

110TH CONGRESS  
1ST SESSION

# S. 1653

To implement the Convention on Supplementary Compensation for Nuclear  
Damage, and for other purposes.

---

IN THE SENATE OF THE UNITED STATES

JUNE 19, 2007

Mr. INHOFE (for himself, Mr. CARPER, and Mr. VOINOVICH) introduced the  
following bill; which was read twice and referred to the Committee on En-  
vironment and Public Works

---

## A BILL

To implement the Convention on Supplementary  
Compensation for Nuclear Damage, 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 “Convention on Supple-  
5 mentary Compensation for Nuclear Damage Contingent  
6 Cost Allocation Act”.

7 **SEC. 2. FINDINGS AND PURPOSE.**

8 (a) FINDINGS.—Congress finds that—

1 (1) section 170 of the Atomic Energy Act of  
2 1954 (42 U.S.C. 2210) (commonly known as the  
3 “Price-Anderson Act”)—

4 (A) provides a predictable legal framework  
5 necessary for nuclear projects; and

6 (B) ensures prompt and equitable com-  
7 pensation in the event of a nuclear incident in  
8 the United States;

9 (2) section 170 of that Act, in effect, provides  
10 operators of nuclear powerplants with insurance for  
11 damage arising out of a nuclear incident and funds  
12 the insurance primarily through the assessment of a  
13 retrospective premium from each operator after the  
14 occurrence of a nuclear incident;

15 (3) the Convention on Supplementary Com-  
16 pensation for Nuclear Damage, done at Vienna on  
17 September 12, 1997, will establish a global system—

18 (A) to provide a predictable legal frame-  
19 work necessary for nuclear energy projects; and

20 (B) to ensure prompt and equitable com-  
21 pensation in the event of a nuclear incident;

22 (4) the Convention benefits United States nu-  
23 clear suppliers that face potentially unlimited liabil-  
24 ity for a nuclear incidents outside the coverage of  
25 section 170 of the Atomic Energy Act of 1954 (42

1 U.S.C. 2210) by replacing a potentially open-ended  
2 liability with a predictable liability regime that, in  
3 effect, provides nuclear suppliers with insurance for  
4 damage arising out of such an incident;

5 (5) the Convention also benefits United States  
6 nuclear facility operators that may be publicly liable  
7 for a Price-Anderson incident by providing an addi-  
8 tional early source for a Price-Anderson incident by  
9 providing an additional early source of funds to com-  
10 pensate damage arising out of the Price-Anderson  
11 incident;

12 (6) the combined operation of the Convention,  
13 section 170 of the Atomic Energy Act of 1954 (42  
14 U.S.C. 2210), and this Act will augment the quan-  
15 tity of assured funds available for victims in a wider  
16 variety of nuclear incidents while reducing the poten-  
17 tial liability of United States suppliers without in-  
18 creasing potential costs to United States operators;

19 (7) the cost of those benefits is the obligation  
20 of the United States to contribute to the supple-  
21 mentary compensation fund established by the Con-  
22 vention;

23 (8) any such contribution should be funded in  
24 a manner that neither upsets settled expectations  
25 based on the liability regime established under sec-

1       tion 170 of the Atomic Energy Act of 1954 (42  
2       U.S.C. 2210) nor shifts to Federal taxpayers liabil-  
3       ity risks for nuclear incidents at foreign installa-  
4       tions;

5           (9) with respect to a Price-Anderson incident,  
6       funds already available under section 170 of the  
7       Atomic Energy Act of 1954 (42 U.S.C. 2210)  
8       should be used; and

9           (10) with respect to a nuclear incident outside  
10      the United States not covered by section 170 of the  
11      Atomic Energy Act of 1954 (42 U.S.C. 2210), a ret-  
12      rospective premium should be prorated among nu-  
13      clear suppliers relieved from potential liability for  
14      which insurance is not available.

15      (b) PURPOSE.—The purpose of this Act is to allocate  
16      the contingent costs associated with participation by the  
17      United States in the international nuclear liability com-  
18      pensation system established by the Convention on Sup-  
19      plementary Compensation for Nuclear Damage, done at  
20      Vienna on September 12, 1997—

21           (1) with respect to a Price-Anderson incident,  
22      by using funds made available under section 170 of  
23      the Atomic Energy Act of 1954 (42 U.S.C. 2210) to  
24      cover the contingent costs in a manner that neither

1 increases the burdens nor decreases the benefits  
2 under section 170 of that Act; and

3 (2) with respect to a covered incident outside  
4 the United States that is not a Price-Anderson inci-  
5 dent, by allocating the contingent costs equitably, on  
6 the basis of risk, among the class of nuclear sup-  
7 pliers relieved by the Convention from the risk of po-  
8 tential liability resulting from any covered incident  
9 outside the United States.

10 **SEC. 3. DEFINITIONS.**

11 In this Act:

12 (1) COMMISSION.—The term “Commission”  
13 means the Nuclear Regulatory Commission.

14 (2) CONTINGENT COST.—The term “contingent  
15 cost” means the cost to the United States in the  
16 event of a covered incident the amount of which is  
17 equal to the amount of funds the United States is  
18 obligated to make available under paragraph 1(b) of  
19 Article III of the Convention.

20 (3) CONVENTION.—The term “Convention”  
21 means the Convention on Supplementary Compensa-  
22 tion for Nuclear Damage, done at Vienna on Sep-  
23 tember 12, 1997.

24 (4) COVERED INCIDENT.—The term “covered  
25 incident” means a nuclear incident the occurrence of

1 which results in a request for funds pursuant to Ar-  
2 ticle VII of the Convention.

3 (5) COVERED INSTALLATION.—The term “cov-  
4 ered installation” means a nuclear installation at  
5 which the occurrence of a nuclear incident could re-  
6 sult in a request for funds under Article VII of the  
7 Convention.

8 (6) COVERED PERSON.—

9 (A) IN GENERAL.—The term “covered per-  
10 son” means—

11 (i) a United States person; and

12 (ii) an individual or entity (including  
13 an agency or instrumentality of a foreign  
14 country) that—

15 (I) is located in the United  
16 States; or

17 (II) carries out an activity in the  
18 United States.

19 (B) EXCLUSIONS.—The term “covered per-  
20 son” does not include—

21 (i) the United States; or

22 (ii) any agency or instrumentality of  
23 the United States.

1           (7) NUCLEAR SUPPLIER.—The term “nuclear  
2           supplier” means a covered person (or a successor in  
3           interest of a covered person) that—

4                   (A) supplies facilities, equipment, fuel,  
5                   services, or technology pertaining to the design,  
6                   construction, operation, or decommissioning of  
7                   a covered installation; or

8                   (B) transports nuclear materials that could  
9                   result in a covered incident.

10          (8) PRICE-ANDERSON INCIDENT.—The term  
11          “Price-Anderson incident” means a covered incident  
12          for which section 170 of the Atomic Energy Act of  
13          1954 (42 U.S.C. 2210) would make funds available  
14          to compensate for public liability (as defined in sec-  
15          tion 11 of that Act (42 U.S.C. 2014)).

16          (9) SECRETARY.—The term “Secretary” means  
17          the Secretary of Energy.

18          (10) UNITED STATES.—

19                   (A) IN GENERAL.—The term “United  
20                   States” has the meaning given the term in sec-  
21                   tion 11 of the Atomic Energy Act of 1954 (42  
22                   U.S.C. 2014).

23                   (B) INCLUSIONS.—The term “United  
24                   States” includes—

25                           (i) the Commonwealth of Puerto Rico;

1 (ii) any other territory or possession  
2 of the United States;

3 (iii) the Canal Zone; and

4 (iv) the waters of the United States  
5 territorial sea under Presidential Procla-  
6 mation Number 5928, dated December 27,  
7 1988 (43 U.S.C. 1331 note).

8 (11) UNITED STATES PERSON.—The term  
9 “United States person” means—

10 (A) any individual who is a resident, na-  
11 tional, or citizen of the United States (other  
12 than an individual residing outside of the  
13 United States and employed by a person who is  
14 not a United States person); and

15 (B) any corporation, partnership, associa-  
16 tion, joint stock company, business trust, unin-  
17 corporated organization, or sole proprietorship  
18 that is organized under the laws of the United  
19 States.

20 **SEC. 4. USE OF PRICE-ANDERSON FUNDS.**

21 (a) IN GENERAL.—Funds made available under sec-  
22 tion 170 of the Atomic Energy Act of 1954 (42 U.S.C.  
23 2210) shall be used to cover the contingent cost resulting  
24 from any Price-Anderson incident.

1 (b) EFFECT.—The use of funds pursuant to sub-  
2 section (a) shall not reduce the limitation on public liabil-  
3 ity established under section 170 e. of the Atomic Energy  
4 Act of 1954 (42 U.S.C. 2210(e)).

5 **SEC. 5. EFFECT ON AMOUNT OF PUBLIC LIABILITY.**

6 (a) IN GENERAL.—Funds made available to the  
7 United States under Article VII of the Convention with  
8 respect to a Price-Anderson incident shall be used to sat-  
9 isfy public liability resulting from the Price-Anderson inci-  
10 dent.

11 (b) AMOUNT.—The amount of public liability allow-  
12 able under section 170 of the Atomic Energy Act of 1954  
13 (42 U.S.C. 2210) relating to a Price-Anderson incident  
14 under subsection (a) shall be increased by an amount  
15 equal to the difference between—

16 (1) the amount of funds made available for the  
17 Price-Anderson incident under Article VII of the  
18 Convention; and

19 (2) the amount of funds used under section 4  
20 to cover the contingent cost resulting from the  
21 Price-Anderson incident.

22 **SEC. 6. RETROSPECTIVE RISK POOLING PROGRAM.**

23 (a) IN GENERAL.—Except as provided in subsection  
24 (b), each nuclear supplier shall participate in a retrospec-  
25 tive risk pooling program in accordance with this Act to

1 cover the contingent cost resulting from a covered incident  
2 outside the United States that is not a Price-Anderson in-  
3 cident.

4 (b) DEFERRED PAYMENT.—

5 (1) IN GENERAL.—The obligation of a nuclear  
6 supplier to participate in the retrospective risk pool-  
7 ing program shall be deferred until the United  
8 States is called on to provide funds pursuant to Ar-  
9 ticle VII of the Convention with respect to a covered  
10 incident that is not a Price-Anderson incident.

11 (2) AMOUNT OF DEFERRED PAYMENT.—The  
12 amount of a deferred payment of a nuclear supplier  
13 under paragraph (1) shall be based on the risk-in-  
14 formed assessment formula determined under para-  
15 graph (3).

16 (3) RISK-INFORMED ASSESSMENT FORMULA.—

17 (A) IN GENERAL.—Not later than 3 years  
18 after the date of enactment of this Act, and  
19 every 5 years thereafter, the Secretary shall, by  
20 regulation, determine the risk-informed assess-  
21 ment formula for the allocation among nuclear  
22 suppliers of the contingent cost resulting from  
23 a covered incident that is not a Price-Anderson  
24 incident, taking into account risk factors such  
25 as—

1 (i) the nature and intended purpose of  
2 the goods and services supplied by each  
3 nuclear supplier to each covered installa-  
4 tion outside the United States;

5 (ii) the quantity of the goods and  
6 services supplied by each nuclear supplier  
7 to each covered installation outside the  
8 United States;

9 (iii) the hazards associated with the  
10 supplied goods and services if the goods  
11 and services fail to achieve the intended  
12 purposes;

13 (iv) the hazards associated with the  
14 covered installation outside the United  
15 States to which the goods and services are  
16 supplied;

17 (v) the legal, regulatory, and financial  
18 infrastructure associated with the covered  
19 installation outside the United States to  
20 which the goods and services are supplied;  
21 and

22 (vi) the hazards associated with par-  
23 ticular forms of transportation.

24 (B) FACTORS FOR CONSIDERATION.—In  
25 determining the formula, the Secretary may—

- 1 (i) exclude—
- 2 (I) goods and services with neg-
- 3 ligible risk;
- 4 (II) classes of goods and services
- 5 not intended specifically for use in a
- 6 nuclear installation;
- 7 (III) a nuclear supplier with a de
- 8 minimis share of the contingent cost;
- 9 and
- 10 (IV) a nuclear supplier no longer
- 11 in existence for which there is no
- 12 identifiable successor; and
- 13 (ii) establish the period on which the
- 14 risk assessment is based.

15 (C) APPLICATION.—In applying the for-

16 mula, the Secretary shall not consider any cov-

17 ered installation or transportation for which

18 funds would be available under section 170 of

19 the Atomic Energy Act of 1954 (42 U.S.C.

20 2210).

21 (D) REPORT.—Not later than 5 years

22 after the date of enactment of this Act and

23 every 5 years thereafter, the Secretary shall

24 submit to the Committee on Environment and

25 Public Works of the Senate and the Committee

1           on Energy and Commerce of the House of Rep-  
2           resentatives a report on whether there is a need  
3           for continuation or amendment of this Act, tak-  
4           ing into account the effects of the implementa-  
5           tion of the Convention on the United States nu-  
6           clear industry and suppliers.

7 **SEC. 7. REPORTING.**

8           (a) COLLECTION OF INFORMATION.—

9           (1) IN GENERAL.—The Secretary may collect  
10          information necessary for developing and imple-  
11          menting the formula for calculating the deferred  
12          payment of a nuclear supplier under section 6(b).

13          (2) PROVISION OF INFORMATION.—Each nu-  
14          clear supplier and other appropriate persons shall  
15          make available to the Secretary such information,  
16          reports, records, documents, and other data as the  
17          Secretary determines, by regulation, to be necessary  
18          or appropriate to develop and implement the formula  
19          under section 6(b)(3).

20          (b) PRIVATE INSURANCE.—The Secretary shall make  
21          available to nuclear suppliers, and insurers of nuclear sup-  
22          pliers, information to support the voluntary establishment  
23          and maintenance of private insurance against any risk for  
24          which nuclear suppliers may be required to pay deferred  
25          payments under this Act.

1 **SEC. 8. EFFECT ON LIABILITY.**

2 Nothing in any other law (including regulations) lim-  
3 its liability for a covered incident to an amount equal to  
4 less than the amount prescribed in paragraph 1(a) of Arti-  
5 cle IV of the Convention, unless the law—

6 (1) specifically refers to this Act; and

7 (2) explicitly repeals, alters, amends, modifies,  
8 impairs, displaces, or supersedes the effect of this  
9 section.

10 **SEC. 9. PAYMENTS TO AND BY THE UNITED STATES.**

11 (a) ACTION BY NUCLEAR SUPPLIERS.—

12 (1) NOTIFICATION.—In the case of a request  
13 for funds under Article VII of the Convention result-  
14 ing from a covered incident that is not a Price-An-  
15 derson incident, the Secretary shall notify each nu-  
16 clear supplier of the amount of the deferred payment  
17 required to be made by the nuclear supplier.

18 (2) PAYMENTS.—

19 (A) IN GENERAL.—Except as provided in  
20 subparagraph (B), not later than 60 days after  
21 receipt of a notification under paragraph (1), a  
22 nuclear supplier shall pay to the general fund of  
23 the Treasury the deferred payment of the nu-  
24 clear supplier required under paragraph (1).

25 (B) ANNUAL PAYMENTS.—A nuclear sup-  
26 plier may elect to prorate payment of the de-

1           ferred payment required under paragraph (1) in  
2           5 equal annual payments (including interest on  
3           the unpaid balance at the prime rate prevailing  
4           at the time the first payment is due).

5           (3) VOUCHERS.—A nuclear supplier shall sub-  
6           mit payment certification vouchers to the Secretary  
7           of the Treasury in accordance with section 3325 of  
8           title 31, United States Code.

9           (b) USE OF FUNDS.—

10           (1) IN GENERAL.—Amounts paid into the  
11           Treasury under subsection (a) shall be available to  
12           the Secretary of the Treasury, without further ap-  
13           propriation and without fiscal year limitation, for  
14           the purpose of making the contributions of public  
15           funds required to be made by the United States  
16           under the Convention.

17           (2) ACTION BY SECRETARY OF TREASURY.—  
18           The Secretary of the Treasury shall pay the con-  
19           tribution required under the Convention to the court  
20           of competent jurisdiction under Article XIII of the  
21           Convention with respect to the applicable covered in-  
22           cident.

23           (c) FAILURE TO PAY.—If a nuclear supplier fails to  
24           make a payment required under this section, the Secretary

1 may take appropriate action to recover from the nuclear  
2 supplier—

3 (1) the amount of the payment due from the  
4 nuclear supplier;

5 (2) any applicable interest on the payment; and

6 (3) a penalty of not more than twice the  
7 amount of the deferred payment due from the nu-  
8 clear supplier.

9 **SEC. 10. LIMITATION ON JUDICIAL REVIEW; CAUSE OF AC-**  
10 **TION.**

11 (a) **LIMITATION ON JUDICIAL REVIEW.—**

12 (1) **IN GENERAL.—**In any civil action arising  
13 under the Convention over which Article XIII of the  
14 Convention grants jurisdiction to the courts of the  
15 United States, any appeal or review by writ of man-  
16 damus or otherwise with respect to a nuclear inci-  
17 dent that is not a Price-Anderson incident shall be  
18 in accordance with chapter 83 of title 28, United  
19 States Code, except that the appeal or review shall  
20 occur in the United States Court of Appeals for the  
21 District of Columbia Circuit.

22 (2) **SUPREME COURT JURISDICTION.—**Nothing  
23 in this subsection affects the jurisdiction of the Su-  
24 preme Court of the United States under chapter 81  
25 of title 28, United States Code.

1 (b) CAUSE OF ACTION.—

2 (1) IN GENERAL.—Subject to paragraph (2), in  
3 any civil action arising under the Convention over  
4 which Article XIII of the Convention grants jurisdic-  
5 tion to the courts of the United States, in addition  
6 to any other cause of action that may exist, an indi-  
7 vidual or entity shall have a cause of action against  
8 the operator to recover for nuclear damage suffered  
9 by the individual or entity.

10 (2) REQUIREMENT.—Paragraph (1) shall apply  
11 only if the individual or entity seeks a remedy for  
12 nuclear damage (as defined in Article I of the Con-  
13 vention) that was caused by a nuclear incident (as  
14 defined in Article I of the Convention) that is not a  
15 Price-Anderson incident.

16 (3) EFFECT OF SUBSECTION.—Nothing in this  
17 subsection limits, modifies, extinguishes, or other-  
18 wise affects any cause of action that would have ex-  
19 isted in the absence of enactment of this subsection.

20 **SEC. 11. RIGHT OF RECOURSE.**

21 This Act does not provide to an operator of a covered  
22 installation any right of recourse under the Convention.

1 **SEC. 12. PROTECTION OF SENSITIVE UNITED STATES IN-**  
2 **FORMATION.**

3 Nothing in the Convention or this Act requires the  
4 disclosure of—

5 (1) any data that, at any time, was Restricted  
6 Data (as defined in section 11 of the Atomic Energy  
7 Act of 1954 (42 U.S.C. 2014));

8 (2) information relating to intelligence sources  
9 or methods protected by section 102A(i) of the Na-  
10 tional Security Act of 1947 (50 U.S.C. 403–1(i)); or

11 (3) national security information classified  
12 under Executive Order 12958 (50 U.S.C. 435 note;  
13 relating to classified national security information)  
14 (or a successor regulation).

15 **SEC. 13. REGULATIONS.**

16 (a) **IN GENERAL.**—The Secretary or the Commission,  
17 as appropriate, may prescribe regulations to carry out sec-  
18 tion 170 of the Atomic Energy Act of 1954 (42 U.S.C.  
19 2210) and this Act.

20 (b) **REQUIREMENT.**—Rules prescribed under this sec-  
21 tion shall ensure, to the maximum extent practicable,  
22 that—

23 (1) the implementation of section 170 of the  
24 Atomic Energy Act of 1954 (42 U.S.C. 2210) and  
25 this Act is consistent and equitable; and

1           (2) the financial and operational burden on a  
2           Commission licensee in complying with section 170  
3           of that Act is not greater as a result of the enact-  
4           ment of this Act.

5           (c) **APPLICABILITY OF PROVISION.**—Section 553 of  
6           title 5, United States Code, shall apply with respect to  
7           the promulgation of regulations under this section.

8           (d) **EFFECT OF SECTION.**—The authority provided  
9           under this section is in addition to, and does not impair  
10          or otherwise affect, any other authority of the Secretary  
11          or the Commission to prescribe regulations.

12          **SEC. 14. EFFECTIVE DATE.**

13          This Act takes effect on the date of enactment of this  
14          Act.

○