

ENSURING THAT THE SECRETARY OF ENERGY MAY CONTINUE TO EXERCISE CERTAIN AUTHORITIES UNDER THE PRICE-ANDERSON ACT THROUGH THE ASSISTANT SECRETARY OF ENERGY FOR ENVIRONMENT, SAFETY, AND HEALTH

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JUNE 23, 2000.—Ordered to be printed
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Mr. BLILEY, from the Committee on Commerce,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 4446]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, to whom was referred the bill (H.R. 4446) to ensure that the Secretary of Energy may continue to exercise certain authorities under the Price-Anderson Act through the Assistant Secretary of Energy for Environment, Safety, and Health, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

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PURPOSE AND SUMMARY

The purpose of H.R. 4446 is to ensure that the Secretary of Energy, acting through the Assistant Secretary of Energy for Environment, Safety, and Health, can continue to enforce the civil penalties section of the Price-Anderson Amendments Act, contained in section 234A of the Atomic Energy Act (P.L. 83-703, 42 U.S.C. §2011 et seq.), as amended, for the entire Department of Energy, including the National Nuclear Security Administration.

BACKGROUND AND NEED FOR LEGISLATION

The Price-Anderson Act (P.L. 85-256; 42 U.S.C. §2011 et seq.) was enacted in 1957 as an amendment to the Atomic Energy Act of 1954 (P.L. 83-703, 42 U.S.C. §1801 et seq.). The original Price-Anderson Act provided a limited indemnification of DOE contractors engaged in activities that involve the risk of a nuclear accident. The Price-Anderson Amendments Act of 1988 (P.L. 100-408; 42 U.S.C. §2011 et seq.) the amount of indemnification, made the inclusion of indemnification provisions mandatory on all DOE contracts, and created a system of civil penalties (i.e., fines) for DOE contractors that violate any DOE rule, regulation, or order relating to nuclear safety. The provisions relating to civil penalties are contained in section 234A of the Atomic Energy Act of 1954, as amended.

These civil penalties provide a valuable and important enforcement tool for the DOE to ensure that its contractors pay proper attention to nuclear safety. Implicit in the ability to impose civil penalties on contractors are related enforcement actions, including accident investigations, subpoenas for information, notices of violation, and orders to abate or correct hazardous practices. Section 234A of the Atomic Energy Act is enforced primarily by the Assistant Secretary of Energy for Environment, Safety, and Health.

Title 32 of the National Defense Authorization Act for Fiscal Year 2000 (P.L. 106-65, 50 U.S.C. §2401 et seq.) created the semi-autonomous National Nuclear Security Administration (NNSA). Section 3213 of that Act provides that employees and contractors of the NNSA shall not be subject to the authority, director, or control of any officer, employee, or agent of the Department of Energy other than the Secretary of Energy, the Administrator of the NNSA, or the Administrator's designee. Under this provision of title 32, the authority of the Assistant Secretary for Environment, Safety, and Health is limited such that this office is no longer able to enforce effectively the provisions of section 234A of the Atomic Energy Act with respect to the facilities and operations of the NNSA. This office can only make recommendations to the NNSA Administrator or to the Secretary of Energy, but can no longer take direct enforcement actions such as issuing notices of violation, subpoenas for information, or assessment of civil penalties against the elements of the NNSA.

Current law creates a clear conflict of interest for the NNSA Administrator, who is now charged with the potentially conflicting missions of stockpile stewardship and nuclear weapons develop-

ment, as well as enforcing nuclear safety rules, regulations, and orders. To allow the NNSA Administrator to enforce the Price-Anderson civil penalties could create conflicting enforcement policies, different investigative procedures, and inconsistent enforcement across the DOE complex. Such inconsistencies would be especially problematic at the DOE sites that perform both NNSA and non-NNSA missions, such as the Oak Ridge National Laboratory and the Savannah River Site. The NNSA Act would apparently require dual Price-Anderson enforcement regimes at those sites, with duplicative staffs and regulatory infrastructures. Further, restrictions on the authority of the Assistant Secretary of Energy for Environment, Safety, and Health over the NNSA facilities could significantly restrict the ability of the Assistant Secretary to gather evidence of violations at those sites and provide such information to the Secretary of Energy. NNSA employees and contractors could refuse to cooperate with accident investigations, denying access to essential documents or facilities. There could be less independent and objective information for the Secretary on nuclear safety compliance by the NNSA sites. The Committee intends that this legislation ensure that a single office at the Department of Energy, such as the Assistant Secretary of Energy for Environment, Safety, and Health, is responsible for and can be held accountable for the enforcement of Section 234A of the Atomic Energy Act for the entire DOE complex, including the NNSA. The Committee does not support fragmenting this responsibility between the NNSA and non-NNSA portions of the Department of Energy.

At the joint hearing held by the Subcommittees on Energy and Power and Oversight and Investigations on March 14, 2000, the Assistant Secretary of Energy for Environment, Safety, and Health testified to this conflict between the responsibilities of his office to enforce section 234A of the Atomic Energy Act and the restrictions imposed by section 3213 of the National Defense Authorization Act for Fiscal Year 2000 on his authority over the NNSA. At the March 22, 2000, legislative hearing of the Subcommittee for Energy and Power, the witness for the Alliance for Nuclear Accountability testified to the need for legislation to correct this problem.

HEARINGS

The Subcommittee on Energy and Power held a legislative hearing on H.R. 3383 on March 22, 2000. The Subcommittee received testimony from: Ms. Mary Anne Sullivan, General Counsel, Department of Energy; the Honorable Richard A. Meserve, Chairman, Nuclear Regulatory Commission; the Honorable Jerrold R. Mande, Deputy Assistant Secretary for Labor, Occupational Safety and Health Administration; the Honorable John T. Conway, Chairman, Defense Nuclear Facilities Safety Board; Ms. Gary Jones, Associate Director for Energy, Resources, and Science Issues, Government Accounting Office; Dr. Charles Shank, Director, Lawrence Berkeley National Laboratory; Mr. Robert Van Ness, Assistant Vice President for Laboratory Administration, University of California; Ms. Maureen Eldredge, Program Director, Alliance for Nuclear Accountability; Dr. David Adelman, Project Attorney, Natural Resources Defense Council; and Mr. Richard Miller, Policy Analyst, PACE International Union.

COMMITTEE CONSIDERATION

On April 12, 2000, the Subcommittee on Energy and Power met in open markup session and approved a Committee Print of this legislation for Full Committee consideration, as amended, by a voice vote. The Committee Print was subsequently introduced by the Subcommittee Chairman and Ranking Minority Member as H.R. 4446. On May 17, 2000, the Committee on Commerce met in open markup session and ordered H.R. 4446 reported to the House, without amendment, by a voice vote, a quorum being present.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. There were no record votes taken in connection with ordering H.R. 4446 reported. A motion by Mr. Bliley to order H.R. 4446 reported to the House, without amendment, was agreed to by a voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held both legislative and oversight hearings and made findings that are reflected in this report.

COMMITTEE ON GOVERNMENT REFORM OVERSIGHT FINDINGS

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Reform.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 4446, a bill to ensure that the Secretary of Energy may continue to exercise certain authorities under the Price-Anderson Act through the Assistant Secretary of Energy for Environment, Safety, and Health, would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
 CONGRESSIONAL BUDGET OFFICE,
 Washington, DC, May 23, 2000.

Hon. TOM BLILEY,
 Chairman, Committee on Commerce,
 House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4446, a bill to ensure that the Secretary of Energy may continue to exercise certain authorities under the Price-Anderson Act through the Assistant Secretary of Energy for Environment, Safety, and Health.

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

Sincerely,

BARRY B. ANDERSON
 (For Dan L. Crippen, Director).

Enclosure.

H.R. 4446—A bill to ensure that the Secretary of Energy may continue to exercise certain authorities under the Price-Anderson Act through the Assistant Secretary of Energy for Environment, Safety, and Health

H.R. 4446 would clarify that the Secretary of Energy has the authority to enforce penalties for nuclear safety violations under the Price-Anderson Act through the Assistant Secretary for Environment, Safety, and Health. (The Price-Anderson Act provides a framework for resolving liability issues in the event of an accident involving nuclear materials.) Because the bill would not change current practice, CBO estimates that H.R. 4446 would have no effect on the federal budget. The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would impose no costs on state, local, or tribal governments.

The CBO staff contact for this estimate is Lisa Cash Driskill. This estimate was approved by Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

EXCHANGE OF COMMITTEE CORRESPONDENCE

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SCIENCE,
Washington, DC, June 7, 2000.

Hon. THOMAS J. BLILEY,
Chairman, Committee on Commerce, Rayburn House Office Building, Washington, DC.

DEAR TOM: On May 15, 1999, Representative Barton, on behalf of himself and Mr. Boucher, introduced H.R. 4446—a bill to ensure that the Secretary of Energy may continue to exercise certain authorities under the Price-Anderson Act through the Assistant Secretary of Energy for Environment, Safety, and Health. The Commerce Committee held a mark-up session on May 17 and ordered the bill reported. The bill contains provisions that fall within the jurisdiction of the Committee on Science. In particular, H.R. 4446 impacts five civilian energy laboratories falling within the Committee on Science's jurisdiction pursuant to Rule X, clause l(n)(l) of the Rules of the House.

In deference to your desire to bring this legislation before the House in an expeditious manner, I will not exercise this Committee's right to a sequential referral. Despite waiving its consideration of H.R. 4446, the Science Committee does not waive its jurisdiction over H.R. 4446. Additionally, the Science Committee expressly reserves its authority to seek conferees on any provisions that are within its jurisdiction during any House-Senate conference that may be convened on this legislation. I ask for your commitment to support any request by the Science Committee for conferees on H.R. 4446 as well as any similar or related legislation.

I request that you include this letter as part of the Record during consideration of the legislation on the House floor.

Thank you for your consideration and attention regarding these matters.

Sincerely,

F. JAMES SENSENBRENNER, Jr.,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON COMMERCE,
Washington, DC, June 7, 2000.

Hon. F. JAMES SENSENBRENNER, Jr.,
Chairman, Committee on Science, House of Representatives, Rayburn House Office Building, Washington, DC.

DEAR JIM: Thank you for your letter regarding your committee's jurisdictional interest in H.R. 4446, a bill to ensure that the Secretary of Energy may continue to exercise certain authorities under

the Price-Anderson Act through the Assistant Secretary of Energy for Environment, Safety and Health.

I acknowledge your committee's jurisdiction over portions of this legislation and appreciate your cooperation in moving the bill to the House floor expeditiously. I agree that your decision to forego further action on the bill will not prejudice the Science Committee with respect to its jurisdictional prerogatives on this or similar legislation. I will also include a copy of your letter and this response in the Committee's report on the bill and the Congressional Record when the legislation is considered by the House.

Thank you again for your cooperation.

Sincerely,

TOM BLILEY,
Chairman.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Exercise of certain Price-Anderson Act authorities through the Assistant Secretary of Energy for Environment, Safety, and Health

Subsection (a) amends section 234A of the Atomic Energy Act of 1954 by adding a new subsection at the end of section 234A which provides that the Secretary of Energy may, notwithstanding any other provision of law, exercise any authority under section 234A through the Assistant Secretary of Energy for Environment, Safety, and Health. The "notwithstanding any other provision of law" clause prevents section 3213 of the National Defense Authorization Act for Fiscal Year 2000 from barring the enforcement of section 234A by the Assistant Secretary of Energy for Environment, Safety, and Health with respect to the NNSA. This provision will ensure that section 234A is enforced in a consistent and efficient manner by a single office in the Department of Energy that is directly accountable to the Secretary of Energy.

Subsection (b) establishes the effective date of this amendment as March 1, 2000, the same date that the NNSA became effective.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

SECTION 234A OF THE ATOMIC ENERGY ACT OF 1954

SEC. 234A. CIVIL MONETARY PENALTIES FOR VIOLATIONS OF DEPARTMENT OF ENERGY SAFETY REGULATIONS.—a. * * *

e. The Secretary may, notwithstanding any other provision of law, exercise any authority under this section through the Assistant Secretary of Energy for Environment, Safety, and Health.

DISSENTING VIEWS

While H.R. 4446 is intended to ensure that nuclear safety is a fully-integrated part of operations at the National Weapons Laboratories, it will have the opposite effect. It will confuse management at the labs and at the National Nuclear Security Administration (NNSA).

H.R. 4446 places an external bureaucracy—the Office of the Assistant Secretary of Energy for Environment, Safety, and Health—in charge of an integral part of NNSA activities. Under the National Nuclear Security Administration Act (P.L. 106–65) the Administrator of the NNSA is given responsibility for ensuring “that the Administration complies with all applicable environmental, safety, and health statutes.” The statute further instructs the Administrator to develop procedures to fully implement that responsibility. Yet, before General John Gordon—the President’s nominee to become the Administrator of the NNSA—even begins his job, H.R. 4446 would undercut his responsibility and authority to ensure that environmental, safety and health statutes are fully implemented.

H.R. 4446 separates authority from responsibility in the area of nuclear safety. It would also harm the national security mission of the NNSA by confusing the clear lines of responsibility in what was intended by Congress to be an independent agency within DOE. It recreates the problems of confused lines of authority that P.L. 106–65 has just fixed. Over the last decade, the need for clear lines of authority and for joining responsibility with authority has been made clear through numerous reports and studies. A 1997 study by the Institute for Defense Analyses concluded that the Department of Energy (DOE) suffered from confusing and redundant lines of authority. The 1999 report of the Commission on Sustaining United States Nuclear Weapons Expertise, chaired by retired Admiral Henry Chiles, noted DOE’s weak management. And most recently, the President’s Foreign Intelligence Advisory Board issued a report, entitled “Science at its Best, Security at its Worst,” which advised that in the interests of security and sound management a semi-autonomous agency responsible for the weapons complex should limit bureaucratic contact with DOE.

This well-intentioned, but ill-designed measure must be corrected during further consideration to ensure that our common goals of nuclear safety and national security are advanced through the NNSA.

CHRIS COX.
HEATHER WILSON.

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