Calendar No. 636

109TH CONGRESS, 2d Session | SENATE | REPORT 109–346

CONVENTION ON SUPPLEMENTARY COMPENSATION FOR NUCLEAR DAMAGE CONTINGENT COST ALLOCATION ACT

SEPTEMBER 25, 2006.—Ordered to be printed

Mr. INHOFE, from the Committee on Environment and Public Works, submitted the following

R E P O R T

[To accompany S. 3879, as amended]

The Committee on Environment and Public Works, to which was referred a bill (S. 3879) to implement the Convention on Supplementary Compensation for Nuclear Damage, and for other purposes, reports favorably thereon with an amendment, and recommends that the bill, as amended, do pass.

GENERAL STATEMENT AND BACKGROUND

This bill modifies Section 170 of the Atomic Energy Act of 1954, known as the Price-Anderson Act (42 U.S.C. 2210 et seq.). The bill modifies the Price-Anderson Act to implement the Convention on Supplementary Compensation for Nuclear Damage States (hereafter, CSC or the Convention) in the United States (U.S.).

The Senate Committee on Environment and Public Works has jurisdiction over the nonmilitary environmental regulation and control of atomic energy. This includes both legislative and oversight authority pertaining to the operations of the Nuclear Regulatory Commission (NRC) and compensation for environmental releases of radionuclides under the Price-Anderson Act.

The CSC creates a legal framework for defining, adjudicating and compensating civil liability resulting from covered nuclear incidents that is consistent with the existing U.S. nuclear civil liability system. In addition, it establishes an international supplementary compensation fund in the event that such an incident exhausts the funds made available, in accordance with the Convention, by the party in which the incident takes place.

The CSC was adopted on September 12, 1997, in Vienna at the 41st General Conference of the International Atomic Energy Agency (IAEA), and signed by the United States on September 29, 1997, the day it was opened for signature. On November 15, 2002, the President transmitted the CSC to the Senate for advice and consent to ratification. The Senate Foreign Relations Committee reported the Convention to the full Senate on July 29, 2006, and the Senate gave its advice and consent to the Convention on August 3, 2006.

The CSC will enter into force 90 days after at least five States with a minimum of 400,000 units of installed nuclear capacity have deposited an instrument of ratification, acceptance or approval with the IAEA. To date, 13 countries have signed the CSC, and Argentina, Romania, and Morocco have ratified it.

Congress passed the Price-Anderson Act in 1957 to ensure that adequate funds would be available to compensate victims of a nuclear accident. It also recognized that the risk of extraordinary liability that companies would incur if a nuclear accident were to happen would render insurance costs prohibitively high, and thwart the development of nuclear energy.

The original Price-Anderson Act authorized government indemnification for only 10 years, until August 1, 1967. Congress extended the Act, in 1965 and 1975 for additional 10-year periods, in 1988, for an additional 15 years, in 2003 for the remainder of fiscal year 2003, and in 2005, until 2025. In addition, in 2005, as part of the Energy Policy Act of 2005 (Public Law 109–58), Congress increased the annual premium payments from $10,000,000 to $15,000,000 per reactor and addressed modular reactors with a total generating capacity of 1,300 megawatts as a single reactor.

S. 3879 would establish a funding mechanism under the Price-Anderson Act for the U.S. contribution ("contingent costs") to the international nuclear liability compensation system that would be established by the CSC, which has not entered into force.

With respect to incidents covered by the Price-Anderson Act,[1] S. 3879 would cover the contingent costs by using the existing funding mechanism established by the Price-Anderson Act in a manner that would neither increase the amount that a nuclear power plant operator would otherwise contribute nor decrease the amount otherwise available to compensate victims. The bill modifies the way the Price-Anderson funding system would operate, as described in Sections 4 and 5.

With respect to incidents outside the United States not covered by the Price-Anderson Act, S. 3879 would allocate the contingent costs among nuclear suppliers that the CSC relieves from the risk of potential liability resulting from incidents outside the United States that are not covered by the Price-Anderson Act.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

This section identifies the short title of the Act as the "Convention on Supplementary Compensation for Nuclear Damage Contingent Cost Allocation Act of 2006"

[1] Principally Sec. 170 of the Atomic Energy Act of 1954 (42 U.S.C. 2210 et seq.), which establishes a liability cap and compensation system for U.S. nuclear incidents.

Section 2. Findings and purpose

Under this section, Congress finds that the Price-Anderson Act establishes a liability system for a nuclear incident involving a commercial power plant or a Department of Energy (DOE) nuclear contractor, which provides a prompt and equitable process for recovering compensation for damage caused by the nuclear incident, provides an assured source of funds for the payment of this compensation, and channels liability for covered claims to this assured source of funds. The CSC establishes an international system comparable to and compatible with the Price-Anderson system. The CSC benefits potential victims by assuring that substantial funds will be available to compensate damage caused by nuclear incidents by establishing minimum requirements for the amount of compensation available under the national laws of member countries and by providing for an internationally financed compensation fund to supplement the amounts available under national law. The CSC benefits U.S. nuclear suppliers who face potentially unlimited liability for nuclear incidents outside the coverage of the Price-Anderson Act by replacing potentially open-ended liability with a predictable regime. Congress finds the CSC also benefits U.S. nuclear facility operators that may be liable for public liability under the Price-Anderson Act by providing an additional source of compensation for nuclear incidents covered by the Price-Anderson Act. The United States should fund any contributions that it may be required to make to the Convention's supplementary compensation fund in a manner that neither upsets settled expectations based on the liability regime established in the Price-Anderson Act nor shifts to Federal taxpayers liability risks for nuclear incidents at foreign installations.

The purpose of the bill is to allocate the U.S. contribution to the international compensation system established by the Convention.

Section 3. Definitions

This section defines terms used in the Act:

- "Commission" refers to the Nuclear Regulatory Commission.
- "Contingent costs" refers to the amount that the United States could contribute to the international fund established by the Convention. These costs are contingent on the occurrence of a nuclear incident that triggers the obligation to contribute. The amount is dependent on the amount of nuclear damage resulting from the nuclear incident and the identities of the other countries that belong to the Convention.
- "Convention" refers to the Convention on Supplementary Compensation for Nuclear Damage.
- "Covered incident" refers to a nuclear incident that comes within the scope of the Convention. In general, a covered incident is a nuclear incident in a country that belongs to the Convention or during transportation to or from such a country.
- "Covered installation" refers to a nuclear installation that comes within the scope of the Convention and at which the occurrence of a nuclear incident could trigger the obligation to contribute to the international fund.
- "Covered person" refers to a person that may be a nuclear supplier for purposes of this Act. A covered person may be ei-

ther (1) a United States person, or (2) any other person to the extent such other person conducts activities in the United States. A covered person may not be the United States or any agency or instrumentality of the United States.

- "Nuclear supplier" refers to a covered person or successor that either (1) provides goods or services to a covered installation, or (2) engages in a shipment of nuclear materials that could result in a covered incident.
- "Price-Anderson incident" means a covered incident that comes within the scope of the Price-Anderson Act.
- "Secretary" refers to the Secretary of Energy.
- "United States" refers to the same geographic area as the definition of "United States" in the Atomic Energy Act, which includes the 50 states, the District of Columbia, Puerto Rico, the Canal Zone, the Territorial Sea as defined in Presidential Proclamation 5928 (December 27, 1988), and the territories and possessions of the United States.
- "United States person" refers to (1) any individual who is a United States resident, national or citizen, or (2) any entity that is organized under the laws of the United States or any state, territory, possession, or commonwealth of the United States, or any political subdivision thereof.

Section 4. Use of Price-Anderson funds

This section provides that if a nuclear incident is covered by the Price-Anderson Act, then a portion of the funds made available for public liability under the Price-Anderson Act will be used to cover the contribution by the United States to the international fund established by the CSC. The use of Price-Anderson funds to cover the contribution by the United States to the international fund shall not decrease the limitation for liability for nuclear damage.

Section 5. Effect on amount of public liability

This section provides that, with respect to an incident covered by the Price-Anderson Act, funds made available to the United States from the international fund established by the CSC will be used to pay persons indemnified under the Price-Anderson Act. In addition, this section provides that the limitation on the amount of public liability under the Price-Anderson Act will be increased by the net amount of funds that the United States receives from the international fund (that is, the actual amount of funds received less the amount of the contribution by the United States to the international fund).

Section 6. Retrospective risk pooling program

This section requires a nuclear supplier to participate in the retrospective payment program established by the bill to cover the costs resulting from an incident outside the United States that is covered by the Convention but not covered by the Price-Anderson Act. The amount of the retrospective payment by a nuclear supplier will be determined after a nuclear incident occurs by allocating the amount of the contribution by the United States to the international fund among nuclear suppliers according to a risk-informed assessment formula developed by the Secretary of Energy. In developing this formula, the Secretary need not limit the examination

to "covered installations" in countries that have ratified the Convention, but also may consider covered installations in countries that have signed the Convention and in other countries that the Secretary concludes are likely to join the Convention within a reasonable period of time.

In developing the formula, the Secretary must take into account certain risk factors that focus on the extent of the potential liability of a nuclear supplier that could result from its goods and services relative to the goods and services of other nuclear suppliers. The formula is expected to exclude nuclear suppliers that do not provide goods or services specifically for nuclear facilities outside the United States or whose goods or services are not likely to result in significant potential liability outside the United States.

The Committee believes the Secretary should also ensure that the burden imposed by the risk-informed formula among nuclear suppliers is shared in a fair and equitable manner, and that the contingent cost is not allocated disproportionately to one supplier. Accordingly, the formula may provide for a minimum and maximum share to be borne by nuclear suppliers not otherwise excluded from the formula. Further, the Secretary should endeavor to ensure that nuclear suppliers do not undervalue their goods and services in order to shift greater liability onto other nuclear suppliers, and that the implementation of Section 6 of the Act does not create an incentive for nuclear suppliers to shift their business activities off-shore in order to avoid or minimize their obligations under the Act or the formula. Given the variability of prices of nuclear goods and services in the market and the lack of any necessary connection between the price of a good or service and the risk or hazard it poses, the share of the contribution assessed on a nuclear supplier should be determined principally by the risks and hazards associated with such nuclear supplier's goods and services, as indicated by the factors listed in the Act.

The Secretary is to determine the formula not later than three years after enactment and every five years thereafter, and to issue a report to Congress assessing the effects of the implementation of the Convention on the U.S. nuclear industry and suppliers within five years of enactment of this Act. Once the initial report is completed, the Committee believes periodic reporting to assess the effects of the implementation of the Convention on the U.S. nuclear industry and nuclear suppliers is warranted, and should be conducted in regular increments of at least every five years. In each report, the Secretary should assess whether there appears to be a significant risk that the requirements of this Act could have a material adverse effect on the competitiveness or availability of U.S. nuclear suppliers and shall suggest mitigating actions where appropriate.

Generally, in implementing this Act and, in particular, in arriving at the risk-informed assessment formula under Section 6(b)(3), the Committee believe the Secretary should seek to (i) minimize any adverse competitive impact of this Act on nuclear suppliers in the United States or foreign markets and (ii) avoid discouraging nuclear suppliers from engaging in manufacturing, research and development or other activities in the United States or from participating in U.S. Government-sponsored projects or activities either in the United States or abroad.

Section 7. Reporting

This section authorizes the Secretary of Energy to collect information needed to develop and implement the assessment formula. The section also requires the Secretary to make information available to nuclear suppliers and insurers to facilitate the creation of a voluntary private insurance system to cover potential payments by nuclear suppliers under the retrospective risk pooling program established by the Act. The section also requires entities to make information available to the Secretary to help develop and implement the assessment formula.

Section 8. Effect on liability

This section provides that liability for a covered incident may not be limited to less than 300 million Special Drawing Rights (the amount prescribed in paragraph 1(a) of Article IV of the Convention), unless an explicit law is enacted. 300 million Special Drawing Rights currently equal approximately $420 million.

Section 9. Payments to and by the United States

This section sets forth the procedure for the Secretary of Energy and nuclear suppliers to follow in the event of a call for funds under the Convention so that the deferred payments are made to the Treasury of the United States and conveyed from the Treasury to the appropriate entity in fulfillment of the obligation of the United States to contribute to the international fund established by the Convention. In the event a nuclear supplier defaults on its obligation to make a deferred payment, this section authorizes the Secretary of Energy to seek recovery from the supplier of the payment, appropriate interest, and civil penalties up to twice the amount of the payment.

Section 10. Limitation on judicial review; Cause of action

This section provides a right to sue the person legally responsible for a nuclear incident under the Convention for damage resulting from a nuclear incident for which a court of the United States has jurisdiction under the Convention, but to which the Price-Anderson Act does not apply. This section ensures a cause of action will be available in all situations where United States courts have jurisdiction over a nuclear incident, including a nuclear incident during transportation, for which federal or state law may not currently provide a cause of action against the person responsible for the nuclear incident as defined by the Convention.

This section also assigns jurisdiction to the United States Court of Appeals for the District of Columbia Circuit for appeals and reviews of claims resulting from a nuclear incident for which a court of the United States has jurisdiction under the Convention, but to which the Price-Anderson Act does not apply. This assignment does not affect the jurisdiction of the Supreme Court under chapter 81 of title 28 of the United States Code.

Section 11. Right of recourse

This section clarifies that this Act does not provide the operator of a covered installation a right of recourse against a nuclear supplier or any other person.

Section 12. Protection of sensitive United States information

This section provides that neither this Act nor the Convention should be construed to require the disclosure of Restricted Data, Formerly Restricted Data, information relating to intelligence sources or methods, or national security information.

Section 13. Regulations

This section authorizes the Secretary of Energy and the Nuclear Regulatory Commission to issue rules to implement this Act, including rules on how the Price-Anderson Act and this Act interact. The Secretary and the Commission will exercise this authority over areas for which they are responsible. The section provides that any implementing rules must be consistent and equitable and ensure that the financial and operational burden on a Commission licensee not increase as a result of the enactment of this Act. This section should not be construed to eliminate, limit, or otherwise affect any other regulatory authority that the Secretary or the Commission already possesses.

Section 14. Effective date

This section provides that the Act becomes effective on the date on which the Convention on Supplementary Compensation for Nuclear Damage enters into force for the United States.

LEGISLATIVE HISTORY

On September 8, 2006, Senator Jim M. Inhofe introduced S. 3879. The bill was referred to the Senate Committee on Environment and Public Works. On September 13, 2006, S. 3879, as amended, was favorably reported by the committee to the full Senate.

HEARINGS

No committee hearings were held on S. 3879.

ROLLCALL VOTES

The Committee on Environment and Public Works met to consider S. 3879 on September 13, 2006. Senators Inhofe and Jeffords proposed an amendment, which was agreed to by voice vote. The bill, as amended, was voted favorably by voice vote.

REGULATORY IMPACT STATEMENT

In compliance of section 11(b) of rule XXVI of the Standing Rules of the Senate, the committee finds that S. 3879 does not create any additional regulatory burdens, nor will it cause any adverse impact on the personal privacy of individuals.

MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (Public Law 104–4), the committee finds that this bill would impose no Federal intergovernmental unfunded mandates on State, local, or tribal governments.

COST OF LEGISLATION

Due to time constraints the Congressional Budget Office estimate was not included in the report when received by the committee, it will appear in the Congressional Record at a later time.

CHANGES IN EXISTING LAW

Section 12 of rule XXVI of the Standing Rules of the Senate requires the committee to publish changes in existing law made by the bill as reported. Passage of this bill will make no changes to existing law.

○