

108TH CONGRESS  
2D SESSION

# S. 2139

To provide coverage under the Energy Employees Occupational Illness Compensation Program for individuals employed at atomic weapons employer facilities during periods of residual contamination.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 26, 2004

Mrs. CLINTON introduced the following bill; which was read twice and referred to the Committee on Health, Education, Labor, and Pensions

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## A BILL

To provide coverage under the Energy Employees Occupational Illness Compensation Program for individuals employed at atomic weapons employer facilities during periods of residual contamination.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Residual Radioactive  
5       Contamination Compensation Act”.

6       **SEC. 2. FINDINGS.**

7       Congress finds the following:

1           (1) Beginning in the early 1940s, the Depart-  
2           ment of Energy and its predecessors, the Atomic  
3           Energy Commission and the Manhattan Engineering  
4           District, relied upon hundreds of private-sector fac-  
5           tories and laboratories to develop, test, and produce  
6           atomic weapons for use by the military, and these  
7           facilities became contaminated with radioactive ma-  
8           terials during the process of producing material used  
9           for atomic weapons production.

10           (2) The Energy Employees Occupational Illness  
11           Compensation Program Act of 2000 (in this section  
12           referred to as “EEOICPA”) provides health care  
13           and lump-sum benefits for radiation-related cancers  
14           and other illnesses to certain covered workers made  
15           sick while they toiled in the nation’s nuclear weap-  
16           ons factories, including vendor facilities. EEOICPA  
17           defines these private-sector vendor facilities as  
18           “atomic weapons employer facilities”, and employees  
19           working in such facilities while their employers were  
20           under contract to process nuclear weapons materials  
21           are defined as “atomic weapons employees”.

22           (3) Many of the atomic weapons employer fa-  
23           cilities were not properly decontaminated after proc-  
24           essing radioactive materials such as thorium, ura-  
25           nium, and radium and retained significant levels of

1 contamination. Workers who were hired and em-  
2 ployed in such atomic weapons employer facilities  
3 after the date that contracts were ended for produc-  
4 tion were potentially exposed to significant amounts  
5 of radiation. Congress was not aware of the presence  
6 of residual radioactive contamination in these facili-  
7 ties when it enacted EEOICPA, thus inadvertently  
8 denying coverage under the law to those who were  
9 unwittingly exposed to radiation left over from nu-  
10 clear weapons activities.

11 (4) In December 2001, the National Defense  
12 Authorization Act for Fiscal Year 2002 (Public Law  
13 107–107) was enacted, which required in section  
14 3151(b) that the National Institute for Occupational  
15 Safety and Health study and issue a final report to  
16 Congress by December 2002 describing which of the  
17 atomic weapons employer facilities had significant  
18 residual radioactive contamination remaining in  
19 them after processing materials for use in atomic  
20 weapons and during what time periods such radio-  
21 active contamination remained.

22 (5) In October 2003, the Institute issued a re-  
23 port, titled “Report on Residual Radioactive and Be-  
24 ryllium Contamination in Atomic Weapons Employer  
25 and Beryllium Vendor Facilities”. The report found

1 that, out of 219 atomic weapons employer facili-  
2 ties—

3 (A) 97 (44 percent) of such facilities have  
4 potential for significant residual radioactive  
5 contamination outside of the periods in which  
6 atomic weapons-related production occurred;

7 (B) 88 (40 percent) of such facilities have  
8 little potential for significant residual radio-  
9 active contamination outside of the periods in  
10 which atomic weapons-related production oc-  
11 curred; and

12 (C) 34 (16 percent) of such facilities have  
13 insufficient information to make a determina-  
14 tion.

15 (6) Congress is now aware that workers were  
16 employed in a substantial number of atomic weapons  
17 employer facilities years after the Manhattan Project  
18 ended. These workers were potentially harmed by  
19 legacy residual radioactive contamination that per-  
20 meated the walls, the floors, and the air of their  
21 worksites well after the Atomic Energy Commission  
22 and the Department of Energy terminated contracts  
23 for production activities. This exposure to residual  
24 radioactive contamination took place without the  
25 knowledge or consent of these workers.

1           (7) Congress therefore declares that, based on  
2           the scientific assessment by the Institute, those  
3           workers hired and employed in such facilities during  
4           the period after Cold War production stopped but  
5           during which the Institute found there was signifi-  
6           cant residual radioactive contamination should be  
7           defined as “atomic weapons employees” under  
8           EEOICPA, should be eligible to apply for compensa-  
9           tion under subtitle B of EEOICPA, and should have  
10          their claims evaluated on the same basis as those  
11          atomic weapons employees who were employed dur-  
12          ing the period when processing of radioactive mate-  
13          rials was underway as part of the atomic weapons  
14          program.

15 **SEC. 3. COVERAGE UNDER ENERGY EMPLOYEES OCCUPA-**  
16 **TIONAL ILLNESS COMPENSATION PROGRAM**  
17 **OF INDIVIDUALS EMPLOYED AT ATOMIC**  
18 **WEAPONS EMPLOYER FACILITIES DURING**  
19 **PERIODS OF RESIDUAL CONTAMINATION.**

20          Paragraph (3) of section 3621 of the Energy Employ-  
21          ees Occupational Illness Compensation Program Act of  
22          2000 (42 U.S.C. 7384l) is amended to read as follows:

23                 “(3) The term ‘atomic weapons employee’  
24          means any of the following:

1           “(A) An individual employed at an atomic  
2 weapons employer facility during a period when  
3 the employer was processing or producing, for  
4 the use by the United States, material that  
5 emitted radiation and was used in the produc-  
6 tion of an atomic weapon, excluding uranium  
7 mining and milling.

8           “(B) An individual employed—

9           “(i) at an atomic weapons employer  
10 facility with respect to which the National  
11 Institute for Occupational Safety and  
12 Health, in its report dated October 2003  
13 and titled ‘Report on Residual Radioactive  
14 and Beryllium Contamination at Atomic  
15 Weapons Employer Facilities and Beryl-  
16 lium Vendor Facilities’, or any update to  
17 that report, found that there is a potential  
18 (not including a case in which the Institute  
19 found that there is ‘little’ potential) for  
20 significant residual contamination outside  
21 of the period in which weapons-related pro-  
22 duction occurred; and

23           “(ii) during a period, as specified in  
24 such report or any update to such report,

1                   of significant residual contamination at  
2                   that facility.”.

3 **SEC. 4. UPDATE TO REPORT.**

4           In each of 2005, 2006, and 2007, the Director of the  
5 National Institute for Occupational Safety and Health  
6 shall submit to Congress, not later than December 31 of  
7 that year, an update to the report required by section  
8 3151(b) of the National Defense Authorization Act for  
9 Fiscal Year 2002 (Public Law 107–107; 42 U.S.C. 7384  
10 note). Each such update shall—

11                   (1) for each facility for which such report, or  
12                   any update to such report, found that insufficient  
13                   information was available to determine whether sig-  
14                   nificant residual contamination was present, deter-  
15                   mine whether significant residual contamination was  
16                   present;

17                   (2) for each facility for which such report, or  
18                   any update to such report, found that significant re-  
19                   sidual contamination remained present as of the  
20                   date of the report, determine the date on which such  
21                   contamination ceased to be present;

22                   (3) for each facility for which such report, or  
23                   any update to such report, found that significant re-  
24                   sidual contamination was present but for which the  
25                   Director has been unable to determine the extent to

1       which such contamination is attributable to beryl-  
2       lium or atomic weapons-related activities, identify  
3       the specific dates of coverage attributable to such  
4       activities and, in so identifying, presume that such  
5       contamination is attributable to such activities until  
6       there is evidence of decontamination of residual con-  
7       tamination identified with beryllium or atomic weap-  
8       ons-related activities; and

9               (4) if new information that pertains to the re-  
10       port has been made available to the Director since  
11       that report was submitted, identify and describe  
12       such information.

13   **SEC. 5. PUBLICATION IN FEDERAL REGISTER.**

14       The Director shall ensure that the report referred to  
15       in section 4, and each update required by section 4, are  
16       published in the Federal Register not later than 15 days  
17       after being released.

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