

107TH CONGRESS  
2D SESSION

# H. R. 5275

To provide for the external regulation of nuclear safety and occupational safety and health at nonmilitary energy laboratories owned or operated by the Department of Energy.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 26, 2002

Mr. COSTELLO introduced the following bill; which was referred to the Committee on Science, and in addition to the Committees on Energy and Commerce and Education and the Workforce, 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 provide for the external regulation of nuclear safety and occupational safety and health at nonmilitary energy laboratories owned or operated by the Department of Energy.

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 “External Regulation  
5       of the Department of Energy Act”.

6 **SEC. 2. FINDINGS.**

7       The Congress finds the following:

1 (1) The Department of Energy has studied ex-  
2 ternal regulation for nine years.

21 (6) It is time to terminate the Department of  
22 Energy's self-regulation of nuclear and worker safety  
23 in the nonmilitary energy laboratory complex and  
24 move to external regulation by the experts in these

1 issues, the Nuclear Regulatory Commission and the  
2 Occupational Safety and Health Administration.

3 **SEC. 3. ELIMINATION OF DEPARTMENT OF ENERGY AU-**  
4 **THORITY.**

5 Effective October 1, 2003, the Department of Energy  
6 shall have no regulatory or enforcement authority with re-  
7 spect to nuclear safety and occupational safety and health  
8 responsibilities assumed by the Nuclear Regulatory Com-  
9 mission under section 4 or by the Occupational Safety and  
10 Health Administration under section 5 at any nonmilitary  
11 energy laboratory owned or operated by the Department.

12 **SEC. 4. NUCLEAR REGULATORY COMMISSION AUTHORITY.**

13 (a) NUCLEAR SAFETY REGULATORY AND ENFORCE-  
14 MENT RESPONSIBILITIES.—Effective October 1, 2003, the  
15 Nuclear Regulatory Commission shall assume the nuclear  
16 safety regulatory and enforcement responsibilities of the  
17 Department of Energy under the Atomic Energy Act of  
18 1954 with regard to nonmilitary energy laboratories  
19 owned or operated by the Department.

20 (b) LICENSED ENTITIES.—For the purposes of car-  
21 rying out at nonmilitary energy laboratories owned or op-  
22 erated by the Department of Energy regulatory and en-  
23 forcement responsibilities described in subsection (a), the  
24 Nuclear Regulatory Commission may regulate, through li-

1 censing, certification, or other appropriate means, the De-  
2 partment, the Department's contractors, or both.

3 (c) DECOMMISSIONING.—A contractor operating a  
4 nonmilitary energy laboratory owned by the Department  
5 of Energy shall not be responsible for the costs of decom-  
6 missioning that facility. No enforcement action may be  
7 taken against such contractor for any violation of Nuclear  
8 Regulatory Commission decommissioning requirements, if  
9 such violation is the result of a failure of the Department  
10 to authorize or fund decommissioning activities. The Nu-  
11 clear Regulatory Commission and the Department shall,  
12 not later than January 1, 2004, enter into a memorandum  
13 of understanding establishing decommissioning procedures  
14 and requirements for nonmilitary energy laboratories  
15 owned or operated by the Department.

16 (d) ADMINISTRATION.—The responsibilities assumed  
17 by the Nuclear Regulatory Commission under this section  
18 shall be administered by the Nuclear Regulatory Commis-  
19 sion, not by States.

20 (e) JUDICIAL REVIEW.—Section 189 b. of the Atomic  
21 Energy Act of 1954 (42 U.S.C. 2239(b)) is amended by  
22 adding the following paragraph after paragraph (4):

23 “(5) Any final order or regulation of the Com-  
24 mission establishing standards to govern nonmilitary  
25 energy laboratories owned or operated by the De-

1       partment of Energy that are issued to implement  
2       the Commission's responsibilities under the External  
3       Regulation of the Department of Energy Act, and  
4       any final determination of the Commission relating  
5       to whether a nonmilitary energy laboratory owned or  
6       operated by the Department is in compliance with  
7       such standards and all applicable Commission regu-  
8       lations or orders.”.

9       (f) EMPLOYEE PROTECTION.—Any Department of  
10      Energy contractor operating a nonmilitary energy labora-  
11      tory that is regulated by the Nuclear Regulatory Commis-  
12      sion under this section shall be subject to section 211 of  
13      the Energy Reorganization Act of 1974 (41 U.S.C. 5851)  
14      to the same extent as any other employer subject to such  
15      section 211.

16       (g) CONFLICT OF INTEREST.—Section 170A of the  
17      Atomic Energy Act of 1954 (42 U.S.C. 2210a) applies to  
18      contracts, agreements, or other arrangements of the Nu-  
19      clear Regulatory Commission proposed or entered into  
20      pursuant to its responsibilities assumed under this section.

21 **SEC. 5. OCCUPATIONAL SAFETY AND HEALTH.**

22       (a) OSHA JURISDICTION.—Notwithstanding section  
23      4(b)(1) of the Occupational Safety and Health Act of  
24      1970 (29 U.S.C. 653(b)(1)) and any other provision of  
25      law, effective October 1, 2003, the Occupational Safety

1 and Health Administration shall assume the regulatory  
2 and enforcement responsibilities of the Department of En-  
3 ergy relating to matters covered by the Occupational Safe-  
4 ty and Health Act of 1970 with regard to all nonmilitary  
5 energy laboratories owned or operated by the Department,  
6 except as provided in subsection (b). Any Department con-  
7 tractor operating such a laboratory shall, with respect to  
8 matters relating to occupational safety and health, be con-  
9 sidered to be an employer for purposes of the Occupational  
10 Safety and Health Act of 1970.

11 (b) REGULATION OF HAZARDS CONTAINING RADIO-  
12 LOGICAL AND NON-RADIOLOGICAL COMPONENT.—If a  
13 hazard at a nonmilitary energy laboratory owned or oper-  
14 ated by the Department presents a risk of occupational  
15 exposure and contains both a radiological and non-radio-  
16 logical component, the Occupational Safety and Health  
17 Administration and the Nuclear Regulatory Commission  
18 shall, effective October 1, 2003, share regulatory and en-  
19 forcement responsibilities with respect to the hazard in ac-  
20 cordance with the memorandum of understanding entered  
21 into pursuant to section 6.

22 **SEC. 6. MEMORANDUM OF UNDERSTANDING.**

23 The Nuclear Regulatory Commission and the Occu-  
24 pational Safety and Health Administration shall, before  
25 January 1, 2003, enter into and transmit to the Congress

1 a memorandum of understanding to govern the exercise  
2 of their respective authorities over nuclear safety and oc-  
3 cupational safety and health at nonmilitary energy labora-  
4 tories owned or operated by the Department of Energy.

5 **SEC. 7. CIVIL PENALTIES.**

6 The Department of Energy's contractor operating a  
7 nonmilitary energy laboratory owned or operated by the  
8 Department shall not be liable for civil penalties under the  
9 Atomic Energy Act of 1954 or the Occupational Safety  
10 and Health Act of 1970 for any actions taken before Octo-  
11 ber 1, 2003, pursuant to the instructions of a Federal  
12 agency in preparation for the transfer of regulatory and  
13 enforcement responsibilities required by this Act.

14 **SEC. 8. INDEMNIFICATION.**

15 The Secretary of Energy shall continue to indemnify  
16 nonmilitary energy laboratories owned or operated by the  
17 Department in accordance with the provisions of section  
18 170 d. of the Atomic Energy Act of 1954.

19 **SEC. 9. DEPARTMENT OF ENERGY REPORTING REQUIRE-  
20 MENT.**

21 By April 1, 2003, the Secretary of Energy shall  
22 transmit to the Committee on Energy and Commerce, the  
23 Committee on Science, and the Committee on Appropria-  
24 tions of the House of Representatives, and the Committee  
25 on Energy and Natural Resources and the Committee on

1 Appropriations of the Senate, a plan for the termination  
2 of the Department's regulatory and enforcement respon-  
3 sibilities for nonmilitary energy laboratories owned or op-  
4 erated by the Department required by this Act. The report  
5 shall include—

6                   (1) a detailed transition plan, drafted in coordi-  
7 nation with the Nuclear Regulatory Commission and  
8 the Occupational Safety and Health Administration,  
9 giving the schedule for termination of self-regulation  
10 authority as outlined in section 3, including the ac-  
11 tivities to be coordinated with the Nuclear Regu-  
12 latory Commission and the Occupational Safety and  
13 Health Administration;

14                   (2) a description of any issues remaining to be  
15 resolved with the Nuclear Regulatory Commission,  
16 the Occupational Safety and Health Administration,  
17 or other external regulators, and a timetable for re-  
18 solving such issues before October 1, 2003; and

19                   (3) an estimate of—

20                   (A) the annual cost of administering and  
21 implementing self-regulation of the nuclear  
22 safety and occupational safety and health re-  
23 sponsibilities described in sections 4 and 5 at  
24 nonmilitary energy laboratories owned or oper-  
25 ated by the Department;

4 (C) the extent and schedule by which the  
5 Department and the staffs at its nonmilitary  
6 energy laboratories will be reduced as a result  
7 of implementation of this Act.