

109TH CONGRESS
2D SESSION

S. 3879

To implement the Convention on Supplementary Compensation for Nuclear
Damage, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 8, 2006

Mr. INHOFE introduced the following bill; which was read twice and referred
to the Committee on Environment and Public Works

A BILL

To implement the Convention on Supplementary
Compensation for Nuclear Damage, and for other purposes.

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 “Convention on Supple-
5 mentary Compensation for Nuclear Damage Contingent
6 Cost Allocation Act”.

7 **SEC. 2. FINDINGS AND PURPOSE.**

8 (a) FINDINGS.—Congress finds that—

1 (1) section 170 of the Atomic Energy Act of
2 1954 (42 U.S.C. 2210) (commonly known as the
3 “Price-Anderson Act”)—

4 (A) provides a predictable legal framework
5 necessary for nuclear projects; and

6 (B) ensures prompt and equitable com-
7 pensation in the event of a nuclear incident in
8 the United States;

9 (2) section 170 of that Act, in effect, provides
10 operators of nuclear powerplants with insurance for
11 damage arising out of a nuclear incident and funds
12 the insurance primarily through the assessment of a
13 retrospective premium from each operator after the
14 occurrence of a nuclear incident;

15 (3) the Convention on Supplementary Com-
16 pensation for Nuclear Damage, done at Vienna on
17 September 12, 1997, will establish a global system—

18 (A) to provide a predictable legal frame-
19 work necessary for nuclear energy projects; and

20 (B) to ensure prompt and equitable com-
21 pensation in the event of a nuclear incident;

22 (4) the Convention benefits United States nu-
23 clear suppliers that face potentially unlimited liabil-
24 ity for a nuclear incidents outside the coverage of
25 section 170 of the Atomic Energy Act of 1954 (42

1 U.S.C. 2210) by replacing a potentially open-ended
2 liability with a predictable liability regime that, in
3 effect, provides nuclear suppliers with insurance for
4 damage arising out of such an incident;

5 (5) the Convention also benefits United States
6 nuclear facility operators that may be publicly liable
7 for a Price-Anderson incident by providing an addi-
8 tional early source for a Price-Anderson incident by
9 providing an additional early source of funds to com-
10 pensate damage arising out of the Price-Anderson
11 incident;

12 (6) the combined operation of the Convention,
13 section 170 of the Atomic Energy Act of 1954 (42
14 U.S.C. 2210), and this Act will augment the quan-
15 tity of assured funds available for victims in a wider
16 variety of nuclear incidents while reducing the poten-
17 tial liability of United States suppliers without in-
18 creasing potential costs to United States operators;

19 (7) the cost of those benefits is the obligation
20 of the United States to contribute to the supple-
21 mentary compensation fund established by the Con-
22 vention;

23 (8) any such contribution should be funded in
24 a manner that neither upsets settled expectations
25 based on the liability regime established under sec-

1 tion 170 of the Atomic Energy Act of 1954 (42
2 U.S.C. 2210) nor shifts to Federal taxpayers liabil-
3 ity risks for nuclear incidents at foreign installa-
4 tions;

5 (9) with respect to a Price-Anderson incident,
6 funds already available under section 170 of the
7 Atomic Energy Act of 1954 (42 U.S.C. 2210)
8 should be used; and

9 (10) with respect to a nuclear incident not cov-
10 ered by section 170 of the Atomic Energy Act of
11 1954 (42 U.S.C. 2210), a retrospective premium
12 should be prorated among nuclear suppliers relieved
13 from potential liability for which insurance is not
14 available.

15 (b) PURPOSE.—The purpose of this Act is to allocate
16 the contingent costs associated with participation by the
17 United States in the international nuclear liability com-
18 pensation system established by the Convention on Sup-
19 plementary Compensation for Nuclear Damage, done at
20 Vienna on September 12, 1997—

21 (1) with respect to a Price-Anderson incident,
22 by using funds made available under section 170 of
23 the Atomic Energy Act of 1954 (42 U.S.C. 2210) to
24 cover the contingent costs in a manner that neither

1 increases the burdens nor decreases the benefits
2 under section 170 of that Act; and

3 (2) with respect to a covered incident that is
4 not a Price-Anderson incident, by allocating the con-
5 tingent costs equitably, on the basis of risk, among
6 the class of nuclear suppliers relieved by the Conven-
7 tion from the risk of potential liability resulting from
8 any covered incident.

9 **SEC. 3. DEFINITIONS.**

10 In this Act:

11 (1) COMMISSION.—The term “Commission”
12 means the Nuclear Regulatory Commission.

13 (2) CONTINGENT COST.—The term “contingent
14 cost” means the cost to the United States in the
15 event of a covered incident the amount of which is
16 equal to the amount of funds the United States is
17 obligated to make available under paragraph 1(b) of
18 Article III of the Convention.

19 (3) CONVENTION.—The term “Convention”
20 means the Convention on Supplementary Compensa-
21 tion for Nuclear Damage, done at Vienna on Sep-
22 tember 12, 1997.

23 (4) COVERED INCIDENT.—The term “covered
24 incident” means a nuclear incident the occurrence of

1 which results in a request for funds pursuant to Ar-
2 ticle VII of the Convention.

3 (5) COVERED INSTALLATION.—The term “cov-
4 ered installation” means a nuclear installation at
5 which the occurrence of a nuclear incident could re-
6 sult in a request for funds under Article VII of the
7 Convention.

8 (6) COVERED PERSON.—

9 (A) IN GENERAL.—The term “covered per-
10 son” means—

11 (i) a United States person; and

12 (ii) an individual or entity (including
13 an agency or instrumentality of a foreign
14 country) that—

15 (I) is located in the United
16 States; or

17 (II) carries out an activity in the
18 United States.

19 (B) EXCLUSIONS.—The term “covered per-
20 son” does not include—

21 (i) the United States; or

22 (ii) any agency or instrumentality of
23 the United States.

1 (7) NUCLEAR SUPPLIER.—The term “nuclear
2 supplier” means a covered person (or a successor in
3 interest of a covered person) that—

4 (A) supplies facilities, equipment, fuel,
5 services, or technology pertaining to the design,
6 construction, operation, or decommissioning of
7 a covered installation; or

8 (B) transports nuclear materials that could
9 result in a covered incident.

10 (8) PRICE-ANDERSON INCIDENT.—The term
11 “Price-Anderson incident” means a covered incident
12 for which section 170 of the Atomic Energy Act of
13 1954 (42 U.S.C. 2210) would make funds available
14 to compensate for public liability (as defined in sec-
15 tion 11 of that Act (42 U.S.C. 2014)).

16 (9) SECRETARY.—The term “Secretary” means
17 the Secretary of Energy.

18 (10) UNITED STATES.—

19 (A) IN GENERAL.—The term “United
20 States” has the meaning given the term in sec-
21 tion 11 of the Atomic Energy Act of 1954 (42
22 U.S.C. 2014).

23 (B) INCLUSIONS.—The term “United
24 States” includes—

25 (i) the Commonwealth of Puerto Rico;

1 (ii) any other territory or possession
2 of the United States;

3 (iii) the Canal Zone; and

4 (iv) the waters of the United States
5 territorial sea under Presidential Procla-
6 mation Number 5928, dated December 27,
7 1988 (43 U.S.C. 1331 note).

8 (11) UNITED STATES PERSON.—The term
9 “United States person” means—

10 (A) any individual who is a resident, na-
11 tional, or citizen of the United States (other
12 than an individual residing outside of the
13 United States and employed by a person who is
14 not a United States person); and

15 (B) any corporation, partnership, associa-
16 tion, joint stock company, business trust, unin-
17 corporated organization, or sole proprietorship
18 that is organized under the laws of the United
19 States.

20 **SEC. 4. USE OF PRICE-ANDERSON FUNDS.**

21 (a) IN GENERAL.—Funds made available under sec-
22 tion 170 of the Atomic Energy Act of 1954 (42 U.S.C.
23 2210) shall be used to cover the contingent cost resulting
24 from any Price-Anderson incident.

1 (b) EFFECT.—The use of funds pursuant to sub-
2 section (a) shall not reduce the limitation on public liabil-
3 ity established under section 170 e. of the Atomic Energy
4 Act of 1954 (42 U.S.C. 2210(e)).

5 **SEC. 5. EFFECT ON AMOUNT OF PUBLIC LIABILITY.**

6 (a) IN GENERAL.—Funds made available to the
7 United States under Article VII of the Convention with
8 respect to a Price-Anderson incident shall be used to sat-
9 isfy public liability resulting from the Price-Anderson inci-
10 dent.

11 (b) AMOUNT.—The amount of public liability allow-
12 able under section 170 of the Atomic Energy Act of 1954
13 (42 U.S.C. 2210) relating to a Price-Anderson incident
14 under subsection (a) shall be increased by an amount
15 equal to the difference between—

16 (1) the amount of funds made available for the
17 Price-Anderson incident under Article VII of the
18 Convention; and

19 (2) the amount of funds used under section 4
20 to cover the contingent cost resulting from the
21 Price-Anderson incident.

22 **SEC. 6. RETROSPECTIVE RISK POOLING PROGRAM.**

23 (a) IN GENERAL.—Except as provided in subsection
24 (b), each nuclear supplier shall participate in a retrospec-
25 tive risk pooling program in accordance with this Act to

1 cover the contingent cost resulting from a covered incident
2 that is not a Price-Anderson incident.

3 (b) DEFERRED PAYMENT.—

4 (1) IN GENERAL.—The obligation of a nuclear
5 supplier to participate in the retrospective risk pool-
6 ing program shall be deferred until the United
7 States is called on to provide funds pursuant to Ar-
8 ticle VII of the Convention with respect to a covered
9 incident that is not a Price-Anderson incident.

10 (2) AMOUNT OF DEFERRED PAYMENT.—The
11 amount of a deferred payment of a nuclear supplier
12 under paragraph (1) shall be based on the risk-in-
13 formed assessment formula determined under para-
14 graph (3).

15 (3) RISK-INFORMED ASSESSMENT FORMULA.—

16 (A) IN GENERAL.—The Secretary shall, by
17 regulation, determine the risk-informed assess-
18 ment formula for the allocation among nuclear
19 suppliers of the contingent cost resulting from
20 a covered incident that is not a Price-Anderson
21 incident, taking into account risk factors such
22 as—

23 (i) the nature and intended purpose of
24 the goods and services supplied by each

1 nuclear supplier to each covered installa-
2 tion;

3 (ii) the quantity of the goods and
4 services supplied by each nuclear supplier
5 to each covered installation;

6 (iii) the hazards associated with the
7 supplied goods and services if the goods
8 and services fail to achieve the intended
9 purposes;

10 (iv) the hazards associated with the
11 covered installation to which the goods and
12 services are supplied;

13 (v) the legal, regulatory, and financial
14 infrastructure associated with the covered
15 installation to which the goods and services
16 are supplied; and

17 (vi) the hazards associated with par-
18 ticular forms of transportation.

19 (B) FACTORS FOR CONSIDERATION.—In
20 determining the formula, the Secretary may—

21 (i) exclude—

22 (I) goods and services with neg-
23 ligible risk;

1 (II) classes of goods and services
2 not intended specifically for use in a
3 nuclear installation;

4 (III) a nuclear supplier with a de
5 minimis share of the contingent cost;
6 and

7 (IV) a nuclear supplier no longer
8 in existence for which there is no
9 identifiable successor; and

10 (ii) establish the period on which the
11 risk assessment is based.

12 (C) APPLICATION.—In applying the for-
13 mula, the Secretary shall not consider any cov-
14 ered installation or transportation for which
15 funds would be available under section 170 of
16 the Atomic Energy Act of 1954 (42 U.S.C.
17 2210).

18 **SEC. 7. REPORTING.**

19 (a) COLLECTION OF INFORMATION.—

20 (1) IN GENERAL.—The Secretary may collect
21 information necessary for developing and imple-
22 menting the formula for calculating the deferred
23 payment of a nuclear supplier under section 6(b).

24 (2) PROVISION OF INFORMATION.—Each nu-
25 clear supplier and other appropriate persons shall

1 make available to the Secretary such information,
2 reports, records, documents, and other data as the
3 Secretary determines, by regulation, to be necessary
4 or appropriate to develop and implement the formula
5 under section 6(b)(3).

6 (b) PRIVATE INSURANCE.—The Secretary shall make
7 available to nuclear suppliers, and insurers of nuclear sup-
8 pliers, information to support the voluntary establishment
9 and maintenance of private insurance against any risk for
10 which nuclear suppliers may be required to pay deferred
11 payments under this Act.

12 **SEC. 8. EFFECT ON LIABILITY.**

13 Nothing in any other law (including regulations) lim-
14 its liability for a covered incident to an amount equal to
15 less than the amount prescribed in paragraph 1(a) of Arti-
16 cle IV of the Convention, unless the law—

17 (1) specifically refers to this Act; and

18 (2) explicitly repeals, alters, amends, modifies,
19 impairs, displaces, or supersedes the effect of this
20 section.

21 **SEC. 9. PAYMENTS TO AND BY THE UNITED STATES.**

22 (a) ACTION BY NUCLEAR SUPPLIERS.—

23 (1) NOTIFICATION.—In the case of a request
24 for funds under Article VII of the Convention result-
25 ing from a covered incident that is not a Price-An-

1 derson incident, the Secretary shall notify each nu-
2 clear supplier of the amount of the deferred payment
3 required to be made by the nuclear supplier.

4 (2) PAYMENTS.—

5 (A) IN GENERAL.—Except as provided in
6 subparagraph (B), not later than 60 days after
7 receipt of a notification under paragraph (1), a
8 nuclear supplier shall pay to the general fund of
9 the Treasury the deferred payment of the nu-
10 clear supplier required under paragraph (1).

11 (B) ANNUAL PAYMENTS.—A nuclear sup-
12 plier may elect to prorate payment of the de-
13 ferred payment required under paragraph (1) in
14 5 equal annual payments (including interest on
15 the unpaid balance at the prime rate prevailing
16 at the time the first payment is due).

17 (3) VOUCHERS.—A nuclear supplier shall sub-
18 mit payment certification vouchers to the Secretary
19 of the Treasury in accordance with section 3325 of
20 title 31, United States Code.

21 (b) USE OF FUNDS.—

22 (1) IN GENERAL.—Amounts paid into the
23 Treasury under subsection (a) shall be available to
24 the Secretary of the Treasury, without further ap-
25 propriation and without fiscal year limitation, for

1 the purpose of making the contributions of public
2 funds required to be made by the United States
3 under the Convention.

4 (2) ACTION BY SECRETARY OF TREASURY.—

5 The Secretary of the Treasury shall pay the con-
6 tribution required under the Convention to the court
7 of competent jurisdiction under Article XIII of the
8 Convention with respect to the applicable covered in-
9 cident.

10 (c) FAILURE TO PAY.—If a nuclear supplier fails to
11 make a payment required under this section, the Secretary
12 may take appropriate action to recover from the nuclear
13 supplier—

14 (1) the amount of the payment due from the
15 nuclear supplier;

16 (2) any applicable interest on the payment; and

17 (3) a penalty of not more than twice the
18 amount of the deferred payment due from the nu-
19 clear supplier.

20 **SEC. 10. LIMITATION ON JUDICIAL REVIEW; CAUSE OF AC-**
21 **TION.**

22 (a) LIMITATION ON JUDICIAL REVIEW.—

23 (1) IN GENERAL.—In any civil action arising
24 under the Convention over which Article XIII of the
25 Convention grants jurisdiction to the courts of the

1 United States, any appeal or review by writ of man-
2 damus or otherwise with respect to a nuclear inci-
3 dent that is not a Price-Anderson incident shall be
4 in accordance with chapter 83 of title 28, United
5 States Code, except that the appeal or review shall
6 occur in the United States Court of Appeals for the
7 District of Columbia Circuit.

8 (2) SUPREME COURT JURISDICTION.—Nothing
9 in this subsection affects the jurisdiction of the Su-
10 preme Court of the United States under chapter 81
11 of title 28, United States Code.

12 (b) CAUSE OF ACTION.—

13 (1) IN GENERAL.—Subject to paragraph (2), in
14 any civil action arising under the Convention over
15 which Article XIII of the Convention grants jurisdic-
16 tion to the courts of the United States, in addition
17 to any other cause of action that may exist, an indi-
18 vidual or entity shall have a cause of action against
19 the operator to recover for nuclear damage suffered
20 by the individual or entity.

21 (2) REQUIREMENT.—Paragraph (1) shall apply
22 only if the individual or entity seeks a remedy for
23 nuclear damage (as defined in Article I of the Con-
24 vention) that was caused by a nuclear incident (as

1 defined in Article I of the Convention) that is not a
2 Price-Anderson incident.

3 (3) EFFECT OF SUBSECTION.—Nothing in this
4 subsection limits, modifies, extinguishes, or other-
5 wise affects any cause of action that would have ex-
6 isted in the absence of enactment of this subsection.

7 **SEC. 11. RIGHT OF RECOURSE.**

8 This Act does not provide to an operator of a covered
9 installation any right of recourse under the Convention.

10 **SEC. 12. PROTECTION OF SENSITIVE UNITED STATES IN-**
11 **FORMATION.**

12 Nothing in the Convention or this Act requires the
13 disclosure of—

14 (1) any data that, at any time, was Restricted
15 Data (as defined in section 11 of the Atomic Energy
16 Act of 1954 (42 U.S.C. 2014));

17 (2) information relating to intelligence sources
18 or methods protected by section 102A(i) of the Na-
19 tional Security Act of 1947 (50 U.S.C. 403–1(i)); or

20 (3) national security information classified
21 under Executive Order 12958 (50 U.S.C. 435 note;
22 relating to classified national security information)
23 (or a successor regulation).

1 **SEC. 13. REGULATIONS.**

2 (a) IN GENERAL.—The Secretary or the Commission,
3 as appropriate, may prescribe regulations to carry out sec-
4 tion 170 of the Atomic Energy Act of 1954 (42 U.S.C.
5 2210) and this Act.

6 (b) REQUIREMENT.—Rules prescribed under this sec-
7 tion shall ensure, to the maximum extent practicable,
8 that—

9 (1) the implementation of section 170 of the
10 Atomic Energy Act of 1954 (42 U.S.C. 2210) and
11 this Act is consistent and equitable; and

12 (2) the financial and operational burden on a
13 Commission licensee in complying with section 170
14 of that Act is not greater as a result of the enact-
15 ment of this Act.

16 (c) APPLICABILITY OF PROVISION.—Section 553 of
17 title 5, United States Code, shall apply with respect to
18 the promulgation of regulations under this section.

19 (d) EFFECT OF SECTION.—The authority provided
20 under this section is in addition to, and does not impair
21 or otherwise affect, any other authority of the Secretary
22 or the Commission to prescribe regulations.

1 **SEC. 14. EFFECTIVE DATE.**

2 This Act takes effect on the date on which the Con-
3 vention enters into force for the United States under Arti-
4 cle XX of the Convention.

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