

108TH CONGRESS
1ST SESSION

H. R. 1961

To provide for the external regulation of nuclear safety and occupational safety and health at the Department of Energy.

IN THE HOUSE OF REPRESENTATIVES

MAY 6, 2003

Mr. COSTELLO (for himself and Mr. CALVERT) introduced the following bill; which was referred to the Committee on Science, and in addition to the Committees on Energy and Commerce, and 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

A BILL

To provide for the external regulation of nuclear safety and occupational safety and health at the Department of Energy.

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. EXTERNAL REGULATION OF DEPARTMENT OF**
4 **ENERGY.**

5 (a) ELIMINATION OF DEPARTMENT OF ENERGY AU-
6 THORITY.—Effective 2 years after the date of enactment
7 of this Act, the Department of Energy shall have no regu-
8 latory or enforcement authority with respect to nuclear

1 safety and occupational safety and health responsibilities
2 assumed by the Nuclear Regulatory Commission under
3 subsection (b) or by the Occupational Safety and Health
4 Administration under subsection (c) at any nonmilitary
5 energy laboratory owned or operated by the Department.

6 (b) NUCLEAR REGULATORY COMMISSION AUTHOR-
7 ITY.—

8 (1) NUCLEAR SAFETY REGULATORY AND EN-
9 FORCEMENT RESPONSIBILITIES.—Effective 2 years
10 after the date of enactment of this Act, the Nuclear
11 Regulatory Commission shall assume the nuclear
12 safety regulatory and enforcement responsibilities of
13 the Department of Energy under the Atomic Energy
14 Act of 1954 with regard to nonmilitary energy lab-
15 oratories owned or operated by the Department.

16 (2) LICENSED ENTITIES.—For the purposes of
17 carrying out at nonmilitary energy laboratories
18 owned or operated by the Department of Energy
19 regulatory and enforcement responsibilities described
20 in paragraph (1), the Nuclear Regulatory Commis-
21 sion may regulate, through licensing, certification, or
22 other appropriate means, the Department's contrac-
23 tors.

24 (3) DECOMMISSIONING.—A contractor oper-
25 ating a nonmilitary energy laboratory owned by the

1 Department of Energy shall not be responsible for
2 the costs of decommissioning that facility. No en-
3 forcement action may be taken against such con-
4 tractor for any violation of Nuclear Regulatory Com-
5 mission decommissioning requirements, if such viola-
6 tion is the result of a failure of the Department to
7 authorize or fund decommissioning activities. The
8 Nuclear Regulatory Commission and the Depart-
9 ment shall, not later than 1 year after the date of
10 enactment of this Act, enter into a memorandum of
11 understanding establishing decommissioning proce-
12 dures and requirements for nonmilitary energy lab-
13 oratories owned or operated by the Department.

14 (4) ACCELERATORS.—Notwithstanding the pro-
15 visions of the Atomic Energy Act of 1954 (42
16 U.S.C. 2011 et. seq.), effective 2 years after the
17 date of enactment of this Act, the Nuclear Regu-
18 latory Commission shall have exclusive regulatory
19 authority over accelerators, other electronic sources
20 of radiation not assigned to the Commission as of
21 the date of enactment of this Act, accelerator-pro-
22 duced radioisotopes, and naturally occurring radio-
23 active materials at nonmilitary energy laboratories,
24 consistent with the authorities granted the Nuclear
25 Regulatory Commission in the Atomic Energy Act of

1 1954. Until such time as the Commission has com-
2 pleted a rulemaking for the foregoing equipment and
3 radioisotopes, nonmilitary energy laboratories shall
4 be required to meet the requirements stipulated in a
5 license for the facility.

6 (5) ADMINISTRATION.—The responsibilities as-
7 sumed by the Nuclear Regulatory Commission under
8 this subsection shall be administered by the Nuclear
9 Regulatory Commission, not by States.

10 (6) JUDICIAL REVIEW.—Section 189 b. of the
11 Atomic Energy Act of 1954 (42 U.S.C. 2239(b)) is
12 amended by adding the following paragraph after
13 paragraph (4):

14 “(5) Any final order or regulation of the Com-
15 mission establishing standards to govern nonmilitary
16 energy laboratories owned or operated by the De-
17 partment of Energy that is issued to implement the
18 Commission’s responsibilities under the Act which
19 enacted this paragraph, and any final determination
20 of the Commission relating to whether a nonmilitary
21 energy laboratory owned or operated by the Depart-
22 ment is in compliance with such standards and all
23 applicable Commission regulations or orders.”.

24 (7) EMPLOYEE PROTECTION.—Any Department
25 of Energy contractor operating a nonmilitary energy

1 laboratory that is regulated by the Nuclear Regu-
2 latory Commission under this section shall be sub-
3 ject to section 211 of the Energy Reorganization Act
4 of 1974 (42 U.S.C. 5851) to the same extent as any
5 other employer subject to such section 211.

6 (8) CONFLICT OF INTEREST.—Section 170A of
7 the Atomic Energy Act of 1954 (42 U.S.C. 2210a)
8 applies to contracts, agreements, or other arrange-
9 ments of the Nuclear Regulatory Commission pro-
10 posed or entered into pursuant to its responsibilities
11 assumed under this subsection.

12 (c) OCCUPATIONAL SAFETY AND HEALTH.—

13 (1) OSHA JURISDICTION.—Notwithstanding
14 section 4(b)(1) of the Occupational Safety and
15 Health Act of 1970 (29 U.S.C. 653(b)(1)), effective
16 2 years after the date of enactment of this Act, the
17 Occupational Safety and Health Administration shall
18 assume the exclusive regulatory and enforcement re-
19 sponsibilities of the Department of Energy relating
20 to matters covered by the Occupational Safety and
21 Health Act of 1970 with regard to all nonmilitary
22 energy laboratories owned or operated by the De-
23 partment, except as provided in paragraph (2). The
24 responsibilities assumed by the Occupational Safety
25 and Health Administration under this subsection

1 shall be administered by the Occupational Safety
2 and Health Administration, not by States. Any De-
3 partment of Energy contractor operating such a lab-
4 oratory shall, with respect to matters relating to oc-
5 cupational safety and health, be considered to be an
6 employer for purposes of the Occupational Safety
7 and Health Act of 1970.

8 (2) REGULATION OF HAZARDS CONTAINING RA-
9 BIOLOGICAL AND NON-RADIOLOGICAL COMPO-
10 NENT.—If a hazard at a nonmilitary energy labora-
11 tory owned or operated by the Department of En-
12 ergy presents a risk of occupational exposure and
13 contains both a radiological and non-radiological
14 component, the Occupational Safety and Health Ad-
15 ministration and the Nuclear Regulatory Commis-
16 sion shall, effective 2 years after the date of enact-
17 ment of this Act, share regulatory and enforcement
18 responsibilities with respect to the hazard in accord-
19 ance with the memorandum of understanding en-
20 tered into pursuant to subsection (d).

21 (d) MEMORANDUM OF UNDERSTANDING.—The Nu-
22 clear Regulatory Commission and the Occupational Safety
23 and Health Administration shall, not later than 1 year
24 after the date of enactment of this Act, enter into and
25 transmit to the Congress a memorandum of under-

1 standing to govern the exercise of their respective authori-
2 ties over nuclear safety and occupational safety and health
3 at nonmilitary energy laboratories owned or operated by
4 the Department of Energy.

5 (e) CIVIL PENALTIES.—The Department of Energy's
6 contractor operating a nonmilitary energy laboratory
7 owned or operated by the Department shall not be liable
8 for civil penalties under the Atomic Energy Act of 1954
9 or the Occupational Safety and Health Act of 1970 for
10 any actions taken before the date of transfer of regulatory
11 authority under this section, pursuant to the instructions
12 of a Federal agency in preparation for the transfer of reg-
13 ulatory and enforcement responsibilities required by this
14 section.

15 (f) INDEMNIFICATION.—The Secretary of Energy
16 shall continue to indemnify nonmilitary energy labora-
17 tories owned or operated by the Department in accordance
18 with the provisions of section 170 d. of the Atomic Energy
19 Act of 1954.

20 (g) DEPARTMENT OF ENERGY REPORTING REQUIRE-
21 MENT.—Not later than 18 months after the date of enact-
22 ment of this Act, the Secretary of Energy shall transmit
23 to the Congress a plan for the termination of the Depart-
24 ment of Energy's regulatory and enforcement responsibil-
25 ities for nonmilitary energy laboratories owned or operated

1 by the Department required by this section. The report
2 shall include—

3 (1) a detailed transition plan, drafted in coordi-
4 nation with the Nuclear Regulatory Commission and
5 the Occupational Safety and Health Administration,
6 giving the schedule for termination of self-regulation
7 authority as outlined in subsection (a), including the
8 activities to be coordinated with the Nuclear Regu-
9 latory Commission and the Occupational Safety and
10 Health Administration;

11 (2) a description of any issues remaining to be
12 resolved with the Nuclear Regulatory Commission,
13 the Occupational Safety and Health Administration,
14 or other external regulators, and a timetable for re-
15 solving such issues by the authority transfer date es-
16 tablished under this section; and

17 (3) an estimate of—

18 (A) the annual cost of administering and
19 implementing self-regulation of the nuclear
20 safety and occupational safety and health re-
21 sponsibilities described in subsections (b) and
22 (c) at nonmilitary energy laboratories owned or
23 operated by the Department;

1 (B) the number of Federal and contractor
2 employees administering and implementing such
3 self-regulation; and

4 (C) the extent and schedule by which the
5 Department and the staffs at its nonmilitary
6 energy laboratories will be reduced as a result
7 of implementation of this section.

8 (h) GENERAL ACCOUNTING OFFICE REPORTING RE-
9 QUIREMENT.—The Comptroller General of the United
10 States shall periodically report to the Congress on the
11 progress made in implementing this section. The Comp-
12 troller General shall provide a report not later than 20
13 months after the date of enactment of this Act on the De-
14 partment of Energy's transition plan, and not later than
15 26 months after the date of enactment of this Act on the
16 implementation of Nuclear Regulatory Commission and
17 Occupational Safety and Health Administration regula-
18 tions in the nonmilitary energy laboratories.

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