

107TH CONGRESS
1ST SESSION

S. 1276

To provide for the establishment of a new counterintelligence polygraph program for the Department of Energy, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JULY 31, 2001

Mr. DOMENICI (for himself and Mr. BINGAMAN) introduced the following bill;
which was read twice and referred to the Committee on Armed Services

A BILL

To provide for the establishment of a new counterintelligence polygraph program for 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,*

3 **SECTION 1. DEPARTMENT OF ENERGY COUNTERINTEL-**
4 **LIGENCE POLYGRAPH PROGRAM.**

5 (a) FINDINGS.—Congress makes the following find-
6 ings:

7 (1) Section 3135 of the Floyd D. Spence Na-
8 tional Defense Authorization Act for Fiscal Year
9 2001 (as enacted by Public Law 106–398) amended
10 section 3154 of the Department of Energy Facilities

1 Safeguards, Security, and Counterintelligence En-
2 hancement Act of 1999 (subtitle D of title XXXI of
3 Public Law 106–65) to increase the requirements
4 for polygraphs of Department of Energy employees
5 and contractors under the Department counterintel-
6 ligence polygraph program.

7 (2) On January 26, 2001, the Division of Be-
8 havioral and Social Sciences and Education of the
9 National Research Council of the National Academy
10 of Sciences organized the initial meeting of the Com-
11 mittee to Review the Scientific Evidence on the
12 Polygraph. The results of that review will address
13 the scientific validity of the polygraph for counter-
14 intelligence screening purposes. Those results are ex-
15 pected in June 2002.

16 (3) On June 28, 2000, the first Administrator
17 of the National Nuclear Security Administration of
18 the Department of Energy began work. Personnel
19 security is one of the responsibilities of the Adminis-
20 trator. The review referred to in paragraph (2) will
21 provide invaluable guidance to the Administrator in
22 implementing the optimal personnel security system
23 for the national security programs of the Depart-
24 ment.

1 (4) The widespread use of polygraphs, in the
2 absence of confidence in their scientific validity, is of
3 great concern to many Department of Energy em-
4 ployees and contractors. Such concern could seri-
5 ously undermine the morale of those employees and
6 contractors and could significantly affect the ability
7 of the Department and its contractors to recruit and
8 retain the scientific staff required to accomplish the
9 national security mission of the Department.

10 (5) Any polygraphs under the Department of
11 Energy counterintelligence polygraph program re-
12 quire a high level of rigor in administration and
13 careful attention to the protection of individual
14 rights commensurate with the rigor in such matters
15 under drug testing programs of the Department of
16 Transportation.

17 (b) NEW COUNTERINTELLIGENCE POLYGRAPH PRO-
18 GRAM.—(1)(A) Not later than 120 days after the date of
19 enactment of this Act, the Secretary of Energy shall sub-
20 mit to the congressional defense committees a plan for
21 conducting, as part of the Department of Energy per-
22 sonnel assurance programs, an interim counterintelligence
23 polygraph program consisting of periodic polygraph exami-
24 nations of Department of Energy employees, or contractor
25 employees, at Department facilities who have, or may

1 have, access to Restricted Data or Sensitive Compart-
2 mented Information. The purpose of examinations under
3 the interim program is to minimize the potential for re-
4 lease or disclosure of classified data, materials, or infor-
5 mation.

6 (B) The plan shall exclude from examinations under
7 the interim program any position or class of positions for
8 which the individual or individuals in such position or class
9 of positions—

10 (i) operate in a controlled environment that
11 does not afford an opportunity, through action solely
12 by the individual or individuals, to inflict damage on
13 or impose risks to national security; and

14 (ii) have duties, functions, or responsibilities
15 which are compartmentalized or supervised such
16 that the individual or individuals do not impose risks
17 to national security.

18 (C) The plan shall assure that individuals who under-
19 go examinations under the interim program receive protec-
20 tions as provided under part 40 of title 49, Code of Fed-
21 eral Regulations.

22 (D) To ensure that administration of the interim pro-
23 gram does not disrupt safe operations of a facility, the
24 plan shall insure notification of the management of the
25 facility at least 14 days in advance of any examination

1 scheduled under the interim program for any employees
2 of the facility.

3 (E) The plan shall include procedures under the in-
4 terim program for—

5 (i) identifying and addressing so-called
6 “false positive” results of polygraph examina-
7 tions; and

8 (ii) ensuring that adverse personnel actions
9 not be taken against an individual solely by rea-
10 son of the individual’s physiological reaction to
11 a question in a polygraph examination, unless
12 reasonable efforts are first made to independ-
13 ently determine through alternative means the
14 veracity of the individual’s response to the ques-
15 tion.

16 (2)(A) Not later than six months after obtaining the
17 results of the Polygraph Review, the Secretary prescribe
18 requirements for a counterintelligence polygraph program
19 for the Department of Energy. The purpose of the pro-
20 gram shall be the same as the purpose of the interim pro-
21 gram under paragraph (1).

22 (B) The Secretary shall prescribe requirements under
23 this paragraph in accordance with the provisions of sub-
24 chapter II of chapter 5 of title 5, United States Code

1 (commonly referred to as the Administrative Procedures
2 Act).

3 (C) In prescribing requirements under this para-
4 graph, the Secretary may include in such requirements
5 any requirement or exclusion provided for in subpara-
6 graphs (B) through (E) of paragraph (1).

7 (D) In prescribing requirements under this para-
8 graph, the Secretary shall take into account the results
9 of the Polygraph Review.

10 (c) REPEAL OF EXISTING POLYGRAPH PROGRAM.—
11 Section 3154 of the Department of Energy Facilities Safe-
12 guards, Security, and Counterintelligence Enhancement
13 Act of 1999 (subtitle D of title XXXI of Public Law 106–
14 65; 42 U.S.C. 7383h) is repealed.

15 (d) REPORT ON FURTHER ENHANCEMENT OF PER-
16 SONNEL SECURITY PROGRAM.—(1) Not later than De-
17 cember 31, 2002, the Administrator for Nuclear Security
18 shall submit to Congress a report setting forth the rec-
19 ommendations of the Administrator for any legislative ac-
20 tion that the Administrator considers appropriate in order
21 to enhance the personnel security program of the Depart-
22 ment of Energy.

23 (2) Any recommendations under paragraph (1) re-
24 garding the use of polygraphs shall take into account the
25 results of the Polygraph Review.

1 (e) DEFINITIONS.—In this section:

2 (1) The term “congressional defense commit-
3 tees” means—

4 (A) the Committee on Armed Services and
5 the Committee on Appropriations of the Senate;
6 and

7 (B) the Committee on Armed Services and
8 the Committee on Appropriations of the House
9 of Representatives.

10 (2) The term “Polygraph Review” means the
11 review of the Committee to Review the Scientific
12 Evidence on the Polygraph of the National Academy
13 of Sciences.

14 (3) The term “Restricted Data” has the mean-
15 ing given that term in section 11 y. of the Atomic
16 Energy Act of 1954 (42 U.S.C. 2014(y)).

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