

Enrolled as Agreed to or Passed by Both House and Senate

Excerpt showing ERA whistleblower related provisions
(sections 627 and 629)

109TH CONGRESS }
1st Session

HOUSE OF REPRESENTATIVES

{ REPORT
109-190

ENERGY POLICY ACT OF 2005

CONFERENCE REPORT

[TO ACCOMPANY H.R. 6]



JULY 27, 2005.—Ordered to be printed

“SEC. 170C. ELIMINATION OF PENSION OFFSET FOR CERTAIN RE-HIRED FEDERAL RETIREES.

“a. IN GENERAL.—The Commission may waive the application of section 8344 or 8468 of title 5, United States Code, on a case-by-case basis for employment of an annuitant—

“(1) in a position of the Commission for which there is exceptional difficulty in recruiting or retaining a qualified employee; or

“(2) when a temporary emergency hiring need exists.

“b. PROCEDURES.—The Commission shall prescribe procedures for the exercise of authority under this section, including—

“(1) criteria for any exercise of authority; and

“(2) procedures for a delegation of authority.

“c. EFFECT OF WAIVER.—An employee as to whom a waiver under this section is in effect shall not be considered an employee for purposes of subchapter II of chapter 83, or chapter 84, of title 5, United States Code.”

(b) CONFORMING AMENDMENT.—The table of sections of the Atomic Energy Act of 1954 (42 U.S.C. prec. 2011) is amended by adding at the end of the items relating to chapter 14 the following:

“Sec. 170C. Elimination of pension offset for certain rehired Federal retirees.”.

SEC. 625. ANTITRUST REVIEW.

Section 105 c. of the Atomic Energy Act of 1954 (42 U.S.C. 2135(c)) is amended by adding at the end the following:

“(9) APPLICABILITY.—This subsection does not apply to an application for a license to construct or operate a utilization facility or production facility under section 103 or 104 b. that is filed on or after the date of enactment of this paragraph.”

SEC. 626. DECOMMISSIONING.

Section 161 i. of the Atomic Energy Act of 1954 (42 U.S.C. 2201(i)) is amended—

(1) by striking “and (3)” and inserting “(3)”; and

(2) by inserting before the semicolon at the end the following: “; and (4) to ensure that sufficient funds will be available for the decommissioning of any production or utilization facility licensed under section 103 or 104 b., including standards and restrictions governing the control, maintenance, use, and disbursement by any former licensee under this Act that has control over any fund for the decommissioning of the facility”.

SEC. 627. LIMITATION ON LEGAL FEE REIMBURSEMENT.

Title II of the Energy Reorganization Act of 1974 (42 U.S.C. 5841 et seq.) is amended by adding at the end the following new section:

“LIMITATION ON LEGAL FEE REIMBURSEMENT

“SEC. 212. The Department of Energy shall not, except as required under a contract entered into before the date of enactment of this section, reimburse any contractor or subcontractor of the Department for any legal fees or expenses incurred with respect to a complaint subsequent to—

“(1) an adverse determination on the merits with respect to such complaint against the contractor or subcontractor by the Director of the Department of Energy’s Office of Hearings and

Appeals pursuant to part 708 of title 10, Code of Federal Regulations, or by a Department of Labor Administrative Law Judge pursuant to section 211 of this Act; or

“(2) an adverse final judgment by any State or Federal court with respect to such complaint against the contractor or subcontractor for wrongful termination or retaliation due to the making of disclosures protected under chapter 12 of title 5, United States Code, section 211 of this Act, or any comparable State law,

unless the adverse determination or final judgment is reversed upon further administrative or judicial review.”.

SEC. 628. DECOMMISSIONING PILOT PROGRAM.

(a) *PILOT PROGRAM.*—The Secretary shall establish a decommissioning pilot program under which the Secretary shall decommission and decontaminate the sodium-cooled fast breeder experimental test-site reactor located in northwest Arkansas, in accordance with the decommissioning activities contained in the report of the Department relating to the reactor, dated August 31, 1998.

(b) *AUTHORIZATION OF APPROPRIATIONS.*—There is authorized to be appropriated to the Secretary to carry out this section \$16,000,000.

SEC. 629. WHISTLEBLOWER PROTECTION.

(a) *DEFINITION OF EMPLOYER.*—Section 211(a)(2) of the Energy Reorganization Act of 1974 (42 U.S.C. 5851(a)(2)) is amended—

- (1) in subparagraph (C), by striking “and” at the end;
- (2) in subparagraph (D), by striking the period at the end and inserting a semicolon; and
- (3) by adding at the end the following:

“(E) a contractor or subcontractor of the Commission;
“(F) the Commission; and
“(G) the Department of Energy.”.

(b) *DE NOVO REVIEW.*—Subsection (b) of such section 211 is amended by adding at the end the following new paragraph:

“(4) If the Secretary has not issued a final decision within 1 year after the filing of a complaint under paragraph (1), and there is no showing that such delay is due to the bad faith of the person seeking relief under this paragraph, such person may bring an action at law or equity for de novo review in the appropriate district court of the United States, which shall have jurisdiction over such an action without regard to the amount in controversy.”.

SEC. 630. MEDICAL ISOTOPE PRODUCTION.

Section 134 of the Atomic Energy Act of 1954 (42 U.S.C. 2160d) is amended—

(1) in subsection a., by striking “a. The Commission” and inserting “a. IN GENERAL.—Except as provided in subsection b., the Commission”;

(2) by redesignating subsection b. as subsection c.; and

(3) by inserting after subsection a. the following:

“b. *MEDICAL ISOTOPE PRODUCTION.*—

“(1) *DEFINITIONS.*—In this subsection:

“(A) *HIGHLY ENRICHED URANIUM.*—The term ‘highly enriched uranium’ means uranium enriched to include concentration of U-235 above 20 percent.