

Calendar No. 538

111TH CONGRESS }
2d Session }

SENATE

{ REPORT
{ 111-268

REPUBLIC OF THE MARSHALL ISLANDS SUPPLEMENTAL NUCLEAR COMPENSATION ACT

AUGUST 5, 2010.—Ordered to be printed

Mr. BINGAMAN, from the Committee on Energy and Natural
Resources, submitted the following

R E P O R T

[To accompany S. 2941]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 2941) to provide supplemental ex gratia compensation to the Republic of the Marshall Islands for impacts of the nuclear testing program of the United States, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Republic of the Marshall Islands Supplemental Nuclear Compensation Act of 2010”.

SEC. 2. CONTINUED MONITORING ON RUNIT ISLAND.

Section 103(f)(1) of the Compact of Free Association Amendments Act of 2003 (48 U.S.C. 1921b(f)(1)) is amended—

(1) by striking “Notwithstanding” and inserting the following:

“(A) IN GENERAL.—Notwithstanding”; and

(2) by adding at the end the following:

“(B) CONTINUED MONITORING ON RUNIT ISLAND.—

“(i) CACTUS CRATER CONTAINMENT AND GROUNDWATER MONITORING.— Effective beginning January 1, 2008, the Secretary of Energy shall, as a part of the Marshall Islands program conducted under subparagraph (A), periodically (but not less frequently than every 4 years) conduct—

“(I) a visual study of the concrete exterior of the Cactus Crater containment structure on Runit Island; and

“(II) a radiochemical analysis of the groundwater surrounding and in the Cactus Crater containment structure on Runit Island.

“(ii) REPORT.—The Secretary shall submit to the Committee on Energy and Natural Resources of the Senate, and the Committee on Nat-

ural Resources of the House of Representatives, a report that contains—

“(I) a description of—

“(aa) the results of each visual survey conducted under clause (i)(I); and

“(bb) the results of the radiochemical analysis conducted under clause (i)(II); and

“(II) a determination on whether the surveys and analyses indicate any significant change in the health risks to the people of Enewetak from the contaminants within the Cactus Crater containment structure.

“(iii) FUNDING FOR GROUNDWATER MONITORING.—The Secretary of the Interior shall make available to the Department of Energy, Marshall Islands Program, from funds available for the Technical Assistance Program of the Office of Insular Affairs, the amounts necessary to conduct the radiochemical analysis of groundwater under clause(i)(II).”.

SEC. 3. CLARIFICATION OF ELIGIBILITY UNDER ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM ACT OF 2000.

(a) DEFINITIONS FOR PROGRAM ADMINISTRATION.—Section 3621 of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7384f) is amended by adding at the end the following:

“(18) The terms ‘covered employee’, ‘atomic weapons employee’, and ‘Department of Energy contractor employee’ (as defined in paragraphs (1), (3), and (11), respectively) include a citizen or national of the Republic of the Marshall Islands or the Federated States of Micronesia who is otherwise covered by that paragraph.”.

(b) DEFINITION OF COVERED DOE CONTRACTOR EMPLOYEE.—Section 3671(1) of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7385s(1)) is amended by inserting before the period at the end the following: “, including a citizen or national of the Republic of the Marshall Islands or the Federated States of Micronesia who is otherwise covered by this paragraph”.

(c) OFFSET OF BENEFITS WITH RESPECT TO THE COMPACT OF FREE ASSOCIATION.—Subtitle C of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7385 et seq.) is amended by inserting after section 3653 (42 U.S.C. 7385j–2) the following:

“SEC. 3654. OFFSET OF BENEFITS WITH RESPECT TO THE COMPACT OF FREE ASSOCIATION.

“An individual who has been awarded compensation under this title, and who has also received compensation benefits under the Compact of Free Association between the United States and the Republic of the Marshall Islands (48 U.S.C. 1681 et seq.) (referred to in this section as the ‘Compact of Free Association’), by reason of the same illness, shall receive the compensation awarded under this title reduced by the amount of any compensation benefits received under the Compact of Free Association, other than medical benefits and benefits for vocational rehabilitation that the individual received by reason of the illness, after deducting the reasonable costs (as determined by the Secretary) of obtaining those benefits under the Compact of Free Association.”.

SEC. 4. SUPPLEMENTAL HEALTH CARE GRANT.

Section 103(h) of the Compact of Free Association Amendments Act of 2003 (48 U.S.C. 1921b(h)) is amended by adding at the end the following:

“(4) SUPPLEMENTAL HEALTH CARE GRANT.—

“(A) IN GENERAL.—In addition to amounts provided under section 211 of the U.S.–RMI Compact (48 U.S.C. 1921 note), the Secretary of the Interior shall provide to the Republic of the Marshall Islands an annual supplemental health care grant in the amount made available under subparagraph (D)—

“(i)(I) to provide enhanced primary health care, with an emphasis on providing regular screenings for radiogenic illnesses by upgrading existing services or by providing quarterly medical field team visits, as appropriate, in each of Enewetak, Bikini, Rongelap, Utrik, Ailuk, Mejit, Likiep, Wotho, Wotje, and Ujelang Atolls, which were affected by the nuclear testing program of the United States; and

“(II) to enhance the capabilities of the Marshall Islands to provide secondary treatment for radiogenic illness; and

“(ii) to construct and operate a whole-body counting facility on Utrik Atoll.

“(B) CONDITIONS ON HEALTH CARE GRANTS.—To ensure the effective use of grants funds under clause (i) of subparagraph (A), the Secretary of the

Interior, after consultation with the Republic of the Marshall Islands, may establish additional conditions on the provision of grants under that clause.

“(C) MEMORANDUM OF AGREEMENT.—To meet the objectives of clause (ii) of subparagraph (A), the Secretary of the Interior, the Secretary of Energy, and the Government of the Republic of the Marshall Islands shall enter into a memorandum of agreement setting forth the terms, conditions, and respective responsibilities of the parties to the memorandum of agreement in carrying out that clause.

“(D) FUNDING.—As authorized by section 105(c), there is appropriated to the Secretary of the Interior, out of funds in the Treasury not otherwise appropriated, to carry out this paragraph \$4,500,000 for each of fiscal years 2009 through 2023, as adjusted for inflation in accordance with section 218 of the U.S.–RMI Compact, to remain available until expended.”.

SEC. 5. ASSESSMENT OF HEALTH CARE NEEDS OF THE MARSHALL ISLANDS.

(a) IN GENERAL.—The Secretary of the Interior shall enter into an agreement with the National Academy of Sciences under which the National Academy of Sciences shall conduct an assessment of the health impacts of the United States nuclear testing program conducted in the Republic of the Marshall Islands on the residents of the Republic of the Marshall Islands.

(b) REPORT.—On completion of the assessment under subsection (a), the National Academy of Sciences shall submit to Congress, the Secretary, the Committee on Energy and Natural Resources of the Senate, and the Committee on Natural Resources of the House of Representatives, a report on the results of the assessment.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as are necessary to carry out this section.

PURPOSE

The purpose of S. 2941 is to provide supplemental *ex gratia* compensation to certain communities and citizens of the Republic of the Marshall Islands for impacts of the nuclear testing program of the United States. The bill expands the scope of three existing programs: the Department of Energy’s Marshall Islands Program; the Department of Labor’s Energy Employees Occupational Illness Compensation Program; and the Republic of the Marshall Islands’ Four Atoll Health Care Program. In addition, the bill provides for an assessment and report by the National Academy of Sciences on the health impacts of the nuclear testing program in the Marshall Islands.

BACKGROUND AND NEED

The Republic of the Marshall Islands is a nation of nearly 66,000 people living on 29 coral atolls and 5 islands in the middle of the Pacific Ocean. Originally claimed by Spain, the islands were sold to Germany in 1884, and captured by Japan during World War I. The League of Nations formally entrusted the Marshall Islands, along with Germany’s other colonies in the Pacific Ocean, to Japan in 1920. The United States captured the islands from Japan in 1944, and ruled them by military occupation for the next three years.

In 1947, the United Nations brought most of Micronesia within the United Nations trusteeship system, and designated the United States as the “Administering Authority” over the Trust Territory of the Pacific Islands which was composed of the Marshall Islands, as well as the Northern Mariana, Caroline, and Palau Islands. Pursuant to its trusteeship agreement with the United Nations Security Council, the United States assumed full responsibility for the government of the Marshall Islands and for promoting the islands’ economic and political development.

In 1979, the Republic of the Marshall Islands adopted a constitution and inaugurated a parliamentary government under its constitution. In 1980, it initialed a Compact of Free Association with the United States, under which the Republic of the Marshall Islands became an independent, self-governing, sovereign nation and the United States agreed to continue certain forms of economic assistance and military defense. The people of the Marshall Islands approved the Compact by plebiscite in 1983, Congress approved it in 1985 with the enactment of Public Law 99-239. It came into full force and effect in 1986. Portions of the Compact expired, pursuant to their terms, after 15 years, in 2001. The United States and the Republic of the Marshall Islands agreed to amend the Compact to extend economic assistance programs for an additional 20 years, and Congress approved the amended Compact in December 2003 with the enactment of Public Law 108-188.

Between June 1946 and August 1958, the United States tested 67 nuclear weapons on or near the Marshall Islands (23 on the Bikini Atoll; 43 on the Enewetak Atoll; and 1 in the ocean west of Bikini). Together the tests had an explosive yield of 108,000 kilotons, equivalent to over 7,200 Hiroshima bombs. "Mike," the first hydrogen bomb ever tested, had the explosive force of nearly 700 Hiroshima bombs, and vaporized the island of Elugelap in the Enewetak Atoll in 1952. "Castle Bravo," the second and largest hydrogen bomb ever tested by the United States, had the explosive force of 1,000 Hiroshima bombs and vaporized five of Bikini's islands in 1954. Radioactive fallout from "Castle Bravo" fell on the Rongelap and Utrik Atolls and their 253 residents. Nuclear testing in the Marshall Islands required the removal and relocation of the residents of four atolls, and resulted in physical destruction and long lasting radioactive contamination.

In 1981, 1982, and 1983, several thousand inhabitants of Bikini, Enewetak, and downwind atolls sued the United States for damages resulting from the nuclear weapons testing program. Their claims were ultimately settled as part of the Compact of Free Association. In section 177 of the Compact, the United States accepted responsibility for compensating the citizens of the Marshall Islands for loss or damage to the people and property of the Islands resulting from the nuclear testing program. Section 177 authorized the Governments of the United States and the Marshall Islands to enter into a separate agreement for the just and adequate settlement of all claims arising from the nuclear testing program; provided \$2 million annually for supplemental health care services under the so-called "Four Atoll Health Care Program"; provided for a nationwide radiological survey; and authorized a \$150 million grant to the Marshall Islands.

The separate agreement called for by section 177 of the Compact, which has become known as the Section 177 Agreement, created a Nuclear Claims Tribunal to handle all claims and payments arising out of the nuclear testing program. The \$150 million authorized by section 177 was placed in a trust fund to fund the Tribunal's operations and awards. The Compact of Free Association Act of 1985, Public Law 99-239, which approved the Compact, provided that the provisions of section 177 and the Section 177 Agreement (which was incorporated by reference into the Compact) constituted "a full and final settlement of all claims," past, present, and future, aris-

ing out of the nuclear testing program. Nonetheless, section 105(c) of the 1985 Act authorized appropriations for “health and education as a result of exceptional circumstances”, and “ex gratia (out of grace rather than as a matter of right) “contributions for the populations of Bikini, Enewetak, Rongelap, and Utrik”. The Section 177 Agreement also provided that the Marshall Islands could seek additional funds from Congress through a “changed circumstances” petition, if “injuries render the provisions of this Agreement manifestly inadequate.” The Agreement did not commit Congress to provide the additional funds.

The Republic of the Marshall Islands submitted a changed circumstances petition, seeking approximately \$3.3 billion in additional compensation, in September 2000 and again in November 2001. The Senate Committee on Energy and Natural Resources and the House Committee on Resources asked the Administration to evaluate the petition. In January 2005, the Department of State reported that the request did not meet the “changed circumstances” test under the Section 177 Agreement, since it was not based on new information or injuries arising after the original settlement. While the Department State found no legal basis for providing additional compensation to the Republic of the Marshall Islands, it acknowledged “serious and continuing public health and medical challenges” and noted that some of the Republic of the Marshall Islands’ requests for additional program assistance “might be desirable.”

In 2007, the President of the Republic of the Marshall Islands, Kessai Note, requested additional program assistance in four specific areas: additional monitoring of radiological conditions on Runit Island in the Enewetak Atoll; clarification that citizens of the Marshall Islands are eligible for the Energy Employees Occupational Illness Compensation Program; continuation and expansion of funding for the Four Atoll Health Care Program; and an assessment by the National Academy of Sciences of the health care needs of the Marshall Islands. Legislation is needed to provide this additional program assistance.

LEGISLATIVE HISTORY

S. 2941 is identical to legislation (S. 1756) introduced during the 110th Congress. S. 1756 was introduced on July 10, 2007 by Senator Bingaman, Senator Akaka, Senator Domenici, and Senator Murkowski at the request of the President of the Republic of the Marshall Islands, Kessai Note. The Committee held a hearing on S. 1756 on September 25, 2007 (S. Hrg. 110–243), and ordered it reported with an amendment in the nature of a substitute, without written report, on September 11, 2008. The Senate took no further action on the bill during the 110th Congress. During the preceding Congress, on July 19, 2005, the Committee had also conducted an oversight hearing on the effects of the nuclear testing program in the Marshall Islands. (S. Hrg. 109–178.)

S. 2941 was introduced by Senator Bingaman and Senator Murkowski at the request of the President of the Republic of the Marshall Islands, Jurelang Zedkaia, on January 20, 2010. The Committee held a hearing on S. 2941 on May 19, 2010. At a business meeting on June 16, 2010, the Committee adopted an amendment

in the nature of a substitute, and at a business meeting on June 21, 2010, ordered the bill, as amended, favorably reported.

COMMITTEE RECOMMENDATION

The Committee on Energy and Natural Resources, in open business session on June 21, 2010, by a unanimous vote of a quorum present, recommends that the Senate pass S. 2941, if amended as described herein.

COMMITTEE AMENDMENT

During its consideration of S. 2491, the Committee adopted an amendment in the nature of a substitute. The amendment requires monitoring of radiological conditions on Runit Island, makes certain nationals and citizens of the Republic of the Marshall Islands and the Federated States of Micronesia eligible to receive compensation under the Energy Employees Occupational Illness Compensation Program, appropriates \$4.5 million annually for the Four Atoll Health Care Program, and requires an assessment by the National Academy of Sciences of the health care needs of the Marshall Islands. The amendment is explained in detail in the section-by-section analysis below.

SECTION-BY-SECTION ANALYSIS

Section 1 provides the short title.

Section 2 amends section 103(f) of the Compact of Free Association Amendments Act of 2003 (48 U.S.C. 1921b(f)(1)) to direct the Secretary of Energy to conduct a visual survey and groundwater analysis of the Cactus Crater containment structure on Runit Island periodically, but not less than every 4 years. It also requires the Secretary to report to the Senate Committee on Energy and Natural Resources and the House Committee on Natural Resources the results of the survey and analysis and any significant change in health risks to the people of Enewetak from the structure. The Cactus Crater containment structure is an above-ground nuclear waste storage site on Runit Island that houses 110,000 cubic yards of radioactively contaminated soil from the Enewetak Atoll. The amendment also requires the Secretary of the Interior to provide to the Department of Energy funds needed to conduct the radiochemical analysis of groundwater from funds available for the Technical Assistance Program of the Office of Insular Affairs.

Section 3 amends sections 3621 and 3671(1) of the Energy Employees Occupational Illness Compensation Program Act of 2000 (42 U.S.C. 7384l; 42 U.S.C. 7385s(1)) to make benefits available to citizens or nationals of the Republic of the Marshall Islands or the Federated States of Micronesia who otherwise meet the program's eligibility requirements. Subsection (c) adds a new section 3654 to the Energy Employees Occupational Illness Compensation Program Act of 2000 to provide that the amount of compensation received under the Program be reduced by the amount of any compensation benefits received under the Compact of Free Association.

Section 4 amends section 103(h) of the Compact of Free Association Amendments Act of 2003 (48 U.S.C. 1921b(h)) to require the Secretary of the Interior to provide to the Republic of the Marshall Islands an annual supplemental health care grant to provide en-

hanced primary and secondary health care for screening and treatment of radiogenic illnesses under the Four Atoll Health Care Program. The Program was originally funded at the rate of \$2 million annually from the \$150 million Nuclear Claims Fund authorized by section 177 of the Compact, and was limited to the inhabitants of the Enewetak, Bikini, Rongelap, and Utrik Atolls. The amendment appropriates \$4.5 million for each of fiscal years 2009 through 2023, provides that the annual appropriation be adjusted for inflation in accordance with the inflation adjustment formula in the Compact, extends the Program from the original Four Atolls to Ailuk, Mejit, Likiep, Wotho and Ujelang Atolls.

Section 5 directs the Secretary of the Interior to enter into an agreement with the National Academy of Sciences to conduct an assessment of the health impacts of the nuclear testing program on the residents of the Republic of the Marshall Islands and report the results to the Secretary, the Senate Committee on Energy and Natural Resources, and the House Committee on Natural Resources, and authorizes such sums as may be necessary to carry out the section.

COST AND BUDGETARY CONSIDERATIONS

The following estimate of costs of this measure has been provided by the Congressional Budget Office.

S. 2941—Republic of the Marshall Islands Supplemental Nuclear Compensation Act of 2010

Summary: S. 2941 would amend the Compact of Free Association Amendments Act of 2003 and the Energy Employees Occupational Illness Compensation Program Act of 2000 (EEOICPA). The legislation would appropriate about \$5 million annually over the 2010–2023 period to supplement the health care resources in certain communities affected by the U.S. nuclear weapons testing program. In addition, S. 2941 would extend coverage of the Energy Employees Occupational Illness Compensation Program to qualified citizens of the Republic of the Marshall Islands and the Federated States of Micronesia. Finally, the legislation would require scientific monitoring of a specific nuclear weapons test site and a report on the health effects of nuclear testing in the Marshall Islands.

CBO estimates that enacting this bill would increase direct spending by \$58 million over the 2011–2020 period; therefore, pay-as-you-go procedures apply.¹ Enacting the bill would not affect revenues. We estimate that additional administrative and reporting costs would total less than \$2 million over the 2011–2012 period, assuming appropriation of the necessary funds.

S. 2941 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Estimated cost to the federal government: The estimated budgetary impact of S. 2941 is shown in the following table. The budgetary effects of this legislation fall within budget functions 050 (national defense) and 800 (general government).

¹ Different time periods apply in the Senate for pay-as-you-go rules. CBO estimates that enacting S. 2941 would increase direct spending by \$25 million over the 2010–2014 period and by \$52 million over the 2010–2019 period.

	By fiscal year, in millions of dollars—											
	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2011– 2015	2011– 2020
CHANGES IN DIRECT SPENDING ^a												
Supplemental Health Care Grants:												
Estimated Budget Authority	5	5	5	5	5	5	5	5	5	5	25	52
Estimated Outlays	5	5	5	5	5	5	5	5	5	5	25	52
Energy Worker Compensation:												
Estimated Budget Authority	2	1	1	1	1	*	*	*	*	*	6	6
Estimated Outlays	2	1	1	1	1	*	*	*	*	*	6	6
Total Changes:												
Estimated Budget Authority	7	6	6	6	6	5	5	5	5	5	31	58
Estimated Outlays	7	6	6	6	6	5	5	5	5	5	31	58

^aIn addition to the costs shown above, CBO estimates that implementing S. 2941 also would increase discretionary costs by less than \$2 million over the 2011–2012 period for administrative and reporting costs.
Note: * = less than \$500,000.

Basis of estimate: For this estimate, CBO assumes that S. 2941 will be enacted near the start of fiscal year 2011.

Supplemental health care grant: Section 4 would appropriate \$4.5 million, plus adjustments for inflation as specified in the Compact of Free Association Amendments Act of 2003,² annually through 2023 for supplemental health care grants to communities of the Marshall Islands that were affected by the United States nuclear weapons testing program. Based on information from the Department of the Interior concerning the provision of health care on the islands and on the availability of roughly \$5 million per year under the bill, CBO estimates that this provision would increase direct spending by \$52 million over the 2011–2020 period.

Energy workers compensation: Section 3 would expand the EEOICPA to cover citizens of the Republic of the Marshall Islands and the Federated States of Micronesia. EEOICPA provides monetary compensation and medical benefits to employees of the Department of Energy (DOE)—including DOE predecessor agencies—and DOE contractors if they develop beryllium disease, silicosis, or radiation-induced cancer as a result of working at a site used by the United States for the production or testing of nuclear weapons. Based on information from DOE and the Department of Labor, CBO estimates that, under the bill, approximately 20 additional workers or their survivors would be eligible for benefits under EEOICPA. We estimate that providing those benefits would increase direct spending by \$6 million over the 2011–2020 period (with nearly all of that cost falling in the 2011–2015 period).

Pay-as-you-go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget reporting and enforcement procedures for legislation affecting direct spending or revenues. The changes in outlays that are subject to those pay-as-you-go procedures are shown in the following table.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR S. 2941 AS ORDERED REPORTED BY THE SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES ON JUNE 21, 2010

	By fiscal year, in millions of dollars—													2010–2015	2010–2020
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020				
	NET INCREASE OR DECREASE (–) IN THE DEFICIT														
Statutory Pay-As-You-Go Impact	0	7	6	6	6	6	5	5	5	5	5	5	31	38	

Intergovernmental and private-sector impact: S. 2941 contains no intergovernmental or private-sector mandates as defined in UMRA and would impose no costs on state, local, or tribal governments.

Estimate prepared by: Federal Costs: Matthew Pickford—Supplemental Health Care Grant; Jason Wheelock—Energy Worker Compensation; Impact on State, Local, and Tribal Governments: Ryan Miller; Impact on the Private Sector: Amy Petz.

Estimate approved by: Peter H. Fontaine, Assistant Director for Budget Analysis.

²Following the adjustments specified in that act, this legislation would appropriate \$5 million in 2011.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 2941.

The bill is not a regulatory measure in the sense of imposing Government established standards or significant economic responsibilities on private individuals and businesses.

Personal information would be collected only from those few dozen persons who may file claims for compensation under the Energy Employees Occupational Illness Compensation Program as authorized by section 3 of the bill. Therefore, there would be little impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of S. 2941.

CONGRESSIONALLY DIRECTED SPENDING

S. 2941, as ordered reported, does not contain congressionally directed spending items, limited tax benefits, or limited tariff benefits as defined in rule XLIV of the Standing Rules of the Senate.

EXECUTIVE COMMUNICATIONS

The testimony provided by the Office of Insular Affairs, Department of the Interior, at the May 19, 2010, hearing on S. 2941 follows:

STATEMENT OF NIKOLAO I. PULA, DIRECTOR, OFFICE OF
INSULAR AFFAIRS

Mr. Chairman and members of the Committee on Energy and Natural Resources, thank you for the opportunity today to discuss S. 2941, the Republic of the Marshall Islands Supplemental Nuclear Compensation Act.

The four principal sections of S. 2941 deal with several issues arising from the nuclear weapons testing program that the United States conducted in the northern islands and atolls of the Marshall Islands from June 1946 until August 1958.

CONTINUED MONITORING ON RUNIT ISLAND—SECTION 2

If enacted, section 2 of S. 2941 would require the Department of Energy to survey radiological conditions on Runit Island every four years and to report the results to relevant House and Senate committees. The partial clean-up of Enewetak Atoll conducted by the Department of Defense in the late 1970s resulted in the creation of an above-ground nuclear waste storage site on Runit Island capped by a dome. Inside Runit Dome are over 110,000 cubic yards of radioactive material scraped from other parts of Enewetak Atoll.

In 1986, the U.S. and Marshall Islands Governments fully settled all claims, past, present and future, of the government and citizens of the Marshall Islands which are based upon, arise out of, or are in any way related to the

U.S. nuclear weapons testing program. In particular, Article VII of the agreement subsidiary to section 177 of the 1986 Compact of Free Association relieved the U.S. Government of all responsibility for controlling “the utilization of areas in the Marshall Islands affected by the Nuclear Testing Program” and placed that responsibility solely with the Marshall Islands Government. Nevertheless, radiological conditions at the Runit Island repository have remained for many years a point of friction in the otherwise mutually agreeable, bilateral relationship between the Marshall Islands and U.S. Governments. Representatives of the Marshall Islands Government have raised questions regarding Runit Island including:

- the safety of land, water and marine life;
- the radiological condition of the northern part of the island; and
- the structural integrity of the dome.

For many years the Department of Energy has performed environmental measurements at Bikini, Enewetak, Rongelap and Utrik Atolls, including, upon request, periodic environmental sampling around Enewetak Atoll’s Runit Dome. The atoll communities set their own environmental goals and conduct all remedial actions. The Department of Energy takes environmental measurements before and after remedial actions to see if the actions have achieved their goals. In addition, the Department of Energy offers suggestions for remedial actions at the request of the Marshall Islands Government, to aid atoll communities’ resettlement decisions.

CLARIFICATION OF ELIGIBILITY UNDER EEOICPA—SECTION 3

Section 3 deals with the eligibility of the people of the former Trust Territory of the Pacific Islands for the Energy Employees Occupational Illness Compensation Program Act (EEOICPA). In the 1950’s the U.S. Government hired U.S. citizens and people of the Trust Territory to clean up ground-zero locations on Bikini and Enewetak Atolls and to collect soil and other materials from contaminated areas in the Marshall Islands. Trust Territory inhabitants received certain benefits, e.g. consular, from the United States Government as administering authority, but they were not U.S. citizens. These individuals cannot currently receive EEOICPA benefits.

Section 3 is intended to place the former non-U.S. citizen Trust Territory workers on an equal footing with U.S. citizen workers.

Regarding section 3 of this bill, the Department of the Interior defers to the Department of Labor, which, since it has primary responsibility for administering EEOICPA, is the Federal agency best positioned to discuss this compensation program and provide technical assistance concerning the language of section 3.

FOUR ATOLL HEALTH CARE PROGRAM—SECTION 4

If enacted, section 4 of the bill would appropriate funds for the Four Atoll Health Care Program. The Congress established the Four Atoll Health Care Program in the early 1970's to provide health care for certain members of the Enewetak, Bikini, Rongelap, and Utrik Atoll communities. When the original Compact of Free Association came into force in 1986, the Four Atoll Program was funded for fifteen years under the agreement subsidiary to section 177 of the Compact. This funding ended in 2001 in accordance with the terms of that agreement. In January 2005, the Department of State transmitted to Congress the Executive Branch's evaluation of the Marshall Islands Government's changed circumstances petition under Article IX of the agreement subsidiary to Compact section 177. The Marshall Islands request included, among other things, an enhanced primary, secondary and tertiary health care system to serve all Marshall Islanders for fifty years. The Executive Branch's report concluded that there was no legal basis for considering additional payments.

Nonetheless, in each fiscal year beginning with 2005, the Congress has added a little less than \$1,000,000 in appropriations for the Four Atoll Program. Section 4 of this bill would create a permanent appropriation for the program for fiscal years 2012 through 2028. Additionally, it would fund the program annually at \$2,000,000, as adjusted for inflation.

The Administration does not support a permanent annual appropriation of \$2,000,000 for this program. As noted previously, the Executive Branch determined in 2005 that there was no legal basis for considering additional payments under the agreement subsidiary to section 177 of the Compact. Furthermore, the U.S. Government is spending over \$1,500,000,000 in direct assistance and trust fund contributions for the Marshall Islands through fiscal year 2023. Also, the Marshall Islands Government, equally with U.S. State and insular governments, remains eligible for a number of categorical and competitive public health grant programs administered by the Department of Health and Human Services under section 105(f)(1)(D) of the Compact of Free Association Amendments Act of 2003 (48 U.S.C. 1921d(f)(1)(D)), should the Marshall Islands wish to apply.

ASSESSMENT OF HEALTH CARE NEEDS OF THE MARSHALL ISLANDS—SECTION 5

If enacted, section 5 of S. 2941 would mandate that the Secretary of the Interior commission an assessment and report by the National Academy of Sciences of the health impact of the U.S. nuclear weapons testing program in the northern islands and atolls of the Marshall Islands from June 1946 until August 1958.

The Administration believes that this assessment is not necessary. In January 2005, the Department of State sub-

mitted the results of the Executive Branch's evaluation that comprehensively and methodically reviewed existing scientific studies of the impact of the U.S. nuclear weapons testing program in the Marshall Islands. This evaluation highlighted that previous studies had adequately answered questions about the impact of the nuclear weapons testing program as those questions related to additional claims for compensation.

The Administration does not support the commissioning of additional studies at this time.

Mr. Chairman, we understand that the Committee is contemplating amendments to the legislation. The Administration would be happy to work with the Committee on any appropriate changes.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill S. 2941, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

COMPACT OF FREE ASSOCIATION AMENDMENTS ACT OF 2003

Public Law 108–188, Approved December 17, 2003, as Amended

A joint resolution to approve the Compact of Free Association, as amended, between the Government of the United States of America and the Government of the Federated States of Micronesia, and the Compact of Free Association, as amended, between the Government of the United States of America and the Government of the Republic of the Marshall Islands, and to appropriate funds to carry out the amended Compacts.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

* * * * *

SEC. 103. (48 USC 1921b) AGREEMENTS WITH AND OTHER PROVISIONS RELATED TO THE REPUBLIC OF THE MARSHALL ISLANDS.

(f) DOE RADIOLOGICAL HEALTH CARE PROGRAM; USDA AGRICULTURAL AND FOOD PROGRAMS.—

(1) MARSHALL ISLANDS PROGRAM.—

[Notwithstanding] (A) *IN GENERAL.*—*Notwithstanding* any other provision of law, upon the request of the Government of the Republic of the Marshall Islands, the President (either through an appropriate department or agency of the United States or by contract with a United States firm) shall continue to provide special medical care and logistical support thereto for the remaining members of the population of Rongelap and Utrik who were exposed to radiation resulting from the 1954 United States thermo-nuclear “Bravo” test, pursuant to Public Laws 95–134 and 96–205.

(B) *CONTINUED MONITORING ON RUNIT ISLANDS.*—

(i) *CACTUS CRATER CONTAINMENT AND GROUNDWATER MONITORING.*—Effective beginning January 1, 2008, the Secretary of Energy shall, as a part of the Marshall Islands program conducted under subparagraph (A), periodically (but not less frequently than every 4 years) conduct—

(I) a visual study of the concrete exterior of the Cactus Crater containment structure on Runit Island; and

(II) a radiochemical analysis of the groundwater surrounding and in the Cactus Crater containment structure on Runit Island.

(ii) *REPORT.*—The Secretary shall submit to the Committee on Energy and Natural Resources of the Senate, and the Committee on Natural Resources of the House of Representatives, a report that contains—

(I) a description of—

(aa) the results of each visual survey conducted under clause (i)(I); and

(bb) the results of the radiochemical analysis conducted under clause (i)(II); and

(II) a determination on whether the surveys and analyses indicated any significant change in the health risks to the people of Enewetak from the contaminants within the Cactus Crater containment structure.

(iii) *FUNDING FOR GROUNDWATER MONITORING.*—The Secretary of the Interior shall make available to the Department of Energy, Marshall Islands Program, from funds available for the Technical Assistance Program of the Office of Insular Affairs, the amounts necessary to conduct the radiochemical analysis of groundwater under clause (i)(II).

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(h) *FOUR ATOLL HEALTH CARE PROGRAM.*—

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(3) In the joint resolution of January 14, 1986 (Public Law 99-239) Congress provided that the Fund Manager shall retain the funds returned by the Government of the Marshall Islands pursuant to paragraph (2) of this subsection, shall invest and manage such funds, and at the end of 15 years after the effective date of the Compact, shall make from the total amount so retained and the proceeds thereof annual disbursements sufficient to continue to make payments for the provision of health services as specified in paragraph (1) of this subsection to such extent as may be provided in contracts between the Government of the Marshall Islands and appropriate United States providers of such health services.

(4) *SUPPLEMENTAL HEALTH CARE GRANT.*—

(A) *IN GENERAL.*—In addition to amounts provided under section 211 of the U.S.-RMI Compact (48 U.S.C. 1921 note), the Secretary of the Interior shall provide to the Republic of the Marshall Islands an annual supplemental health

care grant in the amount made available under subparagraph (D)—

(i)(I) to provide enhanced primary health care, with an emphasis on providing regular screening for radiogenic illnesses by upgrading existing services or by providing quarterly medical field team visits, as appropriate, in each of Enewetak, Bikini, Rongelap, Utrik, Ailuk, Mejit, Likiep, Wotho, Wotje, and Ujelang Atolls, which were affected by the nuclear testing program of the United States; and

(II) to enhance the capabilities of the Marshall Islands to provide secondary treatment for radiogenic illness; and

(ii) to construct and operate a whole-body counting facilities on Utrik Atoll.

(B) *CONDITIONS ON HEALTH CARE GRANTS.*—To ensure the effective use of grants funds under clause (i) of subparagraph (A), the Secretary of the Interior, after consultation with the Republic of the Marshall Islands, may establish additional conditions on the provisions of grants under that clause.

(C) *MEMORANDUM OF AGREEMENT.*—To meet the objectives of clause (ii) of subparagraph (A), the Secretary of the Interior, the Secretary of Energy, and the Government of the Republic of the Marshall Islands shall enter into a memorandum of agreement setting forth the terms, conditions, and respective responsibilities of the parties to the memorandum of agreement in carrying out that clause.

(D) *FUNDING.*—As authorized by section 105(c), there is appropriated to the Secretary of the interior, out of funds in the Treasury not otherwise appropriated, to carry out this paragraph \$4,500,000 for each of fiscal years 2009 through 2023, as adjusted for inflation in accordance with section 218 of the U.S.-RMI Compact, to remain available until expended.

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**ENERGY EMPLOYEES OCCUPATIONAL ILLNESS
COMPENSATION PROGRAM ACT OF 2000**

Public Law 106–398, Approved October 30, 2000, as Amended

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Subtitle B—Program Administration

SEC. 3621. DEFINITIONS FOR PROGRAM ADMINISTRATION.

In this title:

- (1) The term “covered employee” means any of the following:
 - (A) A covered beryllium employee.
 - (B) A covered employee with cancer.
 - (C) To the extent provided in section 3627, a covered employee with chronic silicosis (as defined in that section).

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- (17) The term “specified cancer” means any of the following:

(A) A specified disease, as that term is defined in section 4(b)(2) of the Radiation Exposure Compensation Act (42 U.S.C. 2210 note).

(B) Bone cancer.

(C) Renal cancers.

(D) Leukemia (other than chronic lymphocytic leukemia), if the initial occupation exposure occurred before 21 years of age and onset occurred more than two years after initial occupation exposure.

(18) *The terms "covered employee," "atomic weapons employee," and "Department of Energy contractor employee" (as defined in paragraphs (1), (3), and (11), respectively) include a citizen or national of the Republic of the Marshall Islands or the Federated States of Micronesia who is otherwise covered by that paragraph.*

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Subtitle C—Treatment, Coordination, and Forfeiture of Compensation and Benefits

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SEC. 3653. RECOVERY AND WAIVER OF OVERPAY.

(a) **IN GENERAL.**—When an overpayment has been made to an individual under this title because of an error of fact or law, recovery shall be made under regulations prescribed by the Secretary of Labor by decreasing later payments to which the individual is entitled. If the individual dies before the recovery is completed, recovery shall be made by decreasing later benefits payable under this title with respect to the individual’s death.

(b) **WAIVER.**—Recovery by the United States under this section may not be made when incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of this title or would be against equity and good conscience.

(c) **LIABILITY.**—A certifying or disbursing official is not liable for an amount certified or paid by him when recovery of the amount is waived under subsection (b) of this section, or when recovery under subsection (a) of this section is not completed before the death of all individuals against whose benefits deductions are authorized.

SEC. 3654. OFFSET OF BENEFITS WITH RESPECT TO THE COMPACT OF FREE ASSOCIATION.

An individual who has been awarded compensation under this title, and who has also received compensation benefits under the Compact of Free Association between the United States and the Republic of the Marshall Islands (48 U.S.C. 1681 et seq.) (referred to in this section as the "Compact of Free Association"), by reason of the same illness, shall receive the compensation awarded under this title reduced by the amount of any compensation benefits received under the Compact of Free Association, other than medical benefits and benefits for vocational rehabilitation that the individual received by reason of the illness, after deducting the reasonable costs

(as determined by the Secretary) of obtaining those benefits under the Compact of Free Association.

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Subtitle E—Contractor Employee Compensation

SEC. 3671. DEFINITIONS.

In this subtitle:

(1) The term “covered DOE contractor employee” means any Department of Energy contractor employee determined under section 3675 to have contracted a covered illness through exposure at a Department of Energy facility, *including a citizen or national of the Republic of the Marshall Islands or the Federated States of Micronesia who is otherwise covered by this paragraph.*

(2) The term “covered illness” means an illness or death resulting from exposure to a toxic substance.

(3) The term “Secretary” means the Secretary of Labor.

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