

115TH CONGRESS
1ST SESSION

H. R. 1320

To amend the Omnibus Budget Reconciliation Act of 1990 related to Nuclear Regulatory Commission user fees and annual charges, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 2, 2017

Mr. KINZINGER (for himself and Mr. MICHAEL F. DOYLE of Pennsylvania) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend the Omnibus Budget Reconciliation Act of 1990 related to Nuclear Regulatory Commission user fees and annual charges, 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 “Nuclear Utilization
5 of Keynote Energy Act”.

1 **SEC. 2. NUCLEAR REGULATORY COMMISSION USER FEES**
2 **AND ANNUAL CHARGES THROUGH FISCAL**
3 **YEAR 2019.**

4 (a) IN GENERAL.—Section 6101(c)(2)(A) of the Om-
5 nibus Budget Reconciliation Act of 1990 (42 U.S.C.
6 2214(c)(2)(A)) is amended—

7 (1) in clause (iii), by striking “and” at the end;

8 (2) in clause (iv), by striking the period at the
9 end and inserting “; and”; and

10 (3) by adding at the end the following:

11 “(v) amounts appropriated to the
12 Commission for the fiscal year for activi-
13 ties related to the development of a regu-
14 latory framework for advanced nuclear re-
15 actor technologies.”.

16 (b) REPEAL.—Effective October 1, 2019, section
17 6101 of the Omnibus Budget Reconciliation Act of 1990
18 (42 U.S.C. 2214) is repealed.

19 **SEC. 3. NUCLEAR REGULATORY COMMISSION USER FEES**
20 **AND ANNUAL CHARGES FOR FISCAL YEAR**
21 **2020 AND EACH FISCAL YEAR THEREAFTER.**

22 (a) ANNUAL BUDGET JUSTIFICATION.—

23 (1) IN GENERAL.—In the annual budget jus-
24 tification submitted by the Commission to Congress,
25 the Commission shall expressly identify anticipated
26 expenditures necessary for completion of the re-

1 requested activities of the Commission anticipated to
2 occur during the applicable fiscal year.

3 (2) RESTRICTION.—Budget authority granted
4 to the Commission for purposes of the requested ac-
5 tivities of the Commission shall be used, to the max-
6 imum extent practicable, solely for conducting re-
7 quested activities of the Commission.

8 (3) LIMITATION ON CORPORATE SUPPORT
9 COSTS.—With respect to the annual budget justifica-
10 tion submitted to Congress, corporate support costs,
11 to the maximum extent practicable, shall not exceed
12 the following percentages of the total budget author-
13 ity of the Commission requested in the annual budg-
14 et justification:

15 (A) 30 percent for each of fiscal years
16 2020 and 2021.

17 (B) 29 percent for each of fiscal years
18 2022 and 2023.

19 (C) 28 percent for fiscal year 2024 and
20 each fiscal year thereafter.

21 (b) FEES AND CHARGES.—

22 (1) ANNUAL ASSESSMENT.—

23 (A) IN GENERAL.—Each fiscal year, the
24 Commission shall assess and collect fees and
25 charges in accordance with paragraphs (2) and

1 (3) in a manner that ensures that, to the max-
2 imum extent practicable, the amount collected
3 is equal to an amount that approximates—

4 (i) the total budget authority of the
5 Commission for that fiscal year; less

6 (ii) the budget authority of the Com-
7 mission for the activities described in sub-
8 paragraph (B).

9 (B) EXCLUDED ACTIVITIES DESCRIBED.—

10 The activities referred to in subparagraph
11 (A)(ii) are the following:

12 (i) An activity not attributable to an
13 existing NRC licensee or class of licensee
14 as identified by the Commission in Table
15 III of the final rule of the Commission en-
16 titled “Revision of Fee Schedules; Fee Re-
17 covery for Fiscal Year 2016” (81 Fed.
18 Reg. 41171 (June 24, 2016)).

19 (ii) Amounts appropriated for a fiscal
20 year to the Commission—

21 (I) from the Nuclear Waste Fund
22 established under section 302(c) of
23 the Nuclear Waste Policy Act of 1982
24 (42 U.S.C. 10222(c));

1 (II) for implementation of section
2 3116 of the Ronald W. Reagan Na-
3 tional Defense Authorization Act for
4 Fiscal Year 2005 (50 U.S.C. 2601
5 note; Public Law 108–375);

6 (III) for the homeland security
7 activities of the Commission (other
8 than for the costs of fingerprinting
9 and background checks required
10 under section 149 of the Atomic En-
11 ergy Act of 1954 (42 U.S.C. 2169)
12 and the costs of conducting security
13 inspections);

14 (IV) for the Inspector General
15 services of the Commission provided
16 to the Defense Nuclear Facilities
17 Safety Board;

18 (V) for research and development
19 at universities in areas relevant to the
20 mission of the applicable university;

21 (VI) for a nuclear science and en-
22 gineering grant program that will sup-
23 port multiyear projects that do not
24 align with programmatic missions but
25 are critical to maintaining the dis-

1 cipline of nuclear science and engi-
2 neering; and

3 (VII) for any other fee-relief ac-
4 tivity described in the final rule of the
5 Commission entitled “Revision of Fee
6 Schedules; Fee Recovery for Fiscal
7 Year 2016” (81 Fed. Reg. 41171
8 (June 24, 2016)).

9 (iii) Costs for activities related to the
10 development of regulatory infrastructure
11 for advanced nuclear reactor technologies.

12 (C) EXCEPTION.—The exclusion described
13 in subparagraph (B)(iii) shall cease to be effec-
14 tive on January 1, 2031.

15 (D) REPORT.—Not later than December
16 31, 2029, the Commission shall submit to the
17 Committee on Appropriations and the Com-
18 mittee on Environment and Public Works of the
19 Senate and the Committee on Appropriations
20 and the Committee on Energy and Commerce
21 of the House of Representatives a report de-
22 scribing the views of the Commission on the
23 continued appropriateness and necessity of the
24 funding described in subparagraph (B)(iii).

1 (2) FEES FOR SERVICE OR THING OF VALUE.—

2 In accordance with section 9701 of title 31, United
3 States Code, the Commission shall charge fees to
4 any person who receives a service or thing of value
5 from the Commission to cover the costs to the Com-
6 mission of providing the service or thing of value.

7 (3) ANNUAL FEES.—

8 (A) IN GENERAL.—Subject to subpara-
9 graph (B) and except as provided in subpara-
10 graph (D), the Commission may charge to any
11 licensee or certificate holder of the Commission
12 an annual fee.

13 (B) CAP ON ANNUAL FEES OF CERTAIN LI-
14 CENSEES.—

15 (i) IN GENERAL.—The annual fee
16 under subparagraph (A) charged to an op-
17 erating reactor licensee, to the maximum
18 extent practicable, shall not exceed the an-
19 nual fee amount per operating reactor li-
20 censee established in the final rule of the
21 Commission entitled “Revision of Fee
22 Schedules; Fee Recovery for Fiscal Year
23 2016” (81 Fed. Reg. 41171 (June 24,
24 2016)), as may be adjusted annually by
25 the Commission to reflect changes in the

1 Consumer Price Index published by the
2 Bureau of Labor Statistics of the Depart-
3 ment of Labor.

4 (ii) WAIVER.—The Commission may
5 waive, for a period of 1 year, the cap on
6 annual fees described in clause (i) if the
7 Commission submits to the Committee on
8 Appropriations and the Committee on En-
9 vironment and Public Works of the Senate
10 and the Committee on Appropriations and
11 the Committee on Energy and Commerce
12 of the House of Representatives a written
13 determination that the cap on annual fees
14 may compromise the safety and security
15 mission of the Commission.

16 (C) AMOUNT PER LICENSEE.—

17 (i) IN GENERAL.—The Commission
18 shall establish by rule a schedule of fees
19 fairly and equitably allocating the aggre-
20 gate amount of charges described in sub-
21 paragraph (A) among licensees and certifi-
22 cate holders.

23 (ii) REQUIREMENT.—The schedule of
24 fees under clause (i)—

1 (I) to the maximum extent prac-
2 ticable, shall be based on the cost of
3 providing regulatory services; and

4 (II) may be based on the alloca-
5 tion of the resources of the Commis-
6 sion among licensees or certificate
7 holders or classes of licensees or cer-
8 tificate holders.

9 (D) EXEMPTION.—

10 (i) DEFINITION OF RESEARCH REAC-
11 TOR.—In this subparagraph, the term “re-
12 search reactor” means a nuclear reactor
13 that—

14 (I) is licensed by the Commission
15 under section 104 c. of the Atomic
16 Energy Act of 1954 (42 U.S.C.
17 2134(e)) for operation at a thermal
18 power level of not more than 10
19 megawatts; and

20 (II) if licensed under subclause
21 (I) for operation at a thermal power
22 level of more than 1 megawatt, does
23 not contain—

1 (aa) a circulating loop
2 through the core in which the li-
3 censee conducts fuel experiments;

4 (bb) a liquid fuel loading; or

5 (cc) an experimental facility
6 in the core in excess of 16 square
7 inches in cross-section.

8 (ii) EXEMPTION.—Subparagraph (A)
9 shall not apply to the holder of any license
10 for a federally owned research reactor used
11 primarily for educational training and aca-
12 demic research purposes.

13 (c) PERFORMANCE AND REPORTING.—

14 (1) IN GENERAL.—The Commission shall de-
15 velop for the requested activities of the Commis-
16 sion—

17 (A) performance metrics; and

18 (B) on each request, milestone schedules.

19 (2) DELAYS IN ISSUANCE OF FINAL SAFETY
20 EVALUATION.—The Executive Director for Oper-
21 ations of the Commission shall inform the Commis-
22 sion of a delay in issuance of the final safety evalua-
23 tion for a requested activity of the Commission by
24 the completion date required by the performance

1 metrics or milestone schedule under paragraph (1)
2 by not later than 30 days after the completion date.

3 (3) DELAYS IN ISSUANCE OF FINAL SAFETY
4 EVALUATION EXCEEDING 180 DAYS.—If the final
5 safety evaluation for the requested activity of the
6 Commission described in paragraph (2) is not com-
7 pleted by the date that is 180 days after the comple-
8 tion date required by the performance metrics or
9 milestone schedule under paragraph (1), the Com-
10 mission shall submit to the appropriate congress-
11 sional committees a timely report describing the
12 delay, including a detailed explanation accounting
13 for the delay and a plan for timely completion of the
14 final safety evaluation.

15 (d) ACCURATE INVOICING.—With respect to invoices
16 for fees and charges described in subsection (b)(2), the
17 Commission shall—

18 (1) ensure appropriate management review and
19 concurrence prior to the issuance of invoices;

20 (2) develop and implement processes to audit
21 invoices to ensure accuracy, transparency, and fair-
22 ness; and

23 (3) modify regulations to ensure fair and appro-
24 priate processes to provide licensees and applicants
25 an opportunity to efficiently dispute or otherwise

1 seek review and correction of errors in invoices for
2 fees and charges.

3 (e) REPORT.—Not later than September 30, 2021,
4 the Commission shall submit to the Committee on Appro-
5 priations and the Committee on Environment and Public
6 Works of the Senate and the Committee on Appropria-
7 tions and the Committee on Energy and Commerce of the
8 House of Representatives a report describing the imple-
9 mentation of this section, including any impacts and rec-
10 ommendations for improvement.

11 (f) DEFINITIONS.—In this section:

12 (1) ADVANCED NUCLEAR REACTOR.—The term
13 “advanced nuclear reactor” means a nuclear fission
14 or fusion reactor, including a prototype plant (as de-
15 fined in sections 50.2 and 52.1 of title 10, Code of
16 Federal Regulations), with significant improvements
17 compared to commercial nuclear reactors under con-
18 struction as of the date of enactment of this Act, in-
19 cluding improvements such as—

20 (A) additional inherent safety features;

21 (B) significantly lower levelized cost of
22 electricity;

23 (C) lower waste yields;

24 (D) greater fuel utilization;

25 (E) enhanced reliability;

- 1 (F) increased proliferation resistance;
2 (G) increased thermal efficiency; or
3 (H) ability to integrate into electric and
4 nonelectric applications.

5 (2) APPLICANT.—The term “applicant” means
6 an applicant for a license, certification, permit, or
7 other form of approval from the Commission for a
8 commercial advanced nuclear reactor or a research
9 and test reactor.

10 (3) APPROPRIATE CONGRESSIONAL COMMIT-
11 TEES.—The term “appropriate congressional com-
12 mittees” means the Committee on Environment and
13 Public Works of the Senate and the Committee on
14 Energy and Commerce of the House of Representa-
15 tives.

16 (4) COMMISSION.—The term “Commission”
17 means the Nuclear Regulatory Commission.

18 (5) CORPORATE SUPPORT COSTS.—The term
19 “corporate support costs” means expenditures for
20 acquisitions, administrative services, financial man-
21 agement, human resource management, information
22 management, information technology, policy support,
23 outreach, and training, as those categories are de-
24 scribed and calculated in Appendix A of the Con-

1 gressional Budget Justification for Fiscal Year 2017
2 of the Commission.

3 (6) REQUESTED ACTIVITY OF THE COMMIS-
4 SION.—The term “requested activity of the Commis-
5 sion” means—

6 (A) the processing of applications for—

7 (i) design certifications or approvals;

8 (ii) licenses;

9 (iii) permits;

10 (iv) license amendments;

11 (v) license renewals;

12 (vi) certificates of compliance; and

13 (vii) power uprates; and

14 (B) any other activity requested by a li-
15 censee or applicant.

16 (g) EFFECTIVE DATE.—This section takes effect on
17 October 1, 2019.

18 **SEC. 4. STUDY ON ELIMINATION OF FOREIGN LICENSING**
19 **RESTRICTIONS.**

20 Not later than 18 months after the date of enactment
21 of this Act, the Comptroller General, in consultation with
22 the Secretary of Energy, shall transmit to Congress a re-
23 port containing the results of a study on the feasibility
24 and implications of repealing restrictions under sections
25 103d. and 104d. of the Atomic Energy Act of 1954 on

1 issuing licenses for certain nuclear facilities to an alien
2 or an entity owned, controlled, or dominated by an alien,
3 a foreign corporation, or a foreign government.

4 **SEC. 5. STUDY ON THE IMPACT OF THE ELIMINATION OF**
5 **MANDATORY HEARING FOR UNCONTESTED**
6 **LICENSING APPLICATIONS.**

7 Not later than 18 months after the date of enactment
8 of this Act, the Comptroller General, in consultation with
9 the Secretary of Energy, shall transmit to Congress a re-
10 port containing the results of a study on the impact of
11 the elimination of mandatory hearings for uncontested li-
12 censing and construction permit applications under the
13 Atomic Energy Act of 1954.

14 **SEC. 6. INFORMAL HEARING PROCEDURES.**

15 (a) PROCEDURES.—Section 189 a. of the Atomic En-
16 ergy Act of 1954 (42 U.S.C. 2239(a)) is amended by add-
17 ing at the end the following:

18 “(3) Any hearing under this section shall be con-
19 ducted using informal adjudicatory procedures in accord-
20 ance with sections 553 and 555 of title 5, United States
21 Code, unless the Commission determines that formal adju-
22 dicatory procedures are necessary—

23 “(A) to develop a sufficient record; or

24 “(B) to achieve fairness.”.

1 (b) HEARINGS ON LICENSING OF URANIUM ENRICH-
2 MENT FACILITIES.—Section 193 b. of the Atomic Energy
3 Act of 1954 (42 U.S.C. 2243(b)) is amended—

4 (1) in paragraph (1), by striking “on the
5 record” and all that follows through “and 63” and
6 inserting “if a person the interest of whom may be
7 affected by the construction and operation of a ura-
8 nium enrichment facility under sections 53 and 63
9 has requested a hearing regarding the licensing of
10 the construction and operation of the facility”; and

11 (2) in paragraph (2), by striking “Such hear-
12 ing” and inserting “If a hearing is held under para-
13 graph (1), the hearing”.

14 **SEC. 7. APPLICATION REVIEWS FOR NUCLEAR ENERGY**
15 **PROJECTS.**

16 Section 185 of the Atomic Energy Act of 1954 (42
17 U.S.C. 2235) is amended by adding at the end the fol-
18 lowing:

19 “c. APPLICATION REVIEWS FOR NUCLEAR ENERGY
20 PROJECTS.—

21 “(1) STREAMLINING LICENSE APPLICATION RE-
22 VIEW.—With respect to an application that is dock-
23 eted seeking issuance of a construction permit, oper-
24 ating license, or combined construction permit and
25 operating license for a production or utilization facil-

1 ity, the Commission shall include the following pro-
2 cedures:

3 “(A) Undertake an expedited environ-
4 mental review process and issue any draft envi-
5 ronmental impact statement within 24 months
6 after the application is accepted for docketing.

7 “(B) Complete the technical review process
8 and issue any safety evaluation report and any
9 final environmental impact statement within 42
10 months after the application is accepted for
11 docketing.

12 “(2) EARLY SITE PERMIT.—

13 “(A) SUPPLEMENTAL ENVIRONMENTAL IM-
14 PACT STATEMENT.—In a proceeding for a com-
15 bined construction permit and operating license
16 for a site for which an early site permit has
17 been issued, any environmental impact state-
18 ment prepared by the Commission and cooper-
19 ating agencies shall be prepared as a supple-
20 ment to the environmental impact statement
21 prepared for the early site permit.

22 “(B) INCORPORATION BY REFERENCE.—
23 The supplemental environmental impact state-
24 ment shall—

1 “(i) incorporate by reference the anal-
2 ysis, findings, and conclusions from the en-
3 vironmental impact statement prepared for
4 the early site permit; and

5 “(ii) include additional discussion,
6 analyses, findings, and conclusions on mat-
7 ters resolved in the early site permit pro-
8 ceeding only to the extent necessary to ad-
9 dress information that is new and signifi-
10 cant in that the information would materi-
11 ally change the prior findings or conclu-
12 sions.

13 “(3) PRODUCTION OR UTILIZATION FACILITY
14 LOCATED AT AN EXISTING SITE.—In reviewing an
15 application for an early site permit, construction
16 permit, operating license, or combined construction
17 permit and operating license for a production or uti-
18 lization facility located at the site of a licensed pro-
19 duction or utilization facility, the Commission shall,
20 to the extent practicable, use information that was
21 part of the licensing basis of the licensed production
22 or utilization facility.

23 “(4) HEARING ON EARLY SITE PERMIT, CON-
24 STRUCTION PERMIT, AND COMBINED CONSTRUCTION
25 PERMIT AND OPERATING LICENSE.—The Commis-

1 sion shall issue and make immediately effective an
2 early site permit or construction permit for a pro-
3 duction or utilization facility upon finding that the
4 application therefor satisfies the requirements of this
5 Act, notwithstanding the pendency before the Com-
6 mission of a request for a hearing. Following com-
7 pletion of any required hearing, the Commission
8 shall take any appropriate action with respect to the
9 early site permit, construction permit, or combined
10 construction permit and operating license to the ex-
11 tent necessary to account for the hearing results.

12 “(5) REGULATIONS.—The Commission shall
13 initiate a rulemaking, to be completed 1 year after
14 the date of enactment of the Nuclear Utilization of
15 Keynote Energy Act, to amend the regulations of
16 the Commission to implement this subsection.

17 “(6) RELATIONSHIP TO OTHER LAW.—Nothing
18 in this subsection exempts the Commission from any
19 requirement for full compliance with section
20 102(2)(C) of the National Environmental Policy Act
21 of 1969 (42 U.S.C. 4332(2)(C)).”.

22 **SEC. 8. NUCLEAR REACTOR DECOMMISSIONING.**

23 (a) RULEMAKING.—Chapter 14 of the Atomic Energy
24 Act of 1954 (42 U.S.C. 2201–2210i) is amended by add-
25 ing at the end the following new section:

1 “SEC. 170J. DECOMMISSIONING NUCLEAR REACTOR
2 RULEMAKING.—

3 “The Commission shall, not later than 90 days after
4 the date of enactment of this section, initiate a rulemaking
5 proceeding, including notice and opportunity for public
6 comment, to be completed not later than 48 months after
7 that date, to address the regulatory framework for decom-
8 missioning nuclear reactors licensed under section 103 or
9 104b.”.

10 (b) TABLE OF SECTIONS AMENDMENT.—The table of
11 sections for chapter 14 of the Atomic Energy Act of 1954
12 is amended by adding at the end the following new item:

“Sec. 170J. Decommissioning nuclear reactor rulemaking.”.

○