

109TH CONGRESS
2^D SESSION

S. 3879

AN ACT

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”.

1 **SEC. 2. FINDINGS AND PURPOSE.**

2 (a) FINDINGS.—Congress finds that—

3 (1) section 170 of the Atomic Energy Act of
4 1954 (42 U.S.C. 2210) (commonly known as the
5 “Price-Anderson Act”)—

6 (A) provides a predictable legal framework
7 necessary for nuclear projects; and

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

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

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

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

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

24 (4) the Convention benefits United States nu-
25 clear suppliers that face potentially unlimited liabil-
26 ity for a nuclear incidents outside the coverage of

1 section 170 of the Atomic Energy Act of 1954 (42
2 U.S.C. 2210) by replacing a potentially open-ended
3 liability with a predictable liability regime that, in
4 effect, provides nuclear suppliers with insurance for
5 damage arising out of such an incident;

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

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

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

24 (8) any such contribution should be funded in
25 a manner that neither upsets settled expectations

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

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

10 (10) with respect to a nuclear incident outside
11 the United States not covered by section 170 of the
12 Atomic Energy Act of 1954 (42 U.S.C. 2210), a ret-
13 rospective premium should be prorated among nu-
14 clear suppliers relieved from potential liability for
15 which insurance is not available.

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

22 (1) with respect to a Price-Anderson incident,
23 by using funds made available under section 170 of
24 the Atomic Energy Act of 1954 (42 U.S.C. 2210) to
25 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 outside
4 the United States that is not a Price-Anderson inci-
5 dent, by allocating the contingent costs equitably, on
6 the basis of risk, among the class of nuclear sup-
7 pliers relieved by the Convention from the risk of po-
8 tential liability resulting from any covered incident
9 outside the United States.

10 **SEC. 3. DEFINITIONS.**

11 In this Act:

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

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

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

24 (4) COVERED INCIDENT.—The term “covered
25 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 outside the United States that is not a Price-Anderson in-
3 cident.

4 (b) DEFERRED PAYMENT.—

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

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

16 (3) RISK-INFORMED ASSESSMENT FORMULA.—

17 (A) IN GENERAL.—Not later than 3 years
18 after the date of enactment of this Act, and
19 every 5 years thereafter, the Secretary shall, by
20 regulation, determine the risk-informed assess-
21 ment formula for the allocation among nuclear
22 suppliers of the contingent cost resulting from
23 a covered incident that is not a Price-Anderson
24 incident, taking into account risk factors such
25 as—

1 (i) the nature and intended purpose of
2 the goods and services supplied by each
3 nuclear supplier to each covered installa-
4 tion outside the United States;

5 (ii) the quantity of the goods and
6 services supplied by each nuclear supplier
7 to each covered installation outside the
8 United States;

9 (iii) the hazards associated with the
10 supplied goods and services if the goods
11 and services fail to achieve the intended
12 purposes;

13 (iv) the hazards associated with the
14 covered installation outside the United
15 States to which the goods and services are
16 supplied;

17 (v) the legal, regulatory, and financial
18 infrastructure associated with the covered
19 installation outside the United States to
20 which the goods and services are supplied;
21 and

22 (vi) the hazards associated with par-
23 ticular forms of transportation.

24 (B) FACTORS FOR CONSIDERATION.—In
25 determining the formula, the Secretary may—

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(i) exclude—

(I) goods and services with negligible risk;

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

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

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

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

(C) APPLICATION.—In applying the formula, the Secretary shall not consider any covered installation or transportation for which funds would be available under section 170 of the Atomic Energy Act of 1954 (42 U.S.C. 2210).

(D) REPORT.—Not later than 5 years after the date of enactment of this Act and every 5 years thereafter, the Secretary shall submit to the Committee on Environment and Public Works of the Senate and the Committee

1 on Energy and Commerce of the House of Rep-
2 resentatives a report on whether there is a need
3 for continuation or amendment of this Act, tak-
4 ing into account the effects of the implementa-
5 tion of the Convention on the United States nu-
6 clear industry and suppliers.

7 **SEC. 7. REPORTING.**

8 (a) COLLECTION OF INFORMATION.—

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

13 (2) PROVISION OF INFORMATION.—Each nu-
14 clear supplier and other appropriate persons shall
15 make available to the Secretary such information,
16 reports, records, documents, and other data as the
17 Secretary determines, by regulation, to be necessary
18 or appropriate to develop and implement the formula
19 under section 6(b)(3).

20 (b) PRIVATE INSURANCE.—The Secretary shall make
21 available to nuclear suppliers, and insurers of nuclear sup-
22 pliers, information to support the voluntary establishment
23 and maintenance of private insurance against any risk for
24 which nuclear suppliers may be required to pay deferred
25 payments under this Act.

1 **SEC. 8. EFFECT ON LIABILITY.**

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

6 (1) specifically refers to this Act; and

7 (2) explicitly repeals, alters, amends, modifies,
8 impairs, displaces, or supersedes the effect of this
9 section.

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

11 (a) ACTION BY NUCLEAR SUPPLIERS.—

12 (1) NOTIFICATION.—In the case of a request
13 for funds under Article VII of the Convention result-
14 ing from a covered incident that is not a Price-An-
15 derson incident, the Secretary shall notify each nu-
16 clear supplier of the amount of the deferred payment
17 required to be made by the nuclear supplier.

18 (2) PAYMENTS.—

19 (A) IN GENERAL.—Except as provided in
20 subparagraph (B), not later than 60 days after
21 receipt of a notification under paragraph (1), a
22 nuclear supplier shall pay to the general fund of
23 the Treasury the deferred payment of the nu-
24 clear supplier required under paragraph (1).

25 (B) ANNUAL PAYMENTS.—A nuclear sup-
26 plier may elect to prorate payment of the de-

1 ferred payment required under paragraph (1) in
2 5 equal annual payments (including interest on
3 the unpaid balance at the prime rate prevailing
4 at the time the first payment is due).

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

9 (b) USE OF FUNDS.—

10 (1) IN GENERAL.—Amounts paid into the
11 Treasury under subsection (a) shall be available to
12 the Secretary of the Treasury, without further ap-
13 propriation and without fiscal year limitation, for
14 the purpose of making the contributions of public
15 funds required to be made by the United States
16 under the Convention.

17 (2) ACTION BY SECRETARY OF TREASURY.—
18 The Secretary of the Treasury shall pay the con-
19 tribution required under the Convention to the court
20 of competent jurisdiction under Article XIII of the
21 Convention with respect to the applicable covered in-
22 cident.

23 (c) FAILURE TO PAY.—If a nuclear supplier fails to
24 make a payment required under this section, the Secretary

1 may take appropriate action to recover from the nuclear
2 supplier—

3 (1) the amount of the payment due from the
4 nuclear supplier;

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

6 (3) a penalty of not more than twice the
7 amount of the deferred payment due from the nu-
8 clear supplier.

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

11 (a) **LIMITATION ON JUDICIAL REVIEW.—**

12 (1) **IN GENERAL.—**In any civil action arising
13 under the Convention over which Article XIII of the
14 Convention grants jurisdiction to the courts of the
15 United States, any appeal or review by writ of man-
16 damus or otherwise with respect to a nuclear inci-
17 dent that is not a Price-Anderson incident shall be
18 in accordance with chapter 83 of title 28, United
19 States Code, except that the appeal or review shall
20 occur in the United States Court of Appeals for the
21 District of Columbia Circuit.

22 (2) **SUPREME COURT JURISDICTION.—**Nothing
23 in this subsection affects the jurisdiction of the Su-
24 preme Court of the United States under chapter 81
25 of title 28, United States Code.

1 (b) CAUSE OF ACTION.—

2 (1) IN GENERAL.—Subject to paragraph (2), in
3 any civil action arising under the Convention over
4 which Article XIII of the Convention grants jurisdic-
5 tion to the courts of the United States, in addition
6 to any other cause of action that may exist, an indi-
7 vidual or entity shall have a cause of action against
8 the operator to recover for nuclear damage suffered
9 by the individual or entity.

10 (2) REQUIREMENT.—Paragraph (1) shall apply
11 only if the individual or entity seeks a remedy for
12 nuclear damage (as defined in Article I of the Con-
13 vention) that was caused by a nuclear incident (as
14 defined in Article I of the Convention) that is not a
15 Price-Anderson incident.

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

20 **SEC. 11. RIGHT OF RECOURSE.**

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

1 **SEC. 12. PROTECTION OF SENSITIVE UNITED STATES IN-**
2 **FORMATION.**

3 Nothing in the Convention or this Act requires the
4 disclosure of—

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

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

11 (3) national security information classified
12 under Executive Order 12958 (50 U.S.C. 435 note;
13 relating to classified national security information)
14 (or a successor regulation).

15 **SEC. 13. REGULATIONS.**

16 (a) **IN GENERAL.**—The Secretary or the Commission,
17 as appropriate, may prescribe regulations to carry out sec-
18 tion 170 of the Atomic Energy Act of 1954 (42 U.S.C.
19 2210) and this Act.

20 (b) **REQUIREMENT.**—Rules prescribed under this sec-
21 tion shall ensure, to the maximum extent practicable,
22 that—

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

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

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

8 (d) **EFFECT OF SECTION.**—The authority provided
9 under this section is in addition to, and does not impair
10 or otherwise affect, any other authority of the Secretary
11 or the Commission to prescribe regulations.

12 **SEC. 14. EFFECTIVE DATE.**

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

 Passed the Senate September 30 (legislative day,
September 29), 2006.

Attest:

Secretary.

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Compensation for Nuclear Damage, and for
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