

Calendar No. 636109TH CONGRESS
2^D SESSION**S. 3879****[Report No. 109-346]**

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

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 8, 2006

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

SEPTEMBER 25, 2006

Reported by Mr. INHOFE, with amendments

[Omit the part struck through and insert the part printed in italics]

A BILL

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Convention on Supple-
3 mentary Compensation for Nuclear Damage Contingent
4 Cost Allocation Act”.

5 **SEC. 2. FINDINGS AND PURPOSE.**

6 (a) FINDINGS.—Congress finds that—

7 (1) section 170 of the Atomic Energy Act of
8 1954 (42 U.S.C. 2210) (commonly known as the
9 “Price-Anderson Act”)—

10 (A) provides a predictable legal framework
11 necessary for nuclear projects; and

12 (B) ensures prompt and equitable com-
13 pensation in the event of a nuclear incident in
14 the United States;

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

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

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

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

3 (4) the Convention benefits United States nu-
4 clear suppliers that face potentially unlimited liabil-
5 ity for a nuclear incidents outside the coverage of
6 section 170 of the Atomic Energy Act of 1954 (42
7 U.S.C. 2210) by replacing a potentially open-ended
8 liability with a predictable liability regime that, in
9 effect, provides nuclear suppliers with insurance for
10 damage arising out of such an incident;

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

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

1 (7) the cost of those benefits is the obligation
2 of the United States to contribute to the supple-
3 mentary compensation fund established by the Con-
4 vention;

5 (8) any such contribution should be funded in
6 a manner that neither upsets settled expectations
7 based on the liability regime established under sec-
8 tion 170 of the Atomic Energy Act of 1954 (42
9 U.S.C. 2210) nor shifts to Federal taxpayers liabil-
10 ity risks for nuclear incidents at foreign installa-
11 tions;

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

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

22 (b) PURPOSE.—The purpose of this Act is to allocate
23 the contingent costs associated with participation by the
24 United States in the international nuclear liability com-
25 pensation system established by the Convention on Sup-

1 plementary Compensation for Nuclear Damage, done at
2 Vienna on September 12, 1997—

3 (1) with respect to a Price-Anderson incident,
4 by using funds made available under section 170 of
5 the Atomic Energy Act of 1954 (42 U.S.C. 2210) to
6 cover the contingent costs in a manner that neither
7 increases the burdens nor decreases the benefits
8 under section 170 of that Act; and

9 (2) with respect to a covered incident *outside*
10 *the United States* that is not a Price-Anderson inci-
11 dent, by allocating the contingent costs equitably, on
12 the basis of risk, among the class of nuclear sup-
13 pliers relieved by the Convention from the risk of po-
14 tential liability resulting from any covered incident
15 *outside the United States*.

16 **SEC. 3. DEFINITIONS.**

17 In this Act:

18 (1) COMMISSION.—The term “Commission”
19 means the Nuclear Regulatory Commission.

20 (2) CONTINGENT COST.—The term “contingent
21 cost” means the cost to the United States in the
22 event of a covered incident the amount of which is
23 equal to the amount of funds the United States is
24 obligated to make available under paragraph 1(b) of
25 Article III of the Convention.

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

5 (4) COVERED INCIDENT.—The term “covered
6 incident” means a nuclear incident the occurrence of
7 which results in a request for funds pursuant to Ar-
8 ticle VII of the Convention.

9 (5) COVERED INSTALLATION.—The term “cov-
10 ered installation” means a nuclear installation at
11 which the occurrence of a nuclear incident could re-
12 sult in a request for funds under Article VII of the
13 Convention.

14 (6) COVERED PERSON.—

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

17 (i) a United States person; and

18 (ii) an individual or entity (including
19 an agency or instrumentality of a foreign
20 country) that—

21 (I) is located in the United
22 States; or

23 (II) carries out an activity in the
24 United States.

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

3 (i) the United States; or

4 (ii) any agency or instrumentality of
5 the United States.

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

9 (A) supplies facilities, equipment, fuel,
10 services, or technology pertaining to the design,
11 construction, operation, or decommissioning of
12 a covered installation; or

13 (B) transports nuclear materials that could
14 result in a covered incident.

15 (8) PRICE-ANDERSON INCIDENT.—The term
16 “Price-Anderson incident” means a covered incident
17 for which section 170 of the Atomic Energy Act of
18 1954 (42 U.S.C. 2210) would make funds available
19 to compensate for public liability (as defined in sec-
20 tion 11 of that Act (42 U.S.C. 2014)).

21 (9) SECRETARY.—The term “Secretary” means
22 the Secretary of Energy.

23 (10) UNITED STATES.—

24 (A) IN GENERAL.—The term “United
25 States” has the meaning given the term in sec-

1 tion 11 of the Atomic Energy Act of 1954 (42
2 U.S.C. 2014).

3 (B) INCLUSIONS.—The term “United
4 States” includes—

5 (i) the Commonwealth of Puerto Rico;

6 (ii) any other territory or possession
7 of the United States;

8 (iii) the Canal Zone; and

9 (iv) the waters of the United States
10 territorial sea under Presidential Procla-
11 mation Number 5928, dated December 27,
12 1988 (43 U.S.C. 1331 note).

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

15 (A) any individual who is a resident, na-
16 tional, or citizen of the United States (other
17 than an individual residing outside of the
18 United States and employed by a person who is
19 not a United States person); and

20 (B) any corporation, partnership, associa-
21 tion, joint stock company, business trust, unin-
22 corporated organization, or sole proprietorship
23 that is organized under the laws of the United
24 States.

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

2 (a) IN GENERAL.—Funds made available under sec-
3 tion 170 of the Atomic Energy Act of 1954 (42 U.S.C.
4 2210) shall be used to cover the contingent cost resulting
5 from any Price-Anderson incident.

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

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

11 (a) IN GENERAL.—Funds made available to the
12 United States under Article VII of the Convention with
13 respect to a Price-Anderson incident shall be used to sat-
14 isfy public liability resulting from the Price-Anderson inci-
15 dent.

16 (b) AMOUNT.—The amount of public liability allow-
17 able under section 170 of the Atomic Energy Act of 1954
18 (42 U.S.C. 2210) relating to a Price-Anderson incident
19 under subsection (a) shall be increased by an amount
20 equal to the difference between—

21 (1) the amount of funds made available for the
22 Price-Anderson incident under Article VII of the
23 Convention; and

24 (2) the amount of funds used under section 4
25 to cover the contingent cost resulting from the
26 Price-Anderson incident.

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

2 (a) IN GENERAL.—Except as provided in subsection
3 (b), each nuclear supplier shall participate in a retrospec-
4 tive risk pooling program in accordance with this Act to
5 cover the contingent cost resulting from a covered incident
6 *outside the United States* that is not a Price-Anderson inci-
7 dent.

8 (b) DEFERRED PAYMENT.—

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

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

20 (3) RISK-INFORMED ASSESSMENT FORMULA.—

21 (A) IN GENERAL.—~~The~~ *Not later than 3*
22 *years after the date of enactment of this Act, and*
23 *every 5 years thereafter, the* Secretary shall, by
24 regulation, determine the risk-informed assess-
25 ment formula for the allocation among nuclear
26 suppliers of the contingent cost resulting from

1 a covered incident that is not a Price-Anderson
2 incident, taking into account risk factors such
3 as—

4 (i) the nature and intended purpose of
5 the goods and services supplied by each
6 nuclear supplier to each covered installa-
7 tion *outside the United States*;

8 (ii) the quantity of the goods and
9 services supplied by each nuclear supplier
10 to each covered installation *outside the*
11 *United States*;

12 (iii) the hazards associated with the
13 supplied goods and services if the goods
14 and services fail to achieve the intended
15 purposes;

16 (iv) the hazards associated with the
17 covered installation *outside the United*
18 *States* to which the goods and services are
19 supplied;

20 (v) the legal, regulatory, and financial
21 infrastructure associated with the covered
22 installation *outside the United States* to
23 which the goods and services are supplied;
24 and

1 (vi) the hazards associated with par-
2 ticular forms of transportation.

3 (B) FACTORS FOR CONSIDERATION.—In
4 determining the formula, the Secretary may—

5 (i) exclude—

6 (I) goods and services with neg-
7 ligible risk;

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

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

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

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

19 (C) APPLICATION.—In applying the for-
20 mula, the Secretary shall not consider any cov-
21 ered installation or transportation for which
22 funds would be available under section 170 of
23 the Atomic Energy Act of 1954 (42 U.S.C.
24 2210).

1 (D) *REPORT.*—Not later than 5 years after
2 the date of enactment of this Act, the Secretary
3 shall submit to the Committee on Environment
4 and Public Works of the Senate and the Com-
5 mittee on Energy and Commerce of the House of
6 Representatives a report on whether there is a
7 need for continuation or amendment of this Act,
8 taking into account the effects of the implementa-
9 tion of the Convention on the United States nu-
10 clear industry and suppliers.

11 **SEC. 7. REPORTING.**

12 (a) **COLLECTION OF INFORMATION.**—

13 (1) **IN GENERAL.**—The Secretary may collect
14 information necessary for developing and imple-
15 menting the formula for calculating the deferred
16 payment of a nuclear supplier under section 6(b).

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

24 (b) **PRIVATE INSURANCE.**—The Secretary shall make
25 available to nuclear suppliers, and insurers of nuclear sup-

1 pliers, information to support the voluntary establishment
2 and maintenance of private insurance against any risk for
3 which nuclear suppliers may be required to pay deferred
4 payments under this Act.

5 **SEC. 8. EFFECT ON LIABILITY.**

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

10 (1) specifically refers to this Act; and

11 (2) explicitly repeals, alters, amends, modifies,
12 impairs, displaces, or supersedes the effect of this
13 section.

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

15 (a) ACTION BY NUCLEAR SUPPLIERS.—

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

22 (2) PAYMENTS.—

23 (A) IN GENERAL.—Except as provided in
24 subparagraph (B), not later than 60 days after
25 receipt of a notification under paragraph (1), a

1 nuclear supplier shall pay to the general fund of
2 the Treasury the deferred payment of the nu-
3 clear supplier required under paragraph (1).

4 (B) ANNUAL PAYMENTS.—A nuclear sup-
5 plier may elect to prorate payment of the de-
6 ferred payment required under paragraph (1) in
7 5 equal annual payments (including interest on
8 the unpaid balance at the prime rate prevailing
9 at the time the first payment is due).

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

14 (b) USE OF FUNDS.—

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

22 (2) ACTION BY SECRETARY OF TREASURY.—
23 The Secretary of the Treasury shall pay the con-
24 tribution required under the Convention to the court
25 of competent jurisdiction under Article XIII of the

1 Convention with respect to the applicable covered in-
2 cident.

3 (c) FAILURE TO PAY.—If a nuclear supplier fails to
4 make a payment required under this section, the Secretary
5 may take appropriate action to recover from the nuclear
6 supplier—

7 (1) the amount of the payment due from the
8 nuclear supplier;

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

10 (3) a penalty of not more than twice the
11 amount of the deferred payment due from the nu-
12 clear supplier.

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

15 (a) LIMITATION ON JUDICIAL REVIEW.—

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

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

5 (b) CAUSE OF ACTION.—

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

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

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

1 **SEC. 11. RIGHT OF RECOURSE.**

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

4 **SEC. 12. PROTECTION OF SENSITIVE UNITED STATES IN-**
5 **FORMATION.**

6 Nothing in the Convention or this Act requires the
7 disclosure of—

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

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

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

18 **SEC. 13. REGULATIONS.**

19 (a) **IN GENERAL.**—The Secretary or the Commission,
20 as appropriate, may prescribe regulations to carry out sec-
21 tion 170 of the Atomic Energy Act of 1954 (42 U.S.C.
22 2210) and this Act.

23 (b) **REQUIREMENT.**—Rules prescribed under this sec-
24 tion shall ensure, to the maximum extent practicable,
25 that—

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

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

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

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

15 **SEC. 14. EFFECTIVE DATE.**

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

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