in the future, a maximum level of $3 million per reactor were set and a total of 100 reactors had been licensed to operate up to that time, then $300 million would be available at that time to provide for payment of damages in this secondary layer over and above the base insurance. As more reactors were licensed, the secondary layer would increase proportionately. The Commission will set the maximum premium by rule. Premium taxes which would be due the states on any assessed retrospective premiums are to be added to the amount of the maximum premium established by the Commission and are the responsibility of the licensee.

The Commission would continue to provide indemnity for payment of damages exceeding the combined primary and secondary layers, up to a total of $560 million. As the secondary layer increased, it would gradually phase out the government indemnity. The date at which this would occur would depend on the amount set as the maximum premium and on the rate at which reactors were licensed. The tables in appendix I to this report illustrate how this phaseout would occur for various premium levels.

The Joint Committee expects the Commission to require present licensees to enter into the retrospective premium plan under its authority to establish the maximum financial protection required. The committee believes that this authority is sufficient to require the participation of such licensees in the plan. Exclusion of these licensees would result in confusion and would delay the date at which Government indemnity can be eliminated.

The Joint Committee has from the time of the inception of the Price-Anderson Act endorsed the concept of the assumption by the nuclear industry of the risks associated with nuclear incidents. The industry in its early stages of development, however, was not capable of assuming this unique risk, which has generally been considered to have extremely low probability but potentially large consequences. While the proba-

bilities of severe nuclear accidents appear now to have been over estimated, the industry is just now reaching the point where the government's role can be phased out without the possibility of unduly disrupting the industry's development or of leaving the public with inadequate provision for relief from the highly improbable severe nuclear incident which the Act is designed to protect against. The Federal Energy Administration's proposal as embodied in the Joint Committee bill is considered the most expeditious means for the transfer of responsibility. An abrupt termination of Government protection is not considered appropriate at this time, in light of the still relatively small number of nuclear reactors now licensed (54 operating licenses and 64 construction permits).

Premium Amounts

The Joint Committee desires that the Government indemnity be phased out as soon as is reasonably feasible. Consequently, the bill provides that the Commission must set the level of the standard deferred premium at no less than $2 million per facility. The bill also establishes an upper level for such premium of $5 million per facility. This limitation was considered necessary to assure that smaller utilities are not hampered in efforts to raise capital by a too-high potential liability. The bill thus establishes a range within which the Commission shall set the maximum premium taking into consideration the objectives on which these statutory limits were based and other pertinent factors. The range was further intended to enable the termination of the Government indemnity by 1985. The Commission is directed to consider this time frame as a guideline in establishing the premium.

The Commission is authorized to establish a deferred premium lower than the standard premium for any facility based upon such considerations as size and location. This authorization is included to permit such variations if the Commission finds they are warranted.

The legislation provides for a target date of twelve months after the effective date of the Act for completion of Commission action to implement the deferred premium plan. This should provide ample time for a rulemaking proceeding.

Assurance of Premium Availability

Authority and discretion has also been provided for the Commission to establish measures to ensure that the deferred premiums will be paid when they are called for following a nuclear incident. The Commission is directed to assure these payments to the maximum extent possible through the resources of the nuclear and insurance industries. Representatives of insurance companies indicate that the insurance pools could provide coverage for up to $30 million in defaults initially, and that this sum could be increased later.[2] The Joint Committee believes the industry and Commission should make every effort to provide additional coverage for the payment of deferred premiums by insurance and industry.

[2] This amount of insurance is in addition to the maximum amount of liability insurance for financial protection purposes. That amount is now $125 million.

In order to prevent a potential gap between the public protection pledged and actual payments made, the bill requires the Commission to provide the ultimate assurance to the public for these payments in the event of defaults not covered by insurance. This may be done through reinsurance, guarantees, or other means. There is no dollar limitation to the amount of guarantee which could be required in the event of defaults on the deferred premiums. If a guarantee of payment by the Government is required, authority has been provided to permit recovery by the Government from the defaulting licensee of any payments made on its behalf.

State Constitutional Problem

During the hearings on this legislation, a potential constitutional problem was raised as to public power organizations. Public power representatives testified that the retrospective premium arrangement might be construed to be in violation of some State constitutions, which prohibit a State or a subdivision or agency of a State, such as a municipal utility, from lending its credit or making expenditures for other than public purposes. They suggested that preemption of this field by the Federal Government through the explicit establishment of the premium system as a condition to obtaining a nuclear powerplant license might resolve the problem.

The Joint Committee believes that the language of Section 170, as amended by this bill, is clear in its establishment of participation in the retrospective premium system as a firm requirement of a licensee required to maintain the maximum financial protection. The bill strengthens the language of Section 170 to stress the Federal preemption of nuclear powerplant licensing and the public purposes of the premium system. Furthermore, the deferred premium should not be interpreted as establishing a responsibility by one licensee for a liability or debt of another. The potential deferred premiums are considered by the Joint Committee to have fundamentally the same status as any other such insurance premium. The bill authorizes the Commission to establish a maximum limit on the amount of deferred premiums which can be charged to a facility in any one year. The purpose of this provision is to clarify the status of the premiums and to ensure that they can not be construed as the lending of credit by any licensee and thus raise constitutional problems for some publicly owned utilities.

The bill includes requirements that the retrospective premium plan be available to licensees who elect to provide the basic financial protection through some means other than insurance, and a provision that the maximum financial protection required shall be that available under reasonable terms and conditions. The Commission is thus authorized to not require available insurance to the degree that it determines the rates or terms of such insurance to be unreasonable.

B. INCREASE IN LIMIT ON LIABILITY

The bill does not provide for an immediate change in the $560 million limit on total liability arising from a nuclear incident. That limit is retained until the total of primary insurance and assessable retrospective premiums reaches the level necessary to completely replace the Government indemnity. From that point, as the primary and secondary levels rise, the limit on liability would be allowed to rise correspondingly.

No ultimate limitation on the level to which this coverage could rise is provided for. At a premium level of $3 million per reactor, the overall limit would be projected to reach a billion dollars in about 1990.

The Commission would have the continuing authority to establish a rule reducing the standard premium as appropriate when it determines that the total financial protection has risen to an amount above which further increases are not deemed necessary.

The Joint Committee does not believe that any increase in or elimination of the limit on liability is necessary or appropriate at this time. As the Joint Committee pointed out when the Act was first proposed:

> "The limit of the Commission's responsibility under these (indemnity) agreements is to be $500 million. This limit could be subject to upward revision by the Congress in the event of any one particular incident in which, after further congressional study, the Congress felt more appropriations would be in order.
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> * * * * * * *
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> "Subsec. e limits the liability of the persons indemnified for each nuclear incident to $500 million, together with the amount of financial protection required. Of course, Congress can change this act at any time after any particular incident. The Joint Committee wanted to be sure that any such changes in the act would be considered by it in the light of the particular incident."

At the time of the extension of the Act in 1965, the Joint Committee reiterated this point when it said:

> "In the event of a national disaster of this magnitude, it is obvious that Congress would have to review the problem and take appropriate action. The history of other natural or man-made disasters, such as the Texas City incident, bears this out. The limitation of liability serves primarily as a device for facilitating further congressional review of such a situation, rather than an ultimate bar to further relief of the public."

This assurance on the part of the Congress that it will take whatever further action is needed to protect the public in the event of a nuclear accident causing losses greater than the limit of liability is included as a provision in the bill. The bill also contains reporting requirements to provide the Congress with the information it will need in the event of an accident causing losses beyond the limit on liability.

The recently released final report of the Reactor Safety Study under the direction of Professor Norman Rasmussen of the Massachusetts Institute of Technology has indicated that the probabilities of a nuclear incident are much lower and the likely consequences much less severe than has been thought previously (See Section VII of this report).

C. EXTENSION OF INDEMNITY COVERAGE OUTSIDE THE UNITED STATES TERRITORIAL LIMITS

The bill amends the definitions of "nuclear incident" and "person indemnified" in section 11 of the Atomic Energy Act to permit the Commission and ERDA to extend the provisions of the Price-Anderson Act to certain activities outside the territorial limits of the United States conducted by ERDA contractors or involving licensed nuclear facilities or licensed activities. The bill does not include under Price-Anderson indemnity coverage the import or export of nuclear material or facilities or activities conducted within the territorial limits of another nation, nor any occurrence resulting from the use of a nuclear power reactor to propel a U.S. merchant ship, although nuclear material transported on such a ship as cargo could be covered by the Price-Anderson indemnity provision in the same manner as cargo carried in ships powered by fossil fuel.

The existing definitions of "person indemnified" and "nuclear incident" do not permit indemnity protection for activities licensed by the Nuclear Regulatory Commission if the nuclear incident occurs outside the territorial limits of the United States, with the exception of the now retired nuclear ship *Savannah*. There are two situations in which the protection afforded by the Price-Anderson Act with respect to licensed activities would be extended to nuclear incidents occurring outside the territorial limits of the United States. The first situation involves ocean shipments of new or spent fuel which may move outside the territorial limits of the United States during ocean transit from one licensed nuclear facility to another. The second situation involves nuclear facilities which are physically located outside of the territorial limits of the United States but whose construction and operation are licensed by the Nuclear Regulatory Commission, such as a floating nuclear powerplant located beyond the limits of the territorial sea of the United States. The legislation would authorize the Commission to extend Price-Anderson indemnity protection to such shipments and such facilities.

Any indemnification agreements relating to these activities would be administered in the same manner as the Commission would administer the Price-Anderson Act with respect to other licensed activities.

The present definition of "nuclear incident" as applied to ERDA contractors provides indemnity protection only if an occurrence outside the United States involves "a facility or device" owned by, and used by or under contract with, the United States. The amended definition would resolve any possible ambiguities concerning ERDA's authority to indemnify its contractors for any occurrence during the course of transporting source, special nuclear, or byproduct material outside the United States.

With the apparent advent of offshore nuclear powerplants, it is essential that the protection intended by the Price-Anderson Act not be thwarted by the incidental fact of location beyond the U.S. territorial limits. Likewise, the shipment of nuclear materials from

one licensed facility to another within the United States should be included in the Act's coverage regardless of whether the facility or route involved is located or involves transportation outside the territorial limits.

Testimony at the hearings included suggestions that nuclear merchant ships be included in the act's coverage. The Joint Committee has not included those activities in this bill. The urgency of such inclusion is not considered sufficient to warrant legislation without a more detailed examination. The Joint Committee's decision not to take this action at this time is in no way intended to preclude further consideration at a later time.

D. ADDITIONAL CONSIDERATIONS

Activities Covered by Price-Anderson Act

Financial protection and indemnity for plutonium processing facilities is discretionary with the Commission under the present law. One witness at the hearings, a representative of a company which operates such a facility, proposed that these provisions of the Price-Anderson Act be made mandatory for such facilities. The Commission does not at this time require financial protection of such licensees or extend indemnity coverage to them. However, private liability insurance is available. The Commission has indicated that it will undertake a thorough review of this matter. The Joint Committee has not proposed a legislative change in this area pending the outcome of this review. The Commission is urged to give appropriate consideration to this matter.

Transportation of nuclear materials is not specifically provided for under the Price-Anderson Act, although carriers are generally covered either as ERDA contractors or under the omnibus aspects of licensee financial protection and indemnity. The Association of American Railroads has proposed that transportation be specifically covered because of gaps in the existing system for such situations as transportation of materials for a shipper or receiver not required to maintain financial protection.

The Joint Committee has not proposed legislation to deal with this matter, but encourages the Commission to review the situation to determine if procedural or legislative changes are in order.

Priorities Between Claimants and Types of Claims

The Joint Committee has included in the legislation a direction and authorization for the court which develops the plan for distribution of funds in the event of a nuclear incident which appears to have resulted in damages exceeding the limit on liability to establish priorities between classes of claims and claimants. The Joint Committee wishes to assure that in such a case, where the immediate recovery by claimants may be less than the full amount of their losses, the distribution of funds will be made in such a manner as to compensate first for the most severe and the most readily computable losses. Thus claims for actual losses to property, for actual and reasonable medical expenses, for loss of wages, and other such losses may merit higher priority than such claims as those for alleged pain and suffering, emotional harm, and loss of consortium. Likewise, losses

otherwise compensated for, while not precluded from recovery (under the collateral source rule) in most jurisdictions, should be accorded lower priority than uncompensated losses. The Joint Committee also believes that as a matter of equity, in cases where less than full compensation will be made through the amounts immediately available from insurance and Government indemnity, losses to offsite property of the licensee of the responsible facility should be accorded lower priority than losses to third parties. The court is authorized to establish such additional priorities as are deemed desirable and equitable to further the principles described above.

The above provisions are in no way intended to create any causes of action not in accordance with existing law or to derogate any existing causes of action. Nor should these provisions be construed as a retreat from the belief expressed on many occasions by this Joint Committee and included in this bill that Congress would thoroughly review the situation in the remote event of a nuclear incident involving damages in excess of the limit on liability. The priorities are not intended to preclude ultimate relief for claims of secondary priority, but rather to assure that early relief is applied where most needed.

VII. Relationship of the Reactor Safety Study to the Price-Anderson Act

On October 30, 1975, the Nuclear Regulatory Commission released the final report of the Reactor Safety Study entitled "An Assessment of Accident Risks in U.S. Commercial Nuclear Power Plants." The study was prepared under the direction of Dr. Norman C. Rasmussen, professor of nuclear engineering at the Massachusetts Institute of Technology, using a technical staff of about 60 scientists and engineers, plus a large number of specialized consultants. The report (WASH–1400) presents the results of a three-year, multimillion dollar effort aimed at making a realistic estimate of reactor accident risks and a comparison of these risks with nonnuclear risks to which our society is already exposed.

The 2,300 page report consists of 9 volumes, including an overall report, 11 technical appendices and an executive summary. A draft of the report was issued in August, 1974, and was widely circulated for comment and review during the remainder of that year. The comments which were received from approximately 90 individuals, agencies, and organizations, were carefully considered in preparing the final report. An appendix to the Rasmussen report indicates the study's responses to the comments received and the resulting changes made in the final report.

To assist Members of the Congress and their staffs in familiarizing themselves with the study, special briefings were presented on the draft report on August 20, 1974. Similar briefings were also held on that same day for members of the press and the general public.

The Reactor Safety Study does not deal with insurance or indemnity for nuclear incidents. It is a safety study of the probabilities and consequences of accidents involving nuclear power reactors. As such, its only relation to the Price-Anderson Act is as a possible indicator of the extent and scope of risk to the public. Thus, although it provides no information at all concerning the mechanism for providing protection, it is helpful in determining whether financial protection for the public is required and if so, in what amounts.

Insofar as the risk to the public of a serious nuclear accident is concerned, the Rasmussen report restates what the Joint Committee found to be the case in 1957 and again in 1965. Specifically, this committee determined on the basis of the evidence then available that the likelihood of a serious nuclear accident with severe consequences for the public ever occurring was extremely small. Nevertheless, the committee could not conclude with complete certainty that such an accident would never occur.

These determinations are in agreement with the findings of the Rasmussen report. The study confirms that a wide range of consequences from a nuclear accident is possible, depending upon the exact condition under which the accident occurs, the prevailing weather conditions, and the population distribution around the reactor site. As could be expected, the study shows that the probability of accidents decreases significantly as the magnitude of the potential consequences increases. For a group of 100 reactors, the study concludes that the chance of an accident causing $150 million damage would be about one in 1,000—or once in every 10 centuries—and the chances of an accident causing greater damage are significantly less.

Insofar as the amount of financial protection for the public is concerned, both Dr. Rasmussen's testimony before the Joint Committee last year and the final report affirm that the total of public and private indemnity provided for by this bill is adequate to cover any credible accident which might occur.

The Rasmussen study appears to be a scholarly review and analysis of the potential risks associated with the use of nuclear power. Substantial effort has been devoted to making all of the underlying methodology, assumptions, and calculations of the study available to all interested parties.

As it has done in the past, the committee will continue to follow closely the activities of the Rasmussen Study Group as well as other evaluations of reactor safety.

VIII. Comparison With Other Federal Programs of Disaster Assistance and Insurance

The Joint Committee examined the posture of other Federal programs for relief from disaster. The Federal Government has become increasingly involved as the major underwriter of relief for losses due to natural disasters, principally flooding, hurricane and tornado damage. For example, in a ten-year period ending in 1972, allocations from the President's disaster fund totaled just over $1.25 billion. In the first 2½ years of the Disaster Relief Act of 1970, 104 major disasters were declared, triggering expenditures from the President's fund of about $1 billion, plus loans from two separately administered programs in excess of $2 billion.

Recent legislation affecting both the Federal Disaster Assistance Administration [3] and the National Flood Insurance Program [4] has altered the Government's response to natural disaster, by emphasizing the role of insurance as the primary means of compensation for loss.

[3] Public Law 93–288, "Disaster Relief Act of 1974."
[4] Public Law 93–324, "Flood Disaster Protection Act of 1973."

In this sense, there is consistency with the amendments to the Price-Anderson legislation which are the subject of this report, whereby increased reliance is being placed upon private insurance pools and the licensees of nuclear facilities themselves for financial protection with a concomitant decrease in Government involvement.

The Government's approach is consistent also in its emphasis on loss prevention. The National Flood Insurance Program, for example, provides for mandatory land use criteria for new construction within flood-prone areas. In the nuclear energy field, the rigid licensing process enforced by the Nuclear Regulatory Commission and the surveillance activities of its Offices of Inspection and Enforcement and Nuclear Reactor Regulation represent an unprecedented program of loss prevention.

It is clear from this examination that the Federal Government remains in the business of compensation in many fields, whether as reinsurer, coinsurer, indemnitor, or provider of disaster relief. Insurance concepts become less valid as the frequency of events decrease and as the potential consequences increase.

With respect to the amendments to the Atomic Energy Act under consideration, the Federal Government will retain its role as indemnitor for the uninsured portion of the statutory amount of $500 million, and, after the combined totals of basic and excess insurance reach that figure and are allowed to float upward, as the ultimate guarantor for defaulted retrospective premiums, while retaining subrogated rights against the defaulting licensees.

It is important to note that of all of these Federal programs, only the Price-Anderson legislation provides for compensation to the public for personal injury as well as property damage. All of the other insurance and assistance programs are geared solely to property damage.

Finally, it should be pointed out that the panoply of Federal resources, other than monetary compensation, is available in the event of a large-scale nuclear accident, just as it would be in case of natural disasters.

IX. Cost of Legislation

In accordance with section 252(a) of the Legislative Reorganization Act of 1970 (Public Law 91–510), the Joint Committee has determined that, with the exception of minimal administrative costs associated with determining the terms and conditions acceptable in the proposed restrospective premium plan, the Nuclear Regulatory Commission and the Energy Research and Development Administration will incur no additional costs as a result of carrying out this legislation; except that in the event of a nuclear incident involving a contractor or a licensee with whom an indemnity agreement has been executed, and resulting in damages exceeding the amount of financial protection required, NRC or ERDA may incur costs of up to $500,000,000 for each such incident. The probability of such an incident occurring is considered extremely low. The potential cost to the Government of such an incident involving a licensee other than a nonprofit educational institution will be reduced over a period of years until it reaches essentially zero by 1985. The potential liability for an incident involving a contractor or nonprofit educational institution will

remain at a maximum of $500,000,000 per incident. In addition, there will be potential costs to the Government in the event of defaults on retrospective premiums for which the Government serves as reinsurer, or as guarantor in cases where full recovery against the defaulter is not possible.

X. Section-by-Section Analysis

Section 1 of the bill would amend subsection 11 q. of the Atomic Energy Act of 1954, as amended, to alter the definition of "nuclear incident" as that term is used in subsection 170 d., by substituting the words "source, special nuclear, or byproduct material" for "a facility or device". Its purpose is to gain specificity and consistency. Section 1 of the bill would also amend subsection 11 q. to specially define "nuclear incident" as that term is used in subsection 170 c. The purpose of this amendment is to extend the full aggregate indemnity to offshore nuclear powerplants and to shipments between licensees in the United States which are routed beyond territorial waters.

Section 1 of the bill would also amend subsection 11 t. of the Atomic Energy Act of 1954, as amended, by broadening the definition of "person indemnified", as that term is used in subsection 170 c., to include nuclear incidents outside the United States. This change preserves consistency within the Act. Section 1 would further amend subsection 11 t. by an alternative description of a "person indemnified" as a person "who is required to maintain financial protection". This provides for the situation in which the $560 million limit on liability is provided wholly by private insurance protection, in which case the execution of an indemnity agreement would not be an absolute requirement.

Section 2 of the bill would amend subsection 170 a. of the Atomic Energy Act of 1954, as amended by substituting the word "may" for "shall" in the second sentence. The purpose of this change is to provide consistency with subsection 170 c., as amended. Additional language has been added in the first sentence of subsection 170 a. to emphasize the public purpose of the Price-Anderson provisions, as stated in subsection 2 i. of the Act.

Section 3 of the bill would amend subsection 170 b. of the Atomic Energy Act of 1954, as amended, to provide authority for the Nuclear Regulatory Commission to regulate the terms and conditions of nuclear liability insurance. This section requires the Commission within twelve months of the date of enactment of this Act, to include in determing the maximum amount of private liability insurance available any deferred premium plan which meets certain requirements. Any such plan must have a standard retrospective premium within the range of $2 million to $5 million for each licensed facility required to maintain the maximum financial protection available from private sources. Any State premium taxes which may be due on assessed premiums are to be the responsibility of the licensee and are not to be included in the premium set by the Commission. In addition, participation in the secondary layer must not be conditioned on provision of the basic financial protection through insurance means. This assures that an individual licensee may fullfill some or all of its base liability by means other than insurance and yet be eligible for the retrospective coverage.

Section 3 further requires the Commission to develop a plan to assure payment of such deferred premiums when due in the event of a nuclear incident, and requires the Commission to provide reinsurance or guaranty to assure the availability of funds despite any defaults in retrospective assessments. This provides, in effect, that the full amount to pay any liability will be available promptly with the Government undertaking the burden of later recovery from the defaulter. In connection with the recovery of such funds, section 3 authorizes the Commission to specify the terms of any guaranty agreement as appropriate to permit reimbursement, including liens on property and revenues of a defaulting licensee, and automatic revocation of any license.

Section 4 of the bill would amend subsection 170 c. of the Atomic Energy Act of 1954, as amended, by changing the date "August 1, 1977" wherever it appears to "August 1, 1987". The purpose of this amendment is to extend for 10 years the indemnification authority of the Price-Anderson legislation as it pertains to NRC licensees other than licensees subject to the provisions of subsections 170 k. or 170 l. of the Act.

Section 5 amends subsection 170 d. of the Atomic Energy Act of 1954, as amended, by extending until 1987 the authority of the Energy Research and Development Administration to enter into indemnity agreements with its contractors.

Section 6 amends subsection 170 e. of the Atomic Energy Act of 1954, as amended, by providing that except as to incidents occurring outside the United States to which agreements of indemnification entered into under the provisions of subsection 170 d. are applicable, the limit on aggregate liability arising from a nuclear incident shall be either (1) $500,000,000 plus the amount of financial protection required of the licensee, if the financial protection required is less than $60,000,000 or (2) $560,000,000 or the amount of financial protection required of the licensee, whichever is greater, in cases where the financial protection required is $60,000,000 or more.

Section 7 amends subsection 170 f. of the Atomic Energy Act of 1954, as amended, to authorize the Commission to reduce the indemnity fee for persons with whom agreements of indemnification have been executed in reasonable relation to increases in financial protection above a level of $60,000,000.

Section 8 amends subsection 170 i. of the Atomic Energy Act of 1954, as amended, to require a report by the Commission or the Administrator to the Congress on any nuclear incident which will probably result in public liability claims in excess of $560,000,000. The Act presently provides for such a report for any nuclear incident which will probably result in payments by the United States.

Section 9 amends subsection 170 k. of the Atomic Energy Act to extend until 1987 the authority for the Commission to indemnify licensees found by the Commission to be nonprofit educational institutions for public liability in excess of $250,000 arising from a nuclear incident.

Section 10 amends subsection 170 o. of the Atomic Energy Act of 1954, as amended, by authorizing and directing the establishment, in

any plan for disposition of claims, of priorities between classes of claims and claimants, to the extent necessary to ensure the most equitable allocation of available funds. Section 10 also requires the Commission or the Administrator to provide the Congress with the information it will need to determine what additional action is necessary in the event of an accident causing losses beyond the limit on liability.

Section 11 adds a new subsection 170 p. which provides that the Commission shall submit to the Congress by August 1, 1983, a report and recommendations concerning the need for continuation or modification of section 170 based upon relevant conditions at that time, including the condition of the nuclear industry, availability of private insurance, and the state of knowledge concerning nuclear safety at that time, among other factors.

XI. Changes in Existing Law

In accordance with clause (3) of rule XII of the Rules of the House of Representatives, 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):

Public Law 83-703

(Atomic Energy Act of 1954, as amended)

"Sec. 11. Definitions.—The intent of Congress in the definitions as given in this section should be construed from the words or phrases used in the definitions. As used in this Act:

* * * * * * *

"q. The term 'nuclear incident' means any occurrence, including an extraordinary nuclear occurrence, within the United States causing, within or outside the United States, bodily injury, sickness, disease, or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material: *Provided, however,* That as the term is used in subsection 170 l., it shall include any such occurrence outside of the United States: *And provided further,* That as the term is used in subsection 170 d., it shall include any such occurrence outside the United States if such occurrence involves [a facility or device] *source, special nuclear, or byproduct material* owned by, and used by or under contract with, the United States: *And provided further, That as the term is used in subsection 170 c., it shall include any such occurrence outside both the United States and any other nation if such occurrence arises out of or results from the radioactive, toxic, explosive or other hazardous properties of source, special nuclear, or byproduct material licensed pursuant to Chapters 6, 7, 8, and 10 of this Act, which is used in connection with the operation of a licensed stationary production or utilization facility or which moves outside the territorial limits of the U.S. in transit from one person licensed by the Commission to another person licensed by the Commission.*

* * * * * * *

"t. The term 'person indemnified' means (1) with respect to a nuclear incident occurring within the United States *or outside the United States as the term is used in subsection 170 c.*, and with respect to any nuclear incident in connection with the design, development, construction, operation, repair, maintenance, or use of the nuclear ship Savannah, the person with whom an indemnity agreement is executed *or who is required to maintain financial protection*, and any other person who may be liable for public liability; or (2) with respect to any other nuclear incident occurring outside the United States, the person with whom an indemnity agreement is executed and any other person who may be liable for public liability by reason of his activities under any contract with the Commission or any project to which indemnification under the provisions of subsection 170 d. has been extended or under any subcontract, purchase order or other agreement, of any tier, under any such contract or project.

* * * * * * *

"Sec. 170. Indemnification and Limitation of Liability.—

"a. Each license issued under section 103 or 104 and each construction permit issued under section 185 shall, and each license issued under section 53, 63, or 81 may, *for the public purposes cited in Section 2 i. of the Atomic Energy Act of 1954, as amended*, have as a condition of the license a requirement that the licensee have and maintain financial protection of such type and in such amounts as the Commission *in the exercise of its licensing and regulatory authority and responsibility* shall require in accordance with subsection 170 b. to cover public liability claims. Whenever such financial protection is required, it [shall] *may* be a further condition of the license that the licensee execute and maintain an indemnification agreement in accordance with subsection 170 c. The Commission may require, as a further condition of issuing a license, that an applicant waive any immunity from public liability conferred by Federal or State law.

"b. The amount of financial protection required shall be the amount of liability insurance available from private sources, except that the Commission may establish a lesser amount on the basis of criteria set forth in writing, which it may revise from time to time, taking into consideration such factors as the following: (1) the cost and terms of private insurance, (2) the type, size, and location of the licensed activity and other factors pertaining to the hazard, and (3) the nature and purpose of the licensed activity: *Provided*, That for facilities designed for producing substantial amounts of electricity and having a rated capacity of 100,000 electrical kilowatts or more, the amount of financial protection required shall be the maximum amount available *at reasonable cost and on reasonable terms* from private sources. Such financial protection may include private insurance, private contractual indemnities, self insurance, other proof of financial responsibility, or a combination of such measures *and shall be subject to such terms and conditions as the Commission may, by rule, regulation, or order, prescribe. In prescribing such terms and conditions for licensees required to have and maintain financial protection equal to the maximum amount of liability insurance available from private sources, the Commission shall, by rule initially prescribed not later than twelve months from the date of enactment of this Act, include, in determining such maximum amount, private liability insurance available under an*

industry retrospective rating plan providing for premium charges deferred in whole or major part until public liability from a nuclear incident exceeds or appears likely to exceed the level of the primary financial protection required of the licensee involved in the nuclear incident; Provided, That such insurance is available to, and required of, all of the licensees of such facilities without regard to the manner in which they obtain other types or amounts of such financial protection: And provided further, That the standard deferred premium which may be charged following any nuclear incident under such a plan shall be not less than $2,000,000 nor more than $5,000,000 for each facility required to maintain the maximum amount of financial protection: And provided further, That the amount which may be charged a licensee following any nuclear incident shall not exceed the licensee's pro rata share of the aggregate public liability claims and costs arising out of the nuclear incident. Payment of any State premium taxes which may be applicable to any deferred premium provided for in this Act shall be the responsibility of the licensee and shall not be included in the retrospective premium established by the Commission. The Commission is authorized to establish a maximum amount which the aggregate deferred premiums charged for each facility within any one calendar year may not exceed. The Commission may establish amounts less than the standard premium for individual facilities taking into account such factors as the facility's size, location, and other factors pertaining to the hazard. The Commission shall establish such requirements as are necessary to assure availability of funds to meet any assessment of deferred premiums within a reasonable time when due, and may provide reinsurance or shall otherwise guarantee the payment of such premiums in the event appears that the amount of such premiums will not be available on a timely basis through the resources of private industry and insurance. Any agreement by the Commission with a licensee or indemnitor to guarantee the payment of deferred premiums may contain such terms as the Commission deems appropriate to carry out the purposes of this section and to assure reimbursement to the Commission for its payments made due to the failure of such licensee or indemnitor to meet any of its obligations arising under or in connection with financial protection required under this subsection, including without limitation terms creating liens upon the licensed facility and the revenues derived therefrom or any other property or revenues of such licensee to secure such reimbursement and consent to the automatic revocation of any license.

"c. The Commission shall, with respect to licenses issued between August 30, 1954 and [August 1, 1977] *August 1, 1987*, for which it requires financial protection of less than $560,000,000, agree to indemnify and hold harmless the licensee and other persons indemnified, as their interest may appear, from public liability arising from nuclear incidents which is in excess of the level of financial protection required of the licensee. The aggregate indemnity for all persons indemnified in connection with each nuclear incident shall not exceed $500,000,000 including the reasonable costs of investigation and settling claims and defending suits for damage: *Provided, however*, That this amount of indemnity shall be reduced by the amount that the financial protection required shall exceed $60,000,000. Such a contract of indemnification

shall cover public liability arising out of or in connection with the licensed activity. With respect to any production or utilization facility for which a construction permit is issued between August 30, 1954, and [August 1, 1977] *August 1, 1987*, the requirements of this subsection shall apply to any license issued for such facility subsequent to [August 1, 1977] *August 1, 1987*.

"d. In addition to any other authority the Commission may have, the Commission is authorized until [August 1, 1977] *August 1, 1987*, to enter into agreements of indemnification with its contractors for the construction or operation of production or utilization facilities or other activities under contracts for the benefit of the United States involving activities under the risk of public liability for a substantial nuclear incident. In such agreements of indemnification the Commission may require its contractor to provide and maintain financial protection of such a type and in such amounts as the Commission shall determine to be appropriate to cover public liability arising out of or in connection with the contractual activity, and shall indemnify the persons indemnified against such claims above the amount of the financial protection required, in the amount of $500,000,000, including the reasonable costs of investigating and settling claims and defending suits for damage in the aggregate for all persons indemnified in connection with such contract and for each nuclear incident: *Provided*, That this amount of indemnity shall be reduced by the amount that the financial protection required shall exceed $60,000,000: *Provided further*, That in the case of nuclear incidents occurring outside the United States, the amount of the indemnity provided by the Commission shall not exceed $100,000,000. The provisions of this subsection may be applicable to lump sum as well as cost type contracts and to contracts and projects financed in whole or in part by the Commission. A contractor with whom an agreement of indemnification has been executed and who is engaged in activities connected with the underground detonation of a nuclear explosive device shall be liable, to the extent so indemnified under this section, for injuries or damage sustained as a result of such detonation in the same manner and to the same extent as would a private person acting as principal, and no immunity or defense founded in the Federal, State, or municipal character of the contractor or of the work to be performed under the contract shall be effective to bar such liability.

"e. The aggregate liability for a single nuclear incident of persons indemnified, including the reasonable costs of investigating and settling claims and defending suits for damage, shall not exceed (*1*) the sum of $500,000,000 together with the amount of financial protection required of the licensee or contractor *or* (*2*) *if the amount of financial protection required of the licensee exceeds $60,000,000*, [: *Provided however*, That] such aggregate liability shall [in] not [event] exceed the sum of $560,000,000 *or the amount of financial protection required of the licensee, whichever amount is greater: Provided* [further], *That in the event of a nuclear incident involving damages in excess of that amount of aggregate liability, the Congress will thoroughly review the particular incident and will take whatever action is deemed necessary and appropriate to protect the public from the consequences of a disaster of such magnitude: And provided further*, That with respect to any nuclear incident occurring

outside of the United States to which an agreement of indemnification entered into under the provisions of subsection 170 d. is applicable, such aggregate liability shall not exceed the amount of $100,000,000 together with the amount of financial protection required of the contractor.

"f. The Commission is authorized to collect a fee from all persons with whom an indemnification agreement is executed under this section. This fee shall be $30 per year per thousand kilowatts of thermal energy capacity for facilities licensed under section 103: *Provided, That the Commission is authorized to reduce the fee for such facilities in reasonable relation to increases in financial protection required above a level of $60,000,000.* For facilities licensed under section 104, and for construction permits under section 185, the Commission is authorized to reduce the fee set forth above. The Commission shall establish criteria in writing for determination of the fee for facilities licensed under section 104, taking into consideration such factors as (1) the type, size, and location of facility involved, and other factors pertaining to the hazard, and (2) the nature and purpose of the facility. For other licenses, the Commission shall collect such nominal fees as it deems appropriate. No fee under this subsection shall be less than $100 per year.

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"i. After any nuclear incident which will probably require payments by the United States under this section *or which will probably result in public liability claims in excess of $560,000,000*, the Commission shall make a survey of the causes and extent of damage which shall forthwith be reported to the Joint Committee, and, except as forbidden by the provisions of chapter 12 of this Act or any other law or Executive order, all final findings shall be made available to the public, to the parties involved and to the courts. The Commission shall report to the Joint Committee by April 1, 1958, and every year thereafter on the operations under this section.

* * * * * * *

"k. With respect to any license issued pursuant to section 53, 63, 81, 104 a. or 104 c. for the conduct of educational activities to a person found by the Commission to be a nonprofit educational institution, the Commission shall exempt such licensee from the financial protection requirement of subsection 170 a. With respect to licenses issued between August 30, 1954, and [August 1, 1977] *August 1, 1987*, for which the Commission grants such exemption:

"(1) the Commission shall agree to indemnify and hold harmless the licensee and other persons indemnified, as their interests may appear, from public liability in excess of $250,000 arising from nuclear incidents. The aggregate indemnity for all persons indemnified in connection with each nuclear incident shall not exceed $500,000,000, including the reasonable cost of investigating and settling claims and defending suits for damage;

"(2) such contracts of indemnification shall cover public liability arising out of or in connection with the licensed activity; and shall include damage to property of persons indemnified,

except property which is located at the site of and used in connection with the activity where the nuclear incident occurs; and

"(3) such contracts of indemnification, when entered into with a licensee having immunity from public liability because it is a State agency, shall provide also that the Commission shall make payments under the contract on account of activities of the license in the same manner and to the same extent as the Commission would be required to do if the licensee were not such a State agency.

"Any licensee may waive an exemption to which it is entitled under this subsection. With respect to any production or utilization facility for which a construction permit is issued between August 30, 1954, and [August 1, 1977] *August 1, 1987*, the requirements of this subsection shall apply to any license issued for such facility subsequent to [August 1, 1977] *August 1, 1987*.

* * * * * * *

"o. Whenever the United States district court in the district where a nuclear incident occurs, or the United States District Court for the District of Columbia in case of a nuclear incident occurring outside the United States, determines upon the petition of any indemnitor or other interested person that public liability from a single nuclear incident may exceed the limit of liability under subsection 170 e.:

"(1) Total payments made by or for all indemnitors as a result of such nuclear incident shall not exceed 15 per centum of such limit of liability without the prior approval of such court;

"(2) The court shall not authorize payments in excess of 15 per centum of such limit of liability unless the court determines that such payments are or will be in accordance with a plan of distribution which has been approved by the court or such payments are not likely to prejudice the subsequent adoption and implementation by the court of a plan of distribution pursuant to subparagraph (3) of this subsection (o); and

"(3) The Commission shall, and any other indemnitor or other interested person may, submit to such district court a plan for the disposition of pending claims and for the distribution of remaining funds available. Such a plan shall include an allocation of appropriate amounts for personal injury claims, property damage claims, and possible latent injury claims which may not be discovered until a later time, *and shall include establishment of priorities between claimants and classes of claims, as necessary to insure the most equitable allocation of available funds.* Such court shall have all power necessary to approve, disapprove, or modify plans proposed, or to adopt another plan; and to determine the proportionate share of funds available for each claimant. The Commission, any other indemnitor, and any person indemnified shall be entitled to such orders as may be appropriate to implement and enforce the provisions of this section, including orders limiting the liability of the persons indemnified, orders approving or modifying the plan, orders staying the payment of claims and the execution of court judgments, orders apportioning

the payments to be made to claimants, and orders permitting partial payments to be made before final determination of the total claims. The orders of such court shall be effective throughout the United States."

"(4) *The Commission shall, within ninety days after a court shall have made such determination, deliver to the Joint Committee a supplement to the report prepared in accordance with subsection 170 i. of this Act setting forth the estimated requirements for full compensation and relief of all claimants, and recommendations as to the relief to be provided.*

"*p. The Commission shall submit to the Congress by August 1, 1983, a detailed report concerning the need for continuation or modification of the provisions of this section, taking into account the condition of the nuclear industry, availability of private insurance, and the state of knowledge concerning nuclear safety at that time, among other relevant factors, and shall include recommendations as to the repeal or modification of any of the provisions of this section.*"

Oversight Findings and Recommendations

No oversight findings and recommendations pursuant to clause 2(1)(3)(A), rule XI, under the authority of rule X, clause 2(b)(1) of the Rules of the House of Representatives are included, inasmuch as the Joint Committee is not subject to rule X, clause 2(b)(1), and no relevant oversight findings in addition to those reflected in the body of this report have been prepared by the Joint Committee since the convening of the 94th Congress.

Congressional Budget Act Information

No information pursuant to section 308(a) of the Congressional Budget Act of 1974 has been provided to the committee by the Congressional Budget Office.

Estimate and Comparison, Congressional Budget Office

No report has been submitted to the committee from the Congressional Budget Office pursuant to clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives.

Oversight Findings and Recommendations, Committee on Government Operations

No findings or recommendations on oversight activity pursuant to clause 2(b)(2), rule X, and clause 2(1)(3)(D), rule XI, of the Rules of the House of Representatives have been submitted by the Committee on Government Operations for inclusion in this report.

Effect of Legislation on Inflation

In accordance with rule XI, clause 2(1)(4) of the Rules of the House of Representatives, this legislation is assessed to have no inflationary effect on prices and costs in the operation of the national economy.

SEPARATE VIEWS OF REPRESENTATIVE TENO RONCALIO

Last year I voted against a 5-year extension of Price Anderson. It follows that I can hardly be expected to approve its 10-year extension now.

I believe it is time we clip the Federal umbilical cord to the nuclear industry that is epitomized by this legislation. It is 20 years since nuclear power was given to the private sector along with its Price-Anderson immunity from liability for nuclear harm. Now is the time to end that coverage.

In 1957, the situation was much different in nuclear power generation than today. There was no nuclear industry, nor were there actuarial or experimental data to assess risks involved in nuclear power. It was a fledgling technology, an industry aborning, and Price-Anderson was enacted for two reasons: "First, to protect the public by assuring the availability of funds for the payment of claims arising from a catastrophic nuclear incident; second, to remove a deterrent to private industrial participation in the atomic energy program posed by the threat of tremendous potential liability claims."[1]

Price-Anderson was needed 20 years ago to establish and stimulate the nuclear industry. It is no longer necessary today. Today the industry is an $80 billion reality, including 50 large nuclear reactors now in operation, contributing nearly 8 percent of the total electrical generating capacity in the United States; and including plans for more than 70 facilities being built in the United States and at least 15 in foreign nations by American manufacturers. It is now time for the industry to take its rightful place in our free market system, to buy its insurance upon the open market, and to accept total responsibility for its actions, as should all other industrial enterprises in this nation.

When I hear its proponents insist that Price-Anderson must be extended or the industry will perish—I am reminded of a book that was very popular shortly after World War II, entitled, "*A Tree Grows in Brooklyn.*" It included an hilarious chapter about a youngster in Brooklyn who was suckled to his mother's breast as a baby. The problem developed as he reached the firm age of 12, he was still being suckled at her breast and refused to be weaned—he had to be literally slapped off his mother's breast!

The nuclear industry is much too content with feeding at the government breast and simply doesn't want to assume its rightful responsibility as a mature, powerful, and safe sector of our free market economy.

There are irrefutable reasons why Price-Anderson should end. In 1957, the possibility for a catastrophe did exist and the degree of

[1] JCAE Report, 1965 Extension of the Price-Anderson Act.

that catastrophe was unknown. Not so today. The Nuclear Regulatory Commission has now released the final version of WASH–1400, the Reactor Safety Study, better known as the Rasmussen Report. This $4 million, two and a half year study concludes that the chance for such catastrophe is still in existance, but its occurrance is a very, very remote possibility. The Rasmussen Report affirms that nuclear power is a very safe technology.

I believe in the Rasmussen Report. I believe in the future of nuclear power generation. I believe we must have nuclear power generation and that it must take its place as a safe industry in America as it is in Canada, in Germany, in France, and in other nations of the world. Every member of the Joint Committee on Atomic Energy believes the Rasmussen Report has a sound conclusion, so much so that the Committee decided to mark-up H.R. 8631 without holding any independent review or hearings on this twelve volume report. And every member of this Committee is asking that the American people believe the Rasmussen Report. How can we thus expect the citizens of this nation to believe us if we retain the limit of liability for nuclear plant accidents? The two stands are contradictory in appearance and in fact, in my opinion.

The Rasmussen Report outlines probabilities and consequences of such disasters in a number of fields: air travel, the chemical industry, dam failures, and others. In each of these cases, industry accepts full responsibility for the possibility of catastrophic incidents. Yet in each of these industries, management does not buy full insurance coverage for the worst possible case. There is not an insurance company in existence that equates assets with total exposed liability. If insurance companies are willing to insure against low-probability high consequence accidents in such fields as aviation and chemicals; if these pursuits are able to accept limited insurance, but unlimited liability and full responsibility to the public for their actions, and if capital is available from our private markets to finance these pursuits, then how can it not be true for the nuclear industry? Others may think it is so because nuclear power is unsafe. I disagree with them. I think it is so because the nuclear industry itself has simply fed too long at the government trough.

Price-Anderson includes a government indemnity provision which now guarantees $435 million to private utilities in insurance, in return for a payment that is hardly more than a pittance, when compared to the private insurance rates.

H.R. 8631 purports to phase out this government commitment and the government's role in nuclear insurance. But how soon will this happen, and how final will it be? It may not happen for ten years, and it may not be at all final. Through H.R. 8631 the government will abandon its role as indemnitor and become a guarantor. It will become a guarantor for potentially more than the $435 million it now shoulders. This may result through the deferred premium pool that is established by H.R. 8631. The pool will be funded by contributions from each nuclear reactor on line, to be paid retrospectively in the event of an accident.

This commits the Federal government to guarantee the payment of all premiums on which payment is defaulted. This new insurance

mechanism thus purports to phase-out the government indemnity as the size of this pool expands with the growth of the nuclear industry. Unfortunately, this new pool is clearly contradictory to one purpose of the original Price-Anderson Act, to have a large source of funds immediately and readily available after an accident. Under this proposal they are not immediately available. These funds must be raised on short notice by the utilities and then collected by the government, and if there is industry default after an "incident," then the Federal government must pay all money due. This will not speed relief to victims, nor is it guaranteed to "phase-out" the government's role. It may camouflage and alter that role, but it does not phase it out.

As I quoted in my separate views on this issue last year, "The Act thus did not fully achieve the legislative goal of assuring compensation to the public," and, "the decision to limit liability represents a determination that a major share of the costs of an accident should be borne by its victims."

Price-Anderson has succeeded in achieving the goal of stimulating the nuclear industry, but not the goal of protecting the public—the two goals cited in 1957 by the Joint Committee. It is time for us to focus on that neglected goal and achieve it, by nding the government's role and by abolishing the limits on liability.

After all, it is *safety* with which we are most concerned. Former Defense Secretary, James Schlesinger, when AEC Commissioner, testified that in his opinion Price-Anderson be permitted to expire in 1977. Dixy Lee Ray also stated similar statements which I used in my separate views last year. Surely all members recognize that placing full financial responsibility on any entity will make it act more responsibly. I am confirmed in this view by the remark made by former Atomic Energy Commissioner, William Kreigsman, earlier this year who said of Price-Anderson: "Do away with it, and you'd probably see nuclear valves coming off the assembly line in a lot better shape." (Science, Vol. 187, p. 1060, March 25, 1975).

Hearings were held this year regarding hairline leaks, faulty valves, and other problems in redundant secondary backup coolant systems. It is natural to assume that a better product will be manufactured if the manufacturer is responsible for the damage that might ensue from that product.

It is no longer amusing or ironic to view the very companies who are spending millions to propagandize the public on the end of Big Brother's role, the end of Federal intervention, "the end of the bureaucracy," and the need for reliance and faith upon the free enterprise system, yet be so hesitant to give up this element of control that won't let them be responsible for their own actions!

TENO RONCALIO.

APPENDIX I

TABLE 1.—OPERATING REACTORS ASSESSED AT $2,000,000 EACH

[Dollar amounts in millions]

Year	Number of operating reactors	Assessment	Insurance	Total assessment plus insurance	Remaining NRC indemnity
1977	73	$146	$125	$271	$289
1978	78	156	125	281	279
1979	84	168	125	293	267
1980	88	176	125	301	259
1981	97	194	125	319	241
1982	116	232	125	357	203
1983	141	282	125	407	153
1984	165	330	125	455	105
1985	194	388	125	513	47
1986	218	436	125	561	0
1987	243	486	125	611	0
1988	265	530	125	655	0
1989	285	570	125	695	0

Based on Oct. 24, 1975, estimates of the Nuclear Regulatory Commission.

TABLE 2.—OPERATING REACTORS ASSESSED AT $3,000,000 EACH

[Dollar amounts in millions]

Year	Number of operating reactors	Assessment	Insurance	Total assessment plus insurance	Remaining NRC indemnity
1977	73	$219	$125	$344	$216
1978	78	234	125	359	201
1979	84	252	125	377	183
1980	88	264	125	389	171
1981	97	291	125	416	144
1982	116	348	125	473	87
1983	141	423	125	548	12
1984	165	495	125	620	0
1985	194	582	125	707	0
1986	218	654	125	779	0
1987	243	729	125	854	0
1988	265	795	125	920	0
1989	285	855	125	980	0

[1] Based on Oct. 24, 1975, estimates of the Nuclear Regulatory Commission.

TABLE 3.—OPERATING REACTORS ASSESSED AT $4,000,000 EACH

[Dollar amounts in millions]

Year	Number of operating reactors [1]	Assessment	Insurance	Total assessment plus insurance	Remaining NRC indemnity
1977	73	$292	$125	$417	$143
1978	78	312	125	437	123
1979	84	336	125	461	99
1980	88	352	125	477	83
1981	97	388	125	513	47
1982	116	464	125	589	0
1983	141	564	125	689	0
1984	165	660	125	785	0
1985	194	776	125	901	0
1986	218	872	125	997	0
1987	243	972	125	1,097	0
1988	265	1,060	125	1,185	0
1989	285	1,140	125	1,265	0

[1] Based on Oct. 24, 1975, estimates of the Nuclear Regulatory Commission.

TABLE 4.—OPERATING REACTORS ASSESSED AT $5,000,000 EACH

[Dollar amounts in millions]

Year	Number of operating reactors [1]	Assessment	Insurance	Total assessment plus insurance	Remaining NRC indemnity
1977	73	$365	$125	$490	$70
1978	78	390	125	515	45
1979	84	420	125	545	15
1980	88	440	125	565	0
1981	97	485	125	610	0
1982	116	580	125	705	0
1983	141	705	125	830	0
1984	165	825	125	950	0
1985	194	970	125	1,095	0
1986	218	1,090	125	1,215	0
1987	243	1,215	125	1,340	0
1988	265	1,325	125	1,450	0
1989	285	1,425	125	1,550	0

[1] Based on Oct. 24, 1975, estimates of the Nuclear Regulatory Commission.

APPENDIX II

MESSAGE FROM PRESIDENT GERALD R. FORD TO HOUSE OF REPRESENTATIVES, OCTOBER 12, 1974

To the House of Representatives:

I am returning without my approval H.R. 15323, "To amend the Atomic Energy Act, as amended, to revise the method of providing public remuneration in the event of a nuclear incident, and for other purposes."

The first eleven sections of the bill basically carry out recommendations of the Atomic Energy Commission, and I would be glad to approve them if they stood alone.

Section 12, however, would provide that "the provisions of this Act shall become effective thirty (30) days after the date on which the Joint Committee on Atomic Energy submits to the Congress an evaluation of the Reactor Study, entitled 'An Assessment of Accident Risks in the U.S. Commercial Nuclear Power Plants,' AEC Report Number WASH-1400, except that it shall not become effective if within the thirty (30) day period after the Joint Committee submits its evaluation, the Congress adopts a concurrent resolution disapproving the extension of the Price-Anderson Act." The import of this section is that after I have approved the bill, the Joint Committee and the Congress would further consider whether it should ever become effective.

I cannot approve legislation under these circumstances—if, indeed, the bill can properly be called legislation rather than merely the expression of an intent to legislate. The presentation of a bill to me pursuant to Article I, section 7 of the Constitution amounts to a representation by Congress that, as far as it is concerned, the legislation is ready to become effective, subject perhaps to some extrinsic condition precedent, but not to further congressional deliberation. Here, however, Congress in effect requests my approval before it has given its own.

In this instance, the clear constitutional infirmity of the bill not only affects my powers and duties but directly endangers substantial and important private rights. If the bill is unconstitutional, it will remain unconstitutional despite my signing it. As a result, a sure source of funds for prompt payment of public liability claims, a primary objective of the Price-Anderson Act, would be in doubt. The uncertainty over nuclear liability protection would also adversely affect that private investment which will be necessary as nuclear power assumes its vital role in meeting the nation's energy requirements. The public interest would not be served by approving legislation which creates these uncertainties.

I urge the Congress to reenact the bill promptly so as to remove the problems which Section 12 now raises.

GERALD R. FORD.

THE WHITE HOUSE,
October 12, 1974.

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Calendar No. 444

94TH CONGRESS
1st Session

SENATE

REPORT
No. 94-454

AMENDMENTS TO THE PRICE-ANDERSON PROVISIONS OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED, TO PROVIDE FOR THE PHASEOUT OF GOVERNMENTAL INDEMNITY, AND RELATED MATTERS

REPORT

BY THE

JOINT COMMITTEE ON ATOMIC ENERGY

TOGETHER WITH

ADDITIONAL VIEW

TO ACCOMPANY

S. 2568

NOVEMBER 13, 1975.—Ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE
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94TH CONGRESS, 1st Session } SENATE { REPORT No. 94-454

AMENDMENTS TO THE PRICE-ANDERSON PROVISIONS OF THE ATOMIC ENERGY ACT OF 1954, AS AMENDED, TO PROVIDE FOR THE PHASE-OUT OF GOVERNMENTAL INDEMNITY, AND RELATED MATTERS

NOVEMBER 13, 1975.—Ordered to be printed

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

REPORT

together with

ADDITIONAL VIEWS

[To accompany S. 2568]

The Joint Committee on Atomic Energy, having considered S. 2568, to amend sections 11 and 170 of the Atomic Energy Act of 1954, as amended, hereby reports favorably thereon, with amendments, printed in italic in the bill, and recommends that the bill do pass.

SUMMARY

The Price-Anderson Act was enacted in 1957, and extended and amended in 1965 and 1966. The Act was designed to protect the public and the emerging nuclear industry by assuring the availability of funds for the payment of claims and by protecting the nuclear industry against unlimited liability in the unlikely event of a catastrophic nuclear accident. Funds would be made available to compensate the public for losses caused by a nuclear accident through a combination of private insurance and Government indemnity. Beginning in 1957, the Joint Committee has found on the basis of expert testimony, and it again finds now, that the likelihood that a serious nuclear accident will ever occur is extremely remote. Nevertheless, no one can correctly conclude that such an accident could never ocur. For this reason, the need for the protetion afforded by the Price-Anderson Act persists.

The bill meets this need by extending the Price-Anderson Act for an additional 10 years. Funds will be available to compensate the pub-

lic under the Price-Anderson system for its losses in the unlikely event of a nuclear accident. Moreover the nuclear industry will be required to gradually assume greater financial risk through a system of private insurance. Although the limit on the nuclear industry's liability is continued under the bill, that limit will eventually rise as the number of nuclear plants in operation increases and once the Government's responsibility as indemnitor is placed by the system of private insurance.

I. Background

Among other things, the Act provides funds for public liability up to a total amount of $560 million in the event of a nuclear incident. This figure represents the sum of the amount of Government indemnity, fixed at $500 million by the Congress, and the then-existing (1957) maximum available private liability insurance, $60 million. The amount of private insurance has gradually risen, so that it stands now at $125 million; the Government's indemnity has commensurately decreased to $435 million. Other features included in the Act by the amendments of 1966 are no-fault liability and provisions for accelerated payment of claims immediately upon occurrence of a nuclear incident.

Since the enactment of the Price-Anderson Act, there has not been a single accident which has resulted in indemnity payments for public injury under its provisions. This outstanding safety record has been accompanied by a gradual growth in the nuclear power industry. The Price-Anderson Act has served well its dual purpose of portection of the public and elimination of a potential deterrent to the establishment of a nuclear industry.

The Act is scheduled to expire on August 1, 1977. Because of the long-lead times involved in planning new commitments to nuclear power, the Joint Committee has been urged to consider the matter of extension and possible modification of the Act during the present session of Congress in order to prevent an unwarranted disruption in the planning process for nuclear powerplants, such as might result from uncertainty over the future of the Price-Anderson Act.

The question of whether to extend or modify the Price-Anderson system received extensive consideration during the 93d Congress. In July 1973, the Joint Committee requested the Commission to submit studies and alternative proposals in the indemnity area. In response to this call, the Atomic Energy Commission filed a staff study in January 1974 and the Columbia University Legislative Drafting Fund submitted an independent review sponsored by the Atomic Industrial Forum. Months of informal interchange among members of the Joint Committee, the Atomic Energy Commission, and their staffs, and representatives of private industry and the general public culminated in public hearings beginning on January 31, 1974. On April 22, 1974, the Atomic Energy Commission forwarded to the Congress proposed legislation which was introduced as H.R. 14408 by then-Chairman Melvin Price of the Joint Committee on Atomic Energy on April 25, 1974, and as S. 3452 by Senator John O. Pastore, then Vice-Chairman of the Joint Committee, on May 7, 1974. Additionally, a related bill, S. 3254 was introduced by Senator Mike Gravel ion March 27, 1974.

Following public hearings, held on May 9, 10, 14, 15, and 16, 1974, the full committee met in executive session on June 11, 1974, and after careful consideration voted to submit a committee bill in lieu of the above-mentioned measures. The bill was introduced on June 11, 1974, by Mr. Price (for himself and Mr. Hosmer) as H.R. 15323. The Joint Committee met again on June 13, 1974, in open session and voted to report favorably on the bill with amendments by a rollcall vote of 11 to 2 (*Cf.* H.R. Rept. 93–1115). On July 10, the House of Representatives considered H.R. 15323 and passed the bill with three amendments by a vote of 360–43. The bill was sent to the Senate and referred to the Joint Committee on July 11. The Joint Committee met again in open session on July 22 and voted without dissent to delete two of the three House amendments, to perfect the third, and voted 9 to 1 to report the bill favorably to the Senate (*Cf.* S. Rept. 93–1027).

On August 8, 1974, the Senate passed H.R. 15323 by voice vote with three floor amendments, insisted on its amendments, and asked for a conference. The conferees met on August 14, 1974, and again on August 20, 1974, reaching agreement on the latter date, and agreed to report their recommendations to their respective Houses (H.R. Rept. 93–1306). One amendment which was deleted by the Conference Committee would have provided additional Price-Anderson coverage for accidents involving illegally diverted nuclear materials. In deleting the amendment, however, the Conference Committee called for a report on the consequences and feasibility of extending Price-Anderson protection to cover sabotage or the theft of nuclear materials.

The House of Representatives approved the conference measure on September 24, 1974; the Senate followed on September 30, 1974. The Act was then sent to the President on October 1, 1974. The President vetoed the measure on October 12, 1974, citing his approval of the substantive sections of H.R. 15323, and basing his veto on "the clear constitutional infirmity" of a provision in Section 12 of the bill allowing Congress to prevent it from becoming effective by passing a concurrent resolution within a specified time. The quoted phrase is from the President's veto message, which is reproduced in full as Appendix II. The President urged the Congress to reenact the measure without the offending provision. No further action was taken on the measure during the 93d Congress.

On June 9, 1975, the Nuclear Regulatory Commission submitted to the Joint Committee the report on the subject of sabotage and the theft of nuclear materials which had been requested by the Conference Committee on H.R. 15323.

On July 10, 1975, the Federal Energy Administration forwarded to the Congress proposed legislation which was introduced as H.R. 8631 by Mr. Price (for himself and Mr. Anderson of Illinois) on July 14, 1975, and as S. 2568 by Senator Pastore (for himself and Mr. Baker) on October 28, 1975. These bills are identical to the bill which was passed by the 93d Congress with two exceptions: *First*, the provision which caused the President to veto the bill has been omitted; and *second*, the measure calls for a 10-year rather than a 5-year extension of the Act.

The bills were referred to the Joint Committee and hearings were held on September 23 and 24, 1975, to consider that measure and the

question of whether the Price-Anderson system should be extended to cover sabotage and the theft of nuclear materials.

The Joint Committee met in open session on November 6, 1975, and after full discussion voted by a rollcall vote of 14 to 2 [1] to approve the bills with six technical amendments, together with a recommendation that the bills do pass. The Committee also adopted this report on S. 2568. This report repeats the substance of the Joint Committee reports prepared during the 93d Congress, and is intended to provide the definitive legislative history for the 1975 Price-Anderson revisions and amendments.

II. Hearings

Extensive hearings were held on the possible modification or extention of the Price-Anderson Act during the 93d Congress. During those hearings, the Joint Committee reviewed various studies of the Price-Anderson system and considered a number of specific legislative proposals for modifying and extending the Act. An informal planning committee, drawn from the Joint Committee staff, the Atomic Energy Commission, the legal profession, the commercial power and insurance industries, and public citizen groups, provided the Joint Committee and staff with valuable assistance in planning those hearings.

The following witnesses from the Atomic Energy Commission appeared before the Joint Committee to present testimony or to assist in the development of the record: Dr. Dixy Lee Ray, Chairman; William O. Doub, Commissioner; Marcus Rowden, General Counsel; L. Manning Muntzing, Director of Regulation; and Jerome Saltzman, Deputy Chief, Office of Antitrust and Indemnity, Directorate of Licensing.

Other non-governmental witnesses who appeared one or more times are:

Elmer Dee Anderson, Private Citizen, Valparaiso, Indiana.

Dr. W. H. Arnold, Jr., General Manager, PWR Systems Division, Westinghouse Electric Company.

George K. Bernstein, Federal Insurance Administrator, HUD.

Arthur C. Gehr, Atomic Industrial Forum.

Frank P. Grad, Director, Legislative Drafting Research Fund, Columbia University.

Harold P. Green, Professor of Law, National Law Center, George Washington University.

Gerald R. Hartman, Professor of Insurance and Risk, Temple University.

Joseph F. Hennessey, Bechhoefer, Snapp and Trippe, Washington, D.C.

Larry Hobart, Assistant General Manager, American Public Power Association.

Mrs. Judith H. Johnsrud, Central Pennsylvania Committee on Nuclear Power.

Dr. Chauncey Kepford, York, Pennsylvania, representing the Environmental Coalition on Nuclear Power.

Hubert H. Nexon, Senior Vice-President, Commonwealth Edison Company, representing Edison Electric Institute.

[1] Senator Symington was necessarily absent from the mark-up session because of other official duties. He wishes this report to indicate that had he been present, he would have voted in the affirmative.

Norman C. Rasmussen, Department of Nuclear Engineering, Massachusetts Institute of Technology.

Charles A. Robinson, Jr., Corporate Counsel, National Rural Electric Cooperative Association.

Mrs. Laurie R. Rockett, Greenbaum, Wolff and Ernst, New York City, New York.

Ms. Ann Roosevelt, New York, on behalf of Friends of the Earth.

Richard A. Schmaltz, Hartford Insurance Group, representing Nuclear Energy Liability Insurance Association.

Chauncey Starr, Electric Power Research Institute.

Mark Swann, New Park, Pennsylvania.

Martin Victor, V. P. and Secretary, Babcock & Wilcox Company.

Richard Walker, Partner, Arthur Andersen & Company.

Bruce L. Welch, Director, Environmental Studies, Friends Medical Science Research Center, Inc.

Further hearings were held by the Joint Committee on September 23 and 24, 1975, to consider the specific proposal H.R. 8631 and the sabotage and theft questions.

The Joint Committee heard testimony from a number of Government witnesses at those hearings. Testifying during the September 23 and 24 hearings were John Hill, Deputy Administrator of the Federal Energy Administration; Robert Fri, Deputy Administrator of the Energy Research and Development Administration; and William A. Anders, Chairman, Marcus A. Rowden, Commissioner, and Peter Strauss, General Counsel, of the Nuclear Regulatory Commission.

The following witnesses also appeared and presented testimony during the course of the hearings:

Senator Mike Gravel.

William F. Allen, Jr., President, Stone and Webster Engineering Corporation.

Morgan D. Dubrow, Staff Engineer, National Rural Electric Cooperative Association.

Larry Hobart, Assistant General Manager, American Public Power Association.

Alvin G. Kalmanson, Chairman, Committee on Atomic Energy of the Association of the Bar of the City of New York.

Dr. Chauncey Kepford, York, Pennsylvania, representing the environmental Coalition on Nuclear Power.

Jeffrey W. Knight, Legislative Director, representing Friends of the Earth.

Ralph Nader and James Cubie, representing Congress Watch.

Hubert H. Nexon, Senior Vice President, Commonwealth Edison Company, representing Edison Electric Institute.

Burt C. Proom, General Manager, Nuclear Energy Liability-Property Insurance Association, representing the Nuclear Energy Liability-Property Insurance Association and the Mutual Atomic Energy Liability Underwriters.

John W. Simpson, Atomic Industrial Forum.

III. Provisions of Current Act

The Price-Anderson Act is incorporated in the Atomic Energy Act in Sections 2, 11, 53, and 170. Its major provisions are described below.

The Nuclear Regulatory Commission must require as a condition for certain licenses, including those for nuclear power plants, that the licensee maintain financial protection for payment of third party liability claims in the event of a nuclear accident, in the amount required by the Commission. The Commission at its discretion may require financial protection for other types of licenses. Similarly, the Energy, Research and Development Administration has discretion to require financial protection for its contractors. For any power reactor with an electric capacity of 100 MWe or more the Commission must require financial protection equal to the maximum available from private sources. Currently this is $125 million.

The Commision is also required to execute an indemnity agreement with each licensee required to maintain financial protection, agreeing to indemnify the licensee and any other parties liable for claims arising from a nuclear incident above the amount required, up to $500 million. The indemnity agreement extends for the life of the license (usually 40 years for power reactors). ERDA must execute a similar indemnity agreement with each of its contractors.

The aggregate liability for damages arising from a nuclear incident is limited to $560 million within the United States and $100 million plus the financial protection required of the licensee for incidents occurring outside the United States. All vendors, architect-engineers, subcontractors, and other parties are protected from liability by the omnibus feature of the licensee insurance and the Government indemnity.

Nonprofit educational institutions licensed to operate reactors are exempted from the financial protection requirement and are indemnified by the Commission for payment of claims exceeding $250,000, in an amount up to $500 million.

Damages to offsite property of the licensee are covered by the insurance and indemnity.

The Commission may require the inclusion, in any insurance contract or other proof of financial protection and in its indemnity agreements, of provisions waiving any defenses based upon conduct of the claimant or fault of the indemnified person, charitable or governmental immunity, or statutes of limitations which are shorter than a specified duration. The waivers apply in any instance where the Commission determines there has been an extraordinary nuclear occurrence, as defined by the Commission.

Provisions are also included for prompt payments to insured parties and for consolidation of all claims into a single Federal district court.

IV. Studies

Various groups have recently studied the problem of nuclear insurance and indemnity, and several reports and proposals were prepared. The studies and propoals and related material are included in a Joint Committee print of March 1974 entitled "Selected Materials on Atomic Energy Indemnity and Insurance Legislation."

The major studies were those by the Atomic Energy Commission and by the Legislative Drafting Research Fund of Columbia University. The latter, an independent study, resulted in a report of December 12, 1973, entitled "Major Issues of Financial Protection in Nuclear

Activities". Among the proposals which are included in the Joint Committee print and which were discussed in the AEC and Columbia studies was a proposal by the nuclear liability insurance pools for a retropsective premium insurance plan. This plan, modified somewhat, became the basis of legislation considered by the 93d Congress and of the bill now being reported.

Other proposals included an AEC staff proposal for a contingent fee system, and proposals by former AEC General Counsel Joseph Hennessey, Professor Harold Green, and former Pennsylvania Insurance Commissioner Herbert S. Denenberg. These proposals are not discussed in this report, but can be found in the committee print described above, and were discussed during the hearings.

Senator Gravel's bill constituted an additional proposal which was considered in developing this legislation.

V. Need for Legislation

The Price-Anderson Act applies only to licenses issued prior to August 1, 1977. Nuclear power plants now in the planning and design phases would not receive construction perimts until about 1977–1978. Thus there is uncertainty as to whether these plants would receive protection in the form of Government indemnity. Reactor manufacturers and architect-engineers are already requiring escape clauses in their contracts to permit cancellation in the event some form of protection from unlimited potential liability is not provided. Action is required soon to prevent disruption in utility plans for nuclear power.

The study by the Columbia University Legislative Drafting Research Fund examined the situation that would prevail if the Price-Anderson Act were to be allowed to expire. The study concluded that the resulting legal situation in the event of a nuclear incident would be chaotic. Injured parties would be subject to whatever tort law prevailed in the State in which the incident occurred or in which they suffered harm. There would be wide variation in the grounds for recovery, the standards of proof, and the defenses available to the defendants. Recovery would be uncertain and could be delayed for many years. The potential for unlimited liability might drive smaller manufacturers, architect-engineers, and component suppliers out of the nuclear business and could serve as a deterrent to entry by other firms. The report's conclusions were summarized as follows:

> The primary defect of this alternative is its failure to afford adequate protection to the public in terms of providing either a secure source of funds or a firm basis of legal liability. While it does have the theoretical advantage of placing no legal limit on the amount of protection available, as a practical matter, the public would be less assured of compensation than under the Price-Anderson Act. Adoption of this alternative would also, for the reasons discussed in Chapters 3 and 4, tend to discourage the participation of industry in the nuclear field. If in other respects Congress adopts a policy of continued encouragement, inaction with respect to financial protection will not advance, and will probably impede, this policy.

Assuming no significant change in the insurance patterns of the industry, this alternative also fails to meet the criterion of efficient and equitable cost allocation through risk spreading. With the possible exception of the approximately 100 million dollars insured by the insurance pools, the entire risk of an accident would fall, under the law of most states, either on the victim who was barred from recovery by a technical defense, failure of proof, or inability of the defendant to pay a judgment, or on the particular utility involved and possibly its contractors or suppliers, and on their consumers. And the entire cost would arise after the accident had occurred. This alternative thus makes use of little, if any, intertempora land, initially, virtually no interpersonal spreading. Interpersonal spreading might be achieved later as the companies held liable shifted the cost onto their consumers. Although the allocation of liability to the industry does appear to meet the third criterion of internalization, to the extent that victims of an accident are unable to recover from the industry, even this criterion is not met. Finally, because of the potential problems plaintiffs may encounter in seeking damages under state law, recovery is likely to involve excessive time and expense. In sum, this alternative meets only one of the four basic criteria, that of internalization of cost and meets that only in part.

The Joint Committee has received numerous letters from companies and organizations in the nuclear industry, urging extension of the Price-Anderson Act in its present or a modified form. These letters as well as testimony at the hearings have stressed the importance of the Act in removing a deterrent to development of the nuclear industry, and the need for prompt action to clarify the situation that will prevail after 1977.

The President in his veto message last year indicated his support for the substantive provisions of the legislation, and urged its reenactment without the provisions he considered constitutionally inappropriate. Following the veto, insurance and industry groups also urged the Joint Committee and its members to reenact the extension. The bill now being reported preserves the substantive provisions of that legislation. The committee considers the extension of the Price-Anderson Act during this session to be of great importance to the objectives of Project Independence as well as to the alleviation of the more immediate energy problems of the Nation. Uncertainty occasioned by further delay could well serve to exacerbate the difficulties which have led to numerous recent cancellations and postponements of powerplants, both nuclear and fossil fueled.

VI. Discussion of Bill

The bill provides for a 10-year extension of the Price-Anderson Act and for three major changes: (1) Phaseout of Government indemnity, (2) increase in limit of liability and (3) extension of indemnity coverage outside the territorial limits of the United States for certain limited activities, none of which involve indemnity for any shipment of nuclear technology abroad under an agreement for cooperation

with nations or groups of nations. The Joint Committee wishes to stress that there are a number of features of the Price-Anderson Act which should be viewed as permanent. These include the mandatory insurance coverage, the no-fault provisions, the provisions for consolidation of claims in a single federal court and for advance payment of claims, the contractor indemnity provisions, and the mandatory retrospective premium system. These elements make up a pattern of public protection which must be continued. The provision for termination in 1987 should be viewed as a device to ensure that Congress will reassess the situation prior to that time and make revisions as required, rather than as congressional intent to provide for an eventual termination of the federal regulation of nuclear liability insurance.

The details of the bill are below.

A. Phaseout of Government Indemnity

Deferred Premium System

The bill provides specific authorization for the Commission to establish by rule, regulation or order the terms and conditions of the financial protection required of nuclear licenses. NRC is directed under this authority to require participation, by licensees who are required to maintain the maximum amount of financial protection, in an insurance retrospective rating plan whereby in the event of a nuclear incident resulting in damages exceeding the base layer of insurance, each licensee would be assessed a deferred premium which would be a prorated share of the excess damages. A maximum amount would be established which the retrospective premiums for each facility could not exceed. If, for instance, at some time in the future, a maximum level of $3 million per reactor were set and a total of 100 reactors had been licensed to operate up to that time, then $300 million would be available at that time to provide for payment of damages in this secondary layer over and above the base insurance. As more reactors were licensed, the secondary layer would increase proportionately. The Commission will set the maximum premium by rule. Premium taxes which would be due the states on any assessed retrospective premiums are to be added to the amount of the maximum established by the Commission and are the responsibilty of the licensee.

The Commission would continue to provide indemnity for payment of damages exceeding the combined primary and secondary layers, up to a total of $560 million. As the secondary layer increased, it would gradually phase out the government indemnity. The date at which this would occur would depend on the amount set as the maximum premium and on the rate at which reactors were licensed. The tables in appendix I to this report illustrate how this phaseout would occur for various premium levels.

The Joint Committee expects the Commission to require present licensees to enter into the retrospective premium plan under its authority to establish the maximum financial protection required. The committee belives that this authority is sufficient to require the participation of such licensees in the plan. Exclusion of these licensees would result in confusion and would delay the date at which Government indemnity can be eliminated.

The Joint Committee has from the time of the inception of the Price-Anderson Act endorsed the concept of the assumption by the nuclear industry of the risks associated with nuclear incidents. The industry in its early stages of development, however, was not capable of assuming this unique risk, which has generally been considered to have extremely low probability but potentially large consequences. While the probabilities of severe nuclear accidents appear now to have been over estimated, the industry is just not reaching the point where the government's role can be phased out without the possibility of unduly disrupting the industry's development or of leaving the public with inadequate provision for relief from the highly improbable severe nuclear incident which the Act is designed to protect against. The Federal Energy Administration's proposal as embodied in the Joint Committee bill is considered the most expeditious means for the transfer of responsibility. An abrupt termination of Government protection is not considered appropriate at this time, in light of the still relatively small number of nuclear reactors now licensed (54 operating licenses and 64 construction permits).

Premium Amounts

The Joint Committee desires that the Government indemnity be phased out as soon as is reasonably feasible. Consequently, the bill provides that the Commission must set the level of the standard deferred premium at no less than $2 million per facility. The bill also establishes an upper level for such premium of $5 million per facility. This limitation was considered necessary to assure that smaller utilities are not hampered in efforts to raise capital by a too-high potential liability. The bill thus establishes a range within which the Commission shall set the maximum premium taking into consideration the objectives on which these statutory limits were based and other pertinent factors. The range was further intended to enable the termination of the Government indemnity by 1985. The Commission is directed to consider this time frame as a guideline in establishing the premium.

The Commission is authorized to establish a deferred premium lower than the standard premium for any facility based upon such considerations as size and location. This authorization is included to permit such variations if the Commission finds they are warranted.

The legislation provides for a target date of twelve months after the effective date of the Act for completion of Commission action to implement the deferred premium plan. This should provide ample time for a rulemaking proceeding.

Assurance of Premium Availability

Authority and discretion has also been provided for the Commission to establish measures to ensure that the deferred premiums will be paid when they are called for following a nuclear incident. The Commission is directed to assure these payments to the maximum extent possible through the resources of the nuclear and insurance industries. Representatives of insurance companies indicate that the insurance pools could provide coverage for up to $30 million in defaults initially, and that this sum could be increased later.[2] The Joint Committee

[2] This amount of insurance is in addition to the maximum amount of liability insurance for financial protection purposes. That amount is now $125 million.

believes the industry and Commission should make every effort to provide additional coverage for the payment of deferred premiums by insurance and industry.

In order to prevent a potential gap between the public protection pledged and actual payments made, the bill requires the Commission to provide the ultimate assurance to the public for these payments in the event of defaults not covered by insurance. This may be done through reinsurance, guarantees, or other means. There is no dollar limitation to the amount of guarantee which could be required in the event of defaults on the deferred premiums. If a guarantee of payment by the Government is required, authority has been provided to permit recovery by the Government from the defaulting licensee of any payments made on its behalf.

State Constitutional Problem

During the hearings on this legislation, a potential constitutional problem was raised as to public power organizations. Public power representatives testified that the retrospective premium arrangement might be construed to be in violation of some State constitutions, which prohibit a State or a subdivision or agency of a State, such as a municipal utility, from lending its credit or making expenditures for other than public purposes. They suggested that preemption of this field by the Federal Government through the explicit establishment of the premium system as a condition to obtaining a nuclear powerplant license might resolve the problem.

The Joint Committee believes that the language of Section 170, as amended by this bill, is clear in its establishment of participation in the retrospective premium system as a firm requirement of a licensee required to maintain the maximum financial protection. The bill strengthens the language of Section 170 to stress the Federal preemption of nuclear powerplant licensing and the public purposes of the premium system. Furthermore, the deferred premium should not be interpreted as establishing a responsibility by one licensee for a liability or debt of another. The potential deferred premiums are considered by the Joint Committee to have fundamentally the same status as any other such insurance premium. The bill authorizes the Commission to establish a maximum limit on the amount of deferred premiums which can be charged to a facility in any one year. The purpose of this provision is to clarify the status of the premiums and to ensure that they can not be construed as the lending of credit by any licensee and thus raise constitutional problems for some publicly owned utilities.

The bill includes requirements that the retrospective premium plan be available to licensees who elect to provide the basic financial protection through some means other than insurance, and a provision that the maximum financial protection required shall be that available under reasonable terms and conditions. The Commission is thus authorized to not require available insurance to the degree that it determines the rates or terms of such insurance to be unreasonable.

B. INCREASE IN LIMIT ON LIABILITY

The bill does not provide for an immediate change in the $560 million limit on total liability arising from a nuclear incident. That limit is re-

tained until the total of primary insurance and assessable retrospective premiums reaches the level necessary to completely replace the Government indemnity. From that point, as the primary and secondary levels rise, the limit on liability would be allowed to rise correspondingly. No ultimate limitation on the level to which this coverage could rise is provided for. At a premium level of $3 million per reactor, the overall limit would be projected to reach a billion dollars in about 1990.

The Commission would have the continuing authority to establish a rule reducing the standard premium as appropriate when it determines that the total financial protection has risen to an amount above which further increases are not deemed necessary.

The Joint Committee does not believe that any increase in or elimination of the limit on liability is necessary or appropriate at this time. As the Joint Committee pointed out when the Act was first proposed:

> The limit of the Commission's responsibility under these (indemnity) agreements is to be $500 million. This limit could be subject to upward revision by the Congress in the event of any one particular incident in which, after further congressional study, the Congress felt more appropriations would be in order.
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> * * * * *
>
> Subsec. e limits the liability of the persons indemnified for each nuclear incident to $500 million, together with the amount of financial protection required. Of course, Congress can change this act at any time after any particular incident. The Joint Committee wanted to be sure that any such changes in the act would be considered by it in the light of the particular incident.

At the time of the extension of the Act in 1965, the Joint Committee reiterated this point when it said:

> In the event of a national disaster of this magnitude, it is obvious that Congress would have to review the problem and take appropriate action. The history of other natural or man-made disasters, such as the Texas City incident, bears this out. The limitation of liability serves primarily as a device for facilitating further congressional review of such a situation, rather than an ultimate bar to further relief of the public.

This assurance on the part of the Congress that it will take whatever further action is needed to protect the public in the event of an nuclear accident causing losses greater than the limit of liability is included as a provision in the bill. The bill also contains reporting requirements to provide the Congress with the information it will need in the event of an accident causing losses beyond the limit on liability.

The recently released final report of the Reactor Safety Study under the direction of Professor Norman Rasmussen of the Massachusetts Institute of Technology has indicated that the probabilities of a nuclear incident are much lower and the likely consequences much less severe than has been thought previously, (See Section VII of this report).

C. EXTENSION OF INDEMNITY COVERAGE OUTSIDE THE UNITED STATES TERRITORIAL LIMITS

The bill amends the definitions of "nuclear incident" and "person indemnified" in section 11 of the Atomic Energy Act to permit the Commission and ERDA to extend the provisions of the Price-Anderson Act to certain activities outside the territorial limits of the United States conducted by ERDA contractors or involving licensed nuclear facilities or licensed activities. The bill does not include under Price-Anderson indemnity coverage the import or export of nuclear material or facilities or activities conducted within the territorial limits of another nation, nor any occurrence resulting from the use of a nuclear power reactor to propel a U.S. merchant ship, although nuclear material transported on such a ship as cargo could be covered by the Price-Anderson indemnity provision in the same manner as cargo carried in ships powered by fossil fuel.

The existing definitions of "person indemnified" and "nuclear incident" do not permit indemnity protection for activities licensed by the Nuclear Regulatory Commission if the nuclear incident occurs outside the territorial limits of the United States, with the exception of the now retired nuclear ship *Savannah*. There are two situations in which the protection afforded by the Price-Anderson Act with respect to licensed activities would be extended to nuclear incidents occurring outside the territorial limits of the United States. The first situation involves ocean shipments of new or spent fuel which may move outside the territorial limits of the United States during ocean transit from one licensed nuclear facility to another. The second situation involves nuclear facilities which are physically located outside of the territorial limits of the United States but whose construction and operation are licensed by the Nuclear Regulatory Commission, such as a floating nuclear powerplant located beyond the limits of the territorial sea of the United States. The legislation would authorize the Commission to extend Price-Anderson indemnity protection to such shipments and such facilities.

Any indemnification agreements relating to these activities would be administered in the same manner as the Commission would administer the Price-Anderson Act with respect to other licensed activities.

The present definition of "nuclear incident" as applied to ERDA contractors provides indemnity protection only if an occurrence outside the United States involves "a facility or device" owned by, and used by or under contract with, the United States. The amended definition would resolve any possible ambiguities concerning ERDA's authority to indemnify its contractors for any occurrence during the course of transporting source, special nuclear, or byproduct material outside the United States.

With the apparent advent of offshore nuclear powerplants, it is essential that the protection intended by the Price-Anderson Act not be thwarted by the incidental fact of location beyond the U.S. territorial limits. Likewise, the shipment of nuclear materials from one licensed facility to another within the United States should be included in the Act's coverage regardless of whether the facility or route involved is located or involves transportation outside the territorial limits.

Testimony at the hearings included suggestions that nuclear merchant ships be included in the act's coverage. The Joint Committee has not included those activities in this bill. The urgency of such inclusion is not considered sufficient to warrant legislation without a more detailed examination. The Joint Committee's decision not to take this action at this time is in no way intended to preclude further consideration at a later time.

D. ADDITIONAL CONSIDERATIONS

Activities Covered by Price-Anderson Act

Financial protection and indemnity for plutonium processing facilities is discretionary with the Commission under the present law. One witness at the hearings, a representative of a company which operates such a facility, proposed that these provisions of the Price-Anderson Act be made mandatory for such facilities. The Commission does not at this time require financial protection of such licensees or extend indemnity coverage to them. However, private liability insurance is available. The Commission has indicated that it will undertake a thorough review of this matter. The Joint Committee has not proposed a legislative change in this area pending the outcome of this review. The Commission is urged to give appropriate consideration to this matter.

Transportation of nuclear materials is not specifically provided for under the Price-Anderson Act, although carriers are generally covered either as ERDA contractors or under the omnibus aspects of licensee financial protection and indemnity. The Association of American Railroads has proposed that transportation be specifically covered because of gaps in the existing system for such situations as transportation of materials for a shipper or receiver not required to maintain financial protection.

The Joint Committee has not proposed legislation to deal with this matter, but encourages the Commission to review the situation to determine if procedural or legislative changes are in order.

Priorities Between Claimants and Types of Claims

The Joint Committee has included in the legislation a direction and authorization for the court which develops the plan for distribution of funds in the event of a nuclear incident which appears to have resulted in damages exceeding the limit on liability to establish priorities between classes of claims and claimants. The Joint Committee wishes to assure that in such a case, where the immediate recovery by claimants may be less than the full amount of their losses, the distribution of funds will be made in such a manner as to compensate first for the most severe and the most readily computable losses. Thus claims for actual losses to property, for actual and reasonable medical expenses, for loss of wages, and other such losses may merit higher priority than such claims as those for alleged pain and suffering, emotional harm, and loss of consortium. Likewise, losses otherwise compensated for, while not precluded from recovery (under the collateral source rule) in most jurisdictions, should be accorded

lower priority than uncompensated losses. The Joint Committee also believes that as a matter of equity, in cases where less than full compensation will be made through the amounts immediately available from insurance and Government indemnity, losses to offsite property of the licensee of the responsible facility should be accorded lower priority than losses to third parties. The court is authorized to establish such additional priorities as are deemed desirable and equitable to further the principles described above.

The above provisions are in no way intended to create any causes of action not in accordance with existing law or to derogate any existing causes of action. Nor should these provisions be construed as a retreat from the belief expressed on many occasions by this Joint Committee and included in this bill that Congress would thoroughly review the situation in the remote event of a nuclear incident involving damages in excess of the limit on liability. The priorities are not intended to preclude ultimate relief for claims of secondary priority, but rather to assure that early relief is applied where most needed.

VII. Relationship of the Reactor Safety Study to the Price-Anderson Act

On October 30, 1975, the Nuclear Regulatory Commission released the final report of the Reactor Safety Study entitled "An Assessment of Accident Risks in U.S. Commercial Nuclear Power Plants." The study was prepared under the direction of Dr. Norman C. Rasmussen, professor of nuclear engineering at the Massachusetts Institute of Technology, using a technical staff of about 60 scientists and engineers, plus a large number of specialized consultants. The report (WASH 1400) presents the results of a three-year, multi-million dollar effort aimed at making a realistic estimate of reactor accident risks and a comparison of these risks with nonnuclear risks to which our society is already exposed.

The 2,300 page report consists of 9 volumes, including an overall report, technical appendices, and an executive summary. A draft of the report was issued in August, 1974, and was widely circulated for comment and review during the remainder of that year. The comments which were received from approximately 90 individuals, agencies, and organizations, were carefully considered in preparing the final report. An appendix to the Rasmussen Report indicates the Study's responses to the comments received and the resulting changes made in the final report.

To assist Members of the Congress and their staffs in familiarizing themselves with the study, special briefings were presented on the draft report on August 20, 1974. Similar briefings were also held on that same day for members of the press and the general public.

The Reactor Safety Study does not deal with insurance or indemnity for nuclear incidents. It is a safety study of the probabilities and consequences of accidents involving nuclear power reactors. As such, its only relation to the Price-Anderson Act is as a possible indicator of the extent and scope of risk to the public. Thus, although it provides no information at all concerning the mechanism for providing protection, it is helpful in determining whether financial protection for the public is required and if so, in what amounts.

Insofar as the risk to the public of a serious nuclear accident is concerned, the Rasmussen report restates what the Joint Committee found to be the case in 1957 and again in 1965. Specifically, this committee determined on the basis of the evidence then available that the likelihood of a serious nuclear accident with severe consequences for the public ever occurring was extremely small. Nevertheless, the committee could not conclude with certainty that such an accident would never occur.

These determinations are in agreement with the findings of the Rasmussen report. The study confirms that a wide range of consequences from a nuclear accident is possible, depending upon the exact condition under which the accident occurs, the prevailing weather conditions, and the population distribution around the reactor site. As could be expected, the study shows that the probability of accidents decreases significantly as the magnitude of the potential consequences increases. For a group of 100 reactors, the study concludes that the chance of an accident causing $150 million damage would be about one in 1,000—or once in every 10 centuries and the chances of an accident causing greater damage are significantly less.

Insofar as the amount of financial protection for the public is concerned, both Dr. Rasmussen's testimony before the Joint Committee last year and the final report affirm that the total of public and private indemnity provided for by this bill is adequate to cover any credible accident which might occur.

The Rasmussen study appears to be a scholarly review and analysis of the potential risks associated with the use of nuclear power. Substantial effort has been devoted to making all of the underlying methodology, assumptions, and calculations of the study available to all interested parties.

As it has done in the past, the committee will continue to follow closely the activities of the Rasmussen Study Group as well as other evaluations of reactor safety.

VIII. Comparison With Other Federal Programs of Disaster Assistance and Insurance

The Joint Committee examined the posture of other Federal programs for relief from disaster. The Federal Government has become increasingly involved as the major underwriter of relief for losses due to natural disasters, principally flooding, hurricane and tornado damage. For example, in a ten-year period ending in 1972, allocations from the President's disaster fund totaled just over $1.25 billion. In the first 2½ years of the Disaster Relief Act of 1970, 104 major disasters were declared, triggering expenditures from the President's fund of about $1 billion, plus loans from two separately administered programs in excess of $2 billion.

Recent legislation affecting both the Federal Disaster Assistance Administration [3] and the National Flood Insurance Program [4] has altered the Government's response to natural disaster, by emphasizing the role of insurance as the primary means of compensation for loss. In this sense, there is consistency with the amendments to the Price-

[3] Public Law 93–288, "Disaster Relief Act of 1974."
[4] Public Law 93–324, "Flood Disaster Protection Act of 1973."

Anderson legislation which are the subject of this report, whereby increased reliance is being placed upon private insurance pools and the licensees of nuclear facilities themselves for financial protection with a concomitant decrease in Government involvement.

The Government's approach is consistent also in its emphasis on loss prevention. The National Flood Insurance Program, for example, provides for mandatory land use criteria for new construction within flood-prone areas. In the nuclear energy field, the rigid licensing process enforced by the Nuclear Regulatory Commission and the surveillance activities of its Offices of Inspection and Enforcement and Nuclear Reactor Regulation represent an unprecedented program of loss prevention.

It is clear from this examination that the Federal Government remains in the business of compensation in many fields, whether as reinsurer, coinsurer, indemnitor, or provider of disaster relief. Insurance concepts become less valid as the frequency of events decrease and as the potential consequences increase.

With respect to the amendments to the Atomic Energy Act under consideration, the Federal Government will retain its role as indemnitor for the uninsured portion of the statutory amount of $500 million, and, after the combined totals of basic and excess insurance reach that figure and are allowed to float upward, as the ultimate guarantor for defaulted retrospective premiums, while retaining subrogated rights against the defaulting licensees.

It is important to note that of all of these Federal programs, only the Price-Anderson legislation provides for compensation to the public for personal injury as well as property damage. All of the other insurance and assistance programs are geared solely to property damage.

Finally, it should be pointed out that the panoply of Federal resources, other than monetary compensation, is available in the event of a large-scale nuclear accident, just as it would be in case of natural disasters.

IX. Cost of Legislation

In accordance with section 252(a) of the Legislative Reorganization Act of 1970 (Public Law 91–510), the Joint Committee has determined that, with the exception of minimal administrative costs associated with determining the terms and conditions acceptable in the proposed restrospective premium plan, the Nuclear Regulatory Commission and the Energy Research and Development Administration will incur no additional costs as a result of carrying out this legislation; except that in the event of a nuclear incident involving a contractor or a licensee with whom an indemnity agreement has been executed, and resulting in damages exceeding the amount of financial protection required, NRC or ERDA may incur costs of up to $500,000,000 for each such incident. The probability of such an incident occurring is considered extremely low. The potential cost to the Government of such an incident involving a licensee other than a nonprofit educational institution will be reduced over a period of years until it reaches essentially zero by 1985. The potential liability for an incident involving a contractor or nonprofit educational institution will remain at a maximum of $500,000,000 per incident. In addition, there will be potential

costs to the Government in the event of defaults on retrospective premiums for which the Government serves as reinsurer, or as guarantor in cases where full recovery against the defaulter is not possible.

X. Section-by-Section Analysis

Section 1 of the bill would amend subsection 11 q. of the Atomic Energy Act of 1954, as amended, to alter the definition of "nuclear incident" as that term is used in subsection 170 d., by substituting the words "source, special nuclear, or byproduct material" for "a facility or device". Its purpose is to gain specificity and consistency. Section 1 of the bill would also amend subsection 11 q. to specially define "nuclear incident" as that term is used in subsection 170 c. The purpose of this amendment is to extend the full aggregate indemnity to offshore nuclear powerplants and to shipments between licensees in the United States which are routed beyond territorial waters.

Section 1 of the bill would also amend subsection 11 t. of the Atomic Energy Act of 1954, as amended, by broadening the definition of "person indemnified", as that term is used in subsection 170 c., to include nuclear incidents outside the United States. This change preserves consistency within the Act. Section 1 would further amend subsection 11 t. by an alternative description of a "person indemnified" as a person "who is required to maintain financial protection". This provides for the situation in which the $560 million limit on liability is provided wholly by private insurance protection, in which case the execution of an indemnity agreement would not be an absolute requirement.

Section 2 of the bill would amend subsection 170 a. of the Atomic Energy Act of 1954, as amended by substituting the word "may" for "shall" in the second sentence. The purpose of this change is to provide consistency with subsection 170 c., as amended. Additional language has been added in the first sentence of subsection 170 a. to emphasize the public purpose of the Price-Anderson provisions, as stated in subsection 2 i. of the Act.

Section 3 of the bill would amend subsection 170 b. of the Atomic Energy Act of 1954, as amended, to provide authority for the Nuclear Regulatory Commission to regulate the terms and conditions of nuclear liability insurance. This section requires the Commission within twelve months of the date of enactment of this Act, to include in determining the maximum amount of private liability insurance available any deferred premium plan which meets certain requirements. Any such plan must have a standard retrospective premium within the range of $2 million to $5 million for each licensed facility required to maintain the maximum financial protection available from private sources. Any State premium taxes which may be due on assessed premiums are to be the responsibility of the licensee and are not to be included in the premium set by the Commission. In addition, participation in the secondary layer must not be conditioned on provision of the basic financial protection through insurance means. This assures that an individual licensee may fullfill some or all of its base liability by means other than insurance and yet be eligible for the retrospective coverage.

Section 3 further requires the Commission to develop a plan to assure payment of such deferred premiums when due in the event of

a nuclear incident, and requires the Commission to provide reinsurance or guaranty to assure the availability of funds despite any defaults in retrospective assessments. This provides, in effect, that the full amount to pay any liability will be available promptly with the Government undertaking the burden of later recovery from the defaulter. In connection with the recovery of such funds, section 3 authorizes the Commission to specify the terms of any guaranty agreement as appropriate to permit reimbursement, including liens on property and revenues of a defaulting licensee, and automatic revocation of any license.

Section 4 of the bill would amend subsection 170 c. of the Atomic Energy Act of 1954, as amended, by changing the date "August 1, 1977" wherever it appears to "August 1, 1987". The purpose of this amendment is to extend for 10 years the indemnification authority of the Price-Anderson legislation as it pertains to NRC licensees other than licensees subject to the provisions of subsections 170 k. or 170 l. of the Act.

Section 5 amends subsection 170 d. of the Atomic Energy Act of 1954, as amended, by extending until 1987 the authority of the Energy Research and Development Administration to enter into indemnity agreements with its contractors.

Section 6 amends subsection 170 e. of the Atomic Energy Act of 1954, as amended, by providing that except as to incidents occurring outside the United States to which agreements of indemnification entered into under the provisions of subsection 170 d. are applicable, the limit on aggregate liability arising from a nuclear incident shall be either (1) $500,000,000 plus the amount of financial protection required of the licensee, if the financial protection required is less than $60,000,000 or (2) $560,000,000 or the amount of financial protection required of the licensee, whichever is greater, in cases where the financial protection required is $60,000,000 or more.

Section 7 amends subsection 170 f. of the Atomic Energy Act of 1954, as amended, to authorize the Commission to reduce the indemnity fee for persons with whom agreements of indemnification have been executed in reasonable relation to increases in financial protection above a level of $60,000,000.

Section 8 amends subsection 170 i. of the Atomic Energy Act of 1954, as amended, to require a report by the Commission or the Administrator to the Congress on any nuclear incident which will probably result in public liability claims in excess of $560,000,000. The Act presently provides for such a report for any nuclear incident which will probably result in payments by the United States.

Section 9 amends subsection 170 k. of the Atomic Energy Act to extend until 1987 the authority for the Commission to indemnify licensees found by the Commission to be nonprofit educational institutions for public liability in excess of $250,000 arising from a nuclear incident.

Section 10 amends subsection 170 o. of the Atomic Energy Act of 1954, as amended, by authorizing and directing the establishment, in any plan for disposition of claims, of priorities between classes of claims and claimants, to the extent necessary to ensure the most equitable allocation of available funds. Section 10 also requires the Commission or the Administrator to provide the Congress with the

information it will need to determine what additional action is necessary in the event of an accident causing losses beyond the limit on liability.

Section 11 adds a new subsection 170 p. which provides that the Commission shall submit to the Congress by August 1, 1983, a report and recommendations concerning the need for continuation or modification of section 170 based upon relevant conditions at that time, including the condition of the nuclear industry, availability of private insurance, and the state of knowledge concerning nuclear safety at that time, among other factors.

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

Public Law 83-703

(Atomic Energy Act of 1954, as amended)

Sec. 11. Definitions.—The intent of Congress in the definitions as given in this section should be construed from the words or phrases used in the definitions. As used in this Act:

* * * * * * *

"q. The term 'nuclear incident' means any occurrence, including an extraordinary nuclear occurrence, within the United States causing, within or outside the United States, bodily injury sickness, disease, or death, or loss of or damage to property, or loss of use of property, arising out of the resulting from the radioactive toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material: *Provided, however*, That as the term is used in subsection 170 I., it shall include any such occurrence outside of the United States: *And provided further*, That as the term is used in subsection 170 d., it shall include any such occurrence outside the United States if such occurrence involves [a facility or device] *source, special nuclear, or byproduct material* owned by, and used by or under contract with, the United States: *And provided further, That as the term is used in subsection 170c., it shall include any such occurrence outside both the United States and any other nation if such occurrence arises out of or results from the radioactive, toxic, explosive or other hazardous properties of source, special nuclear, or byproduct material licensed pursuant to Chapters 6, 7, 8, and 10 of this Act, which is used in connection with the operation of a licensed stationary production or utilization facility or which moves outside the territorial limits of the U.S. in transit from one person licensed by the Commission to another person licensed by the Commission.*

* * * * * * *

"t. The term 'person indemnified' means (1) with respect to a nuclear incident occurring within the United States *or outside the United States as the term is used in subsection 170 c.*, and with respect

to any nuclear incident in connection with the design, development, construction, operation, repair, maintenance, or use of the nuclear ship Savannah, the person with whom an indemnity agreement is executed *or who is required to maintain financial protection*, and any other person who may be liable for public liability; or (2) with respect to any other nuclear incident occurring outside the United States, the person with whom an indemnity agreement is executed and any other person who may be liable for public liability by reason of his activities under any contract with the Commission or any project to which indemnification under the provisions of subsection 170 d. has been extended or under any subcontract, purchase order or other agreement, of any tier, under any such contract or project.

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"Sec. 170. Indemnification and Limitation of Liability.—

"a. Each license issued under section 103 or 104 and each construction permit issued under section 185 shall, and each license issued under section 53, 63, or 81 may, *for the public purposes cited in Section 2 i. of the Atomic Energy Act of 1954, as amended*, have as a condition of the license a requirement that the licensee have and maintain financial protection of such type and in such amounts as the Commission *in the exercise of its licensing and regulatory authority and responsibility* shall require in accordance with subsection 170 b. to cover public liability claims. Whenever such financial protection is required, it [shall] *may* be a further condition of the license that the licensee execute and maintain an indemnification agreement in accordance with subsection 170 c. The Commission may require, as a further condition of issuing a license, that an applicant waive any immunity from public liability conferred by Federal or State law.

"b. The amount of financial protection required shall be the amount of liability insurance available from private sources, except that the Commission may establish a lesser amount on the basis of criteria set forth in writing, which it may revise from time to time, taking into consideration such factors as the following: (1) the cost and terms of private insurance, (2) the type, size, and location of the licensed activity and other factors pertaining to the hazard, and (3) the nature and purpose of the licensed activity: *Provided*, That for facilities designed for producing substantial amounts of electricity and having a rated capacity of 100,000 electrical kilowatts or more, the amount of financial protection required shall be the maximum amount available *at reasonable cost and on reasonable terms* from private sources. Such financial protection may include private insurance, private contractual indemnities, self insurance, other proof of financial responsibility, or a combination of such measures *and shall be subject to such terms and conditions as the Commission may, by rule, regulation, or order, prescribe. In prescribing such terms and conditions for licensees required to have and maintain financial protection equal to the maximum amount of liability insurance available from private sources, the Commission shall, by rule initially prescribed not later than twelve months from the date of enactment of this Act, include, in determining such maximum amount, private liability insurance available under an industry retrospective rating plan providing for premium charges deferred in whole or major part until public liability from a nuclear in-*

cident exceeds or appears likely to exceed the level of the primary financial protection required of the licensee involved in the nuclear incident; Provided, That such insurance is available to, and required of, all of the licensees of such facilities without regard to the manner in which they obtain other types or amounts of such financial protection: And provided further, That the standard deferred premium which may be charged following any nuclear incident under such a plan shall be not less than $2,000,000 nor more than $5,000,000 for each facility required to maintain the maximum amount of financial protection: And provided further, That the amount which may be charged a licensee following any nuclear incident shall not exceed the licensee's pro rata share of the aggregate public liability claims and costs arising out of the nuclear incident. Payment of any State premium taxes which may be applicable to any deferred premium provided for in this Act shall be the responsibility of the licensee and shall not be included in the retrospective premium established by the Commission. The Commission is authorized to establish a maximum amount which the aggregate deferred premiums charged for each facility within any one calendar year may not exceed. The Commission may establish amounts less than the standard premium for individual facilities taking into account such factors as the facility's size, location, and other factors pertaining to the hazard. The Commission shall establish such requirements as are necessary to assure availability of funds to meet any assessment of deferred premiums within a reasonable time when due, and may provide reinsurance or shall otherwise guarantee the payment of such premiums in the event appears that the amount of such premiums will not be available on a timely basis through the resources of private industry and insurance. Any agreement by the Commission with a licensee or indemnitor to guarantee the payment of deferred premiums may contain such terms as the Commission deems appropriate to carry out the purposes of this section and to assure reimbursement to the Commission for its payments made due to the failure of such licensee or indemnitor to meet any of its obligations arising under or in connection with financial protection required under this subsection, including without limitation terms creating liens upon the licensed facility and the revenues derived therefrom or any other property or revenues of such licensee to secure such reimbursement and and consent to the automatic revocation of any license.

"c. The Commission shall, with respect to licenses issued between August 30, 1954 and [August 1, 1977] *August 1, 1987*, for which it requires financial protection of less than $560,000,000, agree to indemnify and hold harmless the licensee and other persons indemnified, as their interest may appear, from public liability arising from nuclear incidents which is in excess of the level of financial protection required of the licensee. The aggregate indemnity for all persons indemnified in connection with each nuclear incident shall not exceed $500,000,000 including the reasonable costs of investigation and settling claims and defending suits for damage: *Provided, however*, That this amount of indemnity shall be reduced by the amount that the financial protection required shall exceed $60,000,000. Such a contract of indemnification shall cover public liability arising out of or in connection with the licensed activity. With respect to any production or utilization facility for which a construction permit is issued between August 30, 1954, and

[August 1, 1977] *August 1, 1987*, the requirements of this subsection shall apply to any license issued for such facility subsequent to [August 1, 1977] *August 1, 1987*.

"d. In addition to any other authority the Commission may have, the Commission is authorized until [August 1, 1977] *August 1, 1987*, to enter into agreements of indemnification with its contractors for the construction or operation of production or utilization facilities or other activities under contracts for the benefit of the United States involving activities under the risk of public liability for a substantial nuclear incident. In such agreements of indemnification the Commission may require its contractor to provide and maintain financial protection of such a type and in such amounts as the Commission shall determine to be appropriate to cover public liability arising out of or in connection with the contractual activity, and shall indemnify the persons indemnified against such claims above the amount of the financial protection required, in the amount of $500,000,000, including the reasonable costs of investigating and settling claims and defending suits for damage in the aggregate for all persons indemnified in connection with such contract and for each nuclear incident: *Provided*, That this amount of indemnity shall be reduced by the amount that the financial protection required shall exceed $60,000,000: *Provided further*, That in the case of nuclear incidents occurring outside the United States, the amount of the indemnity provided by the Commission shall not exceed $100,000,000. The provisions of this subsection may be applicable to lump sum as well as cost type contracts and to contracts and projects financed in whole or in part by the Commission. A contractor with whom an agreement of indemnification has been executed and who is engaged in activities connected with the underground detonation of a nuclear explosive device shall be liable, to the extent so indemnified under this section, for injuries or damage sustained as a result of such detonation in the same manner and to the same extent as would a private person acting as principal, and no immunity or defense founded in the Federal, State, or municipal character of the contractor or of the work to be performed under the contract shall be effective to bar such liability.

"e. The aggregate liability for a single nuclear incident of persons indemnified, including the reasonable costs of investigating and settling claims and defending suits for damage, shall not exceed (*1*) the sum of $500,000,000 together with the amount of financial protection required of the licensee or contractor *or (2) if the amount of financial protection required of the licensee exceeds $60,000,000*, [: *Provided however*, That] such aggregate liability shall [in] not [event] exceed the sum of $560,000,000 *or the amount of financial protection required of the licensee, whichever amount is greater: Provided* [further], *That in the event of a nuclear incident involving damages in excess of that amount of aggregate liability, the Congress will thoroughly review the particular incident and will take whatever action is deemed necessary and appropriate to protect the public from the consequences of a disaster of such magnitude: And provided further*, That with respect to any nuclear incident occurring outside of the United States to which an agreement of indemnification entered into under the provisions of subsection 170 d. is applicable, such ag-

gregate liability shall not exceed the amount of $100,000,000 together with the amount of financial protection required of the contractor.

"f. The Commission is authorized to collect a fee from all persons with whom an indemnification agreement is executed under this section. This fee shall be $30 per year per thousand kilowatts of thermal energy capacity for facilities licensed under section 103: *Provided, That the Commission is authorized to reduce the fee for such facilities in reasonable relation to increases in financial protection required above a level of $60,000,000.* For facilities liceensed under section 104, and for construction permits under section 185, the Commission is authorized to reduce the fee set forth above. The Commission shall establish criteria in writing for determination of the fee for facilities licensed under section 104, taking into consideration such factors as (1) the type, size, and location of facility involved, and other factors pertaining to the hazard, and (2) the nature and purpose of the facility. For other licenses, the Commission shall collect such nominal fees as it deems appropriate. No fee under this subsection shall be less than $100 per year.

* * * * * * *

"i. After any nuclear incident which will probably require payments by the United States under this section *or which will probably result in public liability claims in excess of $560,000,000*, the Commission shall make a survey of the causes and extent of damage which shall forthwith be reported to the Joint Committee, and, except as forbidden by the provisions of chapter 12 of this Act or any other law or Executive order, all final findings shall be made available to the public, to the parties involved and to the courts. The Commission shall report to the Joint Committee by April 1, 1958, and every year thereafter on the operations under this section.

* * * * * * *

"k. With respect to any license issued pursuant to section 53, 63, 81, 104 a. or 104 c. for the conduct of educational activities to a person found by the Commission to be a nonprofit educational institution, the Commission shall exempt such licensee from the financial protection requirementof subsection 170 a. With respect to licenses issued between August 30, 1954, and [August 1, 1977] *August 1, 1987*, for which the Commission grants such exemption:

"(1) the Commission shall agree to indemnify and hold harmless the licensee and other persons indemnified, as their interests may appear, from public liability in excess of $250,000 arising from nuclear incidents. The aggregate indemnity for all persons indemnified in connection with each nuclear incident shall not exceed $500,000,000, including the reasonable cost of investigating and settling claims and defending suits for damage;

"(2) such contracts of indemnification shall cover public liability arising out of or in connection with the licensed activity; and shall include damage to property of persons indemnified, except property which is located at the site of and used in connection with the activity where the nuclear incident occurs; and

"(3) such contracts of indemnification, when entered into with a licensee having immunity from public liability because it is a State agency, shall provide also that the Commission shall make

payments under the contract on account of activities of the license in the same manner and to the same extent as the Commission would be required to do if the licensee were not such a State agency.

"Any licensee may waive an exemption to which it is entitled under this subsection. With respect to any production or utilization facility for which a construction permit is issued between August 30, 1954, and [August 1, 1977] *August 1, 1987*, the requirements of this subsection shall apply to any license issued for such facility subsequent to [August 1, 1977] *August 1, 1987*.

* * * * * * *

"o. Whenever the United States district court in the district where a nuclear incident occurs, or the United States District Court for the District of Columbia in case of a nuclear incident occurring outside the United States, determines upon the petition of any indemnitor or other interested person that public liability from a single nuclear incident may exceed the limit of liability under subsection 170 e.:

"(1) Total payments made by or for all indemnitors as a result of such nuclear incident shall not exceed 15 per centum of such limit of liability without the prior approval of such court;

"(2) The court shall not authorize payments in excess of 15 per centum of such limit of liability unless the court determines that such payments are or will be in accordance with a plan of distribution which has been approved by the court or such payments are not likely to prejudice the subsequent adoption and implementation by the court of a plan of distribution pursuant to subparagraph (3) of this subsection (o); and

"(3) The Commission shall, and any other indemnitor or other interested person may, submit to such district court a plan for the disposition of pending claims and for the distribution of remaining funds available. Such a plan shall include an allocation of appropriate amounts for personal injury claims, property damage claims, and possible latent injury claims which may not be discovered until a later time, *and shall include establishment of priorities between claimants and classes of claims, as necessary to insure the most equitable allocation of available funds.* Such court shall have all power necessary to approve, disapprove, or modify plans proposed, or to adopt another plan; and to determine the proportionate share of funds available for each claimant. The Commission, any other indemnitor, and any person indemnified shall be entitled to such orders as may be appropriate to implement and enforce the provisions of this section, including orders limiting the liability of the persons indemnified, orders approving or modifying the plan, orders staying the payment of claims and the execution of court judgments, orders apportioning the payments to be made to claimants, and orders permitting partial payments to be made before final determination of the total claims. The orders of such court shall be effective throughout the United States."

"*(4) The Commission shall, within ninety days after a court shall have made such determination, deliver to the Joint Committee a supplement to the report prepared in accordance with sub-*

section 170 i. of this Act setting forth the estimated requirements for full compensation and relief of all claimants, and recommendations as to the relief to be provided.

"*p. The Commission shall submit to the Congress by August 1, 1983, a detailed report concerning the need for continuation or modification of the provisions of this section, taking into account the condition of the nuclear industry, availability of private insurance, and the state of knowledge concerning nuclear safety at that time, among other relevant factors, and shall include recommendations as to the repeal or modification of any of the provisions of this section.*"

ADDITIONAL VIEWS OF MR. TUNNEY

I welcome this opportunity to amplify my position regarding H.R. 8631, legislation to extend the Price-Anderson Act through August of 1987.

The question before the Joint Committee on Atomic Energy, and ultimately before the entire Congress, is whether extension of the provisions of Price-Anderson as contemplated by this legislation is in the public interest. I am compelled to conclude that it is not. For that reason, I have opposed the action of the Joint Committee in reporting H.R. 8631, and I will oppose the bill, or similar legislation, when the matter comes before the full Senate.

When the Price-Anderson Act was first enacted in 1957, the underlying rationale for passage was the removal of a "roadblock" to private participation in the development of nuclear power. Private entrepreneurs, almost two decades ago, were unwilling to undertake the risks of an untried process without protection against potentially unlimited liability. Private insurers were unwilling to provide such protection without extensive background information on the safety and reliability of nuclear power plants.

Out of the quandary came the Price-Anderson Act, which provided for limitations on liability of $560 million for power-plant operators and others connected with the process of providing nuclear power in the private sector. In addition, the original Act provided for governmental indemnity of up to $500 million, to be lessened by any amount by which available private insurance exceeded the $60 million available in 1957.

In 1965, the Act was extended for another ten years to its present expiration date of August 1977. Again, the ostensible rationale for the action was the fact that "experience in this field is not yet sufficient nor the technology sufficiently developed, that it is possible to deny the theoretical possibility" of an accident in which the total liability of a private operator would exceed the $560 million liability limitation. Thus, the uncertainty surrounding the potential safety of nuclear power plants and the possibility of virtually unlimited liability caused the Joint Committee and the Congress to conclude that extension of Price-Anderson was necessary to stimulate the continued development of nuclear power in the private sector.

However, in extending the law, the Congress expressed the hope that by the end of the second ten-year period "data will have been accumulated, which should enable the industry and the Congress to assess much more accurately the likelihood of a major nuclear incident and the insurance requirements of the nuclear industry." In other words, the Congress, both in 1957 and in 1965, had every expectation that the protections afforded under Price-Anderson would be able to be ended at the end of each ten-year extension.

Now we have come again to the question of whether to extend Price-Anderson for another ten years. No longer is the Congress being told

that we have insufficient operating experience or theoretical data to justify private insurance. Instead, we are assured that operating experience justifies the conclusion that nuclear reactors are safe enough that the possibilities of liability exceeding the liability limitations in Price-Anderson are so remote as to approach infinity. Yet we are urged to extend the protections of Price-Anderson as an "orderly phaseout" of the law's protections by 1987.

Enough is enough. In 1957, we were told that ten years of operating experience would be sufficient to permit the nuclear industry to secure its own private experience. In 1965, we were assured that twenty years of such experience would enable us to turn over the responsibility for insurance to the private sector. Now we are being told that thirty years' of government protection is necessary before nuclear power can become self-supporting.

I reject that argument. It is now 1975. We have almost two decades of experience of private involvement with nuclear power. Today, the United States has 56 operating nuclear power plants, providing almost 8 percent of this country's electrical generating capacity. During the time Price-Anderson has been in effect, there has not been a single nuclear power plant accident injuring a member of the general public.

We now have in hand the final Reactor Safety Study, commissioned by the Atomic Energy Commission and its successor, the Nuclear Regulatory Commission, and supervised by Dr. Norman Rasmussen, of the Massachusetts Institute of Technology. The study took several years and several million dollars to complete, and I find it to be an impressive document.

The report confirms the operating experience of nuclear power plants, and estimates that the likelihood of personal injury from a nuclear power plant accident is very low. Indeed, the report indicates that the likelihood of a given person dying as a result of a nuclear reactor accident is about one in five billion, as compared to one in 4,000 from car accidents, and one in 100,000 because of a plane crash. These probabilities provide a cogent guide to the order of likelihood of a severe nuclear reactor accident.

The all but infinitessimal chance of fatal nuclear accidents involving large numbers is further buttressed by other reports, such as that issued by the American Physical Society, reviewing the safety of conventional light-water reactors. The Society, while differing with the Rasmussen report on the magnitude of some of the consequences of nuclear power plant incidents, arrives at a similar conclusion; that is, it judges that there is little basis for short-term concern about the likelihood of accidents in light-water reactors.

In the face of such evidence, how can the Congress contend that the Price-Anderson Act is an appropriate policy for continuation by the Federal government? I think that we cannot. The conditions envisioned when the Act was passed and extended have been satisfied. We now have a record of operating experience, and a theoretical basis for calculating the risks of nuclear power. That is what the private sector requires to make the kinds of educated estimates which form the basis for private insurance.

Therefore, I cannot accept the arguments of the proponents of H.R. 8631 that an orderly extension of the protections of Price-Anderson is in order. First, I believe the conditions which the Congress wished

to see satisfied before ending Price-Anderson have been met: Second, I believe the pending legislation provides not for an end to the features of Price-Anderson which I find most objectionable, but for an extension of at least ten years of those features.

Let me specify my objections to H.R. 8631 in more detail. First, contrary to what many believe, the bill will not end Fedreally-imposed limitations on liability. It will provide for the present $560 million ceiling to rise gradually upward at some time in the indefinite future.

That time is undeniably indefinite, to be determined by the "retrospective premium" which the Nuclear Regulatory Commission imposes on each reactor operator, and by the number of reactors in existence. Thus, even if the maximum premium of $5 million was imposed on top of $125 million in private insurance, we would have to have almost 90 reactors on line before the *present* liability ceiling is reached. Obviously, if the minimum premium of $2 million per reactor were to be required, it would take even longer for the ceiling to rise above the present $560 million figure. The fact that the $560 million figure will probably not be exceeded for at least ten years takes on added significance when we consider that that figure has remained unchanged during the past 18 years. The Congressional Research Service estimated three years ago that the $560 million 1957 figure would have to be raised to a figure closer to $3 billion if it were to remain constant with the 1957 figure in terms of public protection.

My second objection to the subject legislation concerns its continuation of Federal government responsibility for guaranteeing the payment of private claims. Until the amount of total private and retrospective coverage reaches $560 million, the United States government will be required to indemnify private parties directly. That direct indemnity responsibility will persist for at least ten years, even under the amended version of H.R. 8631.

Even after the government's role as indemnitor is needed, it will still have to guarantee the payment of retrospective premiums by reactor operators in the event of an accident. Theoretically, the amount of financial liability under such requirements could far outstrip the maximum of $500 million for which the government was previously liable under Price-Anderson.

Finally, the government retains its responsibility as insurer of last resort if claims should exceed the liability limitation. For, under the explicit language of H.R. 8631 as amended, the Congress would have the responsibility to consider the reimbursement of victims of nuclear accidents to the extent that they were uncompensated by amounts up to the liability limitation.

In short, the government would still be in its unique role of insurer of the nuclear power industry for the foreseeable future under the terms of H.R. 8631. I object to that form of hidden subsidy to the industry.

In sum, I object to the extension of the Price-Anderson Act for another ten years. I believe that the best interests of the public and ultimately of the nuclear power industry would be better served by allowing the protection of Price-Anderson to lapse as scheduled in August of 1977.

This would leave the victims of a nuclear accident to their traditional remedies of suit and judgment in courts of competent juris-

diction. It would mean that the cost of doing business as a nuclear power plant operator would be where it should be, with the suppliers and users of nuclear electricity, rather than with the innocent victims of an accident, or with the Federal taxpayer.

Regardless of the likelihood of a major nuclear accident, I find it intolerable that the victims of such an accident could receive less than full compensation for their injuries or be thrown upon the mercies of the Congress for full compensation. I find it intolerable that those who profit from the production of nuclear power should not be required to bear its full potential costs because their assets are insulated from attack to the extent that their liability exceeds the statutory limitation.

I am aware of the arguments made by those who favor the extension of the Price-Anderson Act. It is said that nuclear power will no longer be a feasible energy alternative if liability limitations and Federal guarantee provisions are abolished. That argument will simply not stand up to close scrutiny.

First, if it is a fact that nuclear power will not be economically competitive if it is forced to bear the full costs of doing business as other enterprises do, then perhaps we should look seriously at other sources of energy. However, I believe that the available evidence suggests that nuclear power plants would continue in operation even without the protection of Price-Anderson.

In the absence of Price-Anderson, I believe that more private insurance would be made available than is at present. Given the record of operating safety of present plants, and the projections of the likelihood of serious accidents, I believe that the insurance industry would conclude that it could afford to provide substantially more protection than the $125 million presently available. If we are to believe the Rasmussen Report in its estimates of comparative risk, the private insurance industry presently provides substantially more insurance for industries with higher risks; *e.g.*, the airline industries, where private protection apparently runs between $250 million and $300 million per accident.

Why has such protection not been forthcoming to date? One very good reason could be that there has been little incentive for reactor operators to seek insurance from the private sector. Under Price-Anderson, reactor operators pay substantially less for governmental indemnity than they would if purchased from private sources. For example, 3,000 megawatt operators pay $90,000 for $435 million of government indemnity, compared to the minimum of $435,000 which private companies would charge for such coverage. In the absence of governmental protection, there is every reason to believe that utilities would seek and find additional coverage from private insurance companies.

How much would such private coverage cost? The answer to that question is not clear. However, it would appear that the present minimum figure of $1,000 per $1 million of coverage would be a reasonable estimate for additional coverage, since the private companies' risk would decrease with increased coverage. Thus, an additional $500 million of coverage could very well cost something like $500,000 per year. For the average 1,000 megawatt nuclear power plant, such a cost would

translate into an additional cost of approximately one-tenth of a mill per kilowatt hour, hardly a giant cost for so much additional coverage.

In addition to direct private coverage of reactors, there is every reason to believe that private insurance companies would encourage retrospective premium pools of the kind contemplated under the present legislation. Such pools would provide substantial additional coverage for utilities and other operators at minimal cost.

My conversations with experts in insurance indicate to me that such a retrospective premium arrangement would be implemented, whether or not mandated by Price-Anderson. Indeed, the very reason that the insurance industry suggested the possibilities of retrospective premium pools was the existence of such arrangements in other industries at present.

Beyond private individual coverage and retrospective premium pools, I believe that utilities might well form their own pools to cover any risk left uncovered. I do not believe the anti-trust laws would forbid such risk sharing.

Finally, of course, utilities could become self-insurers, and that is exactly the point of removing the liability limitations of Price-Anderson. To the extent that any corporation's assets are subject to legal attack, that corporation becomes a far more reliable and prudent protector of the public safety. The prospective impact of potentially unlimited liability on utility safety procedures and on the reliability of nuclear power plants cannot be underestimated.

In sum, I do not accept the argument that removal of Price-Anderson protection would doom the nuclear power industry in this country. Review of the positions of major utilities and reactor manufacturers confirms my judgment that this would not prejudice unduly their decisions on whether to build future nuclear plants and continue operation of present plants. Indeed, the removal of Price-Anderson protections could be a positive factor, reflecting the true costs of nuclear power more accurately on corporate balance sheets, and encouraging rigid safety and delivery procedures.

Proponents of extending Price-Anderson also argue that suppliers of power plant components and parts would be forced out of business by the prospect of unlimited liability, leaving utilities with limited or nonexistent sources of critical materials for plants. I believe that argument to be faulty as well. Any businessman who supplies any component used in an industrial process must assess the risk that he may be liable for damages caused by the failure of his product. The exceptionally high improbability of a major reactor accident, combined with the further improbability of a particular part being involved in such an accident, and the difficulties of proving fault of a given part, suggest to me that a businessman could well conclude that the risks are so low of major liability that he would continue to furnish parts and components.

Even if suppliers were discouraged from continuing to supply essential goods for reactors, I cannot believe that utilities would permit the threat of unavailability of critical parts to jeopardize the viability of a billion-dollar investment in a nuclear power plant. If supply were threatened, I would anticipate that plant operators would insert "hold-harmless" clauses in contracts for critical parts. Thus, I think that the

interplay of the private system would insure the continued availability of supplies for nuclear power plants.

Finally, those arguing for continuation of Price-Anderson say that the present Act protects the public better than the tort law would. They contend that the provisions of the Act allowing expedited recovery and requiring waivers of defenses protect the public far better than private suits.

I believe that those provisions are commendable and that within the system of limited liability and governmental indemnity established by the Act, they represent innovative steps to accommodate the public interest. However, I believe that the proposition that they are more protective of the public than the tort law and the Federal courts is a debatable one.

First, of course, the system of strict liability goes hand in hand with the limitations on liability in the present law. Without such limitations, I believe that the utilities would be reluctant to accept the imposition of strict liability of the type contained in the present law. Therefore, any discussion of the strict liability system presently in effect must also contemplate the maintenance of liability limits.

Aside from the value judgment involved in trading limited liability for some increased protection, there are significant problems associated with the "public protection" sections of Price-Anderson. It is far from clear that utilities operating nuclear power plants would not be subjected to strict liability for running "ultra-hazardous" activities, even in the absence of the strict liability provisions in the Price-Anderson Act. If that were the case, utilities would be able to avail themselves of certain procedural defenses not now available. However, under strict liability theory in most jurisdictions, the utilities would not be able to assert substantive defenses such as contributory negligence, but would have to settle for restrictive interpretations of the limited substantive defense of assumption of risk. I believe that it is very possible that, if strict liability were to be imposed by the courts, the limited availability of defenses under that liability theory would be more than outweighed by the absence of liability limitations in terms of its impact on the public interest.

Moreover, it is not clear that other facets of the present system are as advantageous as advertised. For example, the 21 claims for which abstracts were prepared between 1957 and 1973 took an average of 48 months to complete from the time of an accident to the time of closing. Four years can hardly be considered an expeditious completion of the compensation process. Additionally, only 15 per cent of the total liability limitations can be paid out in expedited payments without the consent of a court.

Finally, there are substantive problems with the present arrangement of the strict liability provisions of the law. Part of the maximum $560 million liability can be utilized for investigating and administering claims. Such uses diminish the total amount available for final compensation of victims. Most important, of course, the invocation of all of these protection provisions depends on the finding of the Nuclear Regulatory Commission that an "extraordinary nuclear incident" has occurred. That determination is not subject to judicial review. I believe that a system of tort liability which would leave the final determination of the conditions precedent to liability in the hands

of the courts is preferable to the present system, committing that decision solely to the Nuclear Regulatory Commission.

For the foregoing reasons, I believe a strong case can be made for the proposition that the public is better protected by traditional judicial remedies than it is by the strict liability/expedited payment provisions of the present law. That is especially true if the present law requires the maintenance of liability limitations.

In summary, I believe that many of the arguments for preserving Price-Anderson are faulty. In the absence of Price-Anderson, I believe the public would be better protected, and the true costs of nuclear power would be more adequately considered by those providing and using it.

Let me summarize my position. There are those who believe that Price-Anderson is critical to our national well-being, and I accept their opinions as being in good faith. However, I cannot reconcile the claims of safety made by nuclear adherents with the continuation of limitations on liability in a Governmental involvement. If the innocent victims of a nuclear accident cannot recover the full measure of compensation due them, the Congress cannot say that it is protecting the public interest. I am well aware of the continuing promises made by the Congress that it will compensate the victims of nuclear incidents in the aftermath of a catastrophe. However, I would say that this is a peculiarly inappropriate way to resolve the problems inherent in the liability limitation. With one exception, Congressional aid to disaster victims has been limited to situations where non-business activities, such as storms, or floods have produced disastrous consequences. That is as it should be, since it seems illogical for all Federal taxpayers to bear the costs of an accident produced by a limited profitmaking activity.

Moreover, Congressional action in the wake of disasters has frequently been slow, and has left victims partially uncompensated. In fact, in the celebrated Texas City case, the one notable exception to the general rule of disaster aid only for non-profitmaking activities, the Congress adopted an arbritary limitation on the amount of total reimbursement/compensation of $25,000.

The upshot of this is that those who look to the Congress as an insurer of last resort may be living with an illusion in the belief that Congress will make whole the victims of a nuclear accident.

The Columbia Legislative Drafting Research Fund has done an important study on the issues involved in the Price-Anderson Act. That study, done for the Atomic Industrial Forum, concludes that four criteria should govern the selection of a system for remuneration of victims of a nuclear accident (1) provision of adequate compensation; (2) spreading the risk; (3) avoidance of externalization; (4) avoidance of undue costs. I am not prepared to say that these are the only four criteria by which potential plans should be judged, but I believe that the use of these criteria will demonstrate the compelling reasons for ending Price-Anderson.

The alternatives of private insurance, utilities bearing the risk, and unlimited liability are preferable even under such criteria. Let me consider them in reverse order. Private assumption of risk is at least as desirable in preventing "undue" costs as limited liability. Under ordinary systems of liability, private parties and corporations incur only those costs which seem reasonable in terms of their potential

risk. This would be the case without Price-Anderson. Utilities would insure themselves only to the extent they considered necessary; by definition, this eliminates "undue" costs.

On the criterion of risk spreading, ending Price-Anderson is a preferable policy choice as well. The critical question about risk spreading concerns the degree to which risk should be spread. Unlike other disasters, there is no good reason to spread risk first to victims, and then to the entire country. Rather, risk should be concentrated in the hands of those who enjoy the profits and use of nuclear power. Price-Anderson does not accomplish that goal. It places the first, and possibly the ultimate, cost of a catastrophic accident on the shoulders of possible victims. Tort liability, on the other hand, limits the risk to nuclear power operators, users and to those insurers who wish to undertake it.

Yet Price-Anderson is most clearly deficient of satisfying criteria; avoidance of externalization and undue costs. Avoiding externalization is little more than the converse of the idea of spreading risk. Price-Anderson clearly externalizes the cost of nuclear power by asking victims to bear the risks of costs in excess of $560 million. Moreover, the Act does not assure adequate compensation for victims. Rather it assures inadequate compensation by maintenance of liability limits.

On the other hand, tort liability does satisfy these criteria. It places the costs of nuclear power internally; *i.e.* on producers, users and insurers. It also assures adequate compensation to the extent of available insurance and assets.

For these reasons, I favor ending Price-Anderson without further delay. Today's "gradual phaseout" will be replaced in ten years by another rationale for continuing the extraordinary anti-competitive protections of this legislation. If this Congress passes this legislation, it will have become a virtually permanent feature of our national energy policy. I believe that would be unfortunate and short-sighted.

As the distinguished former chairman of the Joint Committee, Representative Holifield of California, observed in opposing the passage of the first Price-Anderson legislation: "This bill is put forth by its proponents as a bill for the protection of the public. This amounts to making a virtue out of a subsidy. The bill is protective of large utilities, industrial companies, and insurance companies which are not willing to adhere to the tenets of free enterprise."

Eighteen years later, those words still have the ring of truth. If anything, the experience of the ensuing years has demonstrated the lack of need for the Price-Anderson Act. H.R. 8631 would encourage us to ignore that experience, and for that reason, I oppose its enactment.

JOHN V. TUNNEY.

APPENDIX I

TABLE 1. OPERATING REACTORS ASSESSED AT $2,000,000 EACH

[Dollar amounts in millions]

Year	Number of operating reactors [1]	Assessment	Insurance	Total assessment plus insurance	Remaining NRC indemnity
1977	73	$146	$125	$271	$289
1978	78	156	125	281	279
1979	84	168	125	293	267
1980	88	176	125	301	259
1981	97	194	125	319	241
1982	116	232	125	357	203
1983	141	282	125	407	153
1984	165	330	125	455	105
1985	194	388	125	513	47
1986	218	436	125	561	0
1987	243	486	125	611	0
1988	265	530	125	655	0
1989	285	570	125	695	0

[1] Based on Oct. 24, 1975, estimates of the Nuclear Regulatory Commission.

TABLE 2.—OPERATING REACTORS ASSESSED AT $3,000,000 EACH

[Dollar amounts in millions]

Year	Number of operating reactors [1]	Assessment	Insurance	Total assessment plus insurance	Remaining NRC indemnity
1977	73	$219	$125	$344	$216
1978	78	234	125	359	201
1979	84	252	125	377	183
1980	88	264	125	389	171
1981	97	291	125	416	144
1982	116	348	125	473	87
1983	141	423	125	548	12
1984	165	495	125	620	0
1985	194	582	125	707	0
1986	218	654	125	779	0
1987	243	729	125	854	0
1988	265	795	125	920	0
1989	285	855	125	980	0

[1] Based on Oct. 24, 1975, estimates of the Nuclear Regulatory Commission.

TABLE 3.—OPERATING REACTORS ASSESSED AT $4,000,000 EACH

[Dollar amounts in millions]

Year	Number of operating reactors [1]	Assessment	Insurance	Total assessment plus insurance	Remaining NRC indemnity
1977	73	$292	$125	$417	$143
1978	78	312	125	437	123
1979	84	336	125	461	99
1980	88	352	125	477	83
1981	97	388	125	513	47
1982	116	464	125	589	0
1983	141	564	125	689	0
1984	165	660	125	785	0
1985	194	776	125	901	0
1986	218	872	125	997	0
1987	243	972	125	1,097	0
1988	265	1,060	125	1,185	0
1989	285	1,140	125	1,265	0

[1] Based on Oct. 24, 1975, estimates of the Nuclear Regulatory Commission.

TABLE 4.—OPERATING REACTORS ASSESSED AT $5,000,000 EACH—Continued

TABLE 4.—OPERATING REACTORS ASSESSED AT $5,000,000 EACH

[Dollar amounts in millions]

Year	Number of operating reactors [1]	Assessment	Insurance	Total assessment plus insurance	Remaining NRC indemnity
1977	73	$365	$125	$490	$70
1978	78	390	125	515	45
1979	84	420	125	545	15
1980	88	440	125	565	0
1981	97	485	125	610	0
1982	116	580	125	705	0
1983	141	705	125	830	0
1984	165	825	125	950	0
1985	194	970	125	1,095	0
1986	218	1,090	125	1,215	0
1987	243	1,215	125	1,340	0
1988	265	1,325	125	1,450	0
1989	285	1,425	125	1,550	0

[1] Based on Oct. 24, 1975, estimates of the Nuclear Regulatory Commission.

APPENDIX II

Message From President Gerald R. Ford to House of Representatives, October 12, 1974

To the House of Representatives:

I am returning without my approval H.R. 15323, "To amend the Atomic Energy Act, as amended, to revise the method of providing public remuneration in the event of a nuclear incident, and for other purposes."

The first eleven sections of the bill basically carry out recommendations of the Atomic Energy Commission, and I would be glad to approve them if they stood alone.

Section 12, however, would provide that "the provisions of this Act shall become effective thirty (30) days after the date on which the Joint Committee on Atomic Energy submits to the Congress an evaluation of the Reactor Study, entitled 'An Assessment of Accident Risks in the U.S. Commercial Nuclear Power Plants,' AEC Report Number WASH-1400, except that it shall not become effective if within the thirty (30) day period after the Joint Committee submits its evaluation, the Congress adopts a concurrent resolution disapproving the extension of the Price-Anderson Act." The import of this section is that after I have approved the bill, the Joint Committee and the Congress would further consider whether it should ever become effective.

I cannot approve legislation under these circumstances—if, indeed, the bill can properly be called legislation rather than merely the expression of an intent to legislate. The presentation of a bill to me pursuant to Article I, section 7 of the Constitution amounts to a representation by Congress that, as far as it is concerned, the legislation is ready to become effective, subject perhaps to some extrinsic condition precedent, but not to further congressional deliberation. Here, however, Congress in effect requests my approval before it has given its own.

In this instance, the clear constitutional infirmity of the bill not only affects my powers and duties but directly endangers substantial and important private rights. If the bill is unconstitutional, it will remain unconstitutional despite my signing it. As a result, a sure source of funds for prompt payment of public liability claims, a primary objective of the Price-Anderson Act, would be in doubt. The uncertainty over nuclear liability protection would also adversely affect that private investment which will be necessary as nuclear power assumes its vital role in meeting the nation's energy requirements. The public interest would not be served by approving legislation which creates these uncertainties.

I urge the Congress to reenact the bill promptly so as to remove the problems which Section 12 now raises.

Gerald R. Ford.

The White House,
October 12, 1974.

○

H. R. 8631

Ninety-fourth Congress of the United States of America

AT THE FIRST SESSION

Begun and held at the City of Washington on Tuesday, the fourteenth day of January, one thousand nine hundred and seventy-five

An Act

To amend the Atomic Energy Act of 1954, as amended, to provide for the phaseout of governmental indemnity as a source of funds for public remuneration in the event of a nuclear incident, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 11 of the Atomic Energy Act of 1954, as amended, is amended by amending subsections q. and t. to read as follows:

"q. The term 'nuclear incident' means any occurrence, including an extraordinary nuclear occurrence, within the United States causing, within or outside the United States, bodily injury, sickness, disease, or death, or loss of or damage to property, or loss of use of property, arising out of or resulting from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material: *Provided, however*, That as the term is used in subsection 170 l., it shall include any such occurrence outside the United States: *And provided further*, That as the term is used in subsection 170 d., it shall include any such occurrence outside the United States if such occurrence involves source, special nuclear, or byproduct material owned by, and used by or under contract with, the United States: *And provided further*, That as the term is used in subsection 170 c., it shall include any such occurrence outside both the United States and any other nation if such occurrence arises out of or results from the radioactive, toxic, explosive, or other hazardous properties of source, special nuclear, or byproduct material licensed pursuant to chapters 6, 7, 8, and 10 of this Act, which is used in connection with the operation of a licensed stationary production or utilization facility or which moves outside the territorial limits of the United States in transit from one person licensed by the Commission to another person licensed by the Commission.

"t. The term 'person indemnified' means (1) with respect to a nuclear incident occurring within the United States or outside the United States as the term is used in subsection 170 c., and with respect to any nuclear incident in connection with the design, development, construction, operation, repair, maintenance, or use of the nuclear ship Savannah, the person with whom an indemnity agreement is executed or who is required to maintain financial protection, and any other person who may be liable for public liability or (2) with respect to any other nuclear incident occurring outside the United States, the person with whom an indemnity agreement is executed and any other person who may be liable for public liability by reason of his activities under any contract with the Commission or any project to which indemnification under the provisions of subsection 170 d. has been extended or under any subcontract, purchase order, or other agreement, of any tier, under any such contract or project.".

SEC. 2. Subsection 170 a. of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"a. Each license issued under section 103 or 104 and each construction permit issued under section 185 shall, and each license issued under section 53, 63, or 81 may, for the public purposes cited in subsection 2 i. of the Atomic Energy Act of 1954, as amended, have as

a condition of the license a requirement that the licensee have and maintain financial protection of such type and in such amounts as the Commission in the exercise of its licensing and regulatory authority and responsibility shall require in accordance with subsection 170 b. to cover public liability claims. Whenever such financial protection is required, it may be a further condition of the license that the licensee execute and maintain an indemnification agreement in accordance with subsection 170 c. The Commission may require, as a further condition of issuing a license, that an applicant waive any immunity from public liability conferred by Federal or State law.".

SEC. 3. Subsection 107 b. of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"b. The amount of financial protection required shall be the amount of liability insurance available from private sources, except that the Commission may establish a lesser amount on the basis of criteria set forth in writing, which it may revise from time to time, taking into consideration such factors as the following: (1) the cost and terms of private insurance, (2) the type, size, and location of the licensed activity and other factors pertaining to the hazard, and (3) the nature and purpose of the licensed activity: *Provided*, That for facilities designed for producing substantial amounts of electricity and having a rated capacity of 100,000 electrical kilowatts or more, the amount of financial protection required shall be the maximum amount available at reasonable cost and on reasonable terms from private sources. Such financial protection may include private insurance, private contractual indemnities, self-insurance, other proof of financial responsibility, or a combination of such measures and shall be subject to such terms and conditions as the Commission may, by rule, regulation, or order, prescribe. In prescribing such terms and conditions for licensees required to have and maintain financial protection equal to the maximum amount of liability insurance available from private sources, the Commission shall, by rule initially prescribed not later than twelve months from the date of enactment of this Act, include, in determining such maximum amount, private liability insurance available under an industry retrospective rating plan providing for premium charges deferred in whole or major part until public liability from a nuclear incident exceeds or appears likely to exceed the level of the primary financial protection required of the licensee involved in the nuclear incident: *Provided*, That such insurance is available to, and required of, all of the licensees of such facilities without regard to the manner in which they obtain other types or amounts of such financial protection: *And provided further*, That the standard deferred premium which may be charged following any nuclear incident under such a plan shall be not less than $2,000,000 nor more than $5,000,000 for each facility required to maintain the maximum amount of financial protection: *And provided further*, That the amount which may be charged a licensee following any nuclear incident shall not exceed the licensee's pro rata share of the aggregate public liability claims and costs arising out of the nuclear incident. Payment of any State premium taxes which may be applicable to any deferred premium provided for in this Act shall be the responsibility of the licensee and shall not be included in the retrospective premium established by the Commission. The Commission is authorized to establish a maximum amount which the aggregate deferred premiums charged for each facility within one calendar year may not exceed.

The Commission may establish amounts less than the standard premium for individual facilities taking into account such factors as the facility's size, location, and other factors pertaining to the hazard. The Commission shall establish such requirements as are necessary to assure availability of funds to meet any assessment of deferred premiums within a reasonable time when due, and may provide reinsurance or shall otherwise guarantee the payment of such premiums in the event it appears that the amount of such premiums will not be available on a timely basis through the resources of private industry and insurance. Any agreement by the Commission with a licensee or indemnitor to guarantee the payment of deferred premiums may contain such terms as the Commission deems appropriate to carry out the purposes of this section and to assure reimbursement to the Commission for its payments made due to the failure of such licensee or indemnitor to meet any of its obligations arising under or in connection with financial protection required under this subsection including without limitation terms creating liens upon the licensed facility and the revenues derived therefrom or any other property or revenues of such licensee to secure such reimbursement and consent to the automatic revocation of any license.".

SEC. 4. (a) Subsection 170 c. of the Atomic Energy Act of 1954, as amended, is amended by deleting the phrase "and August 1, 1977, for which it requires financial protection," in the first sentence and substituting therefor the phrase "and August 1, 1987, for which it requires financial protection of less than $560,000,000," and by deleting the date "August 1, 1977" in the last sentence wherever it appears and substituting therefor the date "August 1, 1987".

(b) Such subsection is further amended by striking "including the reasonable" and inserting in lieu thereof "excluding".

SEC. 5. (a) Subsection 170 d. of the Atomic Energy Act of 1954, as amended, is amended by deleting the phrase "until August 1, 1977," in the first sentence and substituting therefor the phrase "until August 1, 1987,".

(b) Such subsection is further amended by striking "including the reasonable" and inserting in lieu thereof "excluding".

SEC. 6. Subsection 170 e. of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"e. The aggregate liability for a single nuclear incident of persons indemnified, including the reasonable costs of investigating and settling claims and defending suits for damage, shall not exceed (1) the sum of $500,000,000 together with the amount of financial protection required of the licensee or contractor or (2) if the amount of financial protection required of the licensee exceeds $60,000,000, such aggregate liability shall not exceed the sum of $560,000,000 or the amount of financial protection required of the licensee, whichever amount is greater: *Provided*, That in the event of a nuclear incident involving damages in excess of that amount of aggregate liability, the Congress will thoroughly review the particular incident and will take whatever action is deemed necessary and appropriate to protect the public from the consequences of a disaster of such magnitude: *And provided further*, That with respect to any nuclear incident occurring outside of the United States to which an agreement of indemnification entered into under the provisions of subsection 170 d. is applicable, such aggregate liability shall not exceed the amount of $100,000,000 together with the amount of financial protection required of the contractor.".

SEC. 7. Subsection 170 f. of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"f. The Commission is authorized to collect a fee from all persons with whom an indemnification agreement is executed under this section. This fee shall be $30 per year per thousand kilowatts of thermal energy capacity for facilities licensed under section 103: *Provided*, That the Commission is authorized to reduce the fee for such facilities in reasonable relation to increases in financial protection required above a level of $60,000,000. For facilities licensed under section 104, and for construction permits under section 185, the Commission is authorized to reduce the fee set forth above. The Commission shall establish criteria in writing for determination of the fee for facilities licensed under section 104, taking into consideration such factors as (1) the type, size, and location of facility involved, and other factors pertaining to the hazard, and (2) the nature and purpose of the facility. For other licenses, the Commission shall collect such nominal fees as it deems appropriate. No fee under this subsection shall be less than $100 per year.".

SEC. 8. The last sentence of subsection 170 h. of the Atomic Energy Act of 1954, as amended, is amended by striking "may include reasonable" and inserting in lieu thereof "shall not include".

SEC. 9. Subsection 170 i. of the Atomic Energy Act of 1954, as amended, is amended to read as follows:

"i. After any nuclear incident which will probably require payments by the United States under this section or which will probably result in public liability claims in excess of $560,000,000, the Commission shall make a survey of the causes and extent of damage which shall forthwith be reported to the Joint Committee, to the Congressmen of the affected districts, and to the Senators of the affected States, and, except for information which would cause serious damage to the national defense of the United States, all final findings shall be made available to the public, to the parties involved and to the courts. The Commission shall report to the Joint Committee by April 1, 1958, and every year thereafter on the operations under this section.".

SEC. 10. (a) Subsection 170 k. of the Atomic Energy Act of 1954, as amended, is amended by deleting the date "August 1, 1977" wherever it appears and substituting therefor the date "August 1, 1987".

(b) Paragraph (1) of such subsection is amended by striking "including the reasonable" and inserting in lieu thereof "excluding".

SEC. 11. Subsection 170 l. of the Atomic Energy Act of 1954, as amended, is amended by striking "including the reasonable" and inserting in lieu thereof "excluding".

SEC. 12. Section 170 n. (1) (iii) of the Atomic Energy Act of 1954 is amended by striking "ten years" and inserting in lieu thereof "twenty years".

SEC. 13. Subsection 170 o. of the Atomic Energy Act of 1954, as amended, is amended by adding at the end of the second sentence in subparagraph (3) the words "and shall include establishment of priorities between claimants and classes of claims, as necessary to insure the most equitable allocation of available funds.", and by adding a new subparagraph (4) to read as follows:

"(4) the Commission shall, within ninety days after a court shall have made such determination, deliver to the Joint Committee a supplement to the report prepared in accordance with subsection 170 i. of this Act setting forth the estimated requirements for full compensation and relief of all claimants, and recommendations as to the relief to be provided.".

SEC. 14. Section 170 of the Atomic Energy Act of 1954, as amended, is amended by adding subsection p., to read as follows:

"p. The Commission shall submit to the Congress by August 1, 1983, a detailed report concerning the need for continuation or modification of the provisions of this section, taking into account the condition of the nuclear industry, availability of private insurance, and the state of knowledge concerning nuclear safety at that time, among other relevant factors, and shall include recommendations as to the repeal or modification of any of the provisions of this section.".

Speaker of the House of Representatives.

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

December 19, 1975

Dear Mr. Director:

The following bills were received at the White House on December 19th:

H.R. 3474
H.R. 4073
H.R. 5541
H.R. 6461
H.R. 7862
H.R. 8631
H.R. 10555
H.R. 10792
H.R. 11016
H.R. 11172

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

Sincerely,

Robert D. Linder
Chief Executive Clerk

The Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D. C.