

106TH CONGRESS  
1ST SESSION

# H. R. 3495

To establish a compensation program for Department of Energy employees  
injured in Federal nuclear activities.

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 18, 1999

Mr. STRICKLAND (for himself, Mr. GORDON, Mr. UDALL of Colorado, Mr. WHITFIELD, Mrs. TAUSCHER, Mr. BAIRD, Mr. BROWN of Ohio, Mr. PHELPS, Mr. FORBES, Mr. PALLONE, and Ms. KAPTUR) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Ways and Means, 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

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## A BILL

To establish a compensation program for Department of  
Energy employees injured in Federal nuclear activities.

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 “Department of Energy  
5       Nuclear Employees Exposure Compensation Act”.

6       **SEC. 2. FINDINGS.**

7       The Congress finds the following:

1           (1) Federal nuclear activities have long been ex-  
2           plicitly recognized by the Government as an ultra-  
3           hazardous activity under law.

4           (2) Since the inception of the Federal nuclear  
5           weapons program, the Department of Energy and its  
6           predecessors have self-regulated worker safety and  
7           health, which places a unique responsibility upon the  
8           Department to ensure a safe working environment.

9           (3) Since the inception of the nuclear weapons  
10          program, nuclear workers at sites operated by the  
11          Department of Energy and its predecessor agencies  
12          were put at risk of exposure to harmful substances  
13          without the knowledge or consent of the workers.

14          (4) For decades the Department of Energy and  
15          its predecessor agencies withheld information about  
16          worker health risks for reasons that were not in the  
17          national interest—while actively resisting efforts by  
18          workers to seek compensation.

19          (5) The Department of Energy currently does  
20          not have accurate and complete records of exposure  
21          to radioactive and hazardous substances—which un-  
22          fairly places the burden of proof of harm upon work-  
23          ers.

24          (6) Current remedies under State compensation  
25          programs are ill-suited to address chronic diseases

1 and those that have long latency periods which are  
2 associated with exposure to radioactive and haz-  
3 ardous substances at Department of Energy facili-  
4 ties.

5 (7) Scientific evidence shows that ionizing radi-  
6 ation is a carcinogenic substance and that specific  
7 types of cancer are considered radiogenic by the sci-  
8 entific and medical community.

9 **SEC. 3. DEFINITIONS.**

10 For purposes of this Act:

11 (1) DEPARTMENT OF ENERGY.—The term “De-  
12 partment of Energy” includes the predecessor agen-  
13 cies of the Department.

14 (2) DOE NUCLEAR EMPLOYEE.—The term  
15 DOE nuclear employee“ means an individual em-  
16 ployed by—

17 (A) the Department of Energy;

18 (B) an entity that contracted with the De-  
19 partment of Energy to provide management  
20 and operations, management and integration,  
21 production, testing, research, development, envi-  
22 ronmental remediation, or waste management  
23 at facilities at locations, including the following:

24 (i) Portsmouth, Ohio;

25 (ii) Paducah, Kentucky.

- 1 (iii) O.R. K-25, Tennessee;
- 2 (iv) O.R. Y-12, Tennessee;
- 3 (v) O.R. X-10, Tennessee;
- 4 (vi) Hanford, Washington;
- 5 (vii) Idaho National Engineering Lab-
- 6 oratory;
- 7 (viii) Rocky Flats, Colorado;
- 8 (ix) Fernald, Ohio;
- 9 (x) Miamisburg, Ohio;
- 10 (xi) Los Alamos National Laboratory,
- 11 New Mexico;
- 12 (xii) Pinellas, Florida;
- 13 (xiii) Pantex, Texas;
- 14 (xiv) Nevada Test Site;
- 15 (xv) Brookhaven, New York;
- 16 (xvi) Lawrence Livermore National
- 17 Laboratory;
- 18 (xvii) Sandia National Laboratory,
- 19 New Mexico
- 20 (xviii) Burlington, Iowa;
- 21 (xix) Fermi Nuclear Facility, Illinois;
- 22 (xx) Weldon Spring, Maryland; or
- 23 (xxi) Savannah River, South Carolina
- 24 (xxii) Argonne National Lab, Illinois

1 (C) a supplier that supplied uranium con-  
2 version or manufacturing services, including Al-  
3 lied Signal Facility in Metropolis, Illinois, Nu-  
4 clear Fuels Services in Erwin, Tennessee, Linde  
5 Air Products, Tonowanda, New York, and Re-  
6 active Metals in Ashtabula, Ohio.

7 (3) SPECIFIED DISEASE.—The term “specified  
8 disease” means—

9 (A) leukemia (other than chronic  
10 lymphocytic leukemia);

11 (B) the following diseases;

12 (i) multiple myeloma;

13 (ii) lymphomas (other than Hodgkins  
14 disease); and

15 (iii) primary cancer or a pre-can-  
16 cerous condition of the bone, lung, thyroid,  
17 male or female breast, esophagus, kidney,  
18 salivary gland, skin, urinary bladder, stom-  
19 ach pharynx, small intestine, pancreas, bile  
20 ducts, gall bladder, or liver; and

21 (C) additional diseases covered by the Nu-  
22 clear Claims Tribunal of the Marshall Islands.

1 **SEC. 4. DOE NUCLEAR FACILITY EMPLOYEES' EXPOSURE**  
2 **COMPENSATION FUND.**

3 (a) ESTABLISHMENT.—There is established in the  
4 Treasury the DOE Nuclear Employees' Exposure Com-  
5 pensation Fund (hereafter in this Act referred to as the  
6 “Fund”).

7 (b) PURPOSE.—The amounts in the Fund are avail-  
8 able only for disbursement by the Attorney General under  
9 section 6.

10 (c) TERMINATION.—The Fund shall terminate 22  
11 years after the date of enactment of this Act. If all of  
12 the amounts in the Fund have not been expended by the  
13 end of the 22-year period, amounts remaining in the Fund  
14 shall be deposited in the miscellaneous receipts account  
15 in the Treasury.

16 (d) AUTHORIZATION OF APPROPRIATIONS.—There  
17 are authorized to be appropriated to the Fund such sums  
18 as may be necessary to carry out this Act. Amounts appro-  
19 priated to the fund shall remain available until expended  
20 or deposited in the Treasury.

21 (e) AUTHORITY.—Authority under this Act to enter  
22 into contracts or to make payments is effective in any fis-  
23 cal year only to the extent, or in the amounts, provided  
24 in advance in an appropriation Act.

25 **SEC. 5. ELIGIBLE EMPLOYEES.**

26 A DOE nuclear employee who—

1           (1) was employed at a DOE nuclear facility for  
2       at least a year;

3           (2) during the employees' employment period—

4                (A) was or should have been monitored  
5       through the use of dosimetry badges for expo-  
6       sure of the employees's body to radiation at the  
7       facility, and

8                (B) submits written medical documentation  
9       as to having contracted a specified disease after  
10      beginning employment as described in para-  
11      graph (1) and after beginning being monitored  
12      or beginning work,

13 is authorized to receive \$100,000 and first dollar coverage  
14 for all medical and diagnostic costs related to a claim for  
15 a specified disease, including complicating factors, if the  
16 claim for payment is filed with the Attorney General and  
17 the Attorney General determines, in accordance with sec-  
18 tion 6, that the claim meets the requirements of this Act.

19 **SEC. 6. DETERMINATION AND PAYMENT OF CLAIMS.**

20       (a) **FILING PROCEDURES.**—The Attorney General  
21 shall establish procedures under which an eligible em-  
22 ployee may submit a claim for payment under this section.

23       (b) **DETERMINATION.**—The Attorney General shall  
24 determine if each claim filed under this section meets the  
25 requirements of this Act. In making a determination of

1 eligibility for compensation, the Attorney General may  
2 consult with the Surgeon General and the Secretary of En-  
3 ergy. The Attorney General shall—

4           (1) in consultation with the Surgeon General,  
5       establish guidelines for determining what constitutes  
6       written medical documentation under section 5 that  
7       an individual contracted a specified disease; and

8           (2) in consultation with the Secretary of En-  
9       ergy, establish guidelines for determinations of em-  
10      ployment and exposure, as described in section 5.

11      (c) PAYMENT.—

12           (1) IN GENERAL.—The Attorney General is au-  
13      thorized to pay, from amounts available in the Fund,  
14      claims filed under this section that the Attorney  
15      General determines meets the requirements of this  
16      Act.

17           (2) SUBROGATION.—Upon payment of a claim  
18      under paragraph (1), the United States is sub-  
19      rogated for the amount of the payment to a right or  
20      claim that the individual to whom the payment was  
21      made may have against any person on account of a  
22      specified disease contracted following employment  
23      and exposure as described in section 5.

24           (3) DECEASED OR DYING EMPLOYEE.—



1           (A) DECEASED.—In the case of a DOE  
2 nuclear employee who is deceased at the time of  
3 payment under this section, the payment may  
4 be made only as follows:

5           (i) If the DOE nuclear employee is  
6 survived by a spouse who is living at the  
7 time of payment, the payment shall be  
8 made to the surviving spouse.

9           (ii) If there is no surviving spouse at  
10 the time of payment, the payment shall be  
11 made in equal shares to all the children of  
12 the DOE nuclear employee who are living  
13 at the time of payment.

14           (iii) If there is no spouse or children  
15 living at the time of payment, the payment  
16 shall be made in equal shares to the par-  
17 ents of the DOE nuclear employee who are  
18 living at the time of payment.

19           (iv) If there are no spouse, children,  
20 or parents living at the time of payment,  
21 the payment shall be made in equal shares  
22 to all grandchildren of the DOE nuclear  
23 employee who are living at the time of pay-  
24 ment.

1 (v) If there are no spouse, children,  
2 parents, or grandchildren living at the time  
3 of payment, the payment shall be made in  
4 equal shares to the grandparents of the  
5 DOE nuclear employee who are living at  
6 the time of payment.

7 (vi) If there are no spouse, children,  
8 parents, grandchildren, or grandparents  
9 living at the time of payment, the amount  
10 of the payment shall remain in the Fund  
11 for future claimants.

12 (B) DIES.—If the DOE nuclear employee  
13 eligible for payment under this section dies be-  
14 fore filing a claim under this Act, a survivor of  
15 that employee who may receive payment under  
16 subparagraph (A) may file a claim for payment  
17 for such employee.

18 (C) DEFINITIONS.—For purposes of sub-  
19 paragraph (A)—

20 (i) the term “spouse” of a DOE nu-  
21 clear employee is a wife or husband of that  
22 employee who was married to that em-  
23 ployee for at least one year immediately  
24 before the death of that employee;

1 (ii) the term “child” includes a nat-  
2 ural child, a step-child in a regular parent-  
3 child relationship, and an adopted child;

4 (iii) the term “parent” includes fa-  
5 thers and mothers through adoption.

6 (iv) the term “grandchild” of a DOE  
7 nuclear employee is a child of a child of  
8 that employee;

9 (v) the term “grandparent” of a DOE  
10 nuclear employee is a parent of a parent of  
11 that employee.

12 (d) ACTION ON CLAIM.—

13 (1) DETERMINATION PERIOD.—The Attorney  
14 General shall complete the determination of each  
15 claim filed under subsection (a) not later than 12  
16 months after the date the claim is filed.

17 (2) ADDITIONAL INFORMATION AND DOCU-  
18 MENTATION.—The Attorney General may request  
19 from a claimant, or from an individual or entity on  
20 behalf of a claimant, additional information or docu-  
21 mentation necessary to complete the determination  
22 of the claim under subsection (b). The period of time  
23 from the Attorney General’s request for additional  
24 information or documentation until the time the in-  
25 formation or documentation is provided, or the re-

1 requested individual or entity informs the Attorney  
2 General the information or documentation cannot or  
3 will not be provided, is not counted toward the 12-  
4 month period established under paragraph (1). A  
5 claimant may sue the Department of Energy or its  
6 contractor in a district court of the United States to  
7 compel the production of information or documenta-  
8 tion requested by the Attorney General if (A) it is  
9 more than 60 days after the date the Attorney Gen-  
10 eral's request was made, and (B) the information or  
11 documentation has not been provided.

12 (3) PAYMENTS UNDER OTHER ACTS LIM-  
13 ITED.—An individual may not receive payment  
14 under this Act and under the Radiation Exposure  
15 Compensation Act (42 U.S.C. 2210 note) or under  
16 the Veterans' Dioxin and Radiation Exposure Com-  
17 pensation Standards Act (38 U.S.C 354 note).

18 (e) COSTS OF ADMINISTERING THE ADJUDICA-  
19 TIONS.—

20 (1) LIMITATION.—Costs incurred by the Attor-  
21 ney General in carrying out this section shall not be  
22 paid from the Fund or set off against, or otherwise  
23 deducted from, a payment under this section.

24 (2) REIMBURSEMENT.—The Department of En-  
25 ergy shall reimburse the Attorney General for the

1 costs incurred by the Attorney General in connection  
2 with establishing and administering the program of  
3 compensation under this Act until the duties of the  
4 Attorney General terminate under subsection (f).

5 (f) TERMINATION.—The duties of the Attorney Gen-  
6 eral under this section terminate when the Fund termi-  
7 nates.

8 (g) TREATMENT OF PAYMENTS UNDER OTHER  
9 LAWS.—An amount paid to an individual under this  
10 section—

11 (1) shall not be subject to Federal income tax  
12 under the Internal Revenue Code of 1986;

13 (2) shall not be included as income or resources  
14 for purposes of determining eligibility to receive ben-  
15 efits described in section 3803(c)(2)(C) of title 31,  
16 United States Code; and

17 (3) shall not be subject to the offset under  
18 chapter 37 of title 31, United States Code.

19 (h) REGULATORY AUTHORITY.—The Attorney Gen-  
20 eral may issue regulations to carry out this Act.

21 (i) ISSUANCE OF REGULATIONS GUIDELINES, AND  
22 PROCEDURES.—Regulations, guidelines, and procedures  
23 to carry out this Act shall be issued not later than 180  
24 days after the date of enactment of this Act.

1 (j) ADMINISTRATIVE APPEALS PROCEDURE AND JU-  
2 DICIAL REVIEW.—

3 (1) DECISION DENYING CLAIM.—A decision de-  
4 nying a claim under this Act may be appealed to an  
5 appeals officer designated by the Attorney General.

6 (2) If the designated appeals officer affirms a  
7 decision denying a claim under this Act, the indi-  
8 vidual who submitted such claim may seek review of  
9 such affirmation by a district court of the United  
10 States.

11 **SEC. 7. CLAIMS NOT ASSIGNABLE OR TRANSFERABLE.**

12 A claim cognizable under this Act is not assignable  
13 or transferable.

14 **SEC. 8. LIMITATIONS ON CLAIMS.**

15 A claim to which this Act applies is barred unless  
16 the claim is filed within 20 years after the date of enact-  
17 ment of this Act.

18 **SEC. 9. ATTORNEY FEES.**

19 Notwithstanding any contract, the representative of  
20 an individual filing a claim under this Act may not receive  
21 for services rendered in connection with such claim more  
22 than 10 percent of a payment made for such claim. A rep-  
23 resentative who violates this section shall be fined not  
24 more than \$5,000.

1 **SEC. 10. CLAIMS NOT AFFECTED BY AWARDS OF DAMAGES.**

2       A payment made under this Act shall not be consid-  
3 ered as any form of compensation or reimbursement for  
4 a loss for purposes of imposing liability on the individual  
5 receiving the payment to repay any insurance carrier for  
6 insurance payments made. A payment under this Act does  
7 not affect any claim against any insurance carrier with  
8 respect to insurance.

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