

107<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

# H. R. 5493

To amend the Energy Employees Occupational Illness Compensation Program Act of 2000 to provide benefits for contractor employees of the Department of Energy who were exposed to toxic substances at Department of Energy facilities, to provide coverage under subtitle B of that Act for certain additional individuals, to establish an ombudsman and otherwise reform the assistance provided to claimants under that Act, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 26, 2002

Mr. STRICKLAND (for himself, Mr. WHITFIELD, Mr. UDALL of Colorado, Mrs. TAUSCHER, Mr. HOLDEN, Ms. SLAUGHTER, Mr. CLEMENT, Mr. UDALL of New Mexico, Mr. LUCAS of Kentucky, and Mr. KANJORSKI) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Education and the Workforce, 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

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## A BILL

To amend the Energy Employees Occupational Illness Compensation Program Act of 2000 to provide benefits for contractor employees of the Department of Energy who were exposed to toxic substances at Department of Energy facilities, to provide coverage under subtitle B of that Act for certain additional individuals, to establish an ombudsman and otherwise reform the assistance provided to claimants under that Act, 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 “Reform of Energy  
5 Workers Compensation Act”.

6 **SEC. 2. FINDINGS; PURPOSE.**

7        (a) FINDINGS.—The Congress finds the following:

8            (1) The Energy Employees Occupational Illness  
9            Compensation Program Act of 2000 (the “Act”) was  
10            intended to ensure timely, uniform, and adequate  
11            compensation of covered employees (and, where ap-  
12            plicable, survivors of such employees) suffering from  
13            illnesses incurred by such employees in the perform-  
14            ance of duty for the Department of Energy and cer-  
15            tain of its contractors, subcontractors, and vendors,  
16            and to provide parity for uranium miners under the  
17            Radiation Exposure Compensation Act (42 U.S.C.  
18            2210 note).

19            (2) Four Federal agencies, the Departments of  
20            Labor, Health and Human Services, Energy, and  
21            Justice, have been assigned responsibilities under  
22            the Act pursuant to Executive Order No. 13179,  
23            dated December 7, 2000 (42 U.S.C. 7384 note).

24            (3) The Department of Labor began accepting  
25            claims July 31, 2001, and the Department of Health

1 and Human Services, through the National Institute  
2 for Occupational Safety and Health, will perform ra-  
3 diation dose reconstruction for cancer claims and  
4 evaluate petitions for Special Exposure Cohorts.

5 (4) The Department of Energy finalized its reg-  
6 ulations governing claims under Subtitle D of the  
7 Act on August 14, 2002. Those regulations require  
8 claimants to use a State workers' compensation sys-  
9 tem to secure benefits after receiving a positive find-  
10 ings from a Department of Energy physicians panel.  
11 The Department of Energy has conceded, however,  
12 that it will not have a willing payor for as many as  
13 50 percent of the claims that are meritorious. As a  
14 consequence, many deserving claimants with a posi-  
15 tive determination from a Department of Energy  
16 physicians panel will nonetheless be denied benefits.

17 (5) The Department of Energy's regulations (at  
18 10 C.F.R. Part 852) direct contractors of the De-  
19 partment to adopt a non-adversarial posture in state  
20 workers' compensation proceedings, which are struc-  
21 tured as an adversarial forum. The policy of insert-  
22 ing a non-adversarial respondent in an adversarial  
23 system should be remedied by utilizing a non-adver-  
24 sarial dispute resolution system. Taxpayers would  
25 also benefit from placing claimants in a non-adver-

1       sarial system, such as the type of systems adminis-  
2       tered by the Department of Labor under subtitle B  
3       of the Act or under chapter 81 of title 5, United  
4       States Code (known as the Federal Employees Com-  
5       pensation Act), as doing so would assure that dis-  
6       abilities related to occupational illnesses would be  
7       compensated proportional to the degree of injury.

8               (6) In order to assure that congressional intent  
9       is honored with respect to the Department of Ener-  
10      gy's program of worker assistance with state worker  
11      compensation for occupational illnesses that arose  
12      out of the course of employment from exposure to  
13      toxic substances at Department of Energy facilities,  
14      the Department of Energy's implementation of sub-  
15      title D of the Act requires reform, refinement, and  
16      clarification.

17              (7) Certain renal diseases related to uranium  
18      exposure and cancers related to employment by be-  
19      ryllium vendors should be added to coverage under  
20      subtitle B.

21              (8) Congress intended that follow-up imple-  
22      menting legislation would be required when it passed  
23      the Act and, in section 3613 of the Act, directed the  
24      administration to provide such legislation. Although  
25      such legislation was forwarded on January 15, 2001,

1 and Congress adopted technical amendments to the  
2 Act in 2001, significant shortcomings in the Act  
3 have been identified as the Act has been imple-  
4 mented.

5 (b) PURPOSE.—The purpose of this Act is to amend  
6 the Energy Employees Occupational Illness Compensation  
7 Program Act of 2000 to—

8 (1) ensure that meritorious claims for exposure  
9 to toxic substances at Department of Energy facili-  
10 ties are compensated under subtitle D of the Act;

11 (2) enhance assistance to claimants at the De-  
12 partment of Labor;

13 (3) ensure that there is parity in treatment of  
14 chronic renal disease between uranium-exposed De-  
15 partment of Energy employees (including employees  
16 of contractors, subcontractors, and atomic weapons  
17 employer facilities) and the uranium-exposed work-  
18 ers under the Radiation Exposure Compensation  
19 Act;

20 (4) provide coverage of lung cancer for covered  
21 beryllium workers; and

22 (5) make administrative improvements and  
23 technical corrections.

1 **TITLE I—WORKERS’ COMPENSA-**  
2 **TION BENEFITS FOR DOE**  
3 **CONTRACTOR EMPLOYEES**  
4 **EXPOSED TO TOXIC SUB-**  
5 **STANCES**

6 **SEC. 101. BENEFITS.**

7 Subtitle D of the Energy Employees Occupational Ill-  
8 ness Compensation Program Act of 2000 (42 U.S.C.  
9 7385o) is amended to read as follows:

10 **“Subtitle D—Workers’ Compensa-**  
11 **tion Benefits for DOE Con-**  
12 **tractor Employees Exposed to**  
13 **Toxic Substances**

14 **“SEC. 3661. DEFINITIONS.**

15 “In this subtitle:

16 “(1) The term ‘DOE contractor’ means any of  
17 the following:

18 “(A) A contractor (or subcontractor at any  
19 tier) of the Department of Energy.

20 “(B) A contractor (or subcontractor at any  
21 tier) of USEC, a Government-owned corpora-  
22 tion, during the period beginning on July 1,  
23 1993, and ending on July 28, 1998.

24 “(2) The term ‘DOE contractor employee’  
25 means any of the following:

1           “(A) An employee of a contractor (or sub-  
2 contractor at any tier) of the Department of  
3 Energy.

4           “(B) An employee of a contractor (or sub-  
5 contractor at any tier) of USEC, a Govern-  
6 ment-owned corporation, during the period be-  
7 ginning on July 1, 1993, and ending on July  
8 28, 1998.

9           “(3) The term ‘covered DOE contractor em-  
10 ployee’ means a DOE contractor employee, if a  
11 claim relating to that employee is forwarded by the  
12 Secretary of Energy under section 3662(d)(3)(A) to  
13 the Secretary of Labor for payment under section  
14 3663.

15           “(4) The term ‘specified illness’ means, with re-  
16 spect to a covered DOE contractor employee, the ill-  
17 ness by reason of which the claim relating to that  
18 employee was forwarded by the Secretary of Energy  
19 under section 3662(d)(3)(A) to the Secretary of  
20 Labor for payment under section 3663.

21 **“SEC. 3662. DETERMINATIONS OF CAUSATION BY DEPART-**  
22 **MENT OF ENERGY.**

23           “(a) PROCEDURE FOR SUBMITTING CLAIMS.—

24           “(1) IN GENERAL.—The Secretary of Energy  
25 shall establish, by regulation, procedures under

1       which an individual may submit a claim for benefits  
2       under this subtitle due to occupational illness from  
3       exposure to toxic substances.

4               “(2) NOTICE TO CLAIMANT.—Not later than 10  
5       days after the receipt of a claim under paragraph  
6       (1), the Secretary of Energy shall notify the claim-  
7       ant of the receipt of the claim and provide the name,  
8       address, and phone number of a person capable of  
9       answering questions and providing additional infor-  
10      mation with respect to the procedures and benefits  
11      under this subtitle.

12      “(b) INITIAL REVIEW BY DOE.—

13               “(1) EVIDENCE REQUIRED.—The Secretary of  
14      Energy shall review each claim submitted under this  
15      section and, for each such claim, determine not later  
16      than 30 days after receipt of the claim whether the  
17      claimant submitted reasonable evidence of both of  
18      the following:

19                   “(A) The claim was filed by or on behalf  
20                   of a DOE contractor employee or such employ-  
21                   ee’s estate.

22                   “(B) The illness or death of the DOE con-  
23                   tractor employee may have been related to em-  
24                   ployment at a Department of Energy facility.

25      “(2) DETERMINATIONS.—



1           “(A) If the Secretary determines that the  
2 claimant did not submit reasonable evidence  
3 under either paragraph (1)(A) or (1)(B), or  
4 both, the Secretary shall, not later than 10 days  
5 after making such determination, notify the  
6 claimant of such determination and include the  
7 claimant’s options for appeal or for submitting  
8 additional evidence.

9           “(B) If the Secretary determines that the  
10 claimant did submit reasonable evidence under  
11 both paragraphs (1)(A) and (1)(B), the Sec-  
12 retary shall—

13                 “(i) not later than 10 days after mak-  
14 ing such determination, notify the claimant  
15 of such determination;

16                 “(ii) ensure that the claimant is af-  
17 farded the opportunity to review the entire  
18 record, and to supplement the record with-  
19 in 30 days after the date on which infor-  
20 mation is provided by the DOE contractor,  
21 before the claim is submitted to a physi-  
22 cians panel;

23                 “(iii) not later than 10 days after the  
24 claimant supplements the record under  
25 clause (ii), submit the claim to a physi-

1                   cians panel for review under subsection (c);

2                   and

3                   “(iv) not later than 10 days after sub-

4                   mitting the claim to a physicians panel, no-

5                   tify the claimant of such submission.

6           “(c) REVIEW BY PHYSICIANS PANELS.—

7                   “(1) COMPOSITION.—

8                   “(A) The Secretary of Energy shall inform

9                   the Secretary of Health and Human Services of

10                  the number of physicians panels the Secretary

11                  of Energy has determined to be appropriate to

12                  administer this section, the number of physi-

13                  cians needed for each panel, and the area of ju-

14                  risdiction of each panel.

15                  “(B) The Secretary of Health and Human

16                  Services shall appoint panel members with expe-

17                  rience and competency in diagnosing occupa-

18                  tional illnesses under section 3109 of title 5,

19                  United States Code. Each member of a panel

20                  shall be paid at the rate of pay payable for level

21                  III of the Executive Schedule for each day (in-

22                  cluding travel time) the member is engaged in

23                  the work of a panel.

1           “(C) A panel established under this sub-  
2 section shall not be subject to the Federal Advi-  
3 sory Committee Act (5 U.S.C. App.).

4           “(2) OPERATION.—

5           “(A) The Secretary of Energy shall assist  
6 the claimant in obtaining additional evidence  
7 within the control of the Department of Energy  
8 or a DOE contractor who employed a DOE  
9 contractor employee and relevant to the panel’s  
10 deliberations.

11           “(B) At the request of a panel, the Sec-  
12 retary of Energy and a DOE contractor who  
13 employed a DOE contractor employee shall pro-  
14 vide additional information relevant to the pan-  
15 el’s deliberations. A panel may consult special-  
16 ists in relevant fields as it determines nec-  
17 essary.

18           “(C) In any case in which the panel finds  
19 that additional diagnostic testing or an expo-  
20 sure assessment is necessary to the panel’s de-  
21 liberations—

22           “(i) the panel shall so notify the Sec-  
23 retary of Energy and the claimant;

24           “(ii) the claimant may obtain such di-  
25 agnostic testing or exposure assessment

1 using a qualified physician chosen by the  
2 claimant or a qualified occupational health  
3 expert (as applicable) or, if the claimant so  
4 desires, may obtain such diagnostic testing  
5 or exposure assessment using the program  
6 carried out under section 3162 of the Na-  
7 tional Defense Authorization Act for Fiscal  
8 Year 1993 (42 U.S.C. 7274i) to monitor  
9 Department of Energy workers exposed to  
10 hazardous and radioactive substances; and

11 “(iii) any costs of such diagnostic  
12 testing or exposure assessment shall be  
13 paid for from the Fund established under  
14 section 3612 and shall be provided by the  
15 Secretary of Energy through a method  
16 under which the claimant is not required  
17 to advance any amount toward payment of  
18 such costs.

19 “(D) The Secretary of Energy is author-  
20 ized to enter into or modify cooperative agree-  
21 ments with providers who are implementing the  
22 program carried out under section 3162 of the  
23 National Defense Authorization Act for Fiscal  
24 Year 1993 (42 U.S.C. 7274i) to provide assess-  
25 ments of exposures to toxic substances at De-

1           partment of Energy facilities to claimants  
2           under circumstances covered by subparagraph  
3           (C).

4           “(3) DETERMINATION OF CAUSATION.—A panel  
5           shall review a claim submitted to it under this sub-  
6           section and shall determine, under guidelines estab-  
7           lished by the Secretary of Energy, by regulation,  
8           whether the illness or death that is the subject of  
9           the claim arose out of and in the course of employ-  
10          ment by the Department of Energy and exposure to  
11          a toxic substance at a Department of Energy facil-  
12          ity. For purposes of the preceding sentence, illness  
13          or death shall be deemed to arise out of and in the  
14          course of employment by the Department of Energy  
15          and exposure to a toxic substance at a Department  
16          of Energy facility if exposure to the toxic substance  
17          (or substances, as the case may be) was a significant  
18          factor which aggravated, contributed to, or caused  
19          the illness or death.

20          “(4) MAJORITY VOTE.—A determination under  
21          paragraph (3) shall be made by majority vote.

22          “(5) REPORT TO SECRETARY.—Once a panel  
23          has made a determination under paragraph (3), it  
24          shall report to the Secretary of Energy its deter-  
25          mination and the basis for the determination.

1 “(d) REVIEW OF PANEL DETERMINATIONS.—

2 “(1) IN GENERAL.—The Secretary of Energy  
3 shall review a panel’s determination under sub-  
4 section (c)(3), information the panel considered in  
5 reaching its determination, any relevant new infor-  
6 mation not reasonably available at the time of the  
7 panel’s deliberations, and the basis for the panel’s  
8 determination.

9 “(2) ACCEPTANCE OF PANEL DETERMINA-  
10 TION.—As a result of the review under paragraph  
11 (1), the Secretary shall accept the panel’s deter-  
12 mination in the absence of a preponderance of evi-  
13 dence to the contrary.

14 “(3) ACTION UPON ACCEPTED CLAIMS.—If the  
15 panel has made a positive determination under sub-  
16 section (c)(3) and the Secretary accepts the deter-  
17 mination under paragraph (2), or the panel has  
18 made a negative determination under subsection  
19 (c)(3) and the Secretary finds significant evidence to  
20 the contrary—

21 “(A) the Secretary of Energy shall within  
22 10 days forward the claim to the Secretary of  
23 Labor for payment under section 3663, to-  
24 gether with information relating to—

1           “(i) the DOE contractor employee to  
2 whom the claim relates;

3           “(ii) the illness to which the claim re-  
4 lates;

5           “(iii) the determination of the panel  
6 and the basis for the determination;

7           “(iv) the acceptance of the Secretary  
8 and the basis for the acceptance;

9           “(v) the employment to which the  
10 claim relates, including available wage or  
11 salary information; and

12           “(vi) any other matter that the Sec-  
13 retary of Labor considers necessary; and

14           “(B) the Secretary of Energy thereafter—

15           “(i) shall not contest such claim;

16           “(ii) shall not contest an award made  
17 regarding such claim; and

18           “(iii) shall direct the DOE contractor  
19 who employed the DOE contractor em-  
20 ployee to which the claim relates not to  
21 contest such claim or such award in any  
22 administrative or judicial forum, and such  
23 obligation in no case shall be considered  
24 discretionary; and

1           “(C) any costs of contesting a claim or an  
2           award regarding the claim incurred by the  
3           DOE contractor who employed the DOE con-  
4           tractor employee who is the subject of the claim  
5           shall not be an allowable cost under a Depart-  
6           ment of Energy contract.

7           “(e) ACCESS TO INFORMATION.—

8           “(1) DUTY TO PROVIDE INFORMATION.—At the  
9           request of the Secretary of Energy, a DOE con-  
10          tractor who employed a DOE contractor employee  
11          and any other entity possessing information related  
12          to such employee relevant to deliberations under this  
13          section shall make such information available to the  
14          Secretary.

15          “(2) COPIES TO CLAIMANT.—The Secretary of  
16          Energy shall require that a DOE contractor who  
17          provides any information to the Secretary or a panel  
18          under this section shall simultaneously provide such  
19          information to the claimant.

20          “(f) OUTREACH.—The Secretary of Energy, in co-  
21          operation with the Secretary of Labor, shall carry out a  
22          program of outreach and education about the availability  
23          of benefits under this subtitle. The Secretary shall make  
24          available in paper and electronic format forms and infor-  
25          mation available for potential claimants. As part of the



1 program of outreach, the Secretary shall conduct notifica-  
2 tion by mail and use the former worker medical screening  
3 programs to notify, educate, and assist claimants.

4 “(g) ADMINISTRATIVE AND JUDICIAL REVIEW.—The  
5 Secretary of Energy shall establish a process under which  
6 a claimant may obtain prompt and independent adminis-  
7 trative review of any adverse determination by the Sec-  
8 retary under subsection (b) or (d) or by a panel under  
9 subsection (c). The results of any such administrative re-  
10 view shall be deemed to be a final agency action subject  
11 to judicial review.

12 “(h) REPORT TO CONGRESS.—Not later than Feb-  
13 ruary 1 of each year, the Secretary of Energy shall submit  
14 to Congress a report on the implementation and operation  
15 of this section. The report shall include, for the preceding  
16 calendar year—

17 “(1) the number of claims received under this  
18 subtitle;

19 “(2) the size of the backlog in processing such  
20 claims;

21 “(3) the number of such claims submitted to a  
22 physicians panel;

23 “(4) the number of such claims for which a  
24 panel made a determination, including the number

1 of determinations that were positive and the number  
2 that were negative;

3 “(5) the number of determinations accepted  
4 and denied by the Secretary;

5 “(6) the number of claims denied under sub-  
6 section (b) for failure to submit reasonable evidence;

7 “(7) the number and type of diagnostic tests  
8 and exposure assessments requested by a panel, and  
9 the number and type of such tests and assessments  
10 that were carried out;

11 “(8) the number and type of claims appealed,  
12 and the dispositions of such appeals; and

13 “(9) the expenditures made, and staff and con-  
14 tractors employed, in carrying out the Department  
15 of Energy’s responsibilities under this section.

16 “(i) APPLICABILITY OF EXISTING REGULATIONS.—  
17 In implementing the Reform of Energy Workers Com-  
18 pensation Act and the amendments to this title made by  
19 that Act, regulations prescribed by the Secretary of En-  
20 ergy before the date of the enactment of that Act may,  
21 to the extent not inconsistent with this title (as so amend-  
22 ed), continue to apply to this title.

23 **“SEC. 3663. PAYMENT OF BENEFITS BY DEPARTMENT OF**  
24 **LABOR.**

25 “(a) IN GENERAL.—

1           “(1) PAYMENTS.—Payments shall be made with  
2           respect to a covered DOE contractor employee in ac-  
3           cordance with this section for the disability or death  
4           of that employee resulting from that employee’s  
5           specified illness.

6           “(2) MEDICAL BENEFITS.—A covered DOE  
7           contractor employee shall receive medical benefits  
8           under section 3629 for that employee’s specified ill-  
9           ness.

10          “(3) PAYMENT FROM FUND.—The compensa-  
11          tion provided under this section, when authorized or  
12          approved by the President, shall be paid from the  
13          Fund established under section 3612.

14          “(b) DUTY OF SECRETARY OF LABOR.—The Sec-  
15          retary of Labor shall have the duty to carry out this sec-  
16          tion.

17          “(c) NATURE AND AMOUNT OF PAYMENTS.—

18                 “(1) IN GENERAL.—The following provisions of  
19                 subchapter I of chapter 81 of title 5, United States  
20                 Code, apply to a covered DOE contractor employee  
21                 (including the regulations prescribed with respect to  
22                 those provisions, adapted as appropriate), and the  
23                 Secretary of Labor shall provide, with respect to  
24                 that employee and that employee’s specified illness,  
25                 payments determined in accordance with those provi-

1 sions: Sections 8102(a), 8105, 8106, 8107, 8108,  
2 8109, 8110, 8111(a), 8112, 8114, 8115, 8116,  
3 8117, 8133, 8134, and 8146a.

4 “(2) ORGANS AND PHYSIOLOGICAL SYSTEMS.—  
5 For purposes of carrying out this subtitle, the Sec-  
6 retary of Labor shall prescribe additional regulations  
7 for resolving claims under this subtitle of partial or  
8 total loss of use of function of organs or physio-  
9 logical systems that are not already covered by exist-  
10 ing regulations. Such additional regulations shall  
11 cover the liver, brain, stomach, heart, esophagus,  
12 bladder, thyroid, pancreas, and nervous system, and  
13 such additional organs and physiological systems as  
14 the Secretary considers appropriate. The Secretary  
15 shall issue such regulations not later than 90 days  
16 after the date of the enactment of the Reform of  
17 Energy Workers Compensation Act.

18 “(d) ADMINISTRATIVE AND JUDICIAL REVIEW.—

19 “(1) IN GENERAL.—The Secretary of Labor  
20 shall establish a process under which a claimant may  
21 obtain administrative review of any adverse deter-  
22 mination by the Secretary of Labor under this sec-  
23 tion. Such process shall not apply to any adverse de-  
24 termination by the Secretary of Energy.

1           “(2) JUDICIAL REVIEW.—The results of any  
2           such administrative review shall be deemed to be a  
3           final agency action subject to judicial review in the  
4           United States district court for the district in which  
5           the claimant resides.

6           “(3) ATTORNEY FEES.—In any proceeding pur-  
7           suant to this subsection, attorney fees shall be avail-  
8           able on the same basis as such fees are available  
9           under section 28 of the Longshore and Harbor  
10          Workers’ Compensation Act (33 U.S.C. 928).

11   **“SEC. 3664. GENERAL PROVISIONS RELATING TO RESOLU-**  
12                           **TION OF CLAIMS.**

13          “(a) NONADVERSARIAL.—The Secretary of Energy  
14          and the Secretary of Labor shall each ensure that claims  
15          under this subtitle are resolved in a nonadversarial man-  
16          ner.

17          “(b) NO STATUTE OF LIMITATIONS.—A claim under  
18          this subtitle shall not be barred by any statute of limita-  
19          tions.

20   **“SEC. 3665. OFFSET FOR CERTAIN PAYMENTS.**

21          “A claimant awarded benefits under this subtitle as  
22          a result of a specified illness or death of a DOE contractor  
23          employee who receives benefits because of the same illness  
24          or death from any State workers’ compensation system  
25          shall receive the benefits specified in this subtitle for such

1 illness or death, reduced by the amount of any workers'  
2 compensation benefits that the claimant receives or will  
3 receive on account of such illness or death under any State  
4 workers' compensation system during the period that  
5 awarded benefits are provided under this subtitle, after de-  
6 ducting the reasonable costs, as determined by the Sec-  
7 retary of Labor by regulation, of obtaining such benefits.

8 **“SEC. 3666. SUBROGATION OF THE UNITED STATES NOT AP-**  
9 **PLICABLE.**

10 “Notwithstanding any other provision of law, the  
11 United States has no right of subrogation against any per-  
12 son by reason of payments or other benefits provided  
13 under this subtitle.

14 **“SEC. 3667. CERTIFICATION OF TREATMENT OF PAYMENTS**  
15 **UNDER OTHER LAWS.**

16 “Compensation or benefits provided to an individual  
17 under this subtitle—

18 “(1) shall be treated for purposes of the inter-  
19 nal revenue laws of the United States as damages  
20 for human suffering; and

21 “(2) shall not be included as income or re-  
22 sources for purposes of determining eligibility to re-  
23 ceive benefits described in section 3803(c)(2)(C) of  
24 title 31, United States Code, or the amount of such  
25 benefits.

1 **“SEC. 3668. CERTAIN CLAIMS NOT AFFECTED BY AWARDS**  
2 **OF DAMAGES.**

3 “A payment under this subtitle shall not be consid-  
4 ered as any form of compensation or reimbursement for  
5 a loss for purposes of imposing liability on any individual  
6 receiving such payment, on the basis of such receipt, to  
7 repay any insurance carrier for insurance payments; and  
8 a payment under this subtitle shall not affect any claim  
9 against an insurance carrier with respect to insurance.

10 **“SEC. 3669. FORFEITURE OF BENEFITS BY CONVICTED FEL-**  
11 **ONS.**

12 “(a) **FORFEITURE OF COMPENSATION.**—Any indi-  
13 vidual convicted of a violation of section 1920 of title 18,  
14 United States Code, or any other Federal or State crimi-  
15 nal statute relating to fraud in the application for or re-  
16 ceipt of any benefit under this title or under any other  
17 Federal or State workers’ compensation law, shall forfeit  
18 (as of the date of such conviction) any entitlement to any  
19 compensation or benefit under this subtitle such individual  
20 would otherwise be awarded for any injury, illness or death  
21 covered by this subtitle for which the time of injury was  
22 on or before the date of the conviction.

23 “(b) **INFORMATION.**—Notwithstanding section 552a  
24 of title 5, United States Code, or any other Federal or  
25 State law, an agency of the United States, a State, or a  
26 political subdivision of a State shall make available to the

1 President, upon written request from the President and  
2 if the President requires the information to carry out this  
3 section, the names and Social Security account numbers  
4 of individuals confined, for conviction of a felony, in a jail,  
5 prison, or other penal institution or correctional facility  
6 under the jurisdiction of that agency.

7 **“SEC. 3670. EXCLUSIVITY OF REMEDY.**

8       “The liability of the United States or a DOE con-  
9 tractor in its capacity as an employer of a DOE contractor  
10 employee under this subtitle with respect to the specified  
11 illness or death of a DOE contractor employee for which  
12 compensation is made under this subtitle is exclusive and  
13 instead of all other liability of the United States or DOE  
14 contractor in such capacity to the employee, his legal rep-  
15 resentative, spouse, dependents, next of kin, and any other  
16 person otherwise entitled to recover damages from the  
17 United States or DOE contractor in such capacity because  
18 of the specified illness or death in a direct judicial pro-  
19 ceeding, in a civil action, or in admiralty, except for a  
20 State workers’ compensation proceeding or a State inten-  
21 tional tort liability proceeding. However, this section shall  
22 not apply to illness or death for which compensation under  
23 this subtitle is not made.



1 **“SEC. 3671. COORDINATION WITH BENEFITS UNDER SUB-**  
2 **TITLE B.**

3 “(a) RECEIPT OF SUBTITLE B BENEFITS NO BAR  
4 TO APPLICATION UNDER THIS SUBTITLE.—An individual  
5 may apply for benefits under this subtitle without regard  
6 to whether the individual received a lump sum payment  
7 under subtitle B.

8 “(b) OFFSET FOR BENEFITS PAID ON SAME ILLNESS  
9 OF SAME PERSON.—If a lump sum payment is made  
10 under subtitle B by reason of a specified illness of a per-  
11 son, any payment (excluding medical costs) made under  
12 this subtitle by reason of the same specified illness of the  
13 same person shall be offset by the amount of such lump  
14 sum payment. In no case shall a claimant obtain double  
15 indemnity wage replacement benefits for specified illness  
16 under this subtitle.

17 **“SEC. 3672. ASSIGNMENT OF CLAIM.**

18 “An assignment of a claim for compensation under  
19 this subtitle is void. Compensation and claims for com-  
20 pensation are exempt from claims of creditors.”.

21 **SEC. 102. GAO REPORT.**

22 Not later than February 1, 2004, the Comptroller  
23 General shall submit to Congress a report on the imple-  
24 mentation by the Department of Energy of subtitle D of  
25 the Energy Employees Occupational Illness Compensation  
26 Program Act of 2000 (42 U.S.C. 7385o et seq.), as

1 amended by section 101, and of the effectiveness of such  
2 subtitle in assisting DOE contractor employees in obtain-  
3 ing compensation for exposure to a toxic substance at a  
4 Department of Energy facility.

5 **TITLE II—AMENDMENTS RELAT-**  
6 **ING TO SUBTITLE B OF PRO-**  
7 **GRAM**

8 **SEC. 201. COVERAGE FOR CHRONIC RENAL DISEASE.**

9 (a) DEFINITIONS FOR PROGRAM ADMINISTRATION.—  
10 Section 3621 of the Energy Employees Occupational Ill-  
11 ness Compensation Program Act of 2000 (42 U.S.C.  
12 7384l) is amended—

13 (1) in paragraph (1), by adding at the end the  
14 following new subparagraph:

15 “(D) A covered employee with chronic  
16 renal disease.”;

17 (2) in paragraph (15), by striking “or chronic  
18 silicosis” and inserting “, chronic silicosis, or chronic  
19 renal disease”; and

20 (3) by adding at the end the following new  
21 paragraphs:

22 “(19) The term ‘chronic renal disease’ includes  
23 nephritis and kidney tubal tissue injury and related  
24 illnesses of the urogenitoury tract.

1           “(20) The term ‘covered employee with chronic  
2           renal disease’ means an individual determined to  
3           have sustained chronic renal disease in the perform-  
4           ance of duty in accordance with section 3623(f).”.

5           (b) EXPOSURE IN THE PERFORMANCE OF DUTY.—  
6           Section 3623 of such Act (42 U.S.C. 7384n) is amended  
7           by adding at the end the following new subsection:

8           “(f) CHRONIC RENAL DISEASE.—(1) An individual  
9           with chronic renal disease shall, in the absence of substan-  
10          tial evidence to the contrary, be determined to have sus-  
11          tained chronic renal disease in the performance of duty  
12          for purposes of the compensation program if the indi-  
13          vidual—

14                 “(A) was employed in a Department of Energy  
15                 facility (in the case of a Department of Energy em-  
16                 ployee or a Department of Energy contractor em-  
17                 ployee) or an atomic weapons employer facility (in  
18                 the case of an atomic weapons employee) that con-  
19                 ducted uranium processing, converting, refining, en-  
20                 riching, extruding, calcining, machining, or rolling,  
21                 or that operated as a uranium foundry;

22                 “(B) carried out job functions while so em-  
23                 ployed that resulted in the potential for exposure, in-  
24                 halation, or uptake of uranium or uranium com-  
25                 pounds for at least 250 days; and

1           “(C) submits medical evidence that the indi-  
2           vidual, after commencing the employment specified  
3           in subparagraph (A), contracted chronic renal dis-  
4           ease.

5           “(2) Not later than 60 days after the date of the en-  
6           actment of the Reform of Energy Workers Compensation  
7           Act, the Secretary of Energy shall designate a list of De-  
8           partment of Energy facilities and atomic weapons em-  
9           ployer facilities that were engaged in uranium processing,  
10          converting, refining, enriching, extruding, calcining, ma-  
11          chining, or rolling, including the dates such activities were  
12          performed. The list of facilities shall not include facilities  
13          for which uranium millers and transporters are already  
14          covered under the Radiation Exposure Compensation Act  
15          (42 U.S.C. 2210 note).

16          “(3) Not later than 90 days after the date of the en-  
17          actment of the Reform of Energy Workers Compensation  
18          Act, the Secretary of Labor, in consultation with the Sec-  
19          retary of Health and Human Services, shall establish, by  
20          regulation, procedures to be followed and medical evidence  
21          to be submitted by claimants for chronic renal disease  
22          claims.”.

23          (c) OFFSET FOR CERTAIN PAYMENTS.—Section  
24          3641 of such Act (42 U.S.C. 7385) is amended—



1 (1) by redesignating subparagraph (C) as sub-  
 2 paragraph (D) and, in that subparagraph, by strik-  
 3 ing “or (B)” and inserting “(B), or (C)”; and

4 (2) by inserting after subparagraph (B) the fol-  
 5 lowing new subparagraph:

6 “(C) Lung cancer, if such cancer occurs  
 7 within 5 years after the date on which the em-  
 8 ployee is determined to have been first exposed  
 9 to beryllium in the performance of duty in ac-  
 10 cordance with section 3623(a).”.

11 **SEC. 203. CLARIFICATION OF SPECIAL EXPOSURE COHORT**  
 12 **EXPANSION PROCEDURE.**

13 (a) AUTOMATIC DESIGNATION BY LAPSE OF TIME.—  
 14 Section 3626 of the Energy Employees Occupational Ill-  
 15 ness Compensation Program Act of 2000 (42 U.S.C.  
 16 7384q) is amended—

17 (1) by redesignating subsection (c) as sub-  
 18 section (d); and

19 (2) by inserting after subsection (b) the fol-  
 20 lowing new subsection:

21 “(c) AUTOMATIC DESIGNATION BY LAPSE OF  
 22 TIME.—Notwithstanding subsection (b), if a class of em-  
 23 ployees described in subsection (a)(1) petitions to be treat-  
 24 ed as members of the Special Exposure Cohort under sub-  
 25 section (a)(3), the members of that class shall, as of the

1 expiration of the 180-day period beginning with the date  
2 on which the petition was received, be deemed to be mem-  
3 bers of the Special Exposure Cohort for purposes of the  
4 compensation program, unless before the expiration of  
5 that period the petition is denied.”.

6 (b) INDIVIDUAL PRESUMPTION BY LAPSE OF  
7 TIME.—Section 3623 of that Act (42 U.S.C. 7384n) is  
8 amended by adding at the end of subsection (d) the fol-  
9 lowing new paragraph:

10 “(3) DEADLINE FOR COMPLETING DOSE RECON-  
11 STRUCTION ESTIMATES.—An estimate referred to in para-  
12 graph (1) shall be completed by the Secretary of Health  
13 and Human Services within 150 days after the date on  
14 which the Department of Labor submits to the Secretary  
15 of Health and Human Services the claim for which the  
16 estimate is required. If such estimate cannot be completed  
17 before the expiration of such period, it shall be deemed,  
18 for purposes of section 3626(b)(1), that it is not feasible  
19 to estimate with sufficient accuracy the radiation dose re-  
20 ceived by the individual to which the claim relates.”.

1 **SEC. 204. CORRECTING PROBLEMS IN THE**  
2 **RADIOEPIDEMIOLOGIC MODEL FOR DETER-**  
3 **MINING COMPENSATION.**

4 Subsection (c)(3) of section 3623 of the Energy Em-  
5 ployees Occupational Illness Compensation Program Act  
6 of 2000 (42 U.S.C. 7384n) is amended—

7 (1) in subparagraph (B), by striking “and” at  
8 the end;

9 (2) in subparagraph (C)—

10 (A) by striking “past health-related activi-  
11 ties (such as smoking),”; and

12 (B) by striking the period at the end and  
13 inserting “; and”; and

14 (3) by adding at the end the following new sub-  
15 paragraph:

16 “(D) provide the benefit of the doubt to  
17 the claimant wherever there is reasonable sci-  
18 entific evidence to justify compensation, includ-  
19 ing such factors as dose rate effectiveness of  
20 low dose radiation, bias due to selection effects,  
21 and increasing risks from radiation with in-  
22 creasing age at exposure.”.

23 **SEC. 205. ADDITIONAL SPECIFIED CANCERS.**

24 (a) REPORT.—The National Institute for Occupa-  
25 tional Safety and Health shall prepare a report that iden-  
26 tifies each type of cancer (other than specified cancers,



1 as already defined in section 3621(17) of the Energy Em-  
2 ployees Occupational Illness Compensation Program Act  
3 of 2000 (42 U.S.C. 7384l(17))) that the Institute has de-  
4 termined from epidemiology studies of workers or atomic  
5 bomb survivors to be radiosensitive and, for each cancer  
6 so identified, provides a basis for that determination. Not  
7 later than 90 days after the date of the enactment of this  
8 Act, the Institute shall submit the report to Congress, the  
9 Secretary of Labor, and the Advisory Board on Radiation  
10 and Worker Health, and shall publish the report in the  
11 Federal Register, for public review and comment.

12 (b) FINAL REPORT.—Not later than 180 days after  
13 the date of the enactment of this Act, the Institute shall  
14 submit to Congress, the Secretary of Labor, the Secretary  
15 of Health and Human Services, and the Advisory Board  
16 on Radiation and Worker Health a final report, taking  
17 into account comments received in response to the report  
18 under subsection (a), that identifies each type of cancer  
19 that is appropriate to be deemed an additional specified  
20 cancer for purposes of the Energy Employees Occupa-  
21 tional Illness Compensation Program Act of 2000.

1 **SEC. 206. COVERAGE FOR INDIVIDUALS EMPLOYED BY**  
2 **ATOMIC WEAPONS EMPLOYERS OR BERYL-**  
3 **LIUM EMPLOYEES DURING PERIOD OF RE-**  
4 **SIDUAL CONTAMINATION.**

5 Paragraphs (3) and (7)(C) of section 3621 of the En-  
6 ergy Employees Occupational Illness Compensation Pro-  
7 gram Act of 2000 (42 U.S.C. 73841) are each amended  
8 by inserting before the period at the end the following:  
9 “, or during a period when, as specified by the National  
10 Institute for Occupational Safety and Health in the re-  
11 ports required by section 3151(b)(2)(A)(ii) of the National  
12 Defense Authorization Act for Fiscal Year 2002 (42  
13 U.S.C. 7384 note) or any subsequent report, significant  
14 contamination remained in a facility of the employer after  
15 such facility discontinued activities relating to the produc-  
16 tion of nuclear weapons and such contamination could  
17 have caused or substantially contributed to the cancer of  
18 a covered employee with cancer or a covered beryllium ill-  
19 ness, as the case may be”.

20 **SEC. 207. TECHNICAL CORRECTIONS.**

21 (a) FINDINGS.—Section 3602(a)(6) of the Energy  
22 Employees Occupational Illness Compensation Program  
23 Act of 2000 is amended by striking the second sentence  
24 and inserting the following: “Furthermore, studies indi-  
25 cate that 98 percent of radiation-induced cancers within  
26 the Department of Energy nuclear weapons complex occur

1 at dose levels below the existing thresholds for establishing  
2 proof of causation. Those studies further indicate that  
3 workers at Department of Energy sites were exposed to  
4 levels of silica, heavy metals, and toxic substances that will  
5 lead, contribute to, or aggravate illnesses or diseases.”.

6 (b) PAYMENTS IN THE CASE OF DECEASED PER-  
7 SONS.—Section 3628(e)(3)(A) (42 U.S.C. 7384s(e)(3)(A))  
8 of such Act is amended by inserting before the semicolon  
9 the following: “, or a wife or husband of that individual  
10 who was married to that individual immediately before the  
11 death of that individual and filed, on or before December  
12 28, 2001, a claim in that capacity under this subtitle”.

13 **TITLE III—ADMINISTRATIVE AS-**  
14 **SISTANCE FOR CLAIMANTS**  
15 **UNDER EITHER SUBTITLE OF**  
16 **ACT**

17 **SEC. 301. PROVIDING ADMINISTRATIVE RELIEF IN CASES**  
18 **WHERE MEDICAL RECORDS ARE NOT AVAIL-**  
19 **ABLE.**

20 Subtitle C of the Energy Employees Occupational Ill-  
21 ness Compensation Program Act of 2000 (42 U.S.C. 7385  
22 et seq.) is amended by adding at the end the following  
23 new section:

1 **“SEC. 3652. PROOF WHEN MEDICAL RECORDS NOT AVAIL-**  
2 **ABLE.**

3 “For any claim under any subtitle of this title, if the  
4 Department of Energy, a contractor of the Department  
5 of Energy (including a DOE contractor, as defined in sec-  
6 tion 3661), an atomic energy weapons employer, or a be-  
7 ryllium vendor is unable to locate medical records nec-  
8 essary for the processing of that claim that it possessed  
9 or was required to possess within 120 days after receiving  
10 a written request from the claimant to locate such records,  
11 an affidavit of the employee as to the contents of those  
12 records, together with any medical records possessed by  
13 the claimant or otherwise made available, shall be consid-  
14 ered in determining the medical evidence relating to the  
15 claim.”.

16 **SEC. 302. RESOURCE CENTERS AND OUTREACH PROGRAMS.**

17 Subtitle C of such Act is further amended by adding  
18 after section 3652 (as added by section 301) the following  
19 new section:

20 **“SEC. 3653. RESOURCE CENTERS AND OUTREACH PRO-**  
21 **GRAMS.**

22 “(a) REQUIREMENT.—The Secretary of Labor and  
23 the Secretary of Energy shall maintain resource centers  
24 and outreach programs relating to the availability of bene-  
25 fits under any subtitle of this title. Such centers shall be

1 staffed and maintained proportional to the demand for as-  
2 sistance and follow-up.

3 “(b) UNDERSERVED AREAS.—The resource centers  
4 required by subsection (a) shall include one or more re-  
5 source centers in each underserved area near a Depart-  
6 ment of Energy facility.

7 “(c) DURATION.—(1) Except as provided in para-  
8 graph (2), such centers and programs shall be maintained  
9 through September 30, 2004.

10 “(2) In the case of a resource center in an under-  
11 served area referred to in subsection (b), such center shall  
12 be maintained until demand is exhausted.”.

13 **SEC. 303. OFFICE OF THE OMBUDSMAN.**

14 (a) IN GENERAL.—Subtitle C of such Act is further  
15 amended by adding after section 3653 (as added by sec-  
16 tion 302) the following new section:

17 **“SEC. 3654. OFFICE OF THE OMBUDSMAN.**

18 “(a) ESTABLISHMENT.—There is established within  
19 the Office of the Secretary of Labor an office, to be known  
20 as the Office of the Ombudsman for Occupational Illness  
21 Compensation, to assist claimants under this title.

22 “(b) OMBUDSMAN.—

23 “(1) APPOINTMENT.—At the head of the Office  
24 shall be an Ombudsman. The Ombudsman shall be  
25 appointed by the Secretary of Labor, after consulta-

1       tion with claimants or claimant advocates, worker  
2       compensation experts, and members of the advisory  
3       committees to Federal agencies implementing this  
4       title, from among individuals with at least one of the  
5       following qualifications:

6               “(A) Experience or training as an advo-  
7       cate.

8               “(B) Training as a health care provider  
9       with knowledge of occupational illness and dis-  
10      ease.

11              “(C) Experience in assisting claimants  
12      with worker compensation claims.

13              “(2) REMOVAL.—The Secretary of Labor may  
14      remove the Ombudsman for just cause and shall, in  
15      such a case, communicate to the Congress the cir-  
16      cumstances forming the basis of such just cause.

17              “(c) DUTIES.—The duties of the Ombudsman are as  
18      follows:

19               “(1) To direct the operations of the Office.

20               “(2) To report to the Secretary of Labor with  
21      respect to the activities of the Office.

22               “(3) To assist claimants under this title with  
23      claims filed with the Department of Labor or the  
24      Department of Energy.

1           “(4) To receive and investigate complaints or  
2 inquiries regarding the status of a claim under this  
3 title.

4           “(5) To provide claimants under this title with  
5 contacts at agencies with responsibilities under this  
6 title.

7           “(6) To offer informal advice on options avail-  
8 able to claimants under this title.

9           “(7) To identify whether claimants under this  
10 title are encountering systematic difficulties or  
11 delays with respect to claims under this title, and to  
12 make recommendations for improvement, with re-  
13 spect to such claims, in speed, equity, fairness, or  
14 compliance with statutes and regulations.

15           “(8) With respect to individuals filing com-  
16 plaints or requests for information under this title—

17               “(A) to respond within 30 days after re-  
18 ceiving such a complaint or request;

19               “(B) to maintain reasonable communica-  
20 tion with the individual until the matter is re-  
21 solved; and

22               “(C) to maintain, as confidential and privi-  
23 leged, the identity of the individual, unless such  
24 confidentiality or privilege is otherwise waived.

1           “(9) To maintain and publish a telephone num-  
2           ber, facsimile number, electronic mail address, and  
3           post office address for the Office.

4           “(d) LIMITATION.—The Ombudsman may not re-  
5           verse or make decisions regarding any claim under this  
6           title.

7           “(e) AUTHORITY.—The Ombudsman is authorized to  
8           carry out the following activities:

9           “(1) Investigate questions regarding a claim  
10           under this title, or procedures or systems for proc-  
11           essing such claims, with the offices of the Depart-  
12           ment of Energy, Department of Labor, and Depart-  
13           ment of Health and Human Services (including the  
14           National Institute for Occupational Safety and  
15           Health), and any contractor of any such department,  
16           that has responsibility under this title.

17           “(2) Contract for expert advice with respect to  
18           the Ombudsman’s responsibilities under this title.

19           “(3) Access any material relating to a matter  
20           under investigation under paragraph (1).

21           “(4) Request explanations from any Federal  
22           agency with responsibilities under this title about the  
23           activities of that agency under this title.

24           “(5) Enter and inspect places in order to carry  
25           out an investigation under paragraph (1).



1           “(6) Refer any matter within the responsibility  
2           of the Ombudsman to an appropriate inspector gen-  
3           eral.

4           “(f) COOPERATION WITH FEDERAL AGENCIES.—  
5 Federal agencies and the officials responsible for the im-  
6 plementation of this title shall assist the Ombudsman in  
7 carrying out this section and shall promptly make avail-  
8 able to the Ombudsman all information requested by the  
9 Ombudsman. The Ombudsman shall cooperate with such  
10 agencies and officials.

11          “(g) COORDINATION.—The Ombudsman shall coordi-  
12 nate the activities of the Office with the activities of the  
13 Secretaries of Energy, Health and Human Services, and  
14 Labor in carrying out this title. Such coordination shall  
15 be carried out pursuant to memoranda of agreement en-  
16 tered into among and between the Ombudsman and such  
17 Secretaries.

18          “(h) ANNUAL REPORT.—Not later than January 1  
19 of each year, the Ombudsman shall submit a report on  
20 this title to the President, the Congress, and the Secre-  
21 taries of Energy, Health and Human Services, and Labor.  
22 No official outside the Office may require such outside of-  
23 ficial’s approval before submitting the report. The report  
24 shall contain the following:

1           “(1) The number and types of complaints,  
2           grievances, and requests for assistance received by  
3           the ombudsman in the previous year.

4           “(2) Identification of the most common difficul-  
5           ties encountered by claimants under this title.

6           “(3) Recommended changes to the administra-  
7           tive practices of the Federal agencies with responsi-  
8           bility under this title.

9           “(4) Recommended legislative changes that may  
10          be appropriate to mitigate problems with the imple-  
11          mentation of this title.

12          “(i) PUBLICATION.—The Secretaries of Energy,  
13          Health and Human Services, and Labor shall publicize the  
14          availability of the services of the Office.

15          “(j) SEPARATE LINE ITEM.—The budget of the  
16          President under section 1105(a) of title 31, United States  
17          Code, shall include funding for the Office as a separate  
18          line item.

19          “(k) AUTHORIZATION OF APPROPRIATIONS.—There  
20          are authorized to be appropriated to carry out this section  
21          \$800,000 for each of fiscal years 2003 through 2007.”.

22          (b) INITIAL APPOINTMENT.—Not later than 60 days  
23          after the date of the enactment of this Act, the Secretary  
24          of Labor shall appoint the Ombudsman required by sec-  
25          tion 3654 of the Energy Employees Occupational Illness

1 Compensation Program Act of 2000 (as added by sub-  
2 section (a)).

3 (c) MEMORANDA OF AGREEMENT.—Not later than  
4 90 days after the date of the enactment of this Act, the  
5 Ombudsman shall enter into the memoranda of agreement  
6 required by such section 3654 (as added by subsection  
7 (a)).

○