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### NRC FAIRNESS IN FUNDING ACT OF 1998

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JUNE 25, 1998.—Ordered to be printed  
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Mr. CHAFEE, from the Committee on Environment and Public Works, submitted the following

### REPORT

[To accompany S. 2090]

The Committee on Environment and Public Works, to which was referred the bill (S. 2090) to extend the authority of the Nuclear Regulatory Commission to collect fees through 2003, and for other purposes, having considered the same, reports favorably thereon and recommends that the bill do pass.

#### GENERAL STATEMENT

This legislation provides for a 5-year extension of the Nuclear Regulatory Commission's (NRC) current authority to collect fees in an amount sufficient to constitute 100 percent of the NRC's fiscal year budget authority (less the amount appropriated for the Nuclear Waste Fund), with the addition of an exclusion for costs of those activities for which it would not be fair and equitable to assess charges. The legislation is necessary to prevent the NRC's authority to recover 100 percent of its costs from lapsing at the end of the current fiscal year, and to provide fairness and equity in fee collection.

#### BACKGROUND

In 1986, Congress enacted the Consolidated Omnibus Budget Reconciliation Act of 1985, or COBRA-85 (P.L. 99-272). Section 7601 of this legislation directed the NRC to assess and collect annual fees from its licensees in an amount that, when added to other fees such as fees for service collected in the same fiscal year would not exceed 33 percent of NRC costs for that fiscal year. COBRA-85 directed that this annual charge should be "reasonably related

to the regulatory service provided by the Commission and [must] fairly reflect the cost to the Commission of providing such service.”

In the late 1980's, Congress twice acted to increase the percentage of the NRC budget that was to be collected in fees. Congress enacted the Omnibus Budget Reconciliation Act of 1987 (P.L. 100-203), which directed the NRC to collect up to 45 percent of its budget in fees in each of fiscal years 1988 and 1989. The Omnibus Budget Reconciliation Act of 1989 (P.L. 101-234) extended this requirement through fiscal year 1990.

One year later, Congress approved the Omnibus Budget Reconciliation Act of 1990, known as OBRA-90 (P.L. 101-508). Section 6101 of that legislation required the NRC to collect fees-for-service from NRC applicants and annual fees from NRC licensees. With regard to fees-for-service, OBRA-90 required that pursuant to the Independent Offices Appropriations Act, the NRC continue to charge any applicant or other person receiving a service from the NRC a fee covering the cost to the NRC of providing the service. With regard to annual charges, the legislation directed the NRC to collect annual fees from licensees that “[t]o the maximum extent practicable... have a reasonable relationship to the cost of providing regulatory services” and in an amount that, when added to the amount collected in fees for service and the amount appropriated for the Nuclear Waste Fund, would approximate fully 100 percent of NRC budget authority for that fiscal year. To meet the new requirement, the NRC adopted a policy of collecting annual fees not only from reactor licensees, but materials licensees as well.

OBRA-90 provided this “100 percent” fee authority for a period of 5 years, through fiscal year 1995. The authority was extended once, for an additional 3 years (through fiscal year 1998) by the Omnibus Budget Reconciliation Act of 1993, or OBRA-93 (P.L. 103-66).

The fees authorized by OBRA-90 went into effect for fiscal year 1991. Subsequently, however, concerns were raised regarding the fairness of the fee assessment structure. In the Energy Policy Act of 1992 (P.L. 102-486), Congress took steps to address one perceived inequity by statutorily excluding certain federally owned research reactors from the NRC annual fee requirement. In addition, the 1992 Act directed the NRC to undertake a review of its policy for assessing annual charges, solicit public comment on necessary changes to such policy, and make recommendations to Congress on possible changes to existing law that could prevent an unfair burden from being levied on certain NRC licensees.

Accordingly, on February 23, 1994, the NRC submitted to Congress its “Report to Congress on the U.S. Nuclear Regulatory Commission’s Licensee Fee Policy Review Required by the Energy Policy Act of 1992.” The Report took into account not only the 566 public comments received during the compilation of the Report, but also the more than 1,000 public comments submitted during consideration of previous fee-related rules, the thousands of letters and phone calls received regarding fees, two petitions for rule-making, a court decision, and an NRC-requested review by the agency’s Inspector General.

The 1994 Report identified two key concerns regarding fairness and equity: first, that not all direct beneficiaries of NRC activities

pay fees; and second, that fees are based on the NRC's cost of performance, rather than on the licensees' perception of benefits received. With regard to the question of fees that are not directly related to services to licensees, the Report acknowledged that the fee requirements inherently placed a burden on licensees when certain activities such as some international activities, oversight of and regulatory support to the Agreement State program, the statutory fee exemption for Federal agencies, and the NRC's fee exemptions or reductions for nonprofit educational institutions and small entities are considered. As for the issue of benefits perceived, the Report concluded that the concern had merit when considered with regard to the materials regulatory program.

Finally, the Report included legislative recommendations to Congress to remove certain costs from the fee base, the net effect of which would be the recovery of 90 percent of the NRC's budget authority through fees. While the NRC initiated some changes in its fee structure, Congress did not act on the legislative recommendations.

The Committee believes that concerns about fair and equitable assessment of fees continue to be relevant today, and should be addressed. The activities of the NRC that raise fairness and equity issues are important to the NRC's statutory health and safety mission. However, the Committee believes that the cost of such activities should not be recovered through fee collection, but rather through direct appropriation.

Therefore, as the 100 percent fee authority will lapse at the end of the current fiscal year, and as concerns regarding fair and equitable fees remain valid, Congressional action prior to the expiration of the current authorization is necessary.

On May 18, 1998, Environment and Public Works Committee Chairman Chafee introduced S. 2090, legislation to extend the authority of the Nuclear Regulatory Commission to collect fees and to exclude certain costs from the fee base. Joining him as original cosponsors were Subcommittee on Clean Air, Wetlands, Private Property, and Nuclear Safety Chairman Inhofe and Ranking Member Graham; Subcommittee on Superfund, Waste Control, and Risk Assessment Chairman Smith; and Senator Jeffords. S. 2090 was considered by the full Committee on May 21, and reported favorably.

As approved, the legislation authorizes an extension of the 100 percent fee authority for an additional 5 years, through fiscal year 2003. Additionally, the bill directs the NRC to make a determination with regard to costs of activities for which it would not be fair and equitable to assess charges on licensees. A section-by-section analysis follows.

#### SECTION-BY-SECTION ANALYSIS

##### *Section 1. Short title*

This section provides that the short title of the bill shall be the "NRC Fairness in Funding Act of 1998."

##### *Section 2. Nuclear Regulatory Commission Annual Charges*

This section amends current law to extend the NRC's 100 percent fee collection authority for 5 years, from September 30, 1998,

to September 30, 2003. This provision is necessary to prevent the NRC's authority to collect fees in order to cover its costs from dropping from 100 percent to a maximum of 33 percent of its budget authority.

The section also amends current law to require that the NRC exclude from the total amount collected in annual charges from licensees the costs of those activities for which the NRC determines that it would not be fair and equitable to assess on NRC licensees. It requires the NRC, in making this determination, to consider the extent to which NRC activities provide benefits to non-NRC licensees; the extent to which the NRC is unable to assess fees on the licensees that benefit from activities; and the extent to which NRC costs are commensurate with benefits provided to licensees. Finally, this section sets \$30 million as the maximum amount that may be excluded from the fee base in any given fiscal year. This provision as a whole is intended to provide greater fairness and equity in the assessment of fees on licensees.

#### HEARINGS

No hearings were held on S. 2090, although the issue of equity and fairness in fees has been the subject of discussion in previous Congresses.

#### ROLLCALL VOTES

Section 7(b) of rule XXVI of the Standing Rules of the Senate and the rules of the Committee on Environment and Public Works require that any rollcall votes taken during consideration of legislation be noted in the report.

On May 21, the Committee met to consider S. 2090, and approved the legislation by unanimous consent. No rollcall votes occurred on the bill.

#### REGULATORY IMPACT

Section 11(b) of rule XXVI of the Standing Rules of the Senate requires publication in the report of the Committee's estimate of the regulatory impact of the bill as reported. S. 2090, as reported, is expected to impose no new regulatory impact. This bill will not affect the personal privacy of individuals.

#### MANDATES ASSESSMENT

In compliance with the Unfunded Mandates Reform Act of 1995 (P.L. 104-4), the Committee makes the following evaluation of the Federal mandates contained in the reported bill. S. 2090, as reported, imposes no Federal intergovernmental mandates on State, local, or tribal governments.

#### COST OF LEGISLATION

Section 403 of the Congressional Budget and Impoundment Control Act requires that a statement of the cost of a reported bill, prepared by the Congressional Budget Office, be included in the report. That statement follows:

U.S. CONGRESS,  
 CONGRESSIONAL BUDGET OFFICE,  
 Washington, DC, June 4, 1998.

Hon. JOHN H. CHAFEE, *Chairman,*  
*Committee on Environment and Public Works,*  
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2090, the NRC Fairness in Funding Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Kim Cawley (for Federal costs), who can be reached at 226-2860, Pepper Santalucia (for State and local impact), who can be reached at 226-3220, and Jean Wooster (for private-sector impact), can be reached at 226-2960.

Sincerely,

JUNE E. O'NEILL,  
*Director.*

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CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

S. 2090, NRC Fairness In Funding Act of 1998, as ordered reported by the Senate Committee on Environment and Public Works on May 21, 1998.

*Summary*

S. 2090 would extend the authority of the Nuclear Regulatory Commission (NRC) to collect annual charges from its licensees to offset all of the agency's general fund appropriation. The bill does not authorize the appropriation of any funds to support the NRC mission in 1999 or subsequent years, but assuming that appropriations continue at approximately the 1998 level, additional annual income from these fees would be about \$270 million a year. These would be recorded as offsetting collections to the NRC's appropriation. Because the bill would not affect direct spending or receipts, pay-as-you-go procedures would not apply.

By extending the NRC's authority to collect fees from utilities, S. 2090 would impose both an intergovernmental and private-sector mandate as defined by the Unfunded Mandates Reform Act (UMRA). This mandate would not impose costs above the threshold established in UMRA for intergovernmental mandates (\$50 million in 1996, adjusted for inflation). CBO cannot determine whether the direct costs of the mandate would exceed the annual threshold for private-sector mandates (\$100 million in 1996, adjusted for inflation), because UMRA does not clearly define how to determine the direct costs associated with an existing mandate that has not yet expired. Depending on how they are measured, the direct costs to the private sector could exceed the threshold.

*Estimated Cost to the Federal Government*

Under current law, the NRC is directed to collect fees and annual charges sufficient to offset its entire general fund appropria-

tion. This authority expires at the end of 1998; however, the agency has permanent authority to collect fees and annual charges sufficient to offset 33 percent of its annual appropriation (from the general fund or any special funds). S. 2090 would extend the agency's authority to fully offset its general fund appropriation with fees and annual charges through 2003, except that the bill would allow the NRC to exclude certain portions of its budget from annual charges that would not be fair and equitable to assess on its licensees or a class of its licensees. Under the bill, the portion of the NRC's general fund budget that could be excluded from annual charges could not exceed \$30 million annually.

In 1998, Congress appropriated \$473 million for the NRC and the NRC Office of the Inspector General. That total includes \$18 million from the Nuclear Waste Trust Fund and \$455 million from the general fund of the Treasury. CBO estimates that the agency will collect \$455 million in 1998 through fees and annual charges. If the NRC's 1999 appropriation were identical to its 1998 budget, and S. 2090 were enacted, we estimate that fees and annual charges would be \$425 million. In contrast, if the agency's 1999 authority to collect fees and annual charges fell to 33 percent of its budget, CBO estimates the agency would collect only \$156 million.

*Pay-As-You-Go Considerations:* None.

*Intergovernmental and Private-Sector Impact:* The requirement to pay additional annual fees to the NRC would be a mandate as defined in UMRA. The total amount of such fees would depend on the amount of future appropriations. Assuming that future appropriations would be at about the 1998 level and that the portion of the NRC's budget that could be excluded from annual charges would be \$30 million annually (the maximum amount of excluded costs), CBO estimates that extending the fees would result in additional collections from industries regulated by the NRC (primarily electric utilities) of about \$270 million annually beginning in fiscal year 1999, compared to what collections would be under current law. Most of the fees would be paid by private, investor-owned nuclear utilities. (Less than 5 percent would be paid by nonfederal, publicly owned utilities.)

CBO cannot determine whether this mandate would impose any costs as defined in UMRA because the law is unclear as to how to measure costs associated with extending an existing mandate that has not yet expired. One approach would be to measure the costs imposed by the bill against those that would be incurred if current law remains in place and the annual fees decline. Measured that way, the total cost to the private sector of extending this mandate would be about \$255 million annually, beginning in fiscal year 1999, and the cost of the mandate would exceed the annual threshold for the private sector as defined in UMRA. By contrast, measured against the fees paid for fiscal year 1998 (\$455 million), the mandate would impose no additional costs on the private sector because the fees under S. 2090 would be lower than those currently in effect (because some of NRC's costs would be excluded from coverage by the fees). In either case, CBO estimates that the total costs to State, local, and tribal governments would be below the threshold for intergovernmental mandates established in UMRA.

*Estimate Prepared by:* Federal Costs: Kim Cawley (226–2860); Impact on State, Local and Tribal Governments: Pepper Santalucia (225–3220); Impact on the Private Sector: Jean Wooster (226–2960).

*Estimate Approved by:* Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

#### CHANGES IN EXISTING LAW

In compliance with section 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 as proposed to be omitted is enclosed in [bold brackets]; new matter proposed to be added to existing law is printed in *italic*; and existing law in which no change is proposed is shown in roman.

#### UNITED STATES CODE—TITLE 42—THE PUBLIC HEALTH AND WELFARE

#### CHAPTER 23—DEVELOPMENT AND CONTROL OF ATOMIC ENERGY

#### SUBCHAPTER XIII—GENERAL AUTHORITY OF THE COMMISSION

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#### § 2214. NRC user fees and annual charges

(a) ANNUAL ASSESSMENT.—

(1) IN GENERAL.—Except as provided in paragraph (3), the Nuclear Regulatory Commission (in this section referred to as the "Commission") shall annually assess and collect such fees and charges as are described in subsections (b) and (c) of this section.

(2) FIRST ASSESSMENT.—The first assessment of fees under subsection (b) of this section and annual charges under subsection (c) of this section shall be made not later than September 30, 1991.

(3) LAST ASSESSMENT OF ANNUAL CHARGES.—The last assessment of annual charges under subsection (c) of this section shall be made not later than [September 30, 1998] *September 30, 2003*.

(b) FEES FOR SERVICE OR THING OF VALUE.—Pursuant to section 9701 of title 31, any person who receives a service or thing of value from the Commission shall pay fees to cover the Commission's costs in providing any such service or thing of value.

(c) ANNUAL CHARGES.—

(1) PERSONS SUBJECT TO CHARGE.—Except as provided in paragraph (4), any licensee of the Commission may be required to pay, in addition to the fees set forth in subsection (b) of this section, an annual charge.

[(2) AGGREGATE AMOUNT OF CHARGES.—The aggregate amount of the annual charge collected from all licensees shall equal an amount that approximates 100 percent of the budget authority of the Commission in the fiscal year in which such charge is collected, less any amount appropriated to the Com-

mission from the Nuclear Waste Fund and the amount of fees collected under subsection (b) of this section in such fiscal year.】

(2) *AGGREGATE AMOUNT OF CHARGES.*—The aggregate amount of the annual charge collected from all licensees shall equal an amount that approximates 100 percent of the budget authority of the Commission for the fiscal year for which the charge is collected, less, with respect to the fiscal year, the sum of—

(A) any amount appropriated to the Commission from the Nuclear Waste Fund;

(B) the amount of fees collected under subsection (b); and

(C) for fiscal year 1999 and each fiscal year thereafter, to the extent provided in paragraph (5), the costs of activities of the Commission with respect to which a determination is made under paragraph (5).

(3) *AMOUNT PER LICENSEE.*—The Commission shall establish, by rule, a schedule of charges fairly and equitably allocating the aggregate amount of charges described in paragraph (2) among licensees. To the maximum extent practicable, the charges shall have a reasonable relationship to the cost of providing regulatory services and may be based on the allocation of the Commission's resources among licensees or classes of licensees.

(4) *EXEMPTION.*—

(A) *IN GENERAL.*—Paragraph (1) shall not apply to the holder of any license for a federally owned research reactor used primarily for educational training and academic research purposes.

(B) *RESEARCH REACTOR.*—For purposes of subparagraph (A), the term "research reactor" means a nuclear reactor that—

(i) is licensed by the Nuclear Regulatory Commission under section 2134(c) of this title for operation at a thermal power level of 10 megawatts or less; and

(ii) if so licensed for operation at a thermal power level of more than 1 megawatt, does not contain— (I) a circulating loop through the core in which the licensee conducts fuel experiments; (II) a liquid fuel loading; or (III) an experimental facility in the core in excess of 16 square inches in cross-section.

(5) *EXCLUDED BUDGET COSTS.*—

(A) *IN GENERAL.*—The rulemaking under paragraph (3) shall include a determination of the costs of activities of the Commission for which it would not be fair and equitable to assess annual charges on a Nuclear Regulatory Commission licensee or class of licensee.

(B) *CONSIDERATIONS.*—In making the determination under subparagraph (A), the Commission shall consider—

(i) the extent to which activities of the Commission provide benefits to persons that are not licensees of the Commission;

*(ii) the extent to which the Commission is unable to assess fees or charges on a licensee or class of licensee that benefits from the activities; and*

*(iii) the extent to which the costs to the Nuclear Regulatory Commission of activities benefits provided to the licensees from the activities.*

*(C) MAXIMUM EXCLUDED COSTS.—The total amount of costs excluded by the Commission pursuant to the determination under subparagraph (A) shall not exceed \$30,000,000 for any fiscal year.*

**(d) “NUCLEAR WASTE FUND” DEFINED.—As used in this section, the term “Nuclear Waste Fund” means the fund established pursuant to section 10222(c) of this title.**