

Union Calendar No. 180

107TH CONGRESS
1ST SESSION

H. R. 2983

[Report No. 107-299, Part I]

To extend indemnification authority under section 170 of the Atomic Energy Act of 1954, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 2, 2001

Mrs. WILSON (for herself, Mr. BARTON of Texas, Mr. NORWOOD, Mrs. TAUSCHER, Mr. FOSSELLA, Mr. BLUNT, Mr. BURR of North Carolina, Mr. WELLER, and Mr. WHITFIELD) introduced the following bill; which was referred to the Committee on Energy and Commerce

NOVEMBER 19, 2001

Reported with an amendment and referred to the Committee on Science for a period ending not later than November 20, 2001, for consideration of such provisions of the bill and amendment as fall within the jurisdiction of that committee pursuant to clause 1(n), rule X

[Strike out all after the enacting clause and insert the part printed in italic]

NOVEMBER 20, 2001

Committee on Science discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed

[For text of introduced bill, see copy of bill as introduced on October 2, 2001]

A BILL

To extend indemnification authority under section 170 of the Atomic Energy Act of 1954, 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 “Price-Anderson Reau-*
5 *thorization Act of 2001”.*

6 **SEC. 2. EXTENSION OF INDEMNIFICATION AUTHORITY.**

7 (a) *INDEMNIFICATION OF NUCLEAR REGULATORY*
8 *COMMISSION LICENSEES.—Section 170 c. of the Atomic En-*
9 *ergy Act of 1954 (42 U.S.C. 2210(c)) is amended—*

10 (1) *in the subsection heading, by striking “LI-*
11 *CENSES” and inserting “LICENSEES”; and*

12 (2) *by striking “August 1, 2002” each place it*
13 *appears and inserting “August 1, 2017”.*

14 (b) *INDEMNIFICATION OF DEPARTMENT OF ENERGY*
15 *CONTRACTORS.—Section 170 d.(1)(A) of the Atomic Energy*
16 *Act of 1954 (42 U.S.C. 2210(d)(1)(A)) is amended by strik-*
17 *ing “August 1, 2002” and inserting “August 1, 2017”.*

18 (c) *INDEMNIFICATION OF NONPROFIT EDUCATIONAL*
19 *INSTITUTIONS.—Section 170 k. of the Atomic Energy Act*
20 *of 1954 (42 U.S.C. 2210(k)) is amended by striking “August*
21 *1, 2002” each place it appears and inserting “August 1,*
22 *2017”.*

23 **SEC. 3. MAXIMUM ASSESSMENT.**

24 *Section 170 b.(1) of the Atomic Energy Act of 1954*
25 *(42 U.S.C. 2210(b)(1)) is amended—*

1 (1) *in the second proviso of the third sentence—*

2 (A) *by striking “\$63,000,000” and inserting*
3 *“\$94,000,000”; and*

4 (B) *by striking “\$10,000,000 in any 1*
5 *year” and inserting “\$15,000,000 in any 1 year*
6 *(subject to adjustment for inflation under sub-*
7 *section t.)”; and*

8 (2) *in subsection t.—*

9 (A) *by inserting “total and annual” after*
10 *“amount of the maximum”;*

11 (B) *by striking “the date of the enactment*
12 *of the Price-Anderson Amendments Act of 1988”*
13 *and inserting “July 1, 2001”; and*

14 (C) *by striking “such date of enactment”*
15 *and inserting “July 1, 2001”.*

16 **SEC. 4. DEPARTMENT OF ENERGY LIABILITY LIMIT.**

17 (a) *INDEMNIFICATION OF DEPARTMENT OF ENERGY*
18 *CONTRACTORS.—Section 170 d. of the Atomic Energy Act*
19 *of 1954 (42 U.S.C. 2210(d)) is amended by striking para-*
20 *graph (2) and inserting the following:*

21 “(2) *INDEMNIFICATION AGREEMENTS.—In an agree-*
22 *ment of indemnification entered into under paragraph (1),*
23 *the Secretary—*

24 (A) *may require the contractor to provide and*
25 *maintain the financial protection of such a type and*

1 *in such amounts as the Secretary shall determine to*
2 *be appropriate to cover public liability arising out of*
3 *or in connection with the contractual activity; and*

4 “(B) shall indemnify the persons indemnified
5 *against such liability above the amount of the finan-*
6 *cial protection required, in the amount of*
7 *\$10,000,000,000 (subject to adjustment for inflation*
8 *under subsection t.), in the aggregate, for all persons*
9 *indemnified in connection with the contract and for*
10 *each nuclear incident, including such legal costs of the*
11 *contractor as are approved by the Secretary.”.*

12 (b) *CONTRACT AMENDMENTS.—Section 170 d. of the*
13 *Atomic Energy Act of 1954 (42 U.S.C. 2210(d)) is amended*
14 *by striking paragraph (3) and inserting the following:*

15 “(3) *CONTRACT AMENDMENTS.—All agreements of in-*
16 *demnification under which the Department of Energy (or*
17 *its predecessor agencies) may be required to indemnify any*
18 *person under this section shall be deemed to be amended,*
19 *on the date of enactment of the Price-Anderson Reauthoriza-*
20 *tion Act of 2001, to reflect the amount of indemnity for*
21 *public liability and any applicable financial protection re-*
22 *quired of the contractor under this subsection.”.*

23 (c) *LIABILITY LIMIT.—Section 170 e.(1)(B) of the*
24 *Atomic Energy Act of 1954 (42 U.S.C. 2210(e)(1)(B)) is*
25 *amended—*

1 (1) by striking “the maximum amount of finan-
2 cial protection required under subsection b. or”; and

3 (2) by striking “paragraph (3) of subsection d.,
4 whichever amount is more” and inserting “paragraph
5 (2) of subsection d.”.

6 **SEC. 5. INCIDENTS OUTSIDE THE UNITED STATES.**

7 (a) *AMOUNT OF INDEMNIFICATION.*—Section 170 d.(5)
8 of the Atomic Energy Act of 1954 (42 U.S.C. 2210(d)(5))
9 is amended by striking “\$100,000,000” and inserting
10 “\$500,000,000”.

11 (b) *LIABILITY LIMIT.*—Section 170 e.(4) of the Atomic
12 Energy Act of 1954 (42 U.S.C. 2210(e)(4)) is amended by
13 striking “\$100,000,000” and inserting “\$500,000,000”.

14 **SEC. 6. REPORTS.**

15 Section 170 p. of the Atomic Energy Act of 1954 (42
16 U.S.C. 2210(p)) is amended by striking “August 1, 1998”
17 and inserting “August 1, 2013”.

18 **SEC. 7. INFLATION ADJUSTMENT.**

19 Section 170 t. of the Atomic Energy Act of 1954 (42
20 U.S.C. 2210(t)) is amended—

21 (1) by redesignating paragraph (2) as para-
22 graph (3); and

23 (2) by adding after paragraph (1) the following:

24 “(2) *ADJUSTMENT.*—The Secretary shall adjust the
25 amount of indemnification provided under an agreement

1 *of indemnification under subsection d. not less than once*
2 *during each 5-year period following July 1, 2001, in ac-*
3 *cordance with the aggregate percentage change in the Con-*
4 *sumer Price Index since—*

5 “(A) *that date, in the case of the first adjustment*
6 *under this paragraph; or*

7 “(B) *the previous adjustment under this para-*
8 *graph.*”.

9 **SEC. 8. PRICE-ANDERSON TREATMENT OF MODULAR REAC-**
10 **TORS.**

11 *Section 170 b. of the Atomic Energy Act of 1954 (42*
12 *U.S.C. 2210(b)) is amended by adding at the end the fol-*
13 *lowing new paragraph:*

14 “(5)(A) *For purposes of this section only, the Commis-*
15 *sion shall consider a combination of facilities described in*
16 *subparagraph (B) to be a single facility having a rated ca-*
17 *capacity of 100,000 electrical kilowatts or more.*

18 “(B) *A combination of facilities referred to in subpara-*
19 *graph (A) is 2 or more facilities located at a single site,*
20 *each of which has a rated capacity of 100,000 electrical kilo-*
21 *watts or more but not more than 300,000 electrical kilo-*
22 *watts, with a combined rated capacity of not more than*
23 *1,300,000 electrical kilowatts.*”.

1 **SEC. 9. APPLICABILITY.**

2 *The amendments made by sections 3, 4, and 5 do not*
3 *apply to a nuclear incident that occurs before the date of*
4 *enactment of this Act.*

5 **SEC. 10. PROHIBITION ON ASSUMPTION BY UNITED STATES**
6 **GOVERNMENT OF LIABILITY FOR CERTAIN**
7 **FOREIGN ACCIDENTS.**

8 *Section 170 of the Atomic Energy Act of 1954 (42*
9 *U.S.C. 2210) is amended by adding at the end the following*
10 *new subsection:*

11 *“u. PROHIBITION ON ASSUMPTION OF LIABILITY FOR*
12 *CERTAIN FOREIGN ACCIDENTS.—Notwithstanding this sec-*
13 *tion or any other provision of law, no officer of the United*
14 *States or of any department, agency, or instrumentality of*
15 *the United States Government may enter into any contract*
16 *or other arrangement, or into any amendment or modifica-*
17 *tion of a contract or other arrangement, the purpose or ef-*
18 *fect of which would be to directly or indirectly impose li-*
19 *ability on the United States Government, or any depart-*
20 *ment, agency, or instrumentality of the United States Gov-*
21 *ernment, or to otherwise directly or indirectly require an*
22 *indemnity by the United States Government, for nuclear*
23 *accidents occurring in any country whose government has*
24 *been identified by the Secretary of State as engaged in state*
25 *sponsorship of terrorist activities (specifically including*
26 *any country the government of which, as of September 11,*

1 2001, had been determined by the Secretary of State under
2 section 620A(a) of the Foreign Assistance Act of 1961, sec-
3 tion 6(j)(1) of the Export Administration Act of 1979, or
4 section 40(d) of the Arms Export Control Act to have re-
5 peatedly provided support for acts of international ter-
6 rorism).”.

7 **SEC. 11. TRANSPORTATION OF NUCLEAR MATERIALS.**

8 (a) AMENDMENT.—Chapter 14 of the Atomic Energy
9 Act of 1954 (42 U.S.C. 2201–2210b) is amended by adding
10 at the end the following new section:

11 “SEC. 170C. TRANSPORTATION OF NUCLEAR MATE-
12 RIALS.—

13 “a. The Nuclear Regulatory Commission shall establish
14 a system to ensure that—

15 “(1) with respect to activities by any party pur-
16 suant to a license issued under this Act, each vehicle
17 transporting materials described in subsection b. in
18 the United States—

19 “(A) from a facility licensed by the Nuclear
20 Regulatory Commission;

21 “(B) from a facility licensed by an agree-
22 ment State; or

23 “(C) from a country with whom the United
24 States has an agreement for cooperation under
25 section 123,

1 carries a manifest describing the type and amount of
2 materials being transported;

3 “(2) each individual driving or traveling with
4 such a vehicle has been subject to a security back-
5 ground check by appropriate Federal entities; and

6 “(3) no such vehicle transports such materials to
7 a destination other than a facility licensed by the Nu-
8 clear Regulatory Commission or an agreement State
9 under this Act or other appropriate Federal facility,
10 or to a destination outside the United States in a
11 country with whom the United States has an agree-
12 ment for cooperation under section 123.

13 “b. Except as otherwise provided by the Commission
14 by regulation, the materials referred to in subsection a.(1)
15 are byproduct materials, source materials, special nuclear
16 materials, high-level radioactive waste, spent nuclear fuel,
17 transuranic waste, and low-level radioactive waste (as de-
18 fined in section 2(16) of the Nuclear Waste Policy Act of
19 1982 (42 U.S.C. 10101(16))).”.

20 (b) REGULATIONS.—Not later than 1 year after the
21 date of the enactment of this Act, and from time to time
22 thereafter as it considers necessary, the Nuclear Regulatory
23 Commission shall issue regulations identifying radioactive
24 materials that, consistent with the protection of public
25 health and safety and the common defense and security, are

1 *appropriate exceptions to the transportation requirements*
2 *of section 170C of the Atomic Energy Act of 1954, as added*
3 *by subsection (a) of this section.*

4 *(c) EFFECTIVE DATE.—The amendment made by sub-*
5 *section (a) shall take effect upon the issuance of regulations*
6 *under subsection (b).*

7 *(d) TABLE OF SECTIONS AMENDMENT.—The table of*
8 *sections for chapter 14 of the Atomic Energy Act of 1954*
9 *is amended by adding at the end the following new item:*
“Sec. 170C. Transportation of nuclear materials.”.

10 **SEC. 12. NUCLEAR FACILITY THREATS.**

11 *(a) STUDY.—The President, in consultation with the*
12 *Nuclear Regulatory Commission and other appropriate*
13 *Federal, State, and local agencies and private entities, shall*
14 *conduct a study to identify the types of threats that pose*
15 *an appreciable risk to the security of the various classes*
16 *of facilities licensed by the Nuclear Regulatory Commission*
17 *under the Atomic Energy Act of 1954. Such study shall take*
18 *into account, but not be limited to—*

19 *(1) the events of September 11, 2001;*

20 *(2) an assessment of physical, cyber, biochemical,*
21 *and other terrorist threats;*

22 *(3) the potential for attack on facilities by mul-*
23 *tiple coordinated teams of a large number of individ-*
24 *uals;*

1 (4) *the potential for assistance in an attack from*
2 *several persons employed at the facility;*

3 (5) *the potential for suicide attacks;*

4 (6) *the potential for water-based and air-based*
5 *threats;*

6 (7) *the potential use of explosive devices of con-*
7 *siderable size and other modern weaponry;*

8 (8) *the potential for attacks by persons with a*
9 *sophisticated knowledge of facility operations;*

10 (9) *the potential for fires, especially fires of long*
11 *duration; and*

12 (10) *the potential for attacks on spent fuel ship-*
13 *ments by multiple coordinated teams of a large num-*
14 *ber of individuals.*

15 (b) *SUMMARY AND CLASSIFICATION REPORT.—Not*
16 *later than 180 days after the date of the enactment of this*
17 *Act, the President, shall transmit to the Congress and the*
18 *Nuclear Regulatory Commission a report—*

19 (1) *summarizing the types of threats identified*
20 *under subsection (a); and*

21 (2) *classifying each type of threat identified*
22 *under subsection (a), in accordance with existing laws*
23 *and regulations, as either—*

24 (A) *involving attacks and destructive acts,*
25 *including sabotage, directed against the facility*

1 *by an enemy of the United States, whether a for-*
2 *foreign government or other person, or otherwise*
3 *falling under the responsibilities of the Federal*
4 *Government; or*

5 *(B) involving the type of risks that Nuclear*
6 *Regulatory Commission licensees should be re-*
7 *sponsible for guarding against.*

8 *(c) FEDERAL ACTION REPORT.—Not later than 90*
9 *days after the date on which a report is transmitted under*
10 *subsection (b), the President, shall transmit to the Congress*
11 *a report on actions taken, or to be taken, to address the*
12 *types of threats identified under subsection (b)(2)(A). Such*
13 *report may include a classified annex as appropriate.*

14 *(d) REGULATIONS.—Not later than 270 days after the*
15 *date on which a report is transmitted under subsection (b),*
16 *the Nuclear Regulatory Commission shall issue regulations,*
17 *including changes to the design basis threat, to ensure that*
18 *licensees address the threats identified under subsection*
19 *(b)(2)(B).*

20 *(e) PHYSICAL SECURITY PROGRAM.—The Nuclear*
21 *Regulatory Commission shall establish an operational safe-*
22 *guards response evaluation program that ensures that the*
23 *physical protection capability and operational safeguards*
24 *response for sensitive nuclear facilities, as determined by*
25 *the Commission consistent with the protection of public*

1 *health and the common defense and security, shall be tested*
2 *periodically through Commission approved or designed, ob-*
3 *served, and evaluated force-on-force exercises to determine*
4 *whether the ability to defeat the design basis threat is being*
5 *maintained. For purposes of this subsection, the term “sen-*
6 *sitive nuclear facilities” includes at a minimum commer-*
7 *cial nuclear power plants, including associated spent fuel*
8 *storage facilities, spent fuel storage pools and dry cask stor-*
9 *age at closed reactors, independent spent fuel storage facili-*
10 *ties and geologic repository operations areas, category I fuel*
11 *cycle facilities, and gaseous diffusion plants.*

12 (f) *CONTROL OF INFORMATION.—In carrying out this*
13 *section, the President and the Nuclear Regulatory Commis-*
14 *sion shall control the dissemination of restricted data, safe-*
15 *guards information, and other classified national security*
16 *information in a manner so as to ensure the common de-*
17 *fense and security, consistent with chapter 12 of the Atomic*
18 *Energy Act of 1954.*

19 **SEC. 13. INDUSTRIAL SAFETY RULES FOR DEPARTMENT OF**
20 **ENERGY NUCLEAR FACILITIES.**

21 Section 170 d. of the Atomic Energy Act of 1954 (42
22 U.S.C. 2210(d)) is amended by adding at the end the fol-
23 lowing new paragraph:

24 “(8)(A) *It shall be a condition of any agreement of*
25 *indemnification entered into under this subsection that the*

1 *indemnified party comply with regulations issued under*
2 *this paragraph.*

3 “(B) *Not later than 180 days after the date of the en-*
4 *actment of this paragraph, the Secretary shall issue indus-*
5 *trial health and safety regulations that shall apply to all*
6 *Department of Energy contractors and subcontractors who*
7 *are covered under agreements entered into under this sub-*
8 *section for operations at Department of Energy nuclear fa-*
9 *cilities. Such regulations shall provide a level of protection*
10 *of worker health and safety that is substantially equivalent*
11 *to or identical to that provided by the industrial and con-*
12 *struction safety regulations of the Occupational Safety and*
13 *Health Administration (29 CFR 1910 and 1926), and shall*
14 *establish civil penalties for violation thereof that are sub-*
15 *stantially equivalent to or identical to the civil penalties*
16 *applicable to violations of the industrial and construction*
17 *safety regulations of the Occupational Safety and Health*
18 *Administration. The Secretary shall amend regulations*
19 *under this subparagraph as necessary.*

20 “(C) *Not later than 240 days after the date of the en-*
21 *actment of this paragraph, all agreements described in sub-*
22 *paragraph (B), and all contracts and subcontracts for the*
23 *indemnified contractors and subcontractors, shall be modi-*
24 *fied to incorporate the requirements of the regulations*
25 *issued under subparagraph (B). Such modifications shall*

1 *require compliance with the requirements of the regulations*
2 *not later than 1 year after the issuance of the regulations.*

3 “(D) *Enforcement of regulations issued under sub-*
4 *paragraph (B), and inspections required in the course*
5 *thereof, shall be conducted by the Office of Enforcement of*
6 *the Office of Environment, Safety, and Health of the De-*
7 *partment of Energy. The Secretary shall transmit to the*
8 *Congress an annual report on the implementation of this*
9 *subparagraph.”.*

10 **SEC. 14. UNREASONABLE RISK CONSULTATION.**

11 *Section 170 of the Atomic Energy Act of 1954 (42*
12 *U.S.C. 2210) is amended by adding at the end the following*
13 *new subsection:*

14 “v. *UNREASONABLE RISK CONSULTATION.—Before en-*
15 *tering into an agreement of indemnification under this sec-*
16 *tion with respect to a utilization facility, the Nuclear Regu-*
17 *latory Commission shall consult with the Assistant to the*
18 *President for Homeland Security (or any successor official)*
19 *concerning whether the location of the proposed facility and*
20 *the design of that type of facility ensure that the facility*
21 *provides for adequate protection of public health and safety*
22 *if subject to a terrorist attack.”.*

1 **SEC. 15. FINANCIAL ACCOUNTABILITY.**

2 (a) *AMENDMENT.*—Section 170 of the Atomic Energy
3 Act of 1954 (42 U.S.C. 2210) is amended by adding at the
4 end the following new subsection:

5 “w. *FINANCIAL ACCOUNTABILITY.*—(1) *Notwith-*
6 *standing subsection d., the Attorney General may bring an*
7 *action in the appropriate United States district court to*
8 *recover from a contractor of the Secretary (or subcontractor*
9 *or supplier of such contractor) amounts paid by the Federal*
10 *Government under an agreement of indemnification under*
11 *subsection d. for public liability resulting from conduct*
12 *which constitutes intentional misconduct of any corporate*
13 *officer, manager, or superintendent of such contractor (or*
14 *subcontractor or supplier of such contractor).*

15 “(2) *The Attorney General may recover under para-*
16 *graph (1) an amount not to exceed the amount of the profit*
17 *derived by the defendant from the contract.*

18 “(3) *No amount recovered from any contractor (or sub-*
19 *contractor or supplier of such contractor) under paragraph*
20 *(1) may be reimbursed directly or indirectly by the Depart-*
21 *ment of Energy.*

22 “(4) *Paragraph (1) shall not apply to any nonprofit*
23 *entity conducting activities under contract for the Sec-*
24 *retary.*

1 “(5) No waiver of a defense required under this section
2 shall prevent a defendant from asserting such defense in an
3 action brought under this subsection.

4 “(6) The Secretary shall, by rule, define the terms
5 ‘profit’ and ‘nonprofit entity’ for purposes of this sub-
6 section. Such rulemaking shall be completed not later than
7 180 days after the date of the enactment of this subsection.”.

8 (b) *EFFECTIVE DATE.*—The amendment made by this
9 section shall not apply to any agreement of indemnification
10 entered into under section 170 d. of the Atomic Energy Act
11 of 1954 (42 U.S.C. 2210(d)) before the date of the enactment
12 of this Act.

13 **SEC. 16. CIVIL PENALTIES.**

14 (a) *REPEAL OF AUTOMATIC REMISSION.*—Section
15 234A b. (2) of the Atomic Energy Act of 1954 (42 U.S.C.
16 2282a(b)(2)) is amended by striking the last sentence.

17 (b) *LIMITATION FOR NONPROFIT INSTITUTIONS.*—Sub-
18 section d. of section 234A of the Atomic Energy Act of 1954
19 (42 U.S.C. 2282a(d)) is amended to read as follows:

20 “d. Notwithstanding subsection a., a contractor, sub-
21 contractor, or supplier described in section 501(c)(3) of the
22 Internal Revenue Code of 1986 and exempt from tax under
23 section 501(a) of such Code shall not be subject to a civil
24 penalty for a violation under subsection a. in excess of the
25 amount of any discretionary fee paid to such contractor,

1 *subcontractor, or supplier under the contract under which*
2 *such violation occurs.”.*

3 (c) *EFFECTIVE DATE.*—*The amendments made by this*
4 *Act shall not apply to any violation of the Atomic Energy*
5 *Act of 1954 occurring under a contract entered into before*
6 *the date of the enactment of this Act.*

Union Calendar No. 180

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1ST SESSION

H. R. 2983

[Report No. 107-299, Part I]

A BILL

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NOVEMBER 20, 2001

Committee on Science discharged; committed to the Committee of the Whole House on the State of the Union and ordered to be printed