

**Calendar No. 253**

106TH CONGRESS }  
*1st Session* }

SENATE

{ REPORT  
106-135

COMMERCIAL SPACE LAUNCH INDUSTRY  
INDEMNIFICATION EXTENSION

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R E P O R T

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND  
TRANSPORTATION

ON

S. 832



AUGUST 4, 1999.—Ordered to be printed

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED SIXTH CONGRESS

FIRST SESSION

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(II)

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### COMMERCIAL SPACE LAUNCH INDUSTRY INDEMNIFICATION EXTENSION

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Mr. MCCAIN, from the Committee on Commerce, Science, and  
Transportation, submitted the following

### REPORT

[To accompany S. 832]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 832) “A bill to extend the commercial space launch damage indemnification provisions of section 70113 of title 49, United States Code”, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

#### PURPOSE OF THE BILL

The purpose of the bill is to extend the commercial space launch damage indemnification provisions of section 70113 of title 49, United States Code.

#### BACKGROUND AND NEEDS

The Commercial Space Launch Amendments Act (Public Law 100-657) established a framework for the shared allocation of insurance risk for commercial space launches that would allow the government to indemnify licensed launch providers (licensee). Public Law 100-657 requires a licensee to obtain a specific level of insurance to satisfy third-party claims arising from death, bodily injury, or loss of or damage to property resulting from licensed activities. All licensees that comply with the private liability insurance are indemnified by the Federal government for any civil liability damages that exceed the private insurance coverages. The level of insurance required is determined by the Secretary of Transportation (Secretary) after consultation with the Administrator of the

National Aeronautical and Space Administration; the Secretary of the Air Force; and the heads of other appropriate agencies. The amount of private insurance required is limited to \$500 million for third party claims and \$100 million for claims by the U.S. Government for damage or loss to Government property. A licensee may not be required to obtain more than the maximum liability insurance available at a reasonable cost on the world market. The Secretary may also take into account the maximum probable loss from a particular launch in determining the required insurance coverage.

If the total amount of successful third party and government claims related to a single licensed launch exceed the amount of required liability insurance, Public Law 100-657 stipulates that the Secretary provide for the payment of successful claims above the amount compensated by insurance, including self-insurance. These payments are subject to advance appropriations or specific legislative authority. Payments for a single launch are limited to \$1.5 billion in excess of the required insurance amount. This amount is indexed to reflect inflation in 1989 and thereafter.

Public Law 100-657 established a framework to govern third-party liability compensation plans in cases where aggregate claims are likely to exceed the required financial responsibility amounts. The Secretary is directed to survey the causes and extent of damages in such cases and to submit the results to the Congress. The President is required to submit to the Congress a plan that outlines the dollar value of the claims and recommends funding sources. Public Law 100-657 also describes the procedures and timetables applicable to congressional consideration of the plan, which must be approved by a joint resolution. Expedited procedures are prescribed for any plan that requires additional appropriations or additional legislative authority.

The compensation plan provisions would apply only with respect to licenses for which the Secretary receives a complete application within five years following the Act's enactment. This authority was renewed for an additional five years and is set to expire again on December 31, 1999.

#### LEGISLATIVE HISTORY

The bill S. 832 was introduced by Senator McCain on April 20, 1999, co-sponsored by Senators Frist, Burns, Breaux, and Lott, and referred to the Committee on Commerce, Science, and Transportation. The Subcommittee on Science, Technology, and Space conducted a hearing on the commercial space launch industry on May 20, 1999, at which time testimony was received from Major General Robert C. Hinson, Commander, 14th Air Force, Air Force Space Command, and Component Commander, U.S. Air Force Space Operations, U.S. Space Command; Mr. Keith Calhoun-Senghor, Director, Office of Space Commercialization, Technology Administration, Department of Commerce; Ms. Lori Garver, Associate Administrator for Policy and Plans, National Aeronautics and Space Administration; Ms. Patricia Grace Smith, Associate Administrator for Commercial Space Transportation, Federal Aviation Administration, Department of Transportation; Mr. Jim Albaugh, President, Space and Communications, Boeing Company; Mr. D. Andrew

Beal, President and CEO, Beal Aerospace Technologies Inc.; Mr. Hoyt Davidson, Managing Director of Space Finance Group, Donaldson, Lufkin & Jenrette Securities Corporation; Mr. John Douglas, President, Aerospace Industries Association; Mr. Peter B. Teets, President and Chief Operating Officer, Lockheed Martin Corporation; and Mr. Stephen G. Wurst, President, Space Access, LLC. On June 23, 1999, the Committee met in executive session and ordered that the bill be reported favorably without amendment by voice vote.

#### SUMMARY OF MAJOR PROVISIONS

The bill extends the indemnification available to the commercial space launch industry until December 31, 2009, an additional ten years beyond the current expiration date of December 31, 1999.

#### ESTIMATED COSTS

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, July 8, 1999.*

Hon. JOHN MCCAIN,  
*Chairman, Committee on Commerce, Science, and Transportation,  
U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 832, a bill to extend the commercial space launch damage indemnification provisions of section 70113 of title 49, United States Code.

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

Sincerely,

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

Enclosure.

#### CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

*S. 832—A bill to extend the commercial space launch damage indemnification provisions of section 70113 of title 49, United States Code*

S. 832 would provide a 10-year extension of the Department of Transportation's (DOT's) authority to indemnify nonfederal entities involved in commercial space transportation services licensed by DOT. The existing authorization, which is set to expire December 31, 1999, allows DOT to pay claims in excess of the amounts covered by private insurance under certain terms and conditions. This authority is contingent upon funding being provided in advance in an appropriation act or other legislation.

Extending DOT's indemnification authority could result in additional discretionary spending over the next five years, but CBO ex-

pects that any such costs would be negligible. According to agency officials, DOT has never had to pay claims to third parties for incidents involving such vehicles or services. Thus far, the costs associated with incidents have been small and have been covered by private insurance. S. 832 would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply.

S. 832 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not impose costs on state, local, or tribal governments.

The CBO staff contact is Kathleen Gramp. This estimate was approved by Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

#### REGULATORY IMPACT STATEMENT

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported:

##### NUMBER OF PERSONS COVERED

S. 832 extends the deadline for licensees who qualify for indemnification, thus making the provision available to more companies in the commercial space launch industry.

##### ECONOMIC IMPACT

In extending the deadline for indemnification for ten years, S. 832 provides a favorable and stable insurance risk allocation framework for the commercial space launch industry. The continued involvement of the federal government indicates its willingness to support the development of the industry. This may encourage additional private sector investment and facilitate commercialization efforts. Ultimately, the demand for commercial space launches will be driven by space-based applications, such as worldwide telecommunications services, which have enormous market potential. Indemnification thus acts as an incentive for the commercial space launch industry to support these larger telecommunication markets and accompanying economic growth.

##### PRIVACY

This legislation will not have an adverse impact on the personal privacy of individuals.

##### PAPERWORK

This legislation will not increase the paperwork requirement for individuals or businesses.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1. Commercial Space Launch Industry Indemnification Extension*

This section extends the deadline for licensees qualified for indemnification from December 31, 1999, to December 31, 2009.

## 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, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

**TITLE 49. TRANSPORTATION****Subtitle IX. Commercial Space  
Transportation****CHAPTER 701. COMMERCIAL SPACE LAUNCH  
ACTIVITIES****§ 70113. Paying claims exceeding liability insurance and financial responsibility requirements****(a) GENERAL REQUIREMENTS.—**

(1) To the extent provided in advance in an appropriation law or to the extent additional legislative authority is enacted providing for paying claims in a compensation plan submitted under subsection (d) of this section, the Secretary of Transportation shall provide for the payment by the United States Government of a successful claim (including reasonable litigation or settlement expenses) of a third party against a licensee or transferee under this chapter, a contractor, subcontractor, or customer of the licensee or transferee, or a contractor or subcontractor of a customer, resulting from an activity carried out under the license issued or transferred under this chapter for death, bodily injury, or property damage or loss resulting from an activity carried out under the license. However, claims may be paid under this section only to the extent the total amount of successful claims related to one launch or entry—

(A) is more than the amount of insurance or demonstration of financial responsibility required under section 70112(a)(1)(A) of this title; and

(B) is not more than \$ 1,500,000,000 (plus additional amounts necessary to reflect inflation occurring after January 1, 1989) above that insurance or financial responsibility amount.

(2) The Secretary may not provide for paying a part of a claim for which death, bodily injury, or property damage or loss results from willful misconduct by the licensee or transferee. To the extent insurance required under section 70112(a)(1)(A) of this title is not available to cover a successful third party liability claim because of an insurance policy exclusion the Secretary decides is usual for the type of insurance involved, the Secretary may provide for paying the excluded claims without regard to the limitation contained in section 70112(a)(1).

**(b) NOTICE, PARTICIPATION, AND APPROVAL.—**Before a payment under subsection (a) of this section is made—

(1) notice must be given to the Government of a claim, or a civil action related to the claim, against a party described in subsection (a)(1) of this section for death, bodily injury, or property damage or loss;

(2) the Government must be given an opportunity to participate or assist in the defense of the claim or action; and

(3) the Secretary must approve any part of a settlement to be paid out of appropriations of the Government. (c) Withholding payments. The Secretary may withhold a payment under subsection (a) of this section if the Secretary certifies that the amount is not reasonable. However, the Secretary shall deem to be reasonable the amount of a claim finally decided by a court of competent jurisdiction.

(d) SURVEYS, REPORTS, AND COMPENSATION PLANS.—

(1) If as a result of an activity carried out under a license issued or transferred under this chapter the total of claims related to one launch or entry is likely to be more than the amount of required insurance or demonstration of financial responsibility, the Secretary shall—

(A) survey the causes and extent of damage; and

(B) submit expeditiously to Congress a report on the results of the survey.

(2) Not later than 90 days after a court determination indicates that the liability for the total of claims related to one launch or entry may be more than the required amount of insurance or demonstration of financial responsibility, the President, on the recommendation of the Secretary, shall submit to Congress a compensation plan that—

(A) outlines the total dollar value of the claims;

(B) recommends sources of amounts to pay for the claims;

(C) includes legislative language required to carry out the plan if additional legislative authority is required; and

(D) for a single event or incident, may not be for more than \$1,500,000,000.

(3) A compensation plan submitted to Congress under paragraph (2) of this subsection shall—

(A) have an identification number; and

(B) be submitted to the Senate and the House of Representatives on the same day and when the Senate and House are in session.

(e) CONGRESSIONAL RESOLUTIONS.—

(1) In this subsection, “resolution”—

(A) means a joint resolution of Congress the matter after the resolving clause of which is as follows: “That the Congress approves the compensation plan numbered \_\_\_\_\_ submitted to the Congress on \_\_\_\_\_, 19—.”, with the blank spaces being filled appropriately; but

(B) does not include a resolution that includes more than one compensation plan.

(2) The Senate shall consider under this subsection a compensation plan requiring additional appropriations or legislative authority not later than 60 calendar days of continuous

session of Congress after the date on which the plan is submitted to Congress.

(3) A resolution introduced in the Senate shall be referred immediately to a committee by the President of the Senate. All resolutions related to the same plan shall be referred to the same committee.

(4)(A) If the committee of the Senate to which a resolution has been referred does not report the resolution within 20 calendar days after it is referred, a motion is in order to discharge the committee from further consideration of the resolution or to discharge the committee from further consideration of the plan.

(B) A motion to discharge may be made only by an individual favoring the resolution and is highly privileged (except that the motion may not be made after the committee has reported a resolution on the plan). Debate on the motion is limited to one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion is not in order. A motion to reconsider the vote by which the motion is agreed to or disagreed to is not in order.

(C) If the motion to discharge is agreed to or disagreed to, the motion may not be renewed and another motion to discharge the committee from another resolution on the same plan may not be made.

(5)(A) After a committee of the Senate reports, or is discharged from further consideration of, a resolution, a motion to proceed to the consideration of the resolution is in order at any time, even though a similar previous motion has been disagreed to. The motion is highly privileged and is not debatable. An amendment to the motion is not in order. A motion to reconsider the vote by which the motion is agreed to or disagreed to is not in order.

(B) Debate on the resolution referred to in subparagraph (A) of this paragraph is limited to not more than 10 hours, to be divided equally between those favoring and those opposing the resolution. A motion further to limit debate is not debatable. An amendment to, or motion to recommit, the resolution is not in order. A motion to reconsider the vote by which the resolution is agreed to or disagreed to is not in order.

(6) The following shall be decided in the Senate without debate:

(A) a motion to postpone related to the discharge from committee.

(B) a motion to postpone consideration of a resolution.

(C) a motion to proceed to the consideration of other business.

(D) an appeal from a decision of the chair related to the application of the rules of the Senate to the procedures related to a resolution.

(f) APPLICATION.—This section applies to a license issued or transferred under this chapter for which the Secretary receives a complete and valid application not later than **【December 31, 1999.】** *December 31, 2009.*