

110TH CONGRESS
2^D SESSION

S. 3004

AN ACT

To authorize appropriations for fiscal year 2009 for defense activities of the Department of Energy, 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 “Department of Energy
3 National Security Act for Fiscal Year 2009”.

4 **SEC. 2. TABLE OF CONTENTS.**

5 The table of contents for this Act is as follows:

- Sec. 1. Short title.
- Sec. 2. Table of contents.
- Sec. 3. Congressional defense committees.

DIVISION C—DEPARTMENT OF ENERGY NATIONAL SECURITY
AUTHORIZATIONS AND OTHER AUTHORIZATIONS

TITLE XXXI—DEPARTMENT OF ENERGY NATIONAL SECURITY
PROGRAMS

Subtitle A—National Security Programs Authorizations

- Sec. 3101. National Nuclear Security Administration.
- Sec. 3102. Defense environmental cleanup.
- Sec. 3103. Other defense activities.
- Sec. 3104. Defense nuclear waste disposal.

Subtitle B—Program Authorizations, Restrictions, and Limitations

- Sec. 3111. Modification of functions of Administrator for Nuclear Security to include elimination of surplus fissile materials usable for nuclear weapons.
- Sec. 3112. Report on compliance with Design Basis Threat issued by the Department of Energy in 2005.
- Sec. 3113. Modification of submittal of reports on inadvertent releases of restricted data.
- Sec. 3114. Nonproliferation scholarship and fellowship program.
- Sec. 3115. Review of and reports on Global Initiatives for Proliferation Prevention program.

TITLE XXXII—DEFENSE NUCLEAR FACILITIES SAFETY BOARD

- Sec. 3201. Authorization.

6 **SEC. 3. CONGRESSIONAL DEFENSE COMMITTEES.**

7 For purposes of this Act, the term “congressional de-
8 fense committees” has the meaning given that term in sec-
9 tion 101(a)(16) of title 10, United States Code.

1 **DIVISION C—DEPARTMENT OF**
2 **ENERGY NATIONAL SECURITY**
3 **AUTHORIZATIONS AND**
4 **OTHER AUTHORIZATIONS**
5 **TITLE XXXI—DEPARTMENT OF**
6 **ENERGY NATIONAL SECURITY**
7 **PROGRAMS**
8 **Subtitle A—National Security**
9 **Programs Authorizations**

10 **SEC. 3101. NATIONAL NUCLEAR SECURITY ADMINISTRA-**
11 **TION.**

12 (a) AUTHORIZATION OF APPROPRIATIONS.—Funds
13 are hereby authorized to be appropriated to the Depart-
14 ment of Energy for fiscal year 2009 for the activities of
15 the National Nuclear Security Administration in carrying
16 out programs necessary for national security in the
17 amount of \$9,641,892,000, to be allocated as follows:

18 (1) For weapons activities, \$6,610,701,000.

19 (2) For defense nuclear nonproliferation activi-
20 ties, including \$538,782,000 for fissile materials dis-
21 position, \$1,799,056,000.

22 (3) For naval reactors, \$828,054,000.

23 (4) For the Office of the Administrator for Nu-
24 clear Security, \$404,081,000.

1 (b) AUTHORIZATION OF NEW PLANT PROJECTS.—
2 From funds referred to in subsection (a) that are available
3 for carrying out plant projects, the Secretary of Energy
4 may carry out new plant projects for the National Nuclear
5 Security Administration as follows:

6 (1) For readiness in technical base and facili-
7 ties, the following new plant projects:

8 Project 09–D–404, Test Capabilities Revi-
9 talization Phase 2, Sandia National Laboratory,
10 Albuquerque, New Mexico, \$3,200,000.

11 Project 08–D–806, Ion Beam Laboratory
12 Project, Sandia National Laboratory, Albu-
13 querque, New Mexico, \$10,014,000.

14 (2) For naval reactors, the following new plant
15 projects:

16 Project 09–D–902, Naval Reactors Facility
17 Production Support Complex, Naval Reactors
18 Facility, Idaho Falls, Idaho, \$8,300,000.

19 Project 09–D–190, Project engineering
20 and design, Knolls Atomic Power Laboratory
21 infrastructure upgrades, Knolls Atomic Power
22 Laboratory, Kesselring Site, Schenectady, New
23 York, \$1,000,000.

1 **SEC. 3102. DEFENSE ENVIRONMENTAL CLEANUP.**

2 Funds are hereby authorized to be appropriated to
3 the Department of Energy for fiscal year 2009 for defense
4 environmental cleanup activities in carrying out programs
5 necessary for national security in the amount of
6 \$5,297,256,000.

7 **SEC. 3103. OTHER DEFENSE ACTIVITIES.**

8 Funds are hereby authorized to be appropriated to
9 the Department of Energy for fiscal year 2009 for other
10 defense activities in carrying out programs necessary for
11 national security in the amount of \$826,453,000.

12 **SEC. 3104. DEFENSE NUCLEAR WASTE DISPOSAL.**

13 Funds are hereby authorized to be appropriated to
14 the Department of Energy for fiscal year 2009 for defense
15 nuclear waste disposal for payment to the Nuclear Waste
16 Fund established in section 302(c) of the Nuclear Waste
17 Policy Act of 1982 (42 U.S.C. 10222(c)) in the amount
18 of \$197,371,000.

1 **Subtitle B—Program Authoriza-**
2 **tions, Restrictions, and Limita-**
3 **tions**

4 **SEC. 3111. MODIFICATION OF FUNCTIONS OF ADMINIS-**
5 **TRATOR FOR NUCLEAR SECURITY TO IN-**
6 **CLUDE ELIMINATION OF SURPLUS FISSILE**
7 **MATERIALS USABLE FOR NUCLEAR WEAP-**
8 **ONS.**

9 Section 3212(b)(1) of the National Nuclear Security
10 Administration Act (50 U.S.C. 2402(b)(1)) is amended—

11 (1) by redesignating paragraph (18) as para-
12 graph (19); and

13 (2) by inserting after paragraph (17) the fol-
14 lowing new paragraph (18):

15 “(18) Eliminating inventories of surplus fissile
16 materials usable for nuclear weapons.”.

17 **SEC. 3112. REPORT ON COMPLIANCE WITH DESIGN BASIS**
18 **THREAT ISSUED BY THE DEPARTMENT OF**
19 **ENERGY IN 2005.**

20 (a) IN GENERAL.—Not later than January 2, 2009,
21 the Secretary of Energy shall submit to the congressional
22 defense committees a report setting forth the status of the
23 compliance of Department of Energy sites with the Design
24 Basis Threat issued by the Department in November 2005

1 (in this section referred to as the “2005 Design Basis
2 Threat”).

3 (b) ELEMENTS.—The report required by subsection
4 (a) shall include the following:

5 (1) For each Department of Energy site subject
6 to the 2005 Design Basis Threat, an assessment of
7 whether the site has achieved compliance with the
8 2005 Design Basis Threat.

9 (2) For each such site that has not achieved
10 compliance with the 2005 Design Basis Threat—

11 (A) a description of the reasons for the
12 failure to achieve compliance;

13 (B) a plan to achieve compliance;

14 (C) a description of the actions that will be
15 taken to mitigate any security shortfalls until
16 compliance is achieved; and

17 (D) an estimate of the annual funding re-
18 quirements to achieve compliance.

19 (3) A list of such sites with Category I nuclear
20 materials that the Secretary determines will not
21 achieve compliance with the 2005 Design Basis
22 Threat.

23 (4) For each site identified under paragraph
24 (3), a plan to remove all Category I nuclear mate-
25 rials from such site, including—

1 (A) a schedule for the removal of such nu-
2 clear materials from such site;

3 (B) a clear description of the actions that
4 will be taken to ensure the security of such nu-
5 clear materials; and

6 (C) an estimate of the annual funding re-
7 quirements to remove such nuclear materials
8 from such site.

9 (5) An assessment of the adequacy of the 2005
10 Design Basis Threat in addressing security threats
11 at Department of Energy sites, and a description of
12 any plans for updating, modifying, or otherwise re-
13 vising the approach taken by the 2005 Design Basis
14 Threat to establish enhanced security requirements
15 for Department of Energy sites.

16 **SEC. 3113. MODIFICATION OF SUBMITTAL OF REPORTS ON**
17 **INADVERTENT RELEASES OF RESTRICTED**
18 **DATA.**

19 (a) IN GENERAL.—Section 4522 of the Atomic En-
20 ergy Defense Act (50 U.S.C. 2672) is amended—

21 (1) in subsection (e), by striking “on a periodic
22 basis” and inserting “in each even-numbered year”;
23 and

24 (2) in subsection (f), by striking paragraph (2)
25 and inserting the following new paragraph (2):

1 “(2) The Secretary of Energy shall, in each even-
2 numbered year beginning in 2010, submit to the commit-
3 tees and Assistant to the President specified in subsection
4 (d) a report identifying any inadvertent releases of Re-
5 stricted Data or Formerly Restricted Data under Execu-
6 tive Order No. 12958 discovered in the two-year period
7 preceding the submittal of the report.”.

8 (b) TECHNICAL CORRECTION.—Subsection (e) of
9 such section, as amended by subsection (a)(1) of this sec-
10 tion, is further amended by striking “subsection (b)(4)”
11 and inserting “subsection (b)(5)”.

12 **SEC. 3114. NONPROLIFERATION SCHOLARSHIP AND FEL-**
13 **LOWSHIP PROGRAM.**

14 (a) ESTABLISHMENT.—The Administrator for Nu-
15 clear Security shall carry out a program to provide schol-
16 arships and fellowships for the purpose of enabling indi-
17 viduals to qualify for employment in the nonproliferation
18 programs of the Department of Energy.

19 (b) ELIGIBLE INDIVIDUALS.—An individual shall be
20 eligible for a scholarship or fellowship under the program
21 established under this section if the individual—

22 (1) is a citizen or national of the United States
23 or an alien lawfully admitted to the United States
24 for permanent residence;

1 (2) has been accepted for enrollment or is cur-
2 rently enrolled as a full-time student at an institu-
3 tion of higher education (as defined in section
4 102(a) of the Higher Education Act of 1965 (20
5 U.S.C. 1002(a));

6 (3) is pursuing a program of education that
7 leads to an appropriate higher education degree in
8 a qualifying field of study, as determined by the Ad-
9 ministrator;

10 (4) enters into an agreement described in sub-
11 section (c); and

12 (5) meets such other requirements as the Ad-
13 ministrator prescribes.

14 (c) AGREEMENT.—An individual seeking a scholar-
15 ship or fellowship under the program established under
16 this section shall enter into an agreement, in writing, with
17 the Administrator that includes the following:

18 (1) The agreement of the Administrator to pro-
19 vide such individual with a scholarship or fellowship
20 in the form of educational assistance for a specified
21 number of school years (not to exceed five school
22 years) during which such individual is pursuing a
23 program of education in a qualifying field of study,
24 which educational assistance may include payment of

1 tuition, fees, books, laboratory expenses, and a sti-
2 pend.

3 (2) The agreement of such individual—

4 (A) to accept such educational assistance;

5 (B) to maintain enrollment and attendance
6 in a program of education described in sub-
7 section (b)(2) until such individual completes
8 such program;

9 (C) while enrolled in such program, to
10 maintain satisfactory academic progress in such
11 program, as determined by the institution of
12 higher education in which such individual is en-
13 rolled; and

14 (D) after completion of such program, to
15 serve as a full-time employee in a nonprolifera-
16 tion position in the Department of Energy or at
17 a laboratory of the Department for a period of
18 not less than 12 months for each school year or
19 part of a school year for which such individual
20 receives a scholarship or fellowship under the
21 program established under this section.

22 (3) The agreement of such individual with re-
23 spect to the repayment requirements specified in
24 subsection (d).

25 (d) REPAYMENT.—

1 (1) IN GENERAL.—An individual receiving a
2 scholarship or fellowship under the program estab-
3 lished under this section shall agree to pay to the
4 United States the total amount of educational assist-
5 ance provided to such individual under such pro-
6 gram, plus interest at the rate prescribed by para-
7 graph (4), if such individual—

8 (A) does not complete the program of edu-
9 cation agreed to pursuant to subsection
10 (c)(2)(B);

11 (B) completes such program of education
12 but declines to serve in a position in the De-
13 partment of Energy or at a laboratory of the
14 Department as agreed to pursuant to sub-
15 section (c)(2)(D); or

16 (C) is voluntarily separated from service or
17 involuntarily separated for cause from the De-
18 partment of Energy or a laboratory of the De-
19 partment before the end of the period for which
20 such individual agreed to continue in the service
21 of the Department pursuant to subsection
22 (c)(2)(D).

23 (2) FAILURE TO REPAY.—If an individual who
24 received a scholarship or fellowship under the pro-
25 gram established under this section is required to

1 repay, pursuant to an agreement under paragraph
2 (1), the total amount of educational assistance pro-
3 vided to such individual under such program, plus
4 interest at the rate prescribed by paragraph (4), and
5 fails repay such amount, a sum equal to such
6 amount (plus such interest) is recoverable by the
7 United States Government from such individual or
8 the estate of such individual by—

9 (A) in the case of an individual who is an
10 employee of the United States Government,
11 setoff against accrued pay, compensation,
12 amount of retirement credit, or other amount
13 due the employee from the Government; or

14 (B) such other method as is provided by
15 law for the recovery of amounts owed to the
16 Government.

17 (3) WAIVER OF REPAYMENT.—The Adminis-
18 trator may waive, in whole or in part, repayment by
19 an individual under this subsection if the Adminis-
20 trator determines that seeking recovery under para-
21 graph (2) would be against equity and good con-
22 science or would be contrary to the best interests of
23 the United States.

24 (4) RATE OF INTEREST.—For purposes of re-
25 payment under this subsection, the total amount of

1 educational assistance provided to an individual
2 under the program established under this section
3 shall bear interest at the applicable rate of interest
4 under section 427A(c) of the Higher Education Act
5 of 1965 (20 U.S.C. 1077a(c)).

6 (e) PREFERENCE FOR COOPERATIVE EDUCATION
7 STUDENTS.—In evaluating individuals for the award of a
8 scholarship or fellowship under the program established
9 under this section, the Administrator may give a pref-
10 erence to an individual who is enrolled in, or accepted for
11 enrollment in, an institution of higher education that has
12 a cooperative education program with the Department of
13 Energy.

14 (f) COORDINATION OF BENEFITS.—A scholarship or
15 fellowship awarded under the program established under
16 this section shall be taken into account in determining the
17 eligibility of an individual receiving such scholarship or fel-
18 lowship for Federal student financial assistance provided
19 under title IV of the Higher Education Act of 1965 (20
20 U.S.C. 1070 et seq.).

21 (g) REPORT TO CONGRESS.—Not later than January
22 1, 2010, the Administrator shall submit to the congres-
23 sional defense committees a report on the activities carried
24 out under the program established under this section, in-

1 cluding any recommendations for future activities under
2 such program.

3 (h) FUNDING.—Of the amounts authorized to be ap-
4 propriated by section 3101(a)(2) for defense nuclear non-
5 proliferation activities, \$3,000,000 shall be available to
6 carry out the program established under this section.

7 **SEC. 3115. REVIEW OF AND REPORTS ON GLOBAL INITIA-**
8 **TIVES FOR PROLIFERATION PREVENTION**
9 **PROGRAM.**

10 (a) REVIEW OF PROGRAM.—

11 (1) IN GENERAL.—The Administrator for Nu-
12 clear Security shall conduct a review of the Global
13 Initiatives for Proliferation Prevention program.

14 (2) REPORT REQUIRED.—Not later than Feb-
15 ruary 1, 2009, the Administrator shall submit to the
16 congressional defense committees a report setting
17 forth the results of the review required under para-
18 graph (1). The report shall include the following:

19 (A) A description of the goals of the Global
20 Initiatives for Proliferation Prevention program
21 and the criteria for partnership projects under
22 the program.

23 (B) Recommendations regarding the fol-
24 lowing:

1 (i) Whether to continue or bring to a
2 close each of the partnership projects
3 under the program in existence on the date
4 of the enactment of this Act, and, if any
5 such project is recommended to be contin-
6 ued, a description of how that project will
7 meet the criteria under subparagraph (A).

8 (ii) Whether to enter into new part-
9 nership projects under the program with
10 Russia or other countries of the former So-
11 viet Union.

12 (iii) Whether to enter into new part-
13 nership projects under the program in
14 countries other than countries of the
15 former Soviet Union.

16 (C) A plan for completing partnership
17 projects under the program with the countries
18 of the former Soviet Union by 2012.

19 (b) REPORT ON FUNDING FOR PROJECTS UNDER
20 PROGRAM.—

21 (1) IN GENERAL.—The Administrator shall
22 submit to the congressional defense committees a re-
23 port on—

24 (A) the purposes for which amounts made
25 available for the Global Initiatives for Prolifera-

1 tion Prevention program for fiscal year 2009
2 will be obligated or expended; and

3 (B) the amount to be obligated or ex-
4 pended for each partnership project under the
5 program in fiscal year 2009.

6 (2) LIMITATION ON FUNDING BEFORE SUB-
7 MITTAL OF REPORT.—None of the amounts author-
8 ized to be appropriated for fiscal year 2009 by sec-
9 tion 3101(a)(2) for defense nuclear nonproliferation
10 activities and available for the Global Initiatives for
11 Proliferation Prevention program may be obligated
12 or expended until the date that is 30 days after the
13 date on which the Administrator submits to the con-
14 gressional defense committees the report required
15 under paragraph (1).

16 (c) LIMITATION ON FUNDING FOR GLOBAL NUCLEAR
17 ENERGY PARTNERSHIP.—None of the amounts author-
18 ized to be appropriated for fiscal year 2009 by section
19 3101(a)(2) for defense nuclear nonproliferation activities
20 and available for the Global Initiatives for Proliferation
21 Prevention program may be used for projects related to
22 energy security that could promote the Global Nuclear En-
23 ergy Partnership.

1 **TITLE XXXII—DEFENSE NU-**
2 **CLEAR FACILITIES SAFETY**
3 **BOARD**

4 **SEC. 3201. AUTHORIZATION.**

5 There are authorized to be appropriated for fiscal
6 year 2009, \$28,968,574 for the operation of the Defense
7 Nuclear Facilities Safety Board under chapter 21 of the
8 Atomic Energy Act of 1954 (42 U.S.C. 2286 et seq.).

Passed the Senate September 17, 2008.

Attest:

Secretary.

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To authorize appropriations for fiscal year 2009 for defense activities of the Department of Energy, and for other purposes.