

104TH CONGRESS
1ST SESSION

H. R. 1526

To authorize the Secretary of Energy to enter into privatization arrangements for activities carried out in connection with defense nuclear facilities, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 7, 1995

Mr. HASTINGS of Washington (for himself, Mr. WAMP, Mr. GRAHAM, Mr. NETHERCUTT, and Mr. DICKS) introduced the following bill; which was referred to the Committee on Commerce, and in addition to the Committees on National Security, Government Reform and Oversight, and Transportation and Infrastructure, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To authorize the Secretary of Energy to enter into privatization arrangements for activities carried out in connection with defense nuclear facilities, 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 “Defense Nuclear Waste
5 Cleanup Privatization Act”.

1 **SEC. 101. PRIVATIZATION OF WASTE CLEANUP AND MOD-**
2 **ERNIZATION ACTIVITIES OF DEFENSE NU-**
3 **CLEAR FACILITIES.**

4 (a) CONTRACT AUTHORITY.—Notwithstanding any
5 other law, the Secretary of Energy may enter into 1 or
6 more long-term contracts for the procurement, from a fa-
7 cility located within 25 miles of a current or former De-
8 partment of Energy defense nuclear facility, of products
9 and services that are determined by the Secretary to be
10 necessary to support waste cleanup and modernization ac-
11 tivities at such facilities, including the following services
12 and related products:

13 (1) Waste remediation and environmental res-
14 toration, including treatment, storage, and disposal.

15 (2) Technical services.

16 (3) Energy production.

17 (4) Utility services.

18 (5) Effluent treatment.

19 (6) General storage.

20 (7) Fabrication and maintenance.

21 (8) Research and testing.

22 (b) CONTRACT PROVISIONS.—A contract under sub-
23 section (a)—

24 (1) shall be for a term of not more than 30
25 years;

1 (2) shall include options for 2 10-year exten-
2 sions of the contract;

3 (3) when nuclear or hazardous material is in-
4 volved, shall include an agreement to—

5 (A) provide indemnification pursuant to
6 section 170d. of the Atomic Energy Act of 1954
7 (42 U.S.C. 2210(d));

8 (B) indemnify, protect, and hold harmless
9 the contractor from and against all liability, in-
10 cluding liability for legal costs, relating to any
11 preexisting conditions at any part of the de-
12 fense nuclear facility managed under the con-
13 tract;

14 (C) indemnify, protect, and hold harmless
15 the contractor from and against all liability to
16 third parties (including liability for legal costs
17 and for claims for personal injury, illness, prop-
18 erty damage, and consequential damages) for
19 negligence arising out of the contractor's per-
20 formance under the contract, unless such liabil-
21 ity was caused by conduct of the contractor
22 which was grossly negligent or which con-
23 stituted intentional misconduct; and

1 (D) provide for indemnification of sub-
2 contractors as described in subparagraphs (A),
3 (B), and (C);

4 (4) shall permit the contractor (in accordance
5 with Federal law) to obtain a patent for and use for
6 commercial purposes a technology developed by the
7 contractor in the performance of the contract;

8 (5) shall not provide for payment to the con-
9 tractor of cost plus a percentage of cost or cost plus
10 a fixed fee; and

11 (6) shall include such other terms and condi-
12 tions as the Secretary of Energy considers appro-
13 priate to protect the interests of the United States.

14 (c) PREFERENCE FOR LOCAL RESIDENTS.—In enter-
15 ing into contracts under subsection (a), the Secretary of
16 Energy shall give preference, consistent with Federal,
17 State, and local law, to entities that plan to hire, to the
18 maximum extent practicable, residents of the vicinity of
19 the Department of Energy defense nuclear facility who are
20 employed or who have previously been employed by the
21 Department of Energy or its private contractor at the
22 facility.

23 (d) SUBSEQUENTLY ENACTED REQUIREMENTS.—

24 (1) DEFINITION.—In this subsection, the term
25 “applicable requirement” means a requirement in an

1 Act of Congress or regulation that applies specifi-
2 cally to activities described in subsection (a).

3 (2) INCREASED COSTS.—

4 (A) IN GENERAL.—A contractor under a
5 contract under subsection (a) shall be exempt
6 from an applicable requirement that would in-
7 crease the cost of performing the contract that
8 is—

9 (i) imposed by regulation by a Fed-
10 eral, State, or local governmental agency
11 after the date on which the contract is en-
12 tered into unless the regulation is issued
13 under an Act of Congress described in the
14 exception stated in clause (ii); or

15 (ii) imposed by an Act of Congress en-
16 acted after the date of enactment of this
17 Act, except an Act of Congress that refers
18 to this paragraph and explicitly states that
19 it is the intent of Congress to subject such
20 a contractor to the requirement.

21 (B) AMENDMENT OF CONTRACT.—In the
22 case of enactment of an Act of Congress de-
23 scribed in the exception stated in subparagraph
24 (A)(ii), the Secretary of Energy and the con-
25 tractor shall negotiate an amendment to a con-

1 tract under subsection (a) providing full com-
2 pensation to the contractor for the increased
3 cost incurred in order to comply with any addi-
4 tional requirement of law.

5 (3) REDUCED COSTS.—

6 (A) IN GENERAL.—A contractor under a
7 contract under subsection (a) may elect to be
8 governed by a change in a requirement that
9 would reduce the cost of performing the con-
10 tract that is—

11 (i) adopted by regulation by a Fed-
12 eral, State, or local governmental agency
13 after the date on which the contract is en-
14 tered into, unless the change is made pur-
15 suant to an Act of Congress that refers to
16 this paragraph and explicitly states that it
17 is the intent of Congress to continue to
18 subject such a contractor to that require-
19 ment, as in effect prior to the date of en-
20 actment of that Act of Congress; or

21 (ii) enacted by an Act of Congress en-
22 acted after the date of enactment of this
23 Act, except an Act of Congress that refers
24 to this paragraph and explicitly states that
25 it is the intent of Congress to continue to

1 subject such a contractor to that require-
2 ment, as in effect prior to the date of en-
3 actment of that Act of Congress.

4 (B) AMENDMENT OF CONTRACT.—In the
5 case of a change in a requirement that is to be
6 applied to a contractor that will reduce the cost
7 of performing the contract, the Secretary of
8 Energy and the contractor shall negotiate an
9 amendment to a contract under subsection (a)
10 providing for a reduction in the amount of com-
11 pensation to be paid to the contractor commen-
12 surate with the amount of any reduction in
13 costs resulting from the change.

14 (e) PAYMENT OF BALANCE OF UNAMORTIZED
15 COSTS.—

16 (1) DEFINITION.—In this subsection, the term
17 “special facility” means land, a depreciable building,
18 structure, or utility, or depreciable machinery, equip-
19 ment, or material that is not supplied to a contrac-
20 tor by the Department of Energy.

21 (2) CONTRACT TERM.—A contract under sub-
22 section (a) may provide that if the contract is termi-
23 nated for the convenience of the Government, the
24 Secretary of Energy shall pay the unamortized bal-
25 ance of the cost of any special facility acquired or

1 constructed by the contractor for performance of the
2 contract.

3 (3) SOURCE OF FUNDS.—The Secretary of En-
4 ergy may make a payment under a contract term de-
5 scribed in paragraph (2) and pay any other costs as-
6 sumed by the Secretary as a result of the termi-
7 nation out of any appropriations that are available
8 to the Department of Energy for operating expenses
9 for the fiscal year in which the termination occurs
10 or for any subsequent fiscal year.

11 (f) LEASE OF FEDERALLY OWNED LAND.—

12 (1) IN GENERAL.—Notwithstanding any other
13 provision of law, the Secretary of Energy may lease
14 federally owned land at a current or former Depart-
15 ment of Energy defense nuclear facility to a contrac-
16 tor in order to provide for or to facilitate the con-
17 struction of a facility in connection with a contract
18 under subsection (a).

19 (2) TERM.—The term of a lease under this
20 paragraph shall be the lesser of—

21 (A) the expected useful life of the facility
22 to be constructed; or

23 (B) the term of the contract.

24 (3) TERMS AND CONDITIONS.—A lease under
25 paragraph (1) shall—

1 (A) require the contractor to pay rent in
2 amounts that the Secretary of Energy considers
3 to be appropriate; and

4 (B) include such other terms and condi-
5 tions as the Secretary of Energy considers to be
6 appropriate.

7 (g) NUCLEAR STANDARDS.—The Secretary of En-
8 ergy shall, whenever practicable, consider applying com-
9 mercial nuclear standards to a facility used in the per-
10 formance of a contract under subsection (a).

11 (h) LIMITATION ON LIABILITY.—

12 (1) DEFINITIONS.—In this subsection, the
13 terms “hazardous substance”, “pollutant or con-
14 taminant”, “release”, and “response” have the
15 meanings stated in section 101 of the Comprehen-
16 sive Environmental Response, Compensation, and
17 Liability Act of 1980 (42 U.S.C. 9601).

18 (2) IN GENERAL.—A contractor under a con-
19 tract under subsection (a) or a subcontractor of the
20 contractor shall not be liable under Federal, State,
21 or local law for any injury, cost, damage, expense,
22 or other relief on a claim by any person for death,
23 personal injury, illness, loss of or damage to prop-
24 erty, or economic loss caused by a release or threat-
25 ened release of a hazardous substance or pollutant

1 or contaminant during performance of the contract
2 unless the release or threatened release is caused by
3 conduct of the contractor or subcontractor that is
4 negligent or that constitutes intentional misconduct.

5 (3) REPOSE.—No action (including an action
6 for contribution or indemnity) to recover for damage
7 to real or personal property, economic loss, personal
8 injury, illness, death, or other expense or cost arising
9 out of the performance under this section of a
10 response action under a contract under subsection
11 (a) may be brought against the contractor (or sub-
12 contractor of the contractor) under Federal, State,
13 or local law after the date that is 6 years after the
14 date of substantial completion of the response
15 action.

16 **SEC. 102. PREFERENCE AND ECONOMIC DIVERSIFICATION**
17 **FOR COMMUNITIES AND LOCAL RESIDENTS.**

18 (a) DEFINITION.—In this section, the term “qualify-
19 ing Department of Energy site” means a site that contains
20 at least 1 current or former Department of Energy de-
21 fense nuclear facility for which the Secretary of Energy
22 is required by section 3161 of the National Defense Au-
23 thorization Act for Fiscal Year 1993 (42 U.S.C. 7274h)
24 to develop a plan for restructuring the work force.

1 (b) PREFERENCE.—In entering into a contract or
2 subcontract with a private entity for products to be ac-
3 quired or services to be performed at a qualifying Depart-
4 ment of Energy site, the Secretary of Energy and contrac-
5 tors under the Secretary’s supervision shall, to the maxi-
6 mum extent practicable, give preference to an entity that
7 is otherwise qualified and within the competitive range (as
8 determined under section 15.609 of title 48, Code of Fed-
9 eral Regulations, or a successor regulation, as in effect
10 on the date of the determination) that plans to—

11 (1) provide products and services originating
12 from communities within 25 miles of the site;

13 (2) avert, to the maximum extent practicable,
14 the dismissal of employees employed by the Depart-
15 ment of Energy or its private contractor at the site,
16 and protect, to the maximum extent possible, the
17 continuity of service and benefits of such employees;

18 (3) hire residents living in the vicinity of the
19 site, especially residents who have previously been
20 employed by the Department of Energy or its pri-
21 vate contractor at the site, to perform the contract;
22 and

23 (4) invest in value-added activities in the vicin-
24 ity of the site to mitigate adverse economic develop-

1 ment impacts resulting from closure or restructuring
2 of the site.

3 (c) APPLICABILITY.—Preference shall be given under
4 subsection (b) only with respect to a contract for an envi-
5 ronmental management and restoration activity that is en-
6 tered into after the date of enactment of this Act.

7 (d) TERMINATION.—This section shall expire on Sep-
8 tember 30, 1999.

