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DEPARTMENT OF ENERGY ELECTRICITY PROGRAMS ENHANCEMENT ACT OF 2007

SEPTEMBER 17, 2007.—Ordered to be printed

Mr. BINGAMAN, from the Committee on Energy and Natural Resources, submitted the following

R E P O R T

[To accompany S. 1203]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 1203) to enhance the management of electricity programs at the Department of Energy, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE OF THE MEASURE

The purpose of S. 1203 is to increase the number of Assistant Secretaries of Energy from 7 to 8.

BACKGROUND AND NEED

The Department of Energy Organization Act vests a wide range of functions in the Secretary of Energy. To assist the Secretary in the performance of these functions, section 203(a) of the Organization Act, as it was originally enacted in 1977, authorized the President, by and with the advice and consent of the Senate, to appoint 8 Assistant Secretaries. Section 203(a) did not prescribe specific functions for any of the Assistant Secretaries. Instead, in order to allow the Secretary maximum flexibility in organizing the Department's responsibilities, it listed 11 broad groups of functions, including, for example, "environmental responsibilities and functions", "national security functions", and "energy conservation functions." It then permitted the Secretary to assign the Assistant Secretaries functions from the list. In addition, section 203(b) required the President, when submitting a nomination for an Assistant Sec-

59–010

retary, to "identify with particularity the function or functions" to be performed by the Assistant Secretary.

The National Defense Authorization Act for Fiscal Year 2000, Public Law 106–65, reduced the number of Assistant Secretaries from 8 to 6. That Act created a "separately organized agency" within the Department of Energy known as the National Nuclear Security Administration to manage the Secretary's national security functions, which had previously been assigned to the Assistant Secretary for Defense Programs. The Act provided for an Administrator and 3 Deputy Administrators to perform the national security functions, and reduced the authorized number of Assistant Secretaries for the rest of the Department from 8 to 6. The Act also eliminated "national security functions" from the list of functions performed by the Assistant Secretaries in section 203(a) of the Organization Act.

The Energy Policy Act of 2005 restored one of the two Assistant Secretary positions eliminated by the National Defense Authorization Act, by raising the number of Assistant Secretaries authorized by section 203(a) of the Organization Act from 6 to 7. In keeping with the prior law, section 1006(b)(1) of the Energy Policy Act did not prescribe the functions of the new position. Nonetheless, section 1006(b)(2) expressed "the sense of Congress that . . . departmental missions in nuclear energy should be at the Assistant Secretary level."

The Energy Policy Act of 2005 also gave the Secretary of Energy new responsibilities for the modernization of the electric grid and for enhancing the security and reliability of our energy infrastructure. The Secretary assigned these and other functions to an Office of Electricity Delivery and Energy Reliability, to be headed by an office director. Following the resignation of the Assistant Secretary for Environment, Safety, and Health in March 2006, however, the Secretary proposed to assign the functions of the Office of Electricity Delivery and Energy Reliability to an Assistant Secretary for Electricity Delivery and Energy Reliability and to reorganize the environment, safety, and health functions under a new Office of Health, Safety and Security, headed by an office director rather than an Assistant Secretary. In September 2006, the President nominated Kevin M. Kolevar to the vacant Assistant Secretary position and identified the functions assigned to the position as Electricity Delivery and Energy Reliability rather than Environment, Safety and Health. The Senate confirmed the nomination on August 3, 2007.

The importance of electricity delivery and energy reliability to the nation make the elevation of the functions to the Assistant Secretary level appropriate. However, the assignment of those responsibility to the Assistant Secretary position that had been responsible for Environment, Safety and Health functions since 1985 (and environmental functions since 1978), foreclosed, at least for the time being, management of the Environment, Safety and Health functions at the Assistant Secretary level.

S. 1203 is needed to increase the number of Assistant Secretaries of Energy from 7 to 8, the number originally authorized by the Organization Act in 1977. In keeping with current law, S. 1203 does not designate the functions of the new position, but it will enable

the Secretary to restore the Environment, Safety and Health functions to the Assistant Secretary level.

LEGISLATIVE HISTORY

S. 1203 was introduced by Senators Bingaman and Domenici on April 24, 2007. The Subcommittee on Energy held a hearing on the measure on May 22, 2007. The Committee on Energy and Natural Resources ordered S. 1203 favorably reported, without amendment, at a business meeting on July 25, 2007.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on July 25, 2007, by a voice vote of a quorum present, recommends that the Senate pass S. 1203.

SECTION-BY-SECTION ANALYSIS

Section 1 states the short title, the "Department of Energy Electricity Programs Enhancement Act of 2007".

Section 2 increases the authorized number of Assistant Secretaries of Energy from 7 to 8. Subsection (a) implements the increase by amending section 203(a) of the Department of Energy Organization Act (42 U.S.C. 7133(a)). Subsection (b) makes a conforming amendment in the Executive Schedule in section 5315 of title 5, United States Code.

Subsection (c) expresses the sense of Congress that the missions of the Department of Energy related to electricity delivery and reliability should be at the Assistant Secretary level.

COST AND BUDGET CONSIDERATIONS

The following estimate of costs of this measure has been provided by the Congressional Budget Office.

SEPTEMBER 5, 2007.

Hon. JEFF BINGAMAN,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1203, the Department of Energy Electricity Programs Enhancement Act of 2007.

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

Sincerely,

PETER R. ORSZAG.

Enclosure.

S. 1203—Department of Energy Electricity Programs Enhancement Act of 2007

S. 1203 would modify the management structure of the Department of Energy (DOE) by adding an additional position for an Assistant Secretary. The legislation also would express the sense of the Congress that the department's electricity delivery and reliability activities should be managed by an Assistant Secretary.

CBO estimates that implementing S. 1203 would cost less than $1 million a year, subject to the availability of appropriated funds. DOE currently has seven Assistant Secretaries, as authorized by existing law, including an Assistant Secretary for Electricity Delivery and Energy Reliability. Based on the staffing of other such positions at DOE, CBO expects that the additional office of the Assistant Secretary would include two or more deputies and related support staff. Enacting this legislation would not affect direct spending or revenues.

S. 1203 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Kathleen Gramp. This estimate was approved by Peter H. Fontaine, Assistant Director for Budget Analysis.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 1203.

The bill is not a regulatory measure in the sense of imposing Government established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 1203.

EXECUTIVE COMMUNICATIONS

STATEMENT OF DAVID R. HILL, GENERAL COUNSEL, DEPARTMENT OF ENERGY

Chairman Dorgan, Senator Murkowski, and members of the Committee, my name is David Hill and I am the General Counsel of the U.S. Department of Energy. I want to thank you for the opportunity to appear today and offer preliminary comments on five energy-related bills that the Congress is considering. The bills before the Committee today make each valuable contributions to our national discussion on energy security, but in some cases could benefit from further review, discussion and modification. The Department looks forward to working with the Committee to resolve these issues. I would like to discuss the elements of each bill, as well as present some of the DOE activities that are already underway in areas addressed by the bills.

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S. 1203

S. 1203 expands the authorized number of Assistant Secretaries at the Department of Energy from seven to eight. The Department believes it already has a sufficient number of authorized assistant secretaries, but we do not oppose Congress increasing the number if it sees fit to do so.

S. 1203 also would preserve the President and Secretary of Energy discretion to determine whether to appoint individuals to fill all of the authorized assistant secretary positions, to determine how best to manage the Department mission, and to determine the portfolios for the assistant secretaries and other Departmental officials. At this time, the President and the Secretary have made no decision whether an individual would be nominated for the additional assistant secretary position should it be authorized, or what the responsibilities of any such official would be.

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CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 1203, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

DEPARTMENT OF ENERGY ORGANIZATION ACT

Public Law 95–91—Aug. 4, 1977; 42 U.S.C. 7101 et seq.

AN ACT to establish a Department of Energy in the executive branch by the reorganization of energy functions within the Federal Government in order to secure effective management to assure a coordinated national energy policy, and for other purposes.

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ASSISTANT SECRETARIES

SEC. 203. (a) There shall be in the Department [7 Assistant Secretaries] *8 Assistant Secretaries*, each of whom shall be appointed by the President, by and with the advice and consent of the Senate; who shall be compensated at the rate provided for at level IV of the Executive Schedule under section 5315 of title 5, United States Code; and who shall perform, in accordance with applicable law, such of the functions transferred or delegated to, or vested in, the Secretary as he shall prescribe in accordance with the provisions of this chapter. The functions which the Secretary shall assign to the Assistant Secretaries include, but are not limited to, the following:

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TITLE 5—GOVERNMENT ORGANIZATION AND EMPLOYEES

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CHAPTER 53—PAY RATES AND SYSTEMS

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SUBCHAPTER II—EXECUTIVE SCHEDULE PAY RATES

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§ 5315. Positions at level IV

Level IV of the Executive Schedule applies to the following positions, for which the annual rate of basic pay shall be the rate determined with respect to such level under chapter 11 of title 2, as adjusted by section 5318 of this title:

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[Assistant Secretaries of Energy (7)**]** *Assistant Secretaries of Energy (8).*

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