

115TH CONGRESS  
2D SESSION

# S. 2388

To amend the Atomic Energy Act of 1954 to provide for consultation with State, tribal, and local governments, the consideration of State, tribal, and local concerns, and the approval of post-shutdown decommissioning activities reports by the Nuclear Regulatory Commission.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 7, 2018

Mr. SANDERS (for himself, Ms. HARRIS, Mr. MARKEY, and Mrs. GILLIBRAND) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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## A BILL

To amend the Atomic Energy Act of 1954 to provide for consultation with State, tribal, and local governments, the consideration of State, tribal, and local concerns, and the approval of post-shutdown decommissioning activities reports by the Nuclear Regulatory Commission.

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 Plant Decom-  
5 missioning Act of 2018”.

1 **SEC. 2. POST-SHUTDOWN DECOMMISSIONING ACTIVITIES**  
 2 **REPORTS.**

3 (a) IN GENERAL.—Chapter 10 of title I of the Atomic  
 4 Energy Act of 1954 (42 U.S.C. 2131 et seq.) is amended  
 5 by adding at the end the following:

6 **“SEC. 113. POST-SHUTDOWN DECOMMISSIONING ACTIVI-**  
 7 **TIES REPORTS.**

8 “a. DEFINITIONS.—In this section:

9 “(1) AFFECTED STATE.—The term ‘affected  
 10 State’ means—

11 “(A) the host State of a covered facility;  
 12 and

13 “(B) each State located within 50 miles of  
 14 a covered facility.

15 “(2) COMMISSION.—The term ‘Commission’  
 16 means the Nuclear Regulatory Commission.

17 “(3) COVERED FACILITY.—The term ‘covered  
 18 facility’ means a facility of a licensee for which a  
 19 PSDAR is required.

20 “(4) HOST STATE.—The term ‘host State’  
 21 means the State in which a covered facility is lo-  
 22 cated.

23 “(5) LICENSE; LICENSEE.—The terms ‘license’  
 24 and ‘licensee’ have the meanings given the terms in  
 25 section 50.2 of title 10, Code of Federal Regulations  
 26 (or successor regulations).

1           “(6) PSDAR.—The term ‘PSDAR’ means a  
2 post-shutdown decommissioning activities report  
3 submitted to the Commission and affected States  
4 under section 50.82(a)(4)(i) of title 10, Code of Fed-  
5 eral Regulations (or successor regulations).

6           “(7) TRANSFEREE.—The term ‘transferee’  
7 means an entity to which a licensee proposes to  
8 transfer a license for a covered facility.

9           “(8) TRIBAL GOVERNMENT.—The term ‘tribal  
10 government’ means the governing body of an Indian  
11 tribe (as defined in section 4 of the Indian Self-De-  
12 termination and Education Assistance Act (25  
13 U.S.C. 5304)).

14          “b. CONSULTATION REQUIRED.—Notwithstanding  
15 any other provision of law (including regulations), a li-  
16 censee may not submit to the Commission a proposed  
17 PSDAR, or transfer to another entity the license, for a  
18 covered facility until the licensee and the transferee, if ap-  
19 plicable, conduct consultation regarding the development  
20 of the proposed PSDAR or the proposed license transfer,  
21 as applicable, with—

22           “(1) each affected State; and

23           “(2) each unit of State government or tribal  
24 government that—

25           “(A) is located in an affected State; and

1           “(B) has jurisdiction over land located  
2           within 50 miles of the covered facility.

3           “c. SUBMISSION TO COMMISSION; ADDITIONAL CON-  
4           SULTATION.—

5           “(1) IN GENERAL.—After carrying out the con-  
6           sultation required under subsection b. with respect  
7           to a proposed PSDAR or transfer of a license for a  
8           covered facility, the licensee shall—

9           “(A) submit to the Commission, as appli-  
10          cable—

11           “(i) the proposed PSDAR; or

12           “(ii) an application for transfer of a  
13          license; and

14           “(B) subject to paragraph (3), make the  
15          proposed PSDAR or application for transfer of  
16          a license, as applicable, available to the public.

17          “(2) PUBLIC AVAILABILITY.—On receipt of a  
18          proposed PSDAR or notice of a proposed license  
19          transfer under paragraph (1)(A), the Commission  
20          shall, subject to paragraph (3), make the proposed  
21          PSDAR or application for transfer of a license, as  
22          applicable, available to the public.

23          “(3) EXCLUSION OF CERTAIN INFORMATION.—

24          In making a proposed PSDAR or application for  
25          transfer of a license, as applicable, available to the

1 public under paragraph (1)(B) or (2), the Commis-  
2 sion or the licensee, as applicable, may redact such  
3 information as the Commission or the licensee, as  
4 applicable, determines to be necessary to protect—

5 “(A) trade secrets and commercial or fi-  
6 nancial information under section 552(b)(4) of  
7 title 5, United States Code; or

8 “(B) national security.

9 “d. PUBLIC PARTICIPATION.—For a period of not  
10 less than 90 days beginning on the date on which a li-  
11 censee submits a proposed PSDAR to the Commission  
12 under subsection c. (1)(A) or the date on which the Com-  
13 mission docket an application for transfer of a license  
14 under section 2.101 of title 10, Code of Federal Regula-  
15 tions (or successor regulations), as applicable, the Com-  
16 mission shall solicit in the host State public comments re-  
17 garding the proposed PSDAR or notice of proposed license  
18 transfer, including through—

19 “(1) the solicitation of written comments; and

20 “(2) the conduct of not fewer than 2 public  
21 meetings.

22 “e. SUPPORT, CONDITIONAL SUPPORT, OR NON-  
23 SUPPORT BY HOST STATE.—

24 “(1) IN GENERAL.—Not later than 60 days  
25 after the date of receipt of a proposed PSDAR or

1 the date on which the Commission docketed an appli-  
2 cation for transfer of a license under section 2.101  
3 of title 10, Code of Federal Regulations (or suc-  
4 cessor regulations), as applicable, for a covered facil-  
5 ity, the Commission shall notify the host State of  
6 the opportunity to file with the Commission, by the  
7 date that is 60 days after the date on which the host  
8 State receives the notification—

9 “(A) a statement of support for the pro-  
10 posed PSDAR or license transfer;

11 “(B) a statement of conditional support  
12 for the proposed PSDAR or license transfer, to-  
13 gether with specific recommendations for  
14 changes that could lead the host State to sup-  
15 port the proposed PSDAR or license transfer;

16 or

17 “(C) a statement of nonsupport for the  
18 proposed PSDAR or license transfer.

19 “(2) STATEMENT OF SUPPORT OR NON-  
20 SUPPORT; FAILURE TO SUBMIT.—

21 “(A) IN GENERAL.—If the host State files  
22 with the Commission a statement of support  
23 under paragraph (1)(A) or a statement of non-  
24 support under paragraph (1)(C), or fails to file  
25 a statement with the Commission by the dead-

1 line specified in paragraph (1), the Commission  
2 shall issue a determination regarding whether  
3 the proposed PSDAR is adequate or inadequate  
4 or a determination regarding whether to provide  
5 consent for the proposed license transfer, as ap-  
6 plicable—

7 “(i) based on the considerations de-  
8 scribed in subparagraph (B); and

9 “(ii) after taking into consideration—

10 “(I) any written comments sub-  
11 mitted by the host State, other af-  
12 fected States, and local communities  
13 with respect to the proposed PSDAR  
14 or license transfer; and

15 “(II) any input from the public  
16 under subsection d.

17 “(B) CONSIDERATIONS.—The Commission  
18 shall consider a proposed PSDAR or license  
19 transfer to be adequate under subparagraph  
20 (A) if the Commission determines that—

21 “(i) the proposed PSDAR or license  
22 transfer provides for—

23 “(I) the overall protection of  
24 human health and the environment;  
25 and

1                   “(II) adequate protection to the  
2                   health and safety of the public and  
3                   the common defense and security;

4                   “(ii) the licensee (and, if applicable,  
5                   the transferee) has a substantial likelihood  
6                   of implementing the proposed PSDAR or  
7                   license transfer within the timeframe de-  
8                   scribed in the proposed PSDAR or license  
9                   transfer application;

10                   “(iii) the proposed PSDAR or license  
11                   transfer is in accordance with applicable  
12                   law (including regulations); and

13                   “(iv) the licensee (and, if applicable,  
14                   the transferee) has demonstrated that the  
15                   licensee has, or will have, the funds re-  
16                   quired to fully implement the proposed  
17                   PSDAR or license transfer within the  
18                   timeframe described in the proposed  
19                   PSDAR or license transfer application,  
20                   based on—

21                   “(I) a comprehensive radiological  
22                   site assessment and characterization;  
23                   and



1                   “(II) a nonradiological site as-  
2                   sessment and characterization con-  
3                   ducted by the host State.

4                   “(C) DETERMINATION OF ADEQUACY.—  
5                   Subject to paragraph (4), if the Commission de-  
6                   termines that a proposed PSDAR or license  
7                   transfer is adequate under subparagraphs (A)  
8                   and (B), the Commission shall issue a decision  
9                   document approving the PSDAR or license  
10                  transfer.

11                  “(D) DETERMINATION OF INADEQUACY.—  
12                  If the Commission determines that a proposed  
13                  PSDAR or license transfer is inadequate under  
14                  subparagraphs (A) and (B)—

15                         “(i) the Commission shall issue a deci-  
16                         sion document rejecting the proposed  
17                         PSDAR or license transfer, including a de-  
18                         scription of the reasons for the decision, by  
19                         the applicable deadline under paragraph  
20                         (4); and

21                         “(ii) not later than 2 years after the  
22                         date of cessation of operations at the appli-  
23                         cable covered facility, the licensee shall de-  
24                         velop and submit to the Commission a new

1 proposed PSDAR or license transfer in ac-  
2 cordance with this section.

3 “(3) CONDITIONAL SUPPORT BY HOST  
4 STATE.—

5 “(A) IN GENERAL.—In any case in which  
6 the host State files with the Commission a  
7 statement of conditional support of a proposed  
8 PSDAR or license transfer under paragraph  
9 (1)(B), the Commission shall determine whether  
10 the proposed PSDAR or license transfer is per-  
11 missible under applicable law (including regula-  
12 tions).

13 “(B) CHANGES.—Notwithstanding the  
14 adequate protection of public health and safety  
15 or the common defense and security, for each  
16 change recommended by the host State under  
17 paragraph (1)(B), the Commission shall—

18 “(i) provide for the inclusion of the  
19 change into the final PSDAR or license  
20 transfer, unless the Commission deter-  
21 mines the change to be inappropriate for  
22 inclusion, based on clear and convincing  
23 evidence that—

24 “(I) the change violates applica-  
25 ble law; or

1           “(II) the total costs of the  
2           change substantially outweigh the  
3           safety, economic, or environmental  
4           benefits of the change to the host  
5           State; and

6           “(ii) if applicable, provide the ration-  
7           ale for each determination of inappropri-  
8           ateness under clause (i).

9           “(C) DECISION DOCUMENT.—

10           “(i) IN GENERAL.—Subject to para-  
11           graph (4), based on the determinations  
12           made under subparagraphs (A) and (B),  
13           the Commission shall issue a decision doc-  
14           ument relating to a proposed PSDAR or li-  
15           cense transfer that, as applicable—

16           “(I) approves the proposed  
17           PSDAR or license transfer with any  
18           changes recommended by the host  
19           State that are not determined to be  
20           inappropriate under subparagraph  
21           (B); or

22           “(II) rejects the proposed  
23           PSDAR or license transfer.

24           “(ii) APPLICABLE LAW.—A decision  
25           document issued under clause (i) or sub-

1 paragraph (C) or (D)(i) of paragraph (2)  
2 shall be considered to be a final order en-  
3 tered in a proceeding under section 189 a.

4 “(D) TREATMENT ON APPROVAL.—On ap-  
5 proval by the Commission of a proposed  
6 PSDAR or license transfer under subparagraph  
7 (C)(i)(I) or paragraph (2)(C)—

8 “(i) the PSDAR or approval of the li-  
9 cense transfer by the Commission shall be  
10 final; and

11 “(ii) the licensee may begin implemen-  
12 tation of the PSDAR.

13 “(E) REJECTION.—If the Commission re-  
14 jects a proposed PSDAR or license transfer  
15 under subparagraph (C)(i)(II), not later than 2  
16 years after the date of cessation of operations  
17 at the applicable covered facility, the licensee  
18 shall develop and submit to the Commission a  
19 new proposed PSDAR or license transfer in ac-  
20 cordance with this section.

21 “(4) DEADLINE FOR DECISION DOCUMENT.—

22 “(A) IN GENERAL.—Subject to subpara-  
23 graphs (B) and (C), the Commission shall issue  
24 a decision document relating to a proposed  
25 PSDAR or license transfer under subparagraph

1 (C) or (D)(i) of paragraph (2) or paragraph  
2 (3)(C)(i) by not later than 1 year after the date  
3 on which the proposed PSDAR or an applica-  
4 tion for transfer of a license, as applicable, is  
5 submitted to the Commission under subsection  
6 c. (1)(A).

7 “(B) PROPOSED INTERMEDIATE LICENSE  
8 TRANSFERS.—

9 “(i) DEFINITION OF PROPOSED IN-  
10 TERMEDIATE LICENSE TRANSFER.—In this  
11 subparagraph, the term ‘proposed inter-  
12 mediate license transfer’ means a proposed  
13 transfer of license—

14 “(I) for a covered facility on be-  
15 half of which a proposed PSDAR has  
16 been submitted by the licensee to the  
17 Commission under subsection c.  
18 (1)(A)(i); and

19 “(II) the notice of which is sub-  
20 mitted to the Commission under sub-  
21 section c. (1)(A)(ii) before the applica-  
22 ble deadline under subparagraph (A)  
23 for the issuance by the Commission of  
24 a decision document relating to the

1 proposed PSDAR described in sub-  
2 clause (I).

3 “(ii) DEADLINE.—Subject to subpara-  
4 graph (C), in any case in which a licensee  
5 submits to the Commission a notice of a  
6 proposed intermediate license transfer of a  
7 covered facility, the Commission shall issue  
8 a decision document relating to the pro-  
9 posed PSDAR of the covered facility by  
10 not later than 1 year after the date of re-  
11 ceipt of the application for transfer of a li-  
12 cense.

13 “(C) EXTENSION.—If there are unforeseen  
14 circumstances, including unexpected technical  
15 issues, site-specific characteristics, or other ex-  
16 ternal factors that could affect the ability of the  
17 Commission to issue a decision document by a  
18 deadline specified in subparagraph (A) or  
19 (B)(ii), the Commission may extend the applica-  
20 ble deadline for a reasonable period of time, as  
21 determined by the Commission.

22 “f. ADDITIONAL REQUIREMENTS.—

23 “(1) ACTION BY TRANSFEREES.—On transfer  
24 of a license for a covered facility by a licensee to a  
25 transferee in accordance with this section, the trans-

1       feree shall conduct consultation in accordance with  
2       subsection b. with respect to each proposed PSDAR  
3       developed by the transferee for the covered facility.

4               “(2) STATE ENVIRONMENTAL LAW COMPLI-  
5       ANCE.—Notwithstanding any other provision of this  
6       section, the Commission shall not approve a pro-  
7       posed PSDAR or license transfer under this section  
8       unless the proposed PSDAR or license transfer for  
9       a covered facility includes a requirement that the li-  
10      censee and the transferee, if applicable, shall comply  
11      with applicable State law relating to air, water, or  
12      soil quality or radiological standards with respect to  
13      the implementation of the proposed PSDAR or li-  
14      cense transfer in any case in which the applicable  
15      State law is more restrictive than an applicable Fed-  
16      eral law.

17              “g. APPLICATION TO EXISTING DECOMMISSIONING  
18      ACTIVITIES.—

19                      “(1) IN GENERAL.—The Commission shall no-  
20      tify—

21                              “(A) each licensee or transferee, if applica-  
22      ble, of the opportunity to develop and submit to  
23      the Commission for approval a revised PSDAR  
24      for any covered facility of the licensee for

1           which, as of the date of enactment of this sec-  
2           tion—

3                   “(i) decontamination and dismantlement activities described in the PSDAR  
4                   have not commenced at the covered facility; or  
5                   have not commenced at the covered facility; or  
6                   ity; or

7                   “(ii) decontamination and dismantlement activities described in the PSDAR  
8                   have been commenced at the covered facility for a period of less than 5 years; and  
9                   ity for a period of less than 5 years; and  
10                  ity for a period of less than 5 years; and

11                  “(B) each affected State with respect to a  
12                  covered facility described in subparagraph (A)  
13                  of the opportunity to consult with a licensee or  
14                  transferee described in that subparagraph in  
15                  accordance with subsection b.

16                  “(2) PROCESS.—

17                   “(A) IN GENERAL.—Except as provided in  
18                   paragraphs (3) and (4), if a licensee or transferee described in paragraph (1)(A) elects to  
19                   submit to the Commission a revised PSDAR  
20                   under that paragraph, the process for consideration and approval of the revised PSDAR shall  
21                   be carried out in accordance with—  
22                   be carried out in accordance with—  
23                   be carried out in accordance with—

24                   “(i) the process for consideration and  
25                   approval of a proposed PSDAR for a cov-



1           ered facility under subsections b., c., d.,  
2           and f.; and

3           “(ii) the process for support, condi-  
4           tional support, or nonsupport by the host  
5           State under subsection e.

6           “(B) NONSELECTION.—If a licensee or  
7           transferee described in paragraph (1)(A) elects  
8           not to revise an original PSDAR under that  
9           paragraph, the host State may file a statement  
10          of support, conditional support, or nonsupport  
11          for the original PSDAR in accordance with the  
12          process for support, conditional support, or  
13          nonsupport by a host State under subsection e.

14          “(3) DECISION DOCUMENT.—A decision docu-  
15          ment for a revised PSDAR submitted under para-  
16          graph (1)(A), or for an original PSDAR in any case  
17          in which the licensee or transferee elects not to re-  
18          vise the original PSDAR, shall be issued in accord-  
19          ance with subparagraph (C) or (D)(I) of subsection  
20          e. (2) or subsection e. (3)(C), as applicable, except  
21          that the Commission shall issue the decision docu-  
22          ment by the date that is 1 year after the date on  
23          which the applicable decontamination and dismantle-  
24          ment activities commence at the applicable covered  
25          facility.

1           “(4) REVISION AFTER DETERMINATION OF IN-  
2 ADEQUACY.—If the Commission rejects a revised  
3 PSDAR submitted by a licensee or transferee under  
4 paragraph (1)(A) in accordance with subsection e.  
5 (2)(D) or subsection e. (3)(E), the licensee or trans-  
6 feree shall develop and submit to the Commission a  
7 new revised PSDAR in accordance with this sub-  
8 section by not later than 2 years after the date of  
9 the rejection.”.

10 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

11           (1) IN GENERAL.—The Atomic Energy Act of  
12 1954 is amended—

13                   (A) in section 103 (42 U.S.C. 2133)—

14                           (i) in subsection d., in the second sen-  
15 tence, by striking “any any” and inserting  
16 “any”; and

17                           (ii) by redesignating subsection f. as  
18 subsection e.; and

19                   (B) in section 111 (42 U.S.C. 2141), by  
20 striking the section designation and all that fol-  
21 lows through “The Nuclear” in subsection a.  
22 and inserting the following:

1 **“SEC. 111. LICENSING BY NUCLEAR REGULATORY COMMIS-**  
 2 **SION OF DISTRIBUTION OF CERTAIN MATE-**  
 3 **RIALS BY DEPARTMENT OF ENERGY.**

4 “a. The Nuclear”.

5 (2) TABLE OF CONTENTS.—The table of con-  
 6 tents of the Atomic Energy Act of 1954 (68 Stat.  
 7 919; 126 Stat. 2216) is amended by striking the  
 8 items relating to chapter 10 of title I and inserting  
 9 the following:

“CHAPTER 10. ATOMIC ENERGY LICENSES

“Sec. 101. License required.

“Sec. 102. Utilization and production facilities for industrial or commercial purposes.

“Sec. 103. Commercial licenses.

“Sec. 104. Medical therapy and research and development.

“Sec. 105. Antitrust provisions.

“Sec. 106. Classes of facilities.

“Sec. 107. Operators’ licenses.

“Sec. 108. War or national emergency.

“Sec. 109. Component and other parts of facilities.

“Sec. 110. Exclusions.

“Sec. 111. Licensing by Nuclear Regulatory Commission of distribution of certain materials by Department of Energy.

“Sec. 112. Domestic medical isotope production.

“Sec. 113. Post-shutdown decommissioning activities reports.”.

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