

NUCLEAR WASTE POLICY AMENDMENTS ACT OF 2017

OCTOBER 19, 2017.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. WALDEN, from the Committee on Energy and Commerce,
submitted the following

R E P O R T

together with

ADDITIONAL AND DISSENTING VIEWS

[To accompany H.R. 3053]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 3053) to amend the Nuclear Waste Policy Act of 1982, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Nuclear Waste Policy Amendments Act of 2017”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—MONITORED RETRIEVABLE STORAGE

Sec. 101. Monitored retrievable storage.
Sec. 102. Authorization and priority.
Sec. 103. Conditions for MRS agreements.
Sec. 104. Survey.
Sec. 105. Site selection.
Sec. 106. Benefits agreement.
Sec. 107. Licensing.
Sec. 108. Financial assistance.

TITLE II—PERMANENT REPOSITORY

Sec. 201. Land withdrawal, jurisdiction, and reservation.
Sec. 202. Application procedures and infrastructure activities.
Sec. 203. Pending repository license application.
Sec. 204. Limitation on planning, development, or construction of defense waste repository.
Sec. 205. Sense of Congress regarding transportation routes.

TITLE III—DOE CONTRACT PERFORMANCE

Sec. 301. Title to material.

TITLE IV—BENEFITS TO HOST COMMUNITY

Sec. 401. Consent.
Sec. 402. Content of agreements.
Sec. 403. Covered units of local government.
Sec. 404. Termination.
Sec. 405. Priority funding for certain institutions of higher education.
Sec. 406. Disposal of spent nuclear fuel.
Sec. 407. Updated report.

TITLE V—FUNDING

Sec. 501. Assessment and collection of fees.
Sec. 502. Use of Waste Fund.
Sec. 503. Annual multiyear budget proposal.
Sec. 504. Availability of certain amounts.

TITLE VI—MISCELLANEOUS

Sec. 601. Certain standards and criteria.
Sec. 602. Application.
Sec. 603. Transportation safety assistance.
Sec. 604. Office of Civilian Radioactive Waste Management.
Sec. 605. West Lake Landfill.
Sec. 606. Subseabed or ocean water disposal.
Sec. 607. Sense of Congress regarding storage of nuclear waste near the Great Lakes.

TITLE I—MONITORED RETRIEVABLE STORAGE

SEC. 101. MONITORED RETRIEVABLE STORAGE.

(a) **PROPOSAL.**—Section 141(b) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10161(b)) is amended—

(1) in paragraph (1)—

(A) by striking “1985” and inserting “2019”; and
(B) by striking “the construction of”;

(2) in paragraph (2)—

(A) by amending subparagraph (C) to read as follows:

“(C) designs, specifications, and cost estimates sufficient to—
“(i) solicit bids for the construction of one or more such facilities; and
“(ii) enable completion and operation of such a facility as soon as practicable.”;

(B) in subparagraph (D), by striking “this Act.” and inserting “this Act; and”;

(C) by adding at the end the following:

“(E) options to enter into MRS agreements with respect to one or more monitored retrievable storage facilities.”; and

(3) by amending paragraph (4) to read as follows:

“(4) The Secretary shall, not later than 90 days after the date of enactment of the Nuclear Waste Policy Amendments Act of 2017, publish a request for information to help the Secretary evaluate options for the Secretary to enter into MRS agreements with respect to one or more monitored retrievable storage facilities.”.

(b) ADDITIONAL AMENDMENTS.—

(1) IN GENERAL.—Section 141 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10161) is further amended—

(A) in subsection (c)(2)—

(i) by striking “If the Congress” and all that follows through “monitored retrievable storage facility, the” and inserting “The”; and

(ii) by striking “construction of such facility” and inserting “construction of a monitored retrievable storage facility”; and

(B) by striking subsections (d) through (h).

(2) DEFINITIONS.—Section 2 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101) is amended—

(A) in paragraph (34), by striking “the storage facility” and inserting “a storage facility”; and

(B) by adding at the end the following:

“(35) The term ‘MRS agreement’ means a cooperative agreement, contract, or other mechanism that the Secretary considers appropriate to support the storage of Department-owned civilian waste in one or more monitored retrievable storage facilities as authorized under section 142(b)(2).

“(36) The term ‘Department-owned civilian waste’ means high-level radioactive waste, or spent nuclear fuel, resulting from civilian nuclear activities, to which the Department holds title.”.

(3) TECHNICAL AMENDMENTS.—Section 146 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10166) is amended—

(A) in subsection (a), by striking “such subsection” and inserting “subsection (f) of such section”; and

(B) in subsection (b), by striking “this subsection” and inserting “this section”.

SEC. 102. AUTHORIZATION AND PRIORITY.

Section 142 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10162) is amended by striking subsection (b) and inserting the following:

“(b) AUTHORIZATION.—Subject to the requirements of this subtitle, the Secretary is authorized to—

“(1) site, construct, and operate one or more monitored retrievable storage facilities; and

“(2) store, pursuant to an MRS agreement, Department-owned civilian waste at a monitored retrievable storage facility for which a non-Federal entity holds a license described in section 143(1).

“(c) PRIORITY.—

“(1) IN GENERAL.—Except as provided in paragraph (2), the Secretary shall prioritize storage of Department-owned civilian waste at a monitored retrievable storage facility authorized under subsection (b)(2).

“(2) EXCEPTION.—

“(A) DETERMINATION.—Paragraph (1) shall not apply if the Secretary determines that it will be faster and less expensive to site, construct, and operate a facility authorized under subsection (b)(1), in comparison to a facility authorized under subsection (b)(2).

“(B) NOTIFICATION.—Not later than 30 days after the Secretary makes a determination described in subparagraph (A), the Secretary shall submit to Congress written notification of such determination.”.

SEC. 103. CONDITIONS FOR MRS AGREEMENTS.

(a) AMENDMENT.—Section 143 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10163) is amended to read as follows:

“SEC. 143. CONDITIONS FOR MRS AGREEMENTS.

“(a) IN GENERAL.—The Secretary may not enter into an MRS agreement under section 142(b)(2) unless—

“(1) the monitored retrievable storage facility with respect to which the MRS agreement applies has been licensed by the Commission under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.);

“(2) the non-Federal entity that is a party to the MRS agreement has approval to store Department-owned civilian waste at such facility from each of—

“(A) the Governor of the State in which the facility is located;

“(B) any unit of general local government with jurisdiction over the area in which the facility is located; and

- “(C) any affected Indian tribe;
- “(3) except as provided in subsection (b), the Commission has issued a final repository decision; and
- “(4) the MRS agreement provides that the quantity of high-level radioactive waste and spent nuclear fuel at the site of the facility at any one time will not exceed the limits described in section 148(d)(3) and (4).
- “(b) INITIAL AGREEMENT.—
- “(1) AUTHORIZATION.—The Secretary may enter into one MRS agreement under section 142(b)(2) before the Commission has issued a final repository decision.
- “(2) FUNDING.—There are authorized to be appropriated to carry out this subsection—
- “(A) for each of fiscal years 2020 through 2022, the greater of—
- “(i) \$50,000,000; or
- “(ii) the amount that is equal to 10 percent of the amounts appropriated from the Waste Fund in that fiscal year; and
- “(B) for each of fiscal years 2023 through 2025, the amount that is equal to 10 percent of the amounts appropriated from the Waste Fund in that fiscal year.
- “(3) PRIORITY.—
- “(A) IN GENERAL.—An MRS agreement entered into pursuant to paragraph (1) shall, to the extent allowable under this Act (including under the terms of the standard contract established in section 691.11 of title 10, Code of Federal Regulations), provide for prioritization of the storage of Department-owned civilian waste that originated from facilities that have ceased commercial operation.
- “(B) NO EFFECT ON STANDARD CONTRACT.—Nothing in subparagraph (A) shall be construed to amend or otherwise alter the standard contract established in section 691.11 of title 10, Code of Federal Regulations.
- “(4) CONDITIONS.—
- “(A) NO STORAGE.—Except as provided in subparagraph (B), the Secretary may not store any Department-owned civilian waste at the initial MRS facility until the Commission has issued a final repository decision.
- “(B) EXCEPTION.—
- “(i) FINDING.—The Secretary, in consultation with the Chairman of the Commission, may make a finding that a final repository decision is imminent, which finding shall be updated not less often than quarterly until the date on which the Commission issues a final repository decision.
- “(ii) STORAGE.—If the Secretary makes a finding under clause (i), the Secretary may store Department-owned civilian waste at the initial MRS facility in accordance with this section.
- “(iii) NOTICE.—Not later than seven days after the Secretary makes or updates a finding under clause (i), the Secretary shall submit to Congress written notification of such finding.
- “(iv) REPORTING.—In addition to the requirements of section 114(c), if the Secretary makes a finding under clause (i), the Secretary shall submit to Congress the report described in such section 114(c) not later than 1 month after the Secretary makes such finding and monthly thereafter until the date on which the Commission issues a final repository decision.
- “(C) NO EFFECT ON FEDERAL DISPOSAL POLICY.—Nothing in this subsection affects the Federal responsibility for the disposal of high-level radioactive waste and spent nuclear fuel, or the definite Federal policy with regard to the disposal of such waste and spent fuel, established under subtitle A, as described in section 111(b).
- “(c) DEFINITIONS.—For purposes of this section:
- “(1) FINAL REPOSITORY DECISION.—The term ‘final repository decision’ means a final decision approving or disapproving the issuance of a construction authorization for a repository under section 114(d)(1).
- “(2) INITIAL MRS FACILITY.—The term ‘initial MRS facility’ means the monitored retrievable storage facility with respect to which an MRS agreement is entered into pursuant to subsection (b)(1).”.
- (b) CONFORMING AMENDMENT.—The item relating to section 143 in the table of contents for the Nuclear Waste Policy Act of 1982 is amended to read as follows:
- “Sec. 143. Conditions for MRS agreements.”.

SEC. 104. SURVEY.

Section 144 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10164) is amended—

- (1) by striking “After the MRS Commission submits its report to the Congress under section 143, the” and inserting “(a) IN GENERAL.—The”;
- (2) in the matter preceding paragraph (1), by striking “for a monitored retrievable storage facility” and inserting “for any monitored retrievable storage facility authorized under section 142”;
- (3) in paragraph (6), by striking “; and” and inserting a semicolon;
- (4) in paragraph (7), by striking the period at the end and inserting “; and”;
- and
- (5) by adding after paragraph (7) the following:
 - “(8) be acceptable to State authorities, affected units of local government, and affected Indian tribes.

“(b) REQUEST FOR PROPOSALS.—The Secretary shall issue a request for proposals for an MRS agreement authorized under section 142(b)(2) before conducting a survey and evaluation under subsection (a), and shall consider any proposals received in response to such request in making the evaluation.”

SEC. 105. SITE SELECTION.

Section 145 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10165) is amended—

- (1) in subsection (a)—
 - (A) by striking “select the site evaluated” and inserting “select a site evaluated”;
 - (B) by striking “the most”; and
 - (C) by inserting “authorized under section 142(b)(1)” after “monitored retrievable storage facility”; and
- (2) by striking subsection (g).

SEC. 106. BENEFITS AGREEMENT.

Section 147 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10167) is amended—

- (1) by inserting “the Secretary intends to construct and operate under section 142(b)(1)” after “storage facility”; and
- (2) by inserting “or once a non-Federal entity enters into an MRS agreement under section 142(b)(2),” after “section 145.”

SEC. 107. LICENSING.

(a) REVIEW OF LICENSE APPLICATION.—Section 148(c) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10168(c)) is amended by striking “section 142(b)” and inserting “section 142(b)(1)”.

(b) LICENSING CONDITIONS.—Section 148(d) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10168(d)) is amended—

- (1) in paragraph (1), by striking “has issued a license for the construction of a repository under section 115(d)” and inserting “has issued a final decision approving or disapproving the issuance of a construction authorization for a repository under section 114(d)(1)”; and
- (2) in paragraph (2), by striking “or construction of the repository ceases”.

SEC. 108. FINANCIAL ASSISTANCE.

Section 149 of the Nuclear Waste Policy Act of 1982 is amended by inserting “authorized under section 142(b)(1)” after “a monitored retrievable storage facility”.

TITLE II—PERMANENT REPOSITORY

SEC. 201. LAND WITHDRAWAL, JURISDICTION, AND RESERVATION.

(a) LAND WITHDRAWAL, JURISDICTION, AND RESERVATION.—

(1) LAND WITHDRAWAL.—Subject to valid existing rights and except as provided otherwise in this section, the lands described in subsection (c) are withdrawn permanently from all forms of entry, appropriation, and disposal under the public land laws, including the mineral leasing laws, the geothermal leasing laws, and the mining laws.

(2) JURISDICTION.—Except as otherwise provided in this section, jurisdiction over the withdrawal is vested in the Secretary. There are transferred to the Secretary the lands within the withdrawal under the jurisdiction of the Secretary concerned on the effective date described in subsection (j)(1).

(3) RESERVATION.—The withdrawal is reserved for use by the Secretary for development, preconstruction testing and performance confirmation, licensing,

construction, management and operation, monitoring, closure, postclosure, and other activities associated with the disposal of high-level radioactive waste and spent nuclear fuel under the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101 et seq.).

(b) REVOCATION AND MODIFICATION OF PUBLIC LAND ORDERS AND RIGHTS-OF-WAY.—

(1) PUBLIC LAND ORDER REVOCATION.—Public Land Order 6802 of September 25, 1990, as extended by Public Land Order 7534, and any conditions or memoranda of understanding accompanying those land orders, are revoked.

(2) RIGHT-OF-WAY RESERVATIONS.—Project right-of-way reservations N-48602 and N-47748 of January 2001, are revoked.

(c) LAND DESCRIPTION.—

(1) BOUNDARIES.—The lands and interests in lands withdrawn and reserved by this section comprise the approximately 147,000 acres of land in Nye County, Nevada, as generally depicted on the Yucca Mountain Project Map, YMP-03-024.2, entitled “Proposed Land Withdrawal” and dated July 21, 2005.

(2) LEGAL DESCRIPTION AND MAP.—Not later than 120 days after the date of enactment of this Act, the Secretary of the Interior shall—

(A) publish in the Federal Register a notice containing a legal description of the withdrawal; and

(B) file copies of the maps described in paragraph (1) and the legal description of the withdrawal with the Congress, the Governor of the State of Nevada, and the Archivist of the United States.

(3) TECHNICAL CORRECTIONS.—The maps and legal description referred to in this subsection have the same force and effect as if they were included in this section. The Secretary of the Interior may correct clerical and typographical errors in the maps and legal description.

(d) RELATIONSHIP TO OTHER RESERVATIONS.—The provisions of subtitle A of title XXX of the Military Lands Withdrawal Act of 1999 (sections 3011–3023 of Public Law 106–65) and of Public Land Order 2568 do not apply to the lands withdrawn and reserved for use by the Secretary under subsection (a). This Act does not apply to any other lands withdrawn for use by the Department of Defense under subtitle A of title XXX of the Military Lands Withdrawal Act of 1999.

(e) MANAGEMENT RESPONSIBILITIES.—

(1) GENERAL AUTHORITY.—The Secretary shall manage the lands withdrawn by subsection (a) consistent with the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), this section, and other applicable law. The Secretary shall consult with the Secretary concerned in discharging that responsibility.

(2) MANAGEMENT PLAN.—

(A) DEVELOPMENT.—The Secretary, after consulting with the Secretary concerned, shall develop a management plan for the use of the withdrawal. Within 3 years after the date of enactment of this Act, the Secretary shall submit the management plan to the Congress and the State of Nevada.

(B) PRIORITY OF YUCCA MOUNTAIN PROJECT-RELATED ISSUES.—Subject to subparagraphs (C) and (D), any use of the withdrawal for activities not associated with the Project is subject to conditions and restrictions that the Secretary considers necessary or desirable to permit the conduct of Project-related activities.

(C) DEPARTMENT OF THE AIR FORCE USES.—The management plan may provide for the continued use by the Department of the Air Force of the portion of the withdrawal within the Nellis Air Force Base Test and Training Range under terms and conditions on which the Secretary and the Secretary of the Air Force agree concerning Air Force activities.

(D) OTHER NON-YUCCA-MOUNTAIN-PROJECT USES.—The management plan shall provide for the maintenance of wildlife habitat and shall provide that the Secretary may permit non-Project-related uses that the Secretary considers appropriate, including domestic livestock grazing and hunting and trapping in accordance with the following requirements:

(i) GRAZING.—The Secretary may permit grazing to continue where established before the effective date described in subsection (j)(1), subject to regulations, policies, and practices that the Secretary, after consulting with the Secretary of the Interior, determines to be necessary or appropriate. The management of grazing shall be conducted in accordance with applicable grazing laws and policies, including—

(I) the Act commonly known as the “Taylor Grazing Act” (43 U.S.C. 315 et seq.);

(II) title IV of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1751 et seq.); and

(III) the Public Rangelands Improvement Act of 1978 (43 U.S.C. 1901 et seq.).

(ii) HUNTING AND TRAPPING.—The Secretary may permit hunting and trapping within the withdrawal where established before the effective date described in subsection (k)(1), except that the Secretary, after consulting with the Secretary of the Interior and the State of Nevada, may designate zones where, and establish periods when, no hunting or trapping is permitted for reasons of public safety, national security, administration, or public use and enjoyment.

(E) MINING.—

(i) IN GENERAL.—Except as provided in clause (ii), surface or subsurface mining or oil or gas production, including slant drilling from outside the boundaries of the withdrawal, is not permitted at any time on lands on or under the withdrawal. The Secretary of the Interior shall evaluate and adjudicate the validity of all unpatented mining claims on the portion of the withdrawal that, on the date of enactment of this Act, was under the control of the Bureau of Land Management. The Secretary shall provide just compensation for the acquisition of any valid property right.

(ii) CIND-R-LITE MINE.—Patented Mining Claim No. 27-83-0002, covering the Cind-R-Lite Mine, shall not be affected by establishment of the withdrawal set forth in subsection (a)(1). In that event, the Secretary shall provide just compensation.

(F) LIMITED PUBLIC ACCESS.—The management plan may provide for limited public access to the portion of the withdrawal under Bureau of Land Management control on the effective date described in subsection (j)(1). Permitted uses may include continuation of the Nye County Early Warning Drilling Program, utility corridors, and other uses the Secretary, after consulting with the Secretary of the Interior, considers consistent with the purposes of the withdrawal.

(3) CLOSURE.—If the Secretary, after consulting with the Secretary concerned, determines that the health and safety of the public or the common defense and security require the closure of a road, trail, or other portion of the withdrawal, or the airspace above the withdrawal, the Secretary may effect and maintain the closure and shall provide notice of the closure.

(4) IMPLEMENTATION.—The Secretary and the Secretary concerned shall implement the management plan developed under paragraph (2) under terms and conditions on which they agree.

(f) IMMUNITY.—The United States and its departments and agencies shall be held harmless and shall not be liable for damages to persons or property suffered in the course of any mining, mineral leasing, or geothermal leasing activity conducted on the withdrawal.

(g) LAND ACQUISITION.—The Secretary may acquire lands and interests in lands within the withdrawal. Those lands and interests in lands may be acquired by donation, purchase, lease, exchange, easement, rights-of-way, or other appropriate methods using donated or appropriated funds. The Secretary of the Interior shall conduct any exchange of lands within the withdrawal for Federal lands outside the withdrawal.

(h) MATERIAL REQUIREMENTS.—Notwithstanding any other provision of law, no Federal, State, Interstate, or local requirement, either substantive or procedural, that is referred to in section 6001(a) of the Solid Waste Disposal Act (42 U.S.C. 6961(a)) applies with respect to any material—

(1) as such material is transported to a repository for disposal at such repository; or

(2) as, or after, such material is disposed of in a repository.

(i) DEFINITIONS.—

(1) NUCLEAR WASTE POLICY ACT OF 1982 DEFINITIONS.—For purposes of this section, the terms “disposal”, “high-level radioactive waste”, “repository”, “Secretary”, and “spent nuclear fuel” have the meaning given those terms in section 2 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101).

(2) OTHER DEFINITIONS.—For purposes of this section—

(A) the term “withdrawal” means the geographic area consisting of the land described in subsection (c);

(B) the term “Secretary concerned” means the Secretary of the Air Force or the Secretary of the Interior, or both, as appropriate; and

(C) the term “Project” means the Yucca Mountain Project.

(j) EFFECTIVE DATE.—

(1) IN GENERAL.—Except as provided in paragraph (2), this section shall take effect on the date on which the Nuclear Regulatory Commission issues a final

decision approving the issuance of a construction authorization for a repository under section 114(d)(1) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10134(d)) (as so designated by this Act).

(2) EXCEPTIONS.—Subsections (c), (e)(2)(A), (h), (i), and (j) shall take effect on the date of enactment of this Act.

SEC. 202. APPLICATION PROCEDURES AND INFRASTRUCTURE ACTIVITIES.

(a) STATUS REPORT ON APPLICATION.—Section 114(c) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10134(c)) is amended by striking “the date on which such authorization is granted” and inserting “the date on which the Commission issues a final decision approving or disapproving such application”.

(b) APPLICATION PROCEDURES AND INFRASTRUCTURE ACTIVITIES.—Section 114(d) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10134(d)) is amended—

(1) by striking “The Commission shall consider” and inserting the following:

“(1) APPLICATIONS FOR CONSTRUCTION AUTHORIZATION.—The Commission shall consider”;

(2) by striking “the expiration of 3 years after the date of the submission of such application” and inserting “30 months after the date of enactment of the Nuclear Waste Policy Amendments Act of 2017”;

(3) by striking “70,000 metric tons” each place it appears and inserting “110,000 metric tons”; and

(4) by adding at the end the following new paragraphs:

“(2) APPLICATIONS TO AMEND.—If the Commission issues a construction authorization for a repository pursuant to paragraph (1) and the Secretary submits an application to amend such authorization, the Commission shall consider the application to amend using expedited, informal procedures, including discovery procedures that minimize the burden on the parties to produce documents. The Commission shall issue a final decision on such application to amend within 1 year after the date of submission of such application, except that the Commission may extend such deadline by not more than 6 months if, not less than 30 days before such deadline, the Commission complies with the reporting requirements established in subsection (e)(2).

“(3) INFRASTRUCTURE ACTIVITIES.—

“(A) IN GENERAL.—At any time before or after the Commission issues a final decision approving or disapproving the issuance of a construction authorization for a repository pursuant to paragraph (1), the Secretary may undertake infrastructure activities that the Secretary considers necessary or appropriate to support construction or operation of a repository at the Yucca Mountain site or transportation to such site of spent nuclear fuel and high-level radioactive waste. Infrastructure activities include safety upgrades, site preparation, the construction of a rail line to connect the Yucca Mountain site with the national rail network (including any facilities to facilitate rail operations), and construction, upgrade, acquisition, or operation of electrical grids or facilities, other utilities, communication facilities, access roads, and nonnuclear support facilities.

“(B) ENVIRONMENTAL ANALYSIS.—If the Secretary determines that an environmental analysis is required under the National Environmental Policy Act of 1969 with respect to an infrastructure activity undertaken under this paragraph, the Secretary need not consider alternative actions or a no-action alternative. To the extent any other Federal agency must consider the potential environmental impact of such an infrastructure activity, the agency shall adopt, to the extent practicable, any environmental analysis prepared by the Secretary under this subparagraph without further action. Such adoption satisfies the responsibilities of the adopting agency under the National Environmental Policy Act of 1969, and no further action is required by the agency.

“(C) NO GROUNDS FOR DISAPPROVAL.—The Commission may not disapprove, on the grounds that the Secretary undertook an infrastructure activity under this paragraph—

“(i) the issuance of a construction authorization for a repository pursuant to paragraph (1);

“(ii) a license to receive and possess spent nuclear fuel and high-level radioactive waste; or

“(iii) any other action concerning the repository.”.

(c) CONNECTED ACTIONS.—Section 114(f)(6) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10134(f)(6)) is amended by striking “or nongeologic alternatives to such site” and inserting “nongeologic alternatives to such site, or an action connected or otherwise related to the repository to the extent the action is undertaken

outside the geologic repository operations area and does not require a license from the Commission”.

SEC. 203. PENDING REPOSITORY LICENSE APPLICATION.

Nothing in this Act or the amendments made by this Act shall be construed to require the Secretary to amend or otherwise modify an application for a construction authorization described in section 114(d) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10134(d)) pending as of the date of enactment of this Act.

SEC. 204. LIMITATION ON PLANNING, DEVELOPMENT, OR CONSTRUCTION OF DEFENSE WASTE REPOSITORY.

(a) **LIMITATION.**—The Secretary of Energy may not take any action relating to the planning, development, or construction of a defense waste repository until the date on which the Nuclear Regulatory Commission issues a final decision approving or disapproving the issuance of a construction authorization for a repository under section 114(d)(1) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10134(d)) (as so designated by this Act).

(b) **DEFINITIONS.**—In this section—

(1) the terms “atomic energy defense activity”, “high-level radioactive waste”, “repository”, and “spent nuclear fuel” have the meanings given those terms in section 2 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101); and

(2) the term “defense waste repository” means the repository for high-level radioactive waste and spent nuclear fuel derived from the atomic energy defense activities of the Department of Energy, as described in the draft plan of the Department titled “Draft Plan for a Defense Waste Repository” published on December 16, 2016.

SEC. 205. SENSE OF CONGRESS REGARDING TRANSPORTATION ROUTES.

It is the sense of Congress that the Secretary of Energy should consider routes for the transportation of spent nuclear fuel or high-level radioactive waste transported by or for the Secretary under subtitle A of title I of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10131 et seq.) to the Yucca Mountain site that, to the extent practicable, avoid Las Vegas, Nevada.

TITLE III—DOE CONTRACT PERFORMANCE

SEC. 301. TITLE TO MATERIAL.

Section 123 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10143) is amended—

(1) by striking “Delivery” and inserting “(a) **IN GENERAL.**—Delivery”;

(2) by striking “repository constructed under this subtitle” and inserting “repository or monitored retrievable storage facility”; and

(3) by adding at the end the following new subsection:

“(b) **CONTRACT MODIFICATION.**—The Secretary may enter into new contracts or negotiate modifications to existing contracts, with any person who generates or holds title to high-level radioactive waste or spent nuclear fuel of domestic origin, for acceptance of title, subsequent transportation, and storage of such high-level radioactive waste or spent nuclear fuel (including to expedite such acceptance of title, transportation, and storage of such waste or fuel from facilities that have ceased commercial operation) at a monitored retrievable storage facility authorized under subtitle C.”.

TITLE IV—BENEFITS TO HOST COMMUNITY

SEC. 401. CONSENT.

Section 170 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10173) is amended—

(1) in subsection (c), by striking “shall offer” and inserting “may offer”;

(2) in subsection (d), by striking “shall” and inserting “may”;

(3) in subsection (e)—

(A) by inserting a comma after “repository”; and

(B) by inserting “per State,” after “facility”; and

(4) by adding at the end the following new subsection:

“(g) **CONSENT.**—The acceptance or use of any of the benefits provided under a benefits agreement under this section by the State of Nevada shall not be considered to be an expression of consent, express or implied, to the siting of a repository in such State.”.

SEC. 402. CONTENT OF AGREEMENTS.

(a) **BENEFITS SCHEDULE.**—The table in section 171(a)(1) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10173a(a)(1)) is amended to read as follows:

“BENEFITS SCHEDULE

Event	MRS	Repository
(A) Annual payments prior to first spent fuel receipt	\$5,000,000	\$15,000,000
(B) Upon first spent fuel receipt	\$10,000,000	The amount described in section 302(f)(1)(B)
(C) Annual payments after first spent fuel receipt until closure of the facility	\$10,000,000	The amounts described in section 302(f)(1)(C)."

(b) **RESTRICTIONS ON USE.**—Section 171(a) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10173a(a)) is amended—

(1) in paragraph (6), by striking “paragraph (7)” and inserting “paragraphs (7) and (8)”; and

(2) by adding at the end the following new paragraph:

“(8) None of the payments under this section may be used—

“(A) directly or indirectly to influence legislative action on any matter pending before Congress or a State legislature or for any lobbying activity as provided in section 1913 of title 18, United States Code;

“(B) for litigation purposes; or

“(C) to support multistate efforts or other coalition-building activities inconsistent with the siting, construction, or operation of the monitored retrievable storage facility or repository concerned.”.

(c) **CONTENTS.**—Section 171(b) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10173a(b)) is amended—

(1) by striking paragraph (2);

(2) by redesignating paragraphs (3) through (5) as paragraphs (2) through (4), respectively; and

(3) in paragraph (3) (as redesignated by paragraph (2) of this subsection), by striking “in the design of the repository or monitored retrievable storage facility and”.

(d) **PAYMENTS FROM THE WASTE FUND.**—Section 171(c) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10173a(c)) is amended by striking the first sentence and inserting the following: “The Secretary shall make payments to the State of Nevada under a benefits agreement concerning a repository under section 170 from the Waste Fund.”.

SEC. 403. COVERED UNITS OF LOCAL GOVERNMENT.

(a) **IN GENERAL.**—The Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101 et seq.) is amended by inserting after section 172 the following new section:

“SEC. 172A. COVERED UNITS OF LOCAL GOVERNMENT.

“(a) **BENEFITS AGREEMENT.**—Not earlier than 1 year after the date of enactment of this section, the Secretary may enter into a benefits agreement with any covered unit of local government concerning a repository for the acceptance of high-level radioactive waste or spent nuclear fuel in the State of Nevada.

“(b) **CONTENT OF AGREEMENTS.**—In addition to any benefits to which a covered unit of local government is entitled under this Act, the Secretary shall make payments to such covered unit of local government that is a party to a benefits agreement under subsection (a) to mitigate impacts described in section 175(b).

“(c) **PAYMENTS FROM WASTE FUND.**—The Secretary shall make payments to a covered unit of local government under a benefits agreement under this section from the Waste Fund.

“(d) **RESTRICTION ON USE.**—None of the payments made pursuant to a benefits agreement under this section may be used—

“(1) directly or indirectly to influence legislative action on any matter pending before Congress or a State legislature or for any lobbying activity as provided in section 1913 of title 18, United States Code;

“(2) for litigation purposes; or

“(3) to support multistate efforts or other coalition-building activities inconsistent with the siting, construction, or operation of the repository.

“(e) CONSENT.—The acceptance or use of any of the benefits provided under a benefits agreement under this section by any covered unit of local government shall not be considered to be an expression of consent, express or implied, to the siting of a repository in the State of Nevada.

“(f) COVERED UNIT OF LOCAL GOVERNMENT DEFINED.—In this section, the term ‘covered unit of local government’ means—

- “(1) any affected unit of local government with respect to a repository; and
- “(2) any unit of general local government in the State of Nevada.”.

(b) CONFORMING AMENDMENTS.—

(1) BENEFITS AGREEMENT.—Section 170(a)(4) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10173(a)(4)) is amended—

(A) by inserting “made available pursuant to a benefits agreement under this section” after “under this subtitle”; and

(B) by striking “with a benefits agreement under this section” and inserting “with such benefits agreement”.

(2) LIMITATION.—Section 170(e) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10173(e)) is further amended by inserting “under this section” after “may be in effect”.

(3) TABLE OF CONTENTS.—The table of contents for the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101 note) is amended by adding after the item relating to section 172, the following:

“Sec. 172A. Covered units of local government.”.

SEC. 404. TERMINATION.

Section 173 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10173c) is amended—

(1) in subsection (a)—

(A) by striking “under this title if” and inserting “under this title”;

(B) in paragraph (1), by inserting “concerning a repository or a monitored retrievable storage facility, if” before “the site under consideration”; and

(C) in paragraph (2), by striking “the Secretary determines that the Commission cannot license the facility within a reasonable time” and inserting “concerning a repository, if the Commission issues a final decision disapproving the issuance of a construction authorization for a repository under section 114(d)(1)”; and

(2) by amending subsection (b) to read as follows:

“(b) TERMINATION BY STATE OR INDIAN TRIBE.—A State, covered unit of local government (as defined in section 172A), or Indian tribe may only terminate a benefits agreement under this title—

“(1) concerning a repository or a monitored retrievable storage facility, if the Secretary disqualifies the site under consideration for its failure to comply with technical requirements established by the Secretary in accordance with this Act; or

“(2) concerning a repository, if the Commission issues a final decision disapproving the issuance of a construction authorization for a repository under section 114(d)(1).”.

SEC. 405. PRIORITY FUNDING FOR CERTAIN INSTITUTIONS OF HIGHER EDUCATION.

(a) IN GENERAL.—Subtitle G of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10174 et seq.) is amended by adding at the end the following new section:

“SEC. 176. PRIORITY FUNDING FOR CERTAIN INSTITUTIONS OF HIGHER EDUCATION.

“(a) IN GENERAL.—In providing any funding to institutions of higher education from the Waste Fund, the Secretary shall prioritize institutions of higher education that are located in the State of Nevada.

“(b) DEFINITION.—In this section, the term ‘institution of higher education’ has the meaning given that term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).”.

(b) CONFORMING AMENDMENT.—The table of contents for the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101 note) is amended by adding after the item relating to section 175, the following:

“Sec. 176. Priority funding for certain institutions of higher education.”.

SEC. 406. DISPOSAL OF SPENT NUCLEAR FUEL.

Section 122 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10142) is amended by adding at the end the following: “Any economic benefits derived from the retrieval of spent nuclear fuel pursuant to this section shall be shared with the State in which the repository is located, affected units of local government, and affected Indian tribes.”.

SEC. 407. UPDATED REPORT.

Section 175(a) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10174a(a)) is amended by striking “Nuclear Waste Policy Amendments Act of 1987” and inserting “Nuclear Waste Policy Amendments Act of 2017”.

TITLE V—FUNDING**SEC. 501. ASSESSMENT AND COLLECTION OF FEES.**

(a) **IN GENERAL.**—Section 302(a)(4) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222(a)(4)) is amended—

(1) in the first sentence—

(A) by striking “(4) Not later than” and inserting the following:

“(4) **ASSESSMENT, COLLECTION, AND PAYMENT OF FEES.**—

“(A) **ASSESSMENT OF FEES.**—Not later than”;

(B) by striking “the date of enactment of this Act” and inserting “the date of enactment of the Nuclear Waste Policy Amendments Act of 2017”; and

(C) by striking “collection and payment” and inserting “assessment”;

(2) in the second sentence, by striking “collection of the fee” and inserting

“such amount”;

(3) in the third sentence, by striking “are being collected” and inserting “will

result from such amounts”;

(4) in the fifth sentence, by striking “a period of 90 days of continuous session” and all that follows through the period at the end and inserting “the date that is 180 days after the date of such transmittal.”; and

(5) by adding at the end the following:

“(B) **COLLECTION AND PAYMENT OF FEES.**—

“(i) **IN GENERAL.**—Not later than 180 days after the date of enactment of Nuclear Waste Policy Amendments Act of 2017, the Secretary shall establish procedures for the collection and payment of the fees established by paragraph (2) and paragraph (3), or adjusted pursuant to subparagraph (A).

“(ii) **LIMITATION ON COLLECTION.**—The Secretary may not collect a fee established under paragraph (2), including a fee established under paragraph (2) and adjusted pursuant to subparagraph (A)—

“(I) until the date on which the Commission issues a final decision approving or disapproving the issuance of a construction authorization for a repository under section 114(d)(1); and

“(II) after such date, in an amount that will cause the total amount of fees collected under this subsection in any fiscal year to exceed 90 percent of the amounts appropriated for that fiscal year for purposes described in subsection (d).

“(iii) **PAYMENT OF FULL AMOUNTS.**—Notwithstanding the noncollection of a fee by the Secretary pursuant to clause (ii) in any fiscal year, a person who has entered into a contract with the Secretary under this subsection shall pay any uncollected amounts when determined necessary by the Secretary, subject to clause (ii), for purposes described in subsection (d).”.

(b) **AUTHORITY TO MODIFY CONTRACTS.**—The Secretary of Energy may seek to modify a contract entered into under section 302(a) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222(a)) before the date of enactment of this Act to ensure that the contract complies with the provisions of such section, as amended by this Act.

(c) **TECHNICAL AND CONFORMING AMENDMENTS.**—Section 302(a) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222(a)) is amended—

(1) in paragraph (1), by striking “paragraphs (2) and (3)” and inserting “paragraphs (2), (3), and (4)”;

(2) in paragraph (3), by striking “126(b)”; and

(3) in paragraph (4), by striking “insure” and inserting “ensure”.

SEC. 502. USE OF WASTE FUND.

(a) **IN GENERAL.**—Section 302(d) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222(d)) is amended—

(1) in paragraph (1), by striking “maintenance and monitoring” and all that follows through the semicolon at the end and inserting “maintenance and monitoring of any repository or test and evaluation facility constructed under this Act.”;

(2) in paragraph (4), by striking “to be disposed of” and all that follows through the semicolon at the end and inserting “to be disposed of in a repository or to be used in a test and evaluation facility.”;

(3) in paragraph (5), by striking “at a repository site” and all that follows through the end and inserting “at a repository site or a test and evaluation facility site and necessary or incident to such repository or test and evaluation facility;”;

(4) in paragraph (6), by striking the period at the end and inserting “; and”; and

(5) by inserting after paragraph (6) the following:

“(7) payments under benefits agreements for a repository entered into under section 170 or 172A.”.

(b) CONFORMING AMENDMENTS.—Section 117(d) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10137(d)) is amended by inserting “designated with respect to a repository” after “such representatives”.

SEC. 503. ANNUAL MULTIYEAR BUDGET PROPOSAL.

Section 302(e)(2) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222(e)(2)) is amended by striking “triennially” and inserting “annually”.

SEC. 504. AVAILABILITY OF CERTAIN AMOUNTS.

Section 302 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222) is amended by adding at the end the following:

“(f) AVAILABILITY OF CERTAIN AMOUNTS.—

“(1) IN GENERAL.—Notwithstanding any other provision of this section, for the purposes described in subsection (d) that are specified in subparagraphs (A) through (E) of this paragraph, the following amounts from the Waste Fund shall be available to the Secretary without further appropriation:

“(A) An amount equal to 1 percent of 2017 Waste Fund amounts, on the date on which high-level radioactive waste or spent nuclear fuel is received at the Yucca Mountain site, and in each of the 25 years thereafter, for costs associated with construction and operation of a repository or facilities at the Yucca Mountain site.

“(B) An amount equal to 1 percent of 2017 Waste Fund amounts, on the date on which high-level radioactive waste or spent nuclear fuel is received at the Yucca Mountain site, to make payments under a benefits agreement entered into under section 170 with the State of Nevada concerning a repository.

“(C) An amount equal to 0.1 percent of 2017 Waste Fund amounts, on the date that is one year after the date on which high-level radioactive waste or spent nuclear fuel is received at the Yucca Mountain site, and in each year thereafter until closure of the repository, to make payments under a benefits agreement entered into under section 170 with the State of Nevada concerning a repository.

“(D) An amount equal to 20 percent of 2017 Waste Fund amounts, on the date on which monitoring of the repository during the decommissioning period commences, for waste package and drip shield fabrication activities.

“(E) An amount equal to the amount of any fee collected pursuant to subsection (a)(3) after the date of enactment of the Nuclear Waste Policy Amendments Act of 2017, on the date on which such fee is collected, for costs associated with construction and operation of a repository or facilities at the Yucca Mountain site.

“(2) 2017 WASTE FUND AMOUNTS.—For purposes of this subsection, the term ‘2017 Waste Fund amounts’ means the amounts in the Waste Fund on the date of enactment of the Nuclear Waste Policy Amendments Act of 2017.”.

TITLE VI—MISCELLANEOUS

SEC. 601. CERTAIN STANDARDS AND CRITERIA.

(a) GENERALLY APPLICABLE STANDARDS AND CRITERIA.—

(1) ENVIRONMENTAL PROTECTION AGENCY STANDARDS.—

(A) DETERMINATION AND REPORT.—Not later than 2 years after the Nuclear Regulatory Commission has issued a final decision approving or disapproving the issuance of a construction authorization for a repository under section 114(d)(1) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10134(d)) (as so designated by this Act), the Administrator of the Environmental Protection Agency shall—

(i) determine if the generally applicable standards promulgated under section 121(a) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10141(a)) should be updated; and

(ii) submit to Congress a report on such determination.

(B) RULE.—If the Administrator of the Environmental Protection Agency determines, under subparagraph (A), that the generally applicable standards promulgated under section 121(a) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10141(a)) should be updated, the Administrator, not later than 2 years after submission of the report under subparagraph (A)(ii), shall, by rule, promulgate updated generally applicable standards under such section.

(2) COMMISSION REQUIREMENTS AND CRITERIA.—Not later than 2 years after the Administrator of the Environmental Protection Agency promulgates updated generally applicable standards pursuant to paragraph (1)(B), the Commission shall, by rule, promulgate updated technical requirements and criteria under section 121(b) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10141(b)) as necessary to be consistent with such updated generally applicable standards.

(b) SITE-SPECIFIC STANDARDS AND CRITERIA.—Nothing in this section shall affect the standards, technical requirements, and criteria promulgated by the Administrator of the Environmental Protection Agency and the Nuclear Regulatory Commission for the Yucca Mountain site under section 801 of the Energy Policy Act of 1992 (42 U.S.C. 10141 note).

SEC. 602. APPLICATION.

Section 135 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10155) is amended by striking subsection (h) and redesignating subsection (i) as subsection (h).

SEC. 603. TRANSPORTATION SAFETY ASSISTANCE.

Section 180(c) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10175(c)) is amended—

(1) by striking “(c) The Secretary” and inserting the following:

“(c) TRAINING AND ASSISTANCE.—

“(1) TRAINING.—The Secretary”; and

(2) by striking “The Waste Fund” and inserting the following:

“(2) ASSISTANCE.—The Secretary shall, subject to the availability of appropriations, provide in-kind, financial, technical, and other appropriate assistance, for safety activities related to the transportation of high-level radioactive waste or spent nuclear fuel, to any entity receiving technical assistance or funds under paragraph (1).

“(3) SOURCE OF FUNDING.—The Waste Fund”.

SEC. 604. OFFICE OF CIVILIAN RADIOACTIVE WASTE MANAGEMENT.

(a) AMENDMENT TO THE NUCLEAR WASTE POLICY ACT OF 1982.—Subsection (b) of section 304 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10224(b)) is amended to read as follows:

“(b) DIRECTOR.—

“(1) FUNCTIONS.—The Director of the Office shall be responsible for carrying out the functions of the Secretary under this Act. The Director of the Office shall report directly to the Secretary.

“(2) QUALIFICATIONS.—The Director of the Office shall be appointed from among persons who have extensive expertise and experience in organizational and project management.

“(3) TENURE.—The Director of the Office may serve not more than two 5-year terms.

“(4) SERVICE DURING INTERIM PERIOD.—Upon expiration of the Director’s term, the Director may continue to serve until the earlier of—

“(A) the date on which a new Director is confirmed; or

“(B) the date that is one year after the date of such expiration.

“(5) REMOVAL.—The President may remove the Director only for inefficiency, neglect of duty, or malfeasance in office. If the President removes the Director, the President shall submit to Congress a statement explaining the reason for such removal.”.

(b) TRANSFER OF FUNCTIONS.—

(1) AMENDMENT.—Section 203(a) of the Department of Energy Organization Act (42 U.S.C. 7133(a)) is amended by striking paragraph (8).

(2) TRANSFER OF FUNCTIONS.—The functions described in the paragraph (8) stricken by the amendment made by paragraph (1) shall be transferred to and performed by the Office of Civilian Radioactive Waste Management, as provided in section 304 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10224).

(c) TECHNICAL AMENDMENT.—Section 2(17) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(17)) is amended by striking “section 305” and inserting “section 304”.

SEC. 605. WEST LAKE LANDFILL.

Not later than one year after the date of enactment of this Act, the Administrator of the Environmental Protection Agency shall submit to Congress a report containing the final remedy to be implemented at the West Lake Landfill and the expected timeline for implementation of such final remedy.

SEC. 606. SUBSEABED OR OCEAN WATER DISPOSAL.

(a) PROHIBITION.—Section 5 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10104) is amended—

(1) by striking “Nothing in this Act” and inserting:

“(a) EFFECT ON MARINE PROTECTION, RESEARCH, AND SANCTUARIES ACT OF 1972.—Nothing in this Act”; and

(2) by adding at the end the following new subsection:

“(b) SUBSEABED OR OCEAN WATER DISPOSAL.—Notwithstanding any other provision of law—

“(1) the subseabed or ocean water disposal of spent nuclear fuel or high-level radioactive waste is prohibited; and

“(2) no funds shall be obligated for any activity relating to the subseabed or ocean water disposal of spent nuclear fuel or high-level radioactive waste.”

(b) REPEAL.—Section 224 of the Nuclear Waste Policy Act of 1982, and the item relating thereto in the table of contents for such Act, are repealed.

SEC. 607. SENSE OF CONGRESS REGARDING STORAGE OF NUCLEAR WASTE NEAR THE GREAT LAKES.

It is the Sense of Congress that the Governments of the United States and Canada should not allow permanent or long-term storage of spent nuclear fuel or other radioactive waste near the Great Lakes.

PURPOSE AND SUMMARY

H.R. 3053, the Nuclear Waste Policy Amendments Act of 2017, was introduced on June 26, 2017, by Rep. John Shimkus (R-IL). The bill amends the Nuclear Waste Policy Act of 1982 (NWPA)¹ to improve the Department of Energy’s (DOE) nuclear waste management program to store and dispose of spent nuclear fuel (SNF) and high-level radioactive waste (HLW).

Title I of the bill directs DOE to initiate a program to consolidate and temporarily store commercial SNF during the development, construction, and initial operation of a repository, with preference for the Department to take ownership of SNF from facilities that have ceased commercial operation. This title also authorizes DOE to enter into an agreement with a non-Federal entity for the purposes of storing SNF to which the Department holds title.

Title II addresses Federal land withdrawal and related management issues associated with the licensing and construction of a permanent geologic repository at the Yucca Mountain, Nevada site. This title provides for the permanent withdrawal of specific Federal land for repository use by DOE; updates the Nuclear Regulatory Commission (NRC) licensing process and conditions for the repository; and limits activities relating to a separate repository for HLW generated by atomic energy defense activities.

Title III provides DOE with consolidated storage options to help fulfill the Federal government’s obligations to take title to SNF. Provisions amend the NWPA to authorize DOE to modify contracts to allow the transfer of commercial SNF to DOE for monitored retrievable storage in addition to DOE’s existing legal obligations to ensure the permanent disposal of commercial spent fuel.

Title IV provides benefits to the repository host State and units of local governments. The provisions update the NWPA to requalify the State of Nevada to enter into an agreement with DOE to help

¹ P.L. 97-425

mitigate potential impacts that may result from hosting the repository. The title also allows qualified covered units of local government to enter into separate benefits agreements with DOE.

Title V amends the method by which DOE funds its nuclear waste management activities through the collection and usage of the Nuclear Waste Fund (Fund). The bill also makes specific portions of previously collected funding available to the Department without further appropriation throughout the multi-decade life cycle of the repository program.

Title VI makes miscellaneous changes to the NWPA, including updating the generic (non-Yucca Mountain specific) standards for a repository, setting a fixed-term appointment for the Office of Civilian Radioactive Waste Management (OCRWM) Director, and expanding the qualified usage of DOE financial assistance to state and local organizations to support SNF transportation activities.

BACKGROUND AND NEED FOR LEGISLATION

Historical context

Spent nuclear fuel and high-level radioactive waste is generated as a result of commercial generation of nuclear power and as a by-product of our nation's nuclear defense activities, such as legacy material from maintaining a nuclear weapons stockpile, and used fuel from the U.S. Navy's fleet of nuclear-powered submarines and aircraft carriers. This material must be permanently isolated from the manmade environment, and scientific consensus has consistently maintained that isolation in a deep, geologic repository is the best path forward.²

Throughout the 1960's and 1970's, the Federal government unsuccessfully sought a permanent disposal site for this material. For example, in the 1960's the Atomic Energy Commission (AEC)³ attempted to locate a deep geologic repository at an abandoned salt mine near Lyons, Kansas. The State of Kansas ultimately opposed the siting of a repository at the Lyons site because of a lack of transparency and due to processes associated with the site's scientific characterization. Also, in the late 1970's, the Energy Research and Development Administration⁴ conducted the National Waste Terminal Storage Program. The Program identified dozens of geologic sites in 36 states to characterize as potential repositories. However, when the Federal government sent requests to the governors representing the prospective locations, no governor agreed to move forward in partnership with DOE. The program was subsequently terminated.

At the same time, pressure was growing to establish a program for permanent disposal. During the late 1970's, a number of state

²The first comprehensive analysis was undertaken in the 1950's and repository disposal remains the most widely supported policy. See National Research Council. 1957. *The Disposal of Radioactive Waste on Land*. Washington, DC: The National Academies Press. <https://doi.org/10.17226/10294>. See, more recently, National Research Council. 2001. *Disposition of High-Level Waste and Spent Nuclear Fuel: The Continuing Societal and Technical Challenges*. Washington, DC: The National Academies Press. <https://doi.org/10.17226/10119>.

³The United States Atomic Energy Commission was created by the Atomic Energy Act to promote and regulate the use of atomic science and technology. The AEC was disbanded in 1974 and two organizations were established to separate the nuclear promotional activities, which were placed into the Energy Research and Development Administration, from the regulation of civilian nuclear activities, within the Nuclear Regulatory Commission.

⁴In 1977, Congress enacted the Department of Energy Organization Act, which transferred ERDA's activities into the newly established Department of Energy.

legislatures were successful in efforts to prohibit the construction of commercial nuclear power plants until there was a Federal nuclear waste management program.⁵ Additionally, the NRC was successfully sued and required by the courts to have a reasonable expectation that the commercial SNF would be permanently disposed.⁶ As a consequence of these lawsuits, the NRC developed what was known as the “Waste Confidence” rule, which stated that the NRC could continue to license commercial reactors as long as there was a certain level of assurance that there was a nuclear waste disposal program in place.

The Nuclear Waste Policy Act of 1982

The combination of the external efforts, along with the Federal government’s unsuccessful attempts to find a nuclear waste disposal option, prompted Congress to take control of the process and enact the NWPA. The NWPA established the statutory framework that continues to govern DOE’s nuclear waste management policy and the development of a permanent geologic nuclear waste repository.

NWPA established a scientifically based, multi-stage, statutory process for selecting the eventual site of the nation’s permanent geologic repository.⁷ NWPA designated specific responsibilities, decision schedules, and funding to develop a secure facility to dispose of the radioactive waste located around the nation. The NWPA created a Federal obligation to take title to, remove, and transport spent nuclear fuel from commercial nuclear power reactor sites around the nation directly to a permanent repository or an interim storage facility before permanent disposal. The Act provided what was intended to be a dedicated funding stream for the program by establishing the Nuclear Waste Fund, funded by a fee charged on nuclear-generated electricity, under the principle that those who benefit from nuclear power should fund waste disposal activities. The NWPA designated the Federal agencies responsible for implementing this nuclear waste policy and specified their roles: DOE, to characterize, site, design, build, and manage a Federal waste repository; the Environmental Protection Agency (EPA), to set the public health standards for the repository; and the Nuclear Regulatory Commission (NRC), to license the repository’s construction, operation, and closure.

Key provisions of NWPA continue to affect DOE’s nuclear waste management policy today and inform the need for H.R. 3053. These provisions include:

- Establishment of a formal responsibility by DOE to dispose of commercially generated SNF, which was required to be subject to a legally-binding contract between DOE and the commercial nuclear power generator;
- Creation of a “fee for service” model for the Nuclear Waste Fund, in which commercial utilities that generate SNF pay a

⁵ California and Minnesota were prominent in their efforts. According to the National Conference of State Legislatures, California, Connecticut, Hawaii, Illinois, Maine, Massachusetts, Minnesota, Montana, New Jersey, New York, Oregon, Rhode Island, Vermont, and West Virginia currently have restrictions on new commercial nuclear power plants due to disposal policy.

⁶ See *Minnesota v. NRC* 302 F.2d 412 (D.C. Cir. 1979)

⁷ For additional background: see “Closing Yucca Mountain: Litigation Associated with Attempts to Abandon the Planned Nuclear Waste Repository” Congressional Research Service, July 4, 2012 (R41675).

fee to DOE in exchange for the future commitment to dispose of the SNF;

- Establishment of a January 31, 1998 deadline for DOE to begin taking title to the commercial SNF.

The Act also established the Office of Civilian Radioactive Waste Management (OCRWM) within DOE, headed by a Director who is appointed by the President and confirmed by the Senate. The Director is “responsible for carrying out the functions of the Secretary” under the NWPA and is directly responsible to the Secretary.

Under the Act, Congress required a Presidential finding⁸ as to whether waste from atomic energy defense activities could be disposed of in a single, common repository to be developed under the NWPA. In 1985, President Reagan determined that a defense waste only repository was not required and DOE proceeded to develop and plan for one repository to include both defense HLW and commercial SNF.⁹

As previously noted, the Act established a Waste Fund intended to be a “fee for service” model in which commercial entities paid the Federal government a fee in return for the contractual obligation that DOE would take title to the SNF. Congress recognized, under the NWPA provisions, that access to previously collected program funding would give DOE certainty in planning for a multi-generational project. However, the budgetary treatment of the Fund, under a subsequent statute enacted in 1985, limited the original vision and funding model intended under the NWPA.

The Gramm-Rudman-Hollings Balanced Budget Act of 1985¹⁰ set in motion policy changes that designated the accounting method of the Waste Fund fee as a mandatory receipt, but subjected spending on the project from the Fund as discretionary spending. Because payments from the Fund were classified as discretionary, money spent on nuclear waste management activities has been subject to overall budget caps of the Federal government and thus has competed with all other discretionary spending, which has limited the use of the Fund. At the same time, the receipts continue to be applied annually to offset deficit spending, further limiting access to the fund for its intended purpose.

To date, over \$40 billion has been collected for the purposes of the Waste Fund and the current balance of the account is \$37 billion.¹¹ Future access to this fund will remain constrained by the current accounting methods absent additional statutory direction to reestablish long-term spending certainty.¹²

⁸Section 8 of the Nuclear Waste Policy Act of 1982.

⁹In April 2015, President Obama issued a determination that HLW from atomic energy defense activities, such as nuclear weapons programs and spent nuclear fuel from Navy submarines and aircraft carriers, is required to be disposed of in a separate repository apart commercial SNF. In January 2017, the Government Accountability Office found DOE’s cost and schedule estimates for the two-repository approach are not reliable, excluded major costs, lacked information and the schedule was not realistic. GAO recommended DOE “(1) assess benefits, costs, and schedule estimates, and (2) reassess its decision to conduct site section activities.” U.S. Government Accountability Office, “*Nuclear Waste: Benefits and Costs Should Be Better Understood Before DOE Commits to a Separate Repository for Defense Waste*,” GAO-17-174. January 31, 2017.

¹⁰P.L. 99-177.

¹¹DOE Office of Inspector General, “*Audit Report: Department of Energy’s Nuclear Waste Fund’s Fiscal Year 2016 Financial Statement Audit*,” OAI-FS-17-04. December 2016.

¹²For more information regarding the Waste Fund’s creation, budgetary treatment and need for reform, see Committee on Energy and Commerce Subcommittee on Environment and the

Congress set the initial fee at one mil (one tenth of one cent) per kilowatt hour, but gave the Secretary the authority to revise the fee level. To determine the lifecycle funding requirements of the program, the Act required the Secretary to annually review the level of the fee, through what is known as the “fee adequacy” report. Over the period in which the fee was collected, the Secretary never exercised this authority to adjust the fee from the original level established by Congress.

Repository selection and monitored retrievable storage

The NWPA required DOE to establish a process to identify and characterize repository sites in order to select a single location for the first repository. From 1983 through 1987, DOE conducted several multi-attribute analyses for sites of the first repository.¹³ The locations of the three final candidate sites included Hanford, Washington; Deaf Smith County, Texas; and Yucca Mountain, Nevada. In the analysis, the Yucca Mountain site consistently ranked at the top of the most suitable locations.¹⁴

Section 141 of the NWPA also authorized DOE to pursue a “monitored retrievable storage” (MRS) facility.¹⁵ In authorizing an MRS program, Congress found that storage would provide optionality in the waste management system to the Department as it developed a permanent repository. The optionality would allow DOE a higher probability of taking title to SNF by the 1998 deadline. In performing the requirements of the MRS program, DOE identified three sites in Tennessee and formally recommended the Clinch River Site as the preferred location. The State of Tennessee disapproved of this recommendation, not on scientific or technical grounds, but because it determined that an MRS facility was not needed. Testimony before the Committee on Energy and Commerce during this period was clear: all initial efforts should be focused on the development of the first permanent repository.¹⁶

Nuclear Waste Policy Act Amendments of 1987

Following extensive Congressional examination of DOE’s nuclear waste program during this time, and partially out of concern of program cost and a rapidly approaching legal deadline, Congress

Economy hearing titled, “*The Nuclear Waste Fund: Budgetary, Funding, and Scoring Issues*,” on December 3, 2015.

¹³During this time, DOE also initiated a program to identify the site of a second repository in the eastern United States. In particular, as a matter of geographic equity, western states believed there should be a repository in states that relied more heavily on nuclear power, namely east of the Mississippi River. However, this second repository program was strongly opposed by potentially impacted governors and considered unnecessary until the first repository was operational. When Congress amended the NWPA in 1987, the second repository program had already been terminated by DOE, but Congress established a statutory cap of 70,000 metric tons of SNF in the Yucca Mountain repository to create the potential future need for a second repository.

¹⁴Department of Energy, “*A Multiattribute Utility Analysis of Sites Nominated For Characterization For the First Radioactive-Waste Repository—A Decision Aiding Methodology*,” DOE/RW-0074, May 1986.

¹⁵The NWPA defines an MRS facility as a facility designed to accommodate SNF and HLW from civilian nuclear activities; that permits continuous monitoring, management, and maintenance of SNF and waste for the foreseeable future; that provides for the ready retrieval of such SNF and waste for further processing or disposal; and that safely stores SNF and waste as long as may be necessary. See NWPA sec. 141(b)(1).

¹⁶The Committee on Energy and Commerce Subcommittee on Energy Conservation and Power held hearings in the 99th Congress on August 1, 1985, October 15, 1985, April 23, 1986, and May 1, 1986, to examine the progress of the DOE nuclear waste management program under the Nuclear Waste Policy Act. 43 witnesses appeared before the Committee in these hearings.

amended the NWPA in 1987.¹⁷ Congress designated the Yucca Mountain, Nevada site as the sole location for the first repository and prohibited DOE from conducting any site-specific work other than at the Yucca location.

The 1987 Amendments also amended section 141 by nullifying the Clinch River recommendation and establishing a new, more prescriptive siting, characterization, and development process for DOE's MRS program. The conditions for a DOE MRS included a 10,000-ton capacity limit, required that NRC issue a construction authorization for the Yucca Mountain repository prior to developing an MRS, and prohibited an MRS facility from being located within 50 miles of the repository. These policies were intended to assure that an MRS facility would not undermine the policy and related support for developing a permanent disposal facility. The MRS provisions remained focused exclusively on a DOE-owned and operated facility.

Congress acknowledged that Nevada deserved the opportunity to benefit as the host State. Subtitle F (Benefits) of the NWPA Amendments of 1987 includes a structured process for Nevada to enter into a benefits agreement with the Secretary of Energy. However, Congress conditioned the benefits agreements on requiring the State of Nevada to waive their ability to disapprove of the site recommendation.¹⁸ Additionally, Subtitle G of the NWPA Amendments (Other Benefits) directed the Secretary to preferentially site Federal research projects in the host State and to publish a report of potential impacts associated with hosting the repository. The report was to serve as a basis for Federal government mitigation efforts.¹⁹

The Yucca Mountain Program

In 1992, Congress took another significant step relating to the repository development by requiring the EPA to set regulations for protection of human health and the environment specifically for the Yucca Mountain site.²⁰ The Yucca Mountain specific standards superseded standards that had been previously required under section 121 of the NWPA. The EPA standards were finalized in 2001 and were based on the concept of "reasonable expectation"²¹ of performance over a 10,000-year timeframe. The State of Nevada challenged the standards, and EPA subsequently modified the compliance period to a one-million-year performance standard. The development of these Yucca Mountain specific standards and associated actions slowed implementation of DOE's repository program.

¹⁷ Congress amended the Nuclear Waste Policy Act in the Omnibus Budget Reconciliation Act of 1988: P.L. 100-203.

¹⁸ The State of Nevada disapproved of the site selection and never entered into an agreement, largely due to the condition the State would have to waive its right to veto the site recommendation.

¹⁹ The Secretary of Energy published the Section 175 Report in 1988 and found that DOE had sufficient authority to mitigate impacts through financial assistance, transportation programmatic decisions, collaboration with the State and units of local government, and monitoring programs.

²⁰ P.L. 102-486

²¹ "Reasonable expectation means that the NRC is satisfied that compliance will be achieved based on upon the full record before it. Reasonable expectation is used by EPA to recognize that absolute proof is neither necessary nor possible since performance of the disposal system must be projected 10,000 years." See: <https://www.epa.gov/sites/production/files/2015-05/documents/um02paper.pdf>

Throughout the 1990's, DOE studied, characterized, and designed a repository at Yucca Mountain that would include multiple man-made barriers in addition to taking advantage of the unsaturated location of the site. This included the development of a total system performance assessment, which provides long-term performance estimates based on the probabilistic likelihood of future disruptive events.

In 2002, as required by the NWPA,²² Energy Secretary Spencer Abraham recommended the Yucca mountain site to President Bush, and President Bush formally approved the Yucca Mountain site. Pursuant to section 116(b) of the NWPA, the State of Nevada issued a notice of disapproval of the project. However, Congress, as provided in NWPA, overrode the disapproval.²³ Having completed the statutorily required selection and approval process for the Yucca Mountain site, DOE prepared the supporting documentation to submit a license application for a construction authorization to the Nuclear Regulatory Commission.

DOE submitted a license application seeking authorization to construct the repository, required by section 114(d) of the NWPA, to the NRC in June 2008.²⁴ The license application contained a comprehensive Safety Analysis Report, which incorporated the full scientific and environmental analysis of the Yucca Mountain site to provide information necessary for NRC to determine if the repository would meet all regulatory requirements for the safe, permanent disposal of SNF and HLW.

NRC docketed the license application in September 2008. It then commenced a two-pronged review of the application. First, it launched a technical licensing review by the NRC staff to assess the technical merits of the repository design and formulate a position on whether to issue a construction authorization for the repository. Second, NRC initiated adjudicatory hearings by the NRC's Construction Authorization Board to consider technical and legal challenges to the application.²⁵ To date, the State of Nevada has filed more than 200 contentions for adjudication. Pursuant to NWPA, the Commission, based on a staff Safety Evaluation Report (SER) and the Board hearings, must determine solely on the technical merits whether to authorize construction of the repository.

²²Section 115 of the NWPA sets for the review of the repository site selection process. Upon the State's notice of disapproval, the introduction of a joint resolution of Congress was required. The resolution had specific procedures for consideration in both the House of Representatives and Senate which required expedited consideration.

²³H.J. Res 87 was introduced in the House on April 11, 2002 by Energy and Commerce Chairman Joe Barton. The Committee on Energy and Commerce reported the resolution favorably on May 1. The House passed the resolution by a vote of 306-117 on May 8 and the Senate passed the resolution without amendment by voice vote on July 9.

²⁴Section 114 of the NWPA established requirements relating to the process by which DOE and the NRC license the Yucca Mountain repository. The law requires the Secretary of Energy submit to the NRC an application for a construction authorization for a repository following the President's site recommendation. It requires that the Commission "shall consider an application for a construction authorization for all or part of a repository" and the Commission "shall issue a final decision approving or disapproving the issuance of a construction authorization not later than the expiration of 3 years after the date of the submission of such application." In addition, Section 121 of the NWPA requires a three-part licensing process for repositories. The steps include NRC approval or disapproval of "(i) applications for authorization to construct repositories; (ii) applications for licenses to receive and possess spent nuclear fuel and high-level radioactive waste in such repository; and (iii) applications for authorization for closure and decommissioning of such repositories."

²⁵See <https://www.nrc.gov/waste/hlw-disposal/licensing-process.html>

Subsequent NRC review of the construction authorization resulted in the issuance of a five-volume SER,²⁶ in which NRC technical staff concluded that the Yucca Mountain project, as outlined in the DOE license application, was reasonably expected to meet EPA's one-million-year regulatory requirements. When the staff released the final SER volume in January 2015, it noted that DOE had not yet met two conditions for license issuance: DOE had not demonstrated the land would be permanently withdrawn for use of the repository nor had DOE acquired the necessary water use permits from Nevada.²⁷ This SER was completed against a backdrop of an Administration that had been attempting to end the Yucca Mountain Program.

Attempts to end the Yucca Mountain Program

In 2009, despite the statutory requirements and the successful submission of a license application for repository construction, the Obama Administration initiated a process to change course on DOE's nuclear waste management policy.²⁸ Over the course of two fiscal years, the Secretary of Energy dismantled the agency's staff and closed OCRWM offices. In March 2010, DOE submitted a motion to the NRC to withdraw permanently the DOE application for a license to construct a repository at Yucca Mountain.²⁹ The motion was unsuccessful, but the Administration continued other efforts to defund the program—effectively halting NRC adjudicatory proceedings, and delaying issuance of the SER. Concurrently, the Administration initiated a study of potential recommendations to reform approaches to nuclear waste management.³⁰ Energy Secretary Steven Chu established the Blue Ribbon Commission on America's Nuclear Future (BRC) to recommend an alternative nuclear waste policy. The BRC issued its final report in 2012,³¹ and, in response to the BRC's recommendations, DOE issued its own "Strategy for the Management and Disposal of Used Nuclear Fuel and High-Level Radioactive Waste" in 2013.³²

The BRC and "DOE Strategy" both recommended that DOE should pursue a consolidated interim storage program, similar to the NWA's MRS program. The recommendations centered on proposals from private companies to acquire an NRC license for storage of SNF³³ and enter into a contract with DOE. The BRC and

²⁶Nuclear Regulatory Commission, "Safety Evaluation Report Related to Disposal of High-Level Radioactive Waste in a Geologic Repository at Yucca Mountain, Nevada," NUREG-1949. Available at: <https://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1949/>

²⁷The Department of Energy sought a water use permit from the Nevada State Water Engineer. However, the State of Nevada enacted a law stating the Yucca Mountain repository was not in the public interest, which is a requirement for the State to issue a water permit. Litigation between DOE and Nevada is currently under a stay following the Obama Administration's decision to stop work on the repository program.

²⁸See for example, FY 2010 Congressional Budget Request for DOE, at page 504, which notes in relevant part: "The FY2010 requests . . . implements the Administration's decision to terminate the Yucca Mountain program . . ." DOE Office of Chief Financial Officer, May 2009.

²⁹"In the Matter of U.S. Department of Energy (High-Level Waste Repository)," Docket No. 63-001. The NRC rejected DOE's petition to withdraw and ensuing decisions by the D.C. Circuit Court of Appeals required the NRC to continue its review of the license application.

³⁰President Obama directed the Secretary of Energy to create the Blue Ribbon Commission for America's Nuclear Future, which would not identify an alternative site, but would recommend reforms to nuclear waste policy established in statute; See <http://brc.gov/>

³¹Blue Ribbon Commission on America's Nuclear Future, "Report to the Secretary of Energy," January 2012.

³²Department of Energy, "Strategy for the Management and Disposal of Used Nuclear Fuel and High-Level Radioactive Waste," January 2013.

³³One private entity, Private Fuel Storage LLC, currently holds an NRC license for this purpose. Two companies have submitted a license application; however, one company requested no

“DOE Strategy” also emphasized the first storage facility should prioritize taking title to SNF from locations that have permanently ceased commercial operation.³⁴

Mounting Liabilities

After the 1998 deadline was missed for DOE to take title to SNF, utilities filed suit against the Department because it had not met the legally required terms of the Standard Contract.³⁵ Through multiple court cases, DOE was ultimately held in partial breach of contract³⁶ and ordered to pay financial damages to the utilities. The damages reimbursed costs associated with storing SNF onsite, which would not have been necessary had DOE taken title to the fuel for disposal. The Courts directed that these damages were to be paid out of a specific Treasury Department account, known as the Judgment Fund, which pays all claims against the Federal government, rather than out of the Nuclear Waste Fund, which was specifically dedicated to funding nuclear waste management activities.

To date, total damages are expected to total approximately \$30 billion.³⁷ This taxpayer liability estimate has risen by about two billion dollars annually over the last decade.³⁸

Need for Legislation

The country’s long history of challenges managing nuclear waste, the extensive scientific and technical record associated with the Yucca Mountain site, and decades of Congressional oversight by the Committee on Energy and Commerce, indicate the essential framework established in the NWPA remains sound.

Despite substantial delays, the process succeeded in meeting a number of the critical statutory steps necessary for establishing a permanent repository. With Congress’s affirmative, bi-partisan support, the Department of Energy produced a complete license application for the Yucca Mountain repository. The NRC initiated the critical, independent review of the license application, and found that the proposed project would meet all regulatory requirements.

further NRC action on the application and NRC has not yet formally accepted the other application as part of the licensing docket.

³⁴For a more complete record of attempts to end the Yucca Mountain Program and related activities, see the following Committee on Energy and Commerce hearings: “The Role of the Nuclear Regulatory Commission in America’s Energy Future,” May 4, 2011, Serial No. 112–43; “The Department of Energy’s Role in Managing Civilian Radioactive Waste,” June 1, 2011, *Serial No. 112–54*; “The NRC Inspector General Report on the ‘NRC Chairman’s Unilateral Decision to Terminate NRC’s Review of the DOE Yucca Mountain Repository License Application,’” June 14, 2011, Serial No. 112–161; “NRC Repository Safety Division—Staff Perspective on Yucca License Review, June 24, 2011, Serial No. 112–67; and “Recommendations of the Blue Ribbon Commission on America’s Nuclear Future,” February 1, 2012, Serial No. 112–109.

³⁵The Standard Contract is required under the NWPA for entities licensed under section 103 or 104 of the Atomic Energy. The contract governs the disposal of HLW and SNF that may result from the use of such license. See section 302(b) of the NWPA.

³⁶A “partial breach of contract” determines that damages are ongoing. In *Indiana Michigan Power Co. v. United States* it was held that a “partial breach plaintiff can recover damages incurred from the point at which the party has reason to know that performance by the other party will not be forthcoming” to the date of trial.” For more information see: Congressional Research Service, “*Legal Developments Relating to Nuclear Waste Storage and Disposal in the Yucca Mountain Repository Site*,” R44151. August 29, 2016.

³⁷Department of Energy, “*Fiscal Year 2016: Agency Financial Report*,” DOE/CF–0128, November 2016. The DOE Report notes that industry estimates the total liability will exceed \$50 billion. Based on recent trends, the industry estimate may be reasonable.

³⁸For more information see letter from Committee on Energy and Commerce Environment Subcommittee Chairman John Shimkus to Secretary of Energy Rick Perry dated August 21, 2017.

After much delay, Congress must resurrect a stalled program, including the governance regime and funding necessary for DOE to defend the application and for NRC to complete the adjudicatory process. Only when NRC completes the process and makes a decision on the license application will the public have full information about the safety of the Yucca Mountain Site. In the long term, the committee's oversight demonstrates the need to ensure durable funding for operating the facility for decades. As the preceding section indicates, there are a number of practical reforms to NWPA that will help ensure both short-term and long-term success of the program. These include provisions to address governance, access to the Nuclear Waste Fund, state participation, and adding flexibility for the Secretary of Energy to ensure more timely and sustained implementation of the nation's responsibilities for disposing of SNF and HLW.

WHAT THE BILL WILL DO

H.R. 3053, Nuclear Waste Policy Amendments Act of 2017, makes targeted and practical updates to the Nuclear Waste Policy Act, to provide a durable and effective Federal nuclear waste management program. Enactment of this bill will address key challenges associated with storage and disposal of SNF and HLW to ensure the Federal government remains on the path to fulfill its legal and moral obligation to ratepayers, taxpayers, and communities across the country.

Consolidated interim storage

Title I amends Subtitle C of the NWPA, Monitored Retrievable Storage, to direct DOE to initiate a program to take ownership of and store SNF. The bill authorizes DOE to enter into MRS agreements with non-Federal entities to serve as a temporary storage facility. Taken together, the provisions create a structured, predictable, and cost-effective program to provide optionality for DOE, while the permanent repository is licensed and constructed during initial repository operations.

The storage program's first step requires the Secretary of Energy to submit a report to Congress by June 1, 2019, on the need for and feasibility of the construction of one or more MRS facilities. As part of the original passage of the NWPA, Congress required DOE to submit this proposal by June 1, 1985.³⁹ However, as previously described, DOE's efforts to develop an MRS facility were unsuccessful. Today, the delayed repository program and associated financial liabilities have changed the circumstances concerning the potential viability and need for MRS.

DOE's MRS program requires the Secretary receive robust information relating to the potential use of an MRS agreement with a non-Federal entity. Data collected through the issuance of a request for information and, should DOE continue to pursue an MRS facility, a request for proposal, should assure that the initial storage facility is appropriately scoped and characterized prior to committing funding.

³⁹ Department of Energy, "Monitored Retrievable Storage Submission to Congress," DOE/RW-0035. March 1987.

Section 101(b) makes minor modifications to section 141 of the NWPA to account for the explicit Congressional authorization of one or more MRS facilities. The legislation adds “MRS agreement” and “Department-owned civilian waste” definitions to in section 2 of the NWPA. “MRS agreements” may provide the Department flexibility in how DOE considers contractual obligations with potential non-Federal entities. The Committee expects an MRS agreement shall be done in a competitive manner as set forth through Title I. The term “Department-owned civilian waste” applies to commercial spent nuclear fuel to which DOE has taken title, pursuant to the terms of the Standard Contract, and excludes waste from atomic energy defense activities. This assures it is clear DOE has taken title to such SNF, thus the Federal government payments from the Judgment Fund for partial breach of contract have ceased.

The bill amends section 142 of the NWPA to provide the Secretary of Energy the authority to site, construct, and operate one or more MRS facilities or to enter into an MRS agreement with a non-Federal entity for temporary storage. Given DOE’s unsuccessful historical endeavors of siting and developing significant facilities, the legislation directs the Secretary to prioritize one or more MRS agreements with a non-Federal entity over a DOE-owned facility. However, if problems persist with both the repository program and the private MRS initiatives are unsuccessful, the Secretary may determine it is faster and less expensive for DOE to choose the first path (a federal facility).

Section 103 prescribes the manner in which MRS agreements are authorized to be established. These conditions are central to the Department’s storage program because they assure that taxpayer liabilities can be reduced while still assuring that the Federal government fulfills its obligation to permanently dispose of nuclear waste. The conditions of the agreement include:

1. A requirement that the non-Federal entity be fully licensed by the Nuclear Regulatory Commission;
2. A requirement that non-Federal entities secure approval from state and local stakeholders to operate and store civilian waste;
3. A limitation on the total storage capacity of 10,000 metric tons of SNF; and
4. A final NRC decision on the pending Yucca Mountain licensing proceeding, with the exception of the first MRS⁴⁰ agreement.

Each of these conditions are a direct extension of historical experience and critical for the success of DOE’s nuclear waste program. The first condition will assure that a storage facility will safely operate as required by the Atomic Energy Act, which will instill public confidence in the Department. The second condition will prevent host state opposition from hindering DOE’s ability to store material at the non-Federal entity.⁴¹ The third condition provides host communities surety that a temporary storage site will not become a *de facto* repository, because the total volume of nuclear waste will continue to necessitate the permanent repository program. The fourth condition will both protect nuclear waste appropriations from diversion away from the completion of the Yucca Mountain construction

⁴⁰ Section 103 authorizes the Secretary to enter into “one MRS agreement” before the Commission has issued a final repository decision.

⁴¹ For example, the State of Utah opposed a previously private interim storage initiative undertaken in the 1990’s by Private Fuel Storage.

authorization and reinforce the public confidence that an MRS program will only be a temporary facility.

Congress and the Federal government have repeatedly expressed concern that, absent a requirement that a repository move forward concurrently with an interim storage facility, storage would supplant the disposal requirement. In 1972, the AEC presented a plan known as the Retrievable Surface Storage Facility (RSSF), which was an engineered surface facility to store waste until a permanent repository was available. However, EPA was sharply critical of the plan out of concern that the RSSF concept would make disposal a secondary program. EPA believed the development of an ultimate disposal facility must be the primary goal.

Congress enshrined this policy in the NWPA, by limiting the quantity of SNF stored at an MRS site, mandating the approval of the Yucca Mountain license application prior to MRS facility development, and supported the disposal first project through annual appropriations. John Dingell, the Chairman of the Committee on Energy and Commerce during passage of the NWPA and 1987 Amendments, explained why these policies were critical and included in the law during Committee consideration of the Nuclear Waste Policy Amendments Act of 1999. He stated: “it is in the national interest of the United States to develop an interim storage facility so long as it can be funded adequately and so long as it does not undercut the permanent repository program”⁴² and “above all, we must not inadvertently undermine the permanent repository without which there will be no real disposal solution for utility and defense waste temporarily stored in dozens of States.”⁴³

More recently, the BRC argued that “the challenge of establishing positive linkages such that progress on storage does not undermine, but rather supports progress on repository development remains an important one.”⁴⁴ The “DOE Strategy” also noted that

The Obama Administration also agrees with the BRC that a linkage between opening an interim storage facility and progress toward a repository is important so that states and communities that consent to hosting a consolidated interim storage facility do not face the prospect of a *de facto* permanent facility without consent.⁴⁵

During the Committee markup of the bill,⁴⁶ Rep. Ben Ray Lujan (D NM) noted his support for a strong linkage policy by quoting former New Mexico Senator Jeff Bingaman, who said “interim storage can play an important role in a comprehensive waste management program, but only as an integral part of the repository program and not as an alternative to or *de facto* substitute for permanent disposal.” Rep. Lujan went on to quote the two sitting U.S. Senators from New Mexico, repeating Senator Udall’s comment that “no matter where it is built, I will not support an interim disposal site without a plan for a permanent disposal, whether the

⁴² Committee on Commerce Subcommittee on Energy and Power hearing “*The Nuclear Waste Policy Act of 1999*,” 106th Congress. Serial No. 106–17. February 10, and March 12, 1999.

⁴³ *Ibid.*

⁴⁴ Blue Ribbon Commission on America’s Nuclear Future

⁴⁵ DOE Strategy for the Management and Disposal of Used Nuclear Fuel and High-Level Radioactive Waste.

⁴⁶ Committee on Energy and Commerce markup of H.R. 3053, the Nuclear Waste Policy Amendments Act of 2017. June 28, 2017.

site is in southeastern New Mexico or anywhere else in the country, because that nuclear waste could be orphaned there indefinitely,” and Senator Henrich’s opposition to any interim storage facility until New Mexico is sure there will be a path forward to permanent disposal.

Requiring the NRC to determine whether Yucca Mountain meets all regulatory requirements and can be licensed for construction will help the state and local communities of potential storage sites have an answer to the question posed by the New Mexico Senators. This is particularly notable given New Mexico’s interactions with DOE’s Waste Isolation Pilot Project (WIPP), as well as the current outlook in which the only active NRC interim storage proceeding is proposed to be located in southeastern New Mexico.

The legislation provides a narrow and defined exception for the fourth condition by authorizing DOE to enter into a single agreement prior to completion of the Yucca Mountain construction authorization. The bill directs funding from the general fund and links the authorized funding levels to amounts appropriated from the Waste Fund to protect funding for the completion of the Yucca Mountain license application. The expected length of time to complete NRC’s review of the repository is three to five years⁴⁷ and any remaining Waste Fund activity from fiscal year 2023 through 2025 would be adequate to allow for the MRS agreement to be funded at ten percent of those levels.

While the bill allows limited funding to be directed to the first MRS agreement, it prohibits the shipment of any fuel to the MRS until either NRC has issued a final decision approving or disapproving of the Yucca Mountain construction authorization or if the Secretary of Energy finds such a decision is imminent, submits the finding and issues monthly reports to Congress updating the status of the licensing proceeding. The Committee recognizes the National Association of Regulatory Utility Commissioners’ (NARUC) support for legislative provisions to require a final NRC decision before other aspects of the bill can be implemented.⁴⁸ The potential movement of SNF to an MRS facility runs contrary to the documented support for a strong linkage policy. The limited exception provided in this provision does not authorize a broad perpetual exemption for the Secretary to transport SNF to the MRS, but rather applies to an unforeseen circumstance temporarily delaying the Commission’s issuance of the final decision. It should not be interpreted to endorse any deviation from the Federal government’s policy to dispose of all nuclear waste in a repository.

The Committee received extensive feedback from industry,⁴⁹ communities, and took into account BRC recommendations⁵⁰ that the first MRS agreement should also prioritize the storage of SNF from sites where nuclear power plants have permanently ceased commercial operation. In 2008, DOE published a Congressionally

⁴⁷ Government Accountability Office, “Commercial Nuclear Waste: Resuming Licensing of the Yucca Mountain Repository Would Require Rebuilding Capacity at DOE and NRC, Among Other Key Steps,” GAO-17-340. April 2017.

⁴⁸ Letter from NARUC Executive Director Greg White to Committee on Energy and Commerce Chairman Greg Walden and Subcommittee on the Environment Chairman John Shimkus dated June 22, 2017.

⁴⁹ See, for example, testimony from Mr. Steve Nesbit on behalf of the United States Nuclear Infrastructure Council, Committee on Energy and Commerce Subcommittee on Environment hearing, “H.R. ____, the Nuclear Waste Policy Amendments Act of 2017,” April 26, 2017.

⁵⁰ Blue Ribbon Commission on America’s Nuclear Energy Future.

directed report on a demonstration project for the consolidation of SNF from decommissioned sites that noted that legislation would be required to undertake interim storage in a timely manner.⁵¹ These stranded sites are no longer generating electricity and, in some cases,⁵² only used fuel remains at the sites, limiting use or redevelopment.

The legislation does not require that DOE alter the terms of the Standard Contract, which are established on the principle of oldest fuel first. Under this principle, oldest SNF, or the date from when the fuel is discharged from the reactor, is the highest priority in the acceptance queue.⁵³ The Committee notes that the Department maintains existing authority to rearrange the acceptance priority list and utilities also have the ability to negotiate with DOE or other utilities when such fuel would be delivered to the Department.

While several proposals have been put forth to consolidate commercial SNF, any effort that effectively abdicates DOE's obligation to develop a repository would strand defense waste from disposal. Congress and the Federal government owe those respective communities that have been partners and hosted key national security facilities—such as Hanford, Washington; the Savannah River Site in South Carolina; and southeastern Idaho—the fulfillment of the Federal obligation to clean up those sites. Any interim storage policy that does not require advancement of the repository program would place those communities at a disadvantage because DOE's focus would likely be placed on reducing the overall liabilities, which are not linked to the defense sites.

Sections 105, 106, 107, and 108 make conforming changes to the NWPA to allow for more than one MRS site to be selected, modify the conditions for a DOE-owned MRS facility to be developed, and clarify that certain financial assistance provisions for licensing proceedings only applies to Federal MRS facilities.

Development of a permanent repository

Title II of the legislation addresses issues associated with moving forward with the permanent disposal repository at the Yucca Mountain, Nevada site, as Congress designated in 1987 and affirmed in 2002. The provisions will assist DOE in completing the statutorily required NRC review of the pending license application, protect funding for national security programs, and acknowledge the State of Nevada's concerns regarding transportation routes to the repository site.

⁵¹The report found that pursuing Yucca Mountain was the fastest and best option for fulfilling its NWPA requirements. However, the report noted legislation would be needed "(1) to direct the Department to take spent nuclear fuel from decommissioned commercial nuclear power reactors as soon as possible; (2) to establish an expedited siting process; and (3) to authorize the Department to construct and operate the facility under its regulatory authority, or, if the facility were to be constructed and operated under a [NRC] license, to provide for an expedited siting and licensing process." DOE, "Report to Congress on the Demonstration of the Interim Storage of Spent Nuclear Fuel from Decommissioned Nuclear Power Reactor Sites." DOE/RW-0596. December 2008.

⁵²There are currently 16 power reactors in the decommissioning process or are full decommissioned. Eight more plants have announced the sites will permanently cease operation by 2024.

⁵³Settlements for damages as a result of the partial breach of contract are calculated on the "oldest fuel first" policy, which are based on DOE's Acceptance Priority Ranking and Annual Capacity Report. For example, see Department of Energy, "Acceptance Priority Ranking & Annual Capacity Report," July 2004. Accessible at: https://curie.ornl.gov/system/files/documents/not%20ye%20assigned/Acceptance%20Priority%20Ranking%20%26%20Annual%20Capacity%20Report_0.pdf.

As previously noted, completing the NRC's review will help inspire public confidence in the repository by having Nevada's contentions adjudicated and ruled on by independent safety judges and regulatory staff.

Section 201 permanently withdraws the land at the site for use by DOE for repository operations.⁵⁴ NRC staff noted DOE has not yet demonstrated the repository site would be used for any other purpose over the course of the project.⁵⁵ This section will fulfill NRC's requirement. All authority within the withdrawal is vested in the Secretary of Energy.

Section 201(e)(2)(C) requires the Secretary to develop a management plan for use of the withdrawal. In developing the management plan, the Secretary shall consult with the Secretary of Air Force regarding the portion of the withdrawal within the Nellis Air Force Base Test and Training Range. Nothing in this legislation affects previous usage agreements between DOE and the Air Force. To address previous concerns from the Air Force, DOE selected a preferred route that would not impact operations at the base.

The legislation limits the requirements of the Solid Waste Disposal Act for material that is transported to the repository or for disposal in the repository. This provision will provide DOE optionality to dispose of "mixed waste" material or material that contains material regulated both under the Atomic Energy Act as well as hazardous waste under the requirements of the Solid Waste Disposal Act. This provision does not change existing requirements applied to the regulation of the material or state permitting authorities.

The land withdrawal provisions only become effective if the Commission issues a final decision approving a construction authorization to DOE for the Yucca Mountain repository, except for provisions describing the withdrawal's boundary, the material requirements, and definitions.

The legislation updates certain application procedures associated with NRC's consideration of the pending Yucca Mountain construction authorization. For example, the NWPA mandated the NRC complete the review of the construction authorization within three years of DOE's submission. However, due to the Obama Administration's attempts to withdraw the license application and DOE not being a willing applicant, the deadline is no longer applicable. The legislation updates this requirement to provide NRC 30 months after the date of the bill's enactment to issue a final decision on the construction authorization.

If the Commission approves the construction authorization, the legislation provides for the use of informal hearing procedures to amend the authorization to minimize potentially burdensome processes. This provision does not apply to NRC's regulations required to issue a receive and possess license.

The legislation authorizes DOE to undertake activities at and surrounding the site to develop supporting infrastructure. Such activities may assist DOE in preparing the site in a more expeditious

⁵⁴The legislation is substantially the same as language that was submitted to Congress in 2007 by DOE.

⁵⁵See testimony from Josephine Piccone, Director of NRC's Yucca Mountain Directorate at Subcommittee on Environment and the Economy hearing, "Update on the Current Status of Nuclear Waste Management Policy," May 15, 2015.

manner to construct, license and operate the repository. Any supporting infrastructure activities may not be grounds for the NRC to disapprove of the construction authorization. Section 203 affirms that enactment of the legislation does not require the Secretary to modify or amend the pending license application.

Section 204 prohibits DOE from conducting any activity in support of a defense-waste only repository until the NRC has issued a final decision on the Yucca Mountain construction authorization. The development of the Yucca Mountain repository is the quickest path to dispose of our nation's HLW from atomic energy defense activities. Further, a single common repository allows the commercial ratepayers and defense budget accounts to share the overall cost of developing a disposal facility. To date, American taxpayers, through national defense accounts to pay for nuclear waste disposal, have paid \$3.7 billion towards Yucca Mountain,⁵⁶ in addition to the expenditures from the Nuclear Waste Fund. The Committee heard from witnesses on the importance of continuing to share repository costs for disposal of both commercial and government SNF and HLW.⁵⁷

Section 205 recognizes the concerns raised by Nevada stakeholders regarding the shipment of SNF or HLW through population centers. In hearings during the 114th Congress and during the legislative hearing in April 2017, some Members of Congress representing Nevada objected to moving forward with the repository under the existing NWPA framework.⁵⁸ Among the identified concerns was the potential impact on tourism due to transportation through Clark County, Nevada. DOE has previously conducted substantial research on potential transportation routes and identified a preferred transportation route that largely avoids Las Vegas. However, the legislation acknowledges these concerns through the Sense of Congress.

Transfer of ownership to the Department of Energy

Title III authorizes DOE to modify the existing contracts to take title to SNF to go also to an MRS facility, with a priority placed on sites that have permanently ceased commercial operation. Currently, the Standard Contract governing the Department's legal obligations for SNF are conditioned on DOE taking title for disposal. The legislation should not be interpreted to require a change in contract; however, based on DOE's existing authority and in agreement with the contract holder, the intent of the section is to encourage the Department to prioritize decommissioned SNF to MRS facility.

The provision is not intended to permit DOE to take title to SNF at the existing sites. The Committee received testimony expressing the concern that DOE would take ownership to the SNF without moving the used fuel offsite.⁵⁹ The legislation supports the "deliv-

⁵⁶Letter from Secretary of Energy Ernest Moniz to Committee on Energy and Commerce Chairman Fred Upton, May 15, 2015.

⁵⁷See Mr. Steve Nesbit, on behalf of NIC, "We are very much in favor of [Section 205.] I think it is a win-win for both the customers of nuclear-generated electricity, the burden that they bear, and the taxpayers who bear the burden of funding the disposal of so-called defense waste."

⁵⁸Committee on Energy and Commerce Subcommittee on Environment and the Economy hearing "Federal, State, and Local Agreements and Associated Benefits for Spent Nuclear Fuel Disposal," July 7, 2016 and "H.R. _____, the Nuclear Waste Policy Amendments Act of 2017."

⁵⁹The Honorable Anthony J. O'Donnell, Commissioner, Maryland Public Service Commission, Chairman, NARUC Subcommittee on Nuclear Issues—Waste Disposal. Testimony on behalf of

ery and acceptance” policy that the Department only satisfies its obligations to take title to SNF when the SNF is removed from the site.

State and local engagement and benefits

A constructive dialogue with the repository host State will help foster trust and improve nuclear waste management program execution. Nevada’s position in opposition to the repository has delayed the facility by decades, resulted in numerous legal challenges, and cost American taxpayers tens of billions of dollars. While the most important path for Nevada is the opportunity to adjudicate the State’s contentions on the pending construction authorization, the legislation seeks to provide an opportunity for Nevada, and its counties, to discuss a path forward.

Title IV of the legislation amends Subtitle F and Subtitle G of the NWPA to allow Nevada to benefit as the repository host State, updates the benefits schedule, enables Nevada counties to directly enter into benefits agreements with DOE, provides for additional non-financial benefits, and makes conforming changes to the NWPA.

While Congress afforded Nevada the opportunity to enter into a benefits agreement, Nevada did not want to create any appearance that it supported the site selection and refused to discuss potential benefits. Section 401 clearly states that entering into a benefits agreement is not an expression of consent. This provision should assure the State that it does not waive its right to adjudicate contentions on the pending license application or any future activity because it engages with DOE for the purposes of entering into a benefits agreement.

The bill updates the amount of funding available through the benefits schedule as described in Section 171(a)(1) of the NWPA. The legislation increases the amount of the annual payments to the State prior to arrival of first spent fuel from \$10 million to \$15 million; the amount upon first spent fuel receipt from \$20 million to one percent of the balance of the Nuclear Waste Fund on the date of enactment of the legislation, which would currently total approximately \$375 million; and the amount for annual payments after first spent fuel receipt until the closure of the facility to one tenth of one percent of the current balance of the Nuclear Waste Fund, which would currently total approximately \$37 million each year and nearly \$4 billion over the course of the repository project.

The significant increase in the level of funding when first spent fuel arrives more accurately reflects the increased cost to the Federal government of inaction. The funding of first spent fuel receipt and annual payments thereafter would not be subject to appropriation to assure Nevada that the money would be available. This will help the State plan accordingly during the budget development process. This level of funding is a baseline. The section allows DOE and the State to negotiate a higher level of funding, if documented and justified.

the National Association of Regulatory Utility Commissioners before the United States House of Representatives Committee on Energy and Commerce Subcommittee on Environment, “*H.R.* the Nuclear Waste Policy Amendments Act of 2017. April 26, 2017. See also letter from NARUC Executive Director Greg White, NARUC has “one significant concern: section 301’s discussion of the requirements for DOE to take title to waste should be clarified to assure that DOE cannot simply ‘take title’ of waste where it is currently being stored.”

The bill sets restrictions on the funding set forth in the benefits schedule. These restrictions limit the State from using Federal funding to oppose Department and Federal government repository activities. Waste Fund money may not be used for activities that are contrary to the purpose of the Nuclear Waste Policy Act.

Additionally, the legislation amends the required components of the benefits agreement by striking section 171(b)(2), which required the State to waive its rights to disapprove of the recommendation of the site for a repository. As previously noted, Nevada refused to waive its rights to disapprove of the site recommendation in order to receive limited benefits agreement funding. Striking this paragraph requalifies the State to enter into a benefits agreement.

Section 403 adds a new section to the NWPA to authorize the Secretary of Energy to enter into a benefits agreement with a covered unit of local government. The NWPA authorized only one benefits agreement for a repository that was to be entered into with the State of Nevada. Further, the benefits agreement between Nevada and DOE required the State to transfer not less than one-third of the amount of the payment to affected units of local government (AULG), as defined by the NWPA.⁶⁰ Because of the State's refusal to discuss benefits with DOE, affected units of local government were negatively impacted. Adding this new section would remedy this situation by enabling dialogue directly between DOE and Nevada counties.

Prior to entering into an agreement under the new section 172A, the required report under section 175(b) must be completed. Completing this report will provide a basis to inform the total funding level subject to the benefits agreement. These agreements must be based on realistic potential impacts and it is expected that these agreements will not be uniform, but tailored to the respective potential impact of repository activities undertaken by the Department. Under this rationale, it is expected that Nye County would receive the most robust agreement, followed by Lincoln and Clark Counties.

For the purposes of this section, the bill defines covered units of local government to include both affected units of local government, as defined by the Act, but also all units of general local government in the State of Nevada. This qualifies an additional seven counties to negotiate agreements with DOE.

The legislation provides the same restrictions on funding to covered units of local government that are on the funding authorized under section 171 benefits agreements; Federal money cannot be used to oppose or contravene the development of the repository. Additionally, because these agreements would directly support repository efforts, the Waste Fund is authorized to fund the agreements.

The legislation amends section 170 to note that only one agreement with the State of Nevada may be in effect at one time, but does not prohibit the Secretary from negotiating multiple benefits agreements with State under section 170 and covered units of local government under section 172A. The Secretary should balance the need to advance constructive conversations with State and local

⁶⁰ DOE recognizes ten affected units of local government including Mineral County, Lander County, Churchill County, Lincoln County, Eureka County, Nye County, White Pine County, Clark County, Esmeralda County, and Inyo County (CA).

stakeholders with the total financial needs to be supported through the Waste Fund.

The benefits agreements are terminated if the NRC disapproves of the construction authorization for the repository.

While the focus of the benefits agreements under sections 170 and section 172A is on financial transactions, benefits agreements should not be limited solely to financial compensation. DOE and Nevada should identify other opportunities to ensure that the items identified in the section 175 report may be addressed. Doing so will establish more durable partnerships.

Section 405 inserts a new section into the NWPA to require expenditures that the Secretary authorizes from the Waste Fund for institutions of higher education to be prioritized to institutions located in the host State. If Waste Fund money to develop a repository is to go to universities, Nevada universities should receive that money to help develop academic expertise and programs.

The legislation requires a portion of potential future economic benefits from used fuel to be reserved to the State to further compensate Nevada for hosting the facility. While reprocessing spent nuclear fuel is currently not cost effective in the United States, if such a program is pursued in the future, Nevada would further benefit. The legislation does not dictate what percentage of value should be provided to the State; however, the Secretary, in consultation with the Governor and the Review Panel established by section 172, shall determine the terms of compensation.

Congress required the Secretary to report to Congress on the potential impacts of locating a repository at the Yucca Mountain site within one year of the Nuclear Waste Policy Amendments Act of 1987. The Secretary submitted this report to Congress in 1988; however given the considerable advancement in the repository program and developments in Nevada, the conclusions of the original report may be out of date.⁶¹ The potential impacts to be examined are wide ranging and include impacts on education, public health, law enforcement, fire protection, medical care, distribution of public lands, vocational training and employment services, social services, transportation, emergency preparedness personnel, availability of energy, tourism and economic development, and any other needs associated with the construction, operation, and eventual closer of the repository facility. Section 407 of the legislation requires the Secretary provide a report directed under section 175(a) of the NWPA within one year after enactment of the bill.

While benefits agreements will not replace the State's interest in assuring the protection of public health and safety of Nevadans, the combination of provisions within this legislation give the opportunity to be appropriately compensated for hosting the repository.

Financing and funding of Nuclear Waste Management Program

As noted above, Congress set up the nuclear waste management program as a "fee for service" model in which the consumers of nuclear energy paid a fee through nuclear power utilities to fund a disposal program. However, this model never fully functioned as in-

⁶¹ U.S. Department of Energy, Office of Civilian Radioactive Waste Management, "Section 175 Report; Secretary of Energy's Report to the Congress Pursuant to Section 175 of the Nuclear Waste Policy Act, As Amended," December 1988.

tended. This resulting model has severely hampered the Department's program and ability to dispose of used fuel.

Title V of the legislation reforms portions of this financing mechanism to more equitably treat ratepayers, provide certainty to DOE's program management, and make it easier for Congress to appropriate Nuclear Waste Fund money for its intended purposes, without taking resources away from other priority programs across the Federal government.

Managing a multi-generational infrastructure project poses major challenges for assuring that adequate funding is available to the program when needed. Predictable and sufficient funding levels are imperative not just to help the Department, but also for all authorized uses under the NWPA, including funding for AULGs and Nevada to participate in the licensing process, for Payments Equal to Taxes (PETT), for state and local transportation stakeholders, and for benefits agreement authorized under Subtitles F and G. The availability of funding is central to the program's success.

The Nuclear Waste Fund currently maintains a balance of approximately \$37 billion and the value increases annually, even over the previous three years when no new fees were being collected, because the NWPA required DOE to invest in U.S. Treasury bonds to generate interest to capture the time value of money. Congress recognized that spent fuel generated today would be managed over decades, thus requiring that money provided to the Federal government should generate interest. In Fiscal Year 2016, approximately \$1.4 billion in interest was generated according to DOE's Annual Financial Report.^{62 63}

Meanwhile, as payments to the Fund were collected the revenue was directed towards deficit reduction or to offset deficit spending of other government programs. Therefore, while there is a separate accounting of the Nuclear Waste Fund (currently about \$37 billion), OMB has already allocated the value of those receipts under its unified Federal budget scoring method.

DOE access to the existing balance of the Fund is critical. Because the current balance of the Fund increasing annually, the Fund will continue to grow at an appreciable rate. Absent the assurance that DOE will spend the previously collected money, DOE may face challenges restarting collection of the fee. If DOE is prohibited from restarting the fee, no new revenue from Fund payments will be realized by the U.S. Treasury. This, under OMB and CBO accounting rules, would worsen our Federal deficits.

Throughout the oversight and legislative hearings, the Committee consistently heard about the need to address the funding mechanism. In December 2015, the Committee received expert testimony regarding the complexities of the fee collection, the Federal accounting of the money, and usage of the Fund. The Committee's legislative hearing on the discussion draft also included extensive

⁶² Department of Energy, "Fiscal Year 2016: Agency Financial Report," DOE/CF-0128. November 15, 2016.

⁶³ The Congressional Budget Office does not recognize interest as revenue realized by the U.S. Treasury or to the Nuclear Waste Fund, but rather is considered as an intergovernmental transfer. For more information, see Congressional Budget Office testimony from December 3, 2015 Subcommittee on Environment and the Economy hearing.

support for the provisions to reform the fee collection, the budgetary treatment of the account, and the usage of the Waste Fund.⁶⁴

Title V addresses three funding challenges: (1) near-term funding while the pending Yucca Mountain construction authorization is adjudicated and approved or disapproved; (2) resolving the mismatched accounting applications between mandatory receipts and discretionary outlays when the fee is restarted; and, (3) making a portion of the previously collected funding available to the Department over the repository program's lifecycle. Each of these provisions have equal importance and will help sustain a program moving forward.⁶⁵

First, the legislation prohibits DOE from resumption of the fee until the NRC makes a final decision approving or disapproving of the pending Yucca Mountain construction authorization. While the previous Administration terminated the Yucca Mountain program, shuttered OCRWM, sought to withdraw the license application, and established the BRC, ratepayers continued to pay over \$750 million annually to the Waste Fund, specifically for activities authorized by the NWPA. However, DOE's activities ran contrary to the NWPA. The ratepayer fee collections continued until the D.C. Circuit Court of Appeals ordered DOE to stop collection, determining that there was no basis to justify the fee collection.⁶⁶

During this period, approximately two and a half billion dollars in fees were paid to the Waste Fund.⁶⁷ While a significant balance exists in the Fund, the repository program has been stalled for almost eight years.⁶⁸ Ratepayers must see tangible progress on waste management before reinstatement of the fee. The legislation thus prohibits DOE from resuming fee collection⁶⁹ until the NRC makes a final decision approving or disapproving the issuance of the construction authorization. GAO reported the completion of the licensing process would take between three and five years.⁷⁰

Once the Commission has issued a final decision on the Yucca Mountain construction authorization, DOE is authorized to resume fee collection. However, the legislation will address an underlying

⁶⁴ O'Donnell testimony, "H.R. _____, the Nuclear Waste Policy Amendments Act of 2017," and letter from Greg White, Executive Director, NARUC, to Chairman Greg Walden.

⁶⁵ See Subcommittee on Environment hearing on April 26, 2017. Congressman Flores asked the witnesses if the provisions to reform the NWF and financing mechanisms are an important improvement from the existing mechanism. Mr. Sproat answer "yes." Mr. O'Donnell said the provisions would help enable a program to properly fund nuclear waste management activities and Mr. Nesbit also agreed it would help the program.

⁶⁶ *NARUC v. United States Department of Energy* No. 11-1066, United States Court of Appeals for the District of Columbia Circuit. The notable opinion stated, DOE's analysis that the costs of disposal could run between a \$2 trillion deficit and a \$4.9 trillion surplus "reminds us of the lawyer's song in the Musical 'Chicago,'—'Give them the old razzle dazzle.'"

⁶⁷ See U.S. Department of Energy Office of Inspector General, Office of Audits & Inspections, "Audit Report: Department of Energy's Nuclear Waste Fund's Fiscal Year 2011 Financial Statements," OAS-FS-12-03. November 2011. Further OIG Audits for Fiscal Years 2012, 2013, 2014, and Fiscal Year 2015.

⁶⁸ Since May 2014, when the fee collection was halted, the Office of Management and Budget (OMB) and Congressional Budget Office (CBO) has continued to include fee receipts in annual and semi-annual budget projections. According to DOE, OMB and CBO projected \$1.41 billion in estimated total NWF receipts since the fee was set to zero in 2014. The actual level of NWF receipts under section 302(a)(2) during this time period was zero dollars. See: Letter from Energy Secretary Rick Perry to Environment Subcommittee Chairman John Shimkus, dated October 2, 2017.

⁶⁹ The legislation does not address whether DOE can begin assessing the fee prior to NRC's final decision. It is the Committee's expectation that DOE would not make an assessment until the final decision has been made due to the uncertainties that are associated with the Commission's decision.

⁷⁰ Government Accountability Office, "Commercial Nuclear Waste: Resuming Licensing of the Yucca Mountain Repository Would Require Rebuilding Capacity at DOE and NRC, Among Other Key Steps," GAO-17-340. April 26, 2017.

problem with the current funding set up with receipts classified as mandatory revenue, while expenditures are categorized as discretionary. The bill does so by bifurcating the “fee adequacy” determination by the Secretary into an assessment process and fee collection procedures.

Prior to resumption of the fee, the Secretary must complete a lifecycle cost estimate for the repository program to determine how much funding will be required to support the 120-year project. This total assessed value⁷¹ must be accounted for with respective commercial operating reactors and must be available to be collected when DOE demands payment.⁷² Once the assessment is complete, the Secretary must develop a process for the resumption of fee collection.

Following the assessment and establishment of a collection process, the legislation limits the total amount collected on an annual basis to 90 percent of the appropriation. The collection is intended to help offset annual appropriations from the existing Fund corpus and thus limit the overall impact on budget allocations subject to annual caps, while also protecting ratepayers from having to pay the Federal government if DOE is not actively fulfilling the requirements of the NWPA. The Committee heard strong support for this provision to protect ratepayers,⁷³ as well as the need to address this issue from former OCRWM officials.⁷⁴ The Appropriations Committee also retains authority to access the balance in the Fund.

The legislation amends the authorized usage of the Waste Fund by removing monitored retrievable storage from section 302(d) of the NWPA. This restriction only applies to the MRS agreements authorized in Title I, or Subtitle C of the NWPA.⁷⁵ The Committee is concerned about increasing financial demands on the Waste Fund, which would require an increased assessment and collection on ratepayers going forward. At the Committee’s legislative hearing, the Committee received testimony that previous DOE analysis of interim storage would impose additional costs and require a higher fee.⁷⁶ Currently, the fleet of commercial nuclear power plants are facing economic challenges partially due to market impacts. The Committee is concerned that forcing new costs onto the industry relating to storage would worsen the economic outlook for nuclear power plants.

⁷¹The legislation does not state whether or not the assessment will generate interest during the period between assessment and collection. The Secretary has the authority to make that decision as part of the assessment and must take the decision into account as part of the lifecycle cost analysis.

⁷²Note Standard Contract currently governs the relationship between DOE and utilities, but there is authority to have conversation by all parties that could allow the Contract to be renegotiated. To fix a broken system, need to fix the underlying contract.

⁷³NARUC Executive Director Greg White letter to Environment Subcommittee Chairman Shimkus on June 22, 2017, “section 504 assures that the Secretary can only collect, through fees, 90 percent of amounts appropriated for any fiscal year—assuring any fees collected going forward are immediately available to the Secretary for waste-related activities. If the NWF fee is restarted, this provision is absolutely crucial.”

⁷⁴When asked about the most critical provision in the legislation, Ward Sproat, former Director of OCRWM, said “the very first or top priority is about getting the issues associated with the [NWF] fixed . . . so getting the issue around the [NWF] and the mismatch between the mandatory receipts and discretionary appropriations I would say is probably the top priority.”

⁷⁵Title I of H.R. 3053 authorizes expenditures for MRS agreements from the general fund and subject to appropriations.

⁷⁶See DOE, “Report to Congress on the Demonstration of the Interim Storage of Spent Nuclear Fuel from Decommissioned Nuclear Power Reactor Sites.” DOE/RW-0596. December 2008.

Prohibiting Waste Fund expenditures for MRS facilities also will ensure that DOE remains focused on the overall disposal policy of the NWPA. The Committee recognizes that nuclear waste management programs cannot be entirely delineated between MRS and permanent disposal; the system must be integrated. The legislation does not prohibit the Fund from being used for overall management activities and other activities such as transportation to an MRS, so long as those activities are integrated into a permanent disposal program.

Section 503 amends the NWPA to require DOE to update its budgetary projections annually, rather than the current requirement for a triannual update. Under the revised collection method, which would likely result in collections increasing or decreasing depending on program need and Congressional appropriation, it is important for Public Service Commissions and utilities to have a reasonable expectation of near-term collection amounts. Requiring DOE to update projections annually will allow for more transparency in the collection process, subject to appropriation.

As previously discussed, it is critical for DOE to have access to the previously collected funding in a predictable manner, while still assuring Congress can annually conduct program management. To achieve this policy goal, section 504 makes certain amounts of the Fund available to DOE for specified purposes over the course of the project.⁷⁷ These amounts will ensure that the program has a minimal level of funding for some basic operations at the repository, while still ensuring Congress can exercise annual oversight of the program. The bill makes the following amounts available, not subject to future appropriation:

- One percent of the balance of the Fund on the date of enactment, available to the State of Nevada when first SNF arrives at the site. That amount would currently equal approximately \$370 million.

This provides a baseline of funding, but does not prohibit DOE and Nevada from having additional funding pursuant to the benefits agreements.

- One tenth of one percent of the balance of the Fund on the date of enactment available to the State of Nevada for each fiscal year for the course of the project until the site is closed. That amount is approximately \$37 million annually.

This provides a baseline of funding, but does not prohibit DOE and Nevada from having additional funding pursuant to the benefits agreements.

- One percent of the balance of the Fund on the date of enactment available to DOE starting in the first fiscal year in which SNF or HLW is received at the repository site and for the 25 years thereafter, available only for the purposes of repository operations at the site. This funding shall not be used for transportation, program management, or associated Fund costs. The additional annual funding required to manage the program must be appropriated by Congress.

⁷⁷ See examples from April 26, 2017 Subcommittee on Environment hearing. Mr. Anthony O'Donnell stated the provision "is essential to the central component from NARUC's perspective on this draft legislation." Mr. Sproat said "whatever the legislation that is required to be able to give the Department access to the corpus of the fund as well as the interest being generated on the fund in a manner that meets the construction, the optimum construction expenditure profile, needs to be figured out how to do that."

This funding, approximately \$370 million annually, would prevent future political interference through the appropriations process.

The most recent Total System Life Cycle Cost Report (TSLCC) for the Yucca Mountain program estimated that the repository's operational costs would be between \$756 million and \$877 million during the first 25 years of operation.⁷⁸ The funding under this bill will need to be supplemented through the appropriations process.⁷⁹

- Twenty percent of the balance of the Fund, approximately \$7.4 billion, on the date of enactment available to DOE to acquire, install, and manage drip shields during the decommissioning phase.

Installation of titanium drip shields during the project's decommissioning phase is a key engineered barrier component of the repository design to protect groundwater flow. This phase is expected to be initiated about 75 years after the repository begins operations and immediately precedes the closure of the site. Making this funding available will assure host communities and regulators that DOE will move forward with this design in the future.

The 2008 TSLCC estimated the cost for waste package and drip shield fabrication to total approximately \$7.6 billion throughout this phase of the project. The funding under this bill will need to be supplemented through the appropriations process.

The legislation also makes available to DOE, without further appropriation, what are known as "one-time fees," fees that utilities had deferred payment as authorized by the NWPA.⁸⁰ The purpose of this provision is to help DOE manage the expected spike in costs that will accompany the project during the construction phase. The 2008 TSLCC projected costs during the construction phase to spike over \$1.9 billion annually, with appropriations over \$1 billion required for a decade during construction of the facility, the Nevada Transportation Project, and for associated transportation activities. This mechanism will allow Congress additional flexibility to direct limited funding to other program components and limit the potential to require significant fee collection. Similar to the funding for repository operations after first spent fuel is received at the site, this money may only be used for costs associated with the repository to assure that specific, discrete costs are covered while annual appropriations for program direction and oversight will still be necessary.

Miscellaneous program provisions

Title VI of the legislation addresses miscellaneous provisions to improve the management and execution of DOE's nuclear waste

⁷⁸ Department of Energy, "Analysis of the Total System Life Cycle Cost of the Civilian Radioactive Waste Management Program, Fiscal Year 2007," DOE/RW-0591, July 2008.

⁷⁹ For a full understanding of the annual Yucca Mountain projections, see Appendix B, "Annual Cost Profile," of the DOE TSLCC. Figure B1 and Table B1 compile the expected costs from 1983 through 2133. These projections are the most credible and detailed analysis for the repository program and relied upon to inform the legislation. The Committee notes that while a 130-year cost profile of \$96 billion appears significant, the existing liabilities due to inaction already total nearly \$30 billion in less than 20 years of partial breach of contract. The annual cost of inaction and associated litigation exceeds the annual cost to develop, construct, operate, decommission, and close the Yucca Mountain repository.

⁸⁰ See NWPA section 302(a)(3), "For [SNF or HLW] derived from [SNF], which fuel was used to generate electricity in a civilian nuclear power reactor prior to the application of the [annual fee] to such reactor, the Secretary shall, not later than 90 days after the date of enactment of this Act, establish a 1 time fee per kilogram of heavy metal in [SNF or HLW]."

program and reflects amendments adopted during the Committee's consideration of the bill.

The legislation requires EPA to decide whether generic repository standards developed over 35 years ago, and required by the NHPA, should be updated.⁸¹ However, this initial examination is delayed until after the NRC has made a decision on the pending construction authorization. Near-term resources should be directed towards completing that process and any standards relating to generic repository would only be necessary after Yucca Mountain begins operations.

This section does not affect the existing Yucca Mountain site specific standards under 10 CFR Part 63, promulgated as a result of EPACT 1992.⁸² NRC will consider all licensing proceedings and related regulatory activities for the Yucca Mountain repository under those existing standards.

Section 602 strikes section 135(h) of the NHPA, which states:

[N]othing in the Act shall be construed to encourage, authorize, or require the private or Federal use, purchase, lease or other acquisition of any storage facility located away from the site of any civilian nuclear power reactor and not owned by the Federal Government [on the date of NHPA enactment.]

This section makes a conforming change to align with the authority under Title I of the legislation, which provides DOE authority to enter into an MRS agreement to store SNF with a non-Federal entity.

The Committee received testimony discussing challenges associated with state and local stakeholders to adequately plan for the transportation of spent nuclear fuel.⁸³ Section 180(c) of the NHPA authorizes DOE to provide grants to help with the safe and secure transport of shipments. However, DOE has previously interpreted section 180(c) to authorize only training funding, rather than financial assistance for operational safety when the transportation campaign is initiated. Mr. Kelly Horn, on behalf of the Midwestern Radioactive Materials Transportation Committee of the Council of State Governments, noted that DOE's narrow interpretation would limit the effectiveness of the funds.⁸⁴ The legislation acknowledges the potential negative impact and financial stress on state transportation organizations and clarifies the allowable use of DOE grants to plan for SNF and HLW transportation activities.

The legislation amends the Department of Energy Organization Act to transfer all the responsibilities currently assigned to the Assistant Secretary responsible for nuclear waste management⁸⁵ to the OCRWM Director and to reassert the need to designate OCRWM as the specific, dedicated office in DOE to manage its nu-

⁸¹The BRC made a number of recommendations for developing future disposal facility standards, including closer coordination of EPA and NRC regulations, be based on scientifically possible and reasonable compliance, and be defined as performance standards are developed.

⁸²NRC's regulations for Yucca Mountain are under 10 CFR Part 63, while the generic repository standards are under 10 CFR Part 60.

⁸³Committee on Energy and Commerce Subcommittee on Environment and the Economy, "Transporting Nuclear Materials: Design, Logistics, and Shipment," October 1, 2015.

⁸⁴Mr. Kelly Horn, testimony before the Committee on Energy and Commerce Subcommittee on Environment and the Economy hearing, "Transporting Nuclear Materials: Design, Logistics, and Shipment," October 1, 2015.

⁸⁵There is not currently, nor has there ever existed a DOE Assistant Secretary for Nuclear Waste Management.

clear waste program. When the Secretary of Energy closed OCRWM in 2010, citing authority under the Department of Energy Organization Act, all nuclear waste activities were transferred to DOE's Office of Nuclear Energy. Managing DOE's nuclear waste should not compete with other high-priority activities that are overseen as part of DOE's commercial civilian nuclear energy activities.

As part of the legislation to reestablish OCRWM, section 603 establishes a five-year, fixed-term appointment for the OCRWM Director. In doing so, the Department's nuclear waste management program will gain continuity throughout presidential administrations, which is important for State and local stakeholders. A fixed-term will also elevate the position to inspire confidence in potential candidates who must be nominated by the President and confirmed by the Senate.⁸⁶ The key quality is project management for a director because of the many different program elements that are critical for program success.

The bill allows for the Director to be re-nominated for an additional five-year term and allows the Director to continue to serve while the Senate considers a pending nomination. This provision is intended to avoid repeated vacancies that plagued the program through various points of OCRWM's history. Acting Directors lack the full credibility and authority of a Senate-confirmed Director. However, providing for a sitting Director to continue to serve does not obviate the need for timely nomination and confirmation.

The President may remove the Director for inefficiency, neglect of duty, or malfeasance in office. Congress shall be notified if the President decides to remove the Director.

During the Committee on Energy and Commerce markup on H.R. 3053, the legislation was amended to include section 605 to require the Administrator of the Environmental Protection Agency to submit a report to Congress on the final remedy to be implemented at the West Lake Landfill and the expected timeline.

The Committee also adopted two amendments to prohibit sub-seabed or ocean water disposal of spent fuel and a Sense of Congress that the Governments of the United States and Canada should not allow for permanent or long-term storage of spent nuclear fuel or other radioactive waste near the Great Lakes. The intent of the entire legislation is to provide a disposal pathway to the Yucca Mountain site and therefore, transport spent nuclear fuel from existing sites surrounding the Great Lakes to the deep, geologic repository.

COMMITTEE ACTION

On April 26, 2017, the Subcommittee on Environment held a hearing on H.R. 3053. The Subcommittee received testimony from:

- Dean Heller (NV), Member, U.S. Senate;
- Ruben Kihuen (NV), Member, U.S. House of Representatives;
- Dina Titus (NV), Member, U.S. House of Representatives;

⁸⁶ A total of six Senate-confirmed OCRWM Directors served in the position from the establishment of the office in 1983 through 2009, when the office was closed. Throughout this time period, the position was consistently filled with an Acting Director. In many cases, the tenure lasted considerably less than the four-year term of a Presidential Administration. For example, John Bartless was confirmed by the Senate on April 5, 1990, Ivan Itkin was confirmed on November 19, 1999, and Edward Sproat was confirmed on May 26, 2006.

- Jacky Rosen (NV), Member, U.S. House of Representatives;
- Joe Wilson (SC), Member, U.S. House of Representatives;
- Ward Sproat, former Director, Office of Civilian Radioactive Waste Management, Department of Energy;
- Anthony O'Donnell, Chairman, Nuclear Issues Subcommittee, National Association of Regulatory Utility Commissioners;
- Ed Lyman, Senior Scientist, Global Security Program, Union of Concerned Scientists;
- Steven P. Nesbit, Chairmen, Backend Working Group, Nuclear Infrastructure Council; and,
- Mark McManus, General President, United Association.

Additionally, in the 114th Congress, the Committee heard from 37 witnesses over the course of 9 hearings which discussed components of a nuclear waste management program and associated challenges. These include:

- Subcommittee on Energy and Power, “The Fiscal Year 2016 Department of Energy Budget,” on February 9, 2015;
- Subcommittee on Energy and Power, “The Fiscal Year 2017 Department of Energy Budget,” on February 29, 2016;
- Subcommittee on Energy and Power and Subcommittee on Environment and the Economy “Oversight of the Nuclear Regulatory Commission,” on September 9, 2015;
- Subcommittee on Energy and Power and Subcommittee on Environment and the Economy “Fiscal Year 2017 Nuclear Regulatory Commission Budget,” April 18, 2016;
- Subcommittee on Environment and the Economy, “Update on the Current Status of Nuclear Waste Management Policy,” on May 15, 2015;
- Subcommittee on Environment and the Economy, “Transporting Nuclear Materials: Design, Logistics, and Shipment,” on October 1, 2015;
- Subcommittee on Environment and the Economy, “Update on Low-Level Radioactive Waste Disposal Issues,” on October 28, 2015;
- Subcommittee on Environment and the Economy, “The Nuclear Waste Fund: Budgetary, Funding, and Scoring Issues,” on December 3, 2015; and
- Subcommittee on Environment and the Economy, “Federal, State, and Local Agreements and Associated Benefits for Spent Nuclear Fuel Disposal,” on July 7, 2016.

On June 15, 2017, the Subcommittee on Environment met in open markup session and forwarded the Committee Print entitled “Nuclear Waste Policy Amendments Act of 2017,” without amendment, to the full Committee by a voice vote. H.R. 3053 was introduced on June 26, 2017, and was substantially similar to the Committee Print forwarded by the Subcommittee. On June 28, 2017, the full Committee on Energy and Commerce met in open markup session and ordered H.R. 3053, as amended, favorably reported to the House by a record vote of 49 yeas and 4 nays.

COMMITTEE VOTES

Clause 3(b) of rule XIII requires the Committee to list the record votes on the motion to report legislation and amendments thereto.

The following reflects the record votes taken during the Committee consideration:

**COMMITTEE ON ENERGY AND COMMERCE -- 115TH CONGRESS
ROLL CALL VOTE # 34**

BILL: H.R. 3053, Nuclear Waste Policy Amendments Act of 2017

AMENDMENT: A motion by Mr. Walden to order H.R. 3053 favorably reported to the House, as amended.
(Final Passage)

DISPOSITION: AGREED TO, by a roll call vote of 49 yeas and 4 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Walden	X			Mr. Pallone	X		
Mr. Barton	X			Mr. Rush	X		
Mr. Upton	X			Ms. Eshoo	X		
Mr. Shimkus	X			Mr. Engel		X	
Mr. Murphy	X			Mr. Green	X		
Mr. Burgess	X			Ms. DeGette	X		
Mrs. Blackburn	X			Mr. Doyle	X		
Mr. Scalise				Ms. Schakowsky		X	
Mr. Latta	X			Mr. Butterfield	X		
Mrs. McMorris Rodgers	X			Ms. Matsui	X		
Mr. Harper	X			Ms. Castor	X		
Mr. Lance	X			Mr. Sarbanes	X		
Mr. Guthrie	X			Mr. McNerney	X		
Mr. Olson	X			Mr. Welch	X		
Mr. McKinley	X			Mr. Lujan		X	
Mr. Kinzinger	X			Mr. Tonko	X		
Mr. Griffith	X			Ms. Clarke	X		
Mr. Bilirakis	X			Mr. Loeb sack		X	
Mr. Johnson	X			Mr. Schrader	X		
Mr. Long				Mr. Kennedy	X		
Mr. Bucshon	X			Mr. Cardenas	X		
Mr. Flores	X			Mr. Ruiz	X		
Mrs. Brooks	X			Mr. Peters	X		
Mr. Mullin	X			Ms. Dingell	X		
Mr. Hudson	X						
Mr. Collins	X						
Mr. Cramer	X						
Mr. Walberg	X						
Mrs. Walters	X						
Mr. Costello	X						
Mr. Carter	X						

06/28/2017

OVERSIGHT FINDINGS AND RECOMMENDATIONS

Pursuant to clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII, the Committee held a hearing on April 26, 2017, and made findings that are reflected in this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Pursuant to clause 3(c)(2) of rule XIII, the Committee finds that H.R. 3053 would result in no new or increased budget authority, entitlement authority, or tax expenditures or revenues.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 4, 2017.

Hon. GREG WALDEN,
*Chairman, Committee on Energy and Commerce,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3053, Nuclear Waste Policy Amendments Act of 2017.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Megan Carroll.

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 3053—Nuclear Waste Policy Amendments Act of 2017

Summary: Under the Nuclear Waste Policy Act (NWPA), the federal government, through the Department of Energy (DOE), is responsible for permanently disposing of the nation's nuclear waste in a geologic repository at Yucca Mountain, Nevada. H.R. 3053 would not change that fundamental requirement, but would temporarily limit DOE's authority to collect certain fees charged to utilities with nuclear plants to cover the costs of disposing of the waste they generate and would authorize DOE to enter into agreements to provide benefits to state, local, and tribal governments that might host or be affected by facilities related to the waste management program.

In general, CBO expects that enacting H.R. 3053 would not significantly change the overall magnitude of the long-term costs the government will incur under the NWPA (tens of billions of dollars over multiple decades). However, relative to CBO's 10-year baseline projections, we estimate that enacting the bill would increase direct spending over the next 10 years. In particular, the bill would reduce projected receipts from certain fees (which are treated as reductions in direct spending) that utilities might otherwise pay by about \$1.5 billion and would increase direct spending for payments

to state, local, and tribal governments by \$260 million over the 2018–2027 period.

However, the House Committee on the Budget has directed CBO to estimate the budgetary effects of H.R. 3053 on the assumption that, under current law, the utilities will pay none of the affected fees over the 2018–2027 period. On that basis, CBO estimates that enacting H.R. 3053 would not reduce projected receipts, but would increase direct spending by \$260 million over the 2018–2027 period.

In addition, assuming appropriation of the authorized and estimated amounts, CBO estimates that implementing the bill would have discretionary costs of \$300 million over the next 10 years.

Pay-as-you-go procedures apply because enacting H.R. 3053 would affect direct spending. Enacting the bill would not affect revenues.

CBO estimates that enacting H.R. 3053 would increase net direct spending after 2027. However, CBO cannot determine whether such net increases would exceed \$5 billion in one or more of the four consecutive 10-year periods beginning in 2028 because the bulk of such increases would depend on whether a geologic repository at Yucca Mountain is licensed, built, and put into operation. Whether such events occur depends on factors that lie beyond the scope of this legislation—namely, what the outcome is for the Nuclear Regulatory Commission’s (NRC’s) review of DOE’s application for a license to construct a geologic repository at Yucca Mountain and whether the Congress provides the funding necessary for DOE to establish such a facility and carry out other activities related to the disposal of nuclear waste.

H.R. 3053 would impose intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA). The bill would preempt state and local regulatory authority over hazardous waste that would be transported to and stored in a nuclear waste repository in Nevada. Although the preemption would limit the application of state and local laws and regulations, CBO estimates that the preemption would impose no duty on state or local governments that would result in additional spending or a loss of revenues.

H.R. 3053 also would impose a private-sector mandate as defined in UMRA on owners of mining claims by prohibiting mining on federal land withdrawn from public land laws for the construction of a repository. Based on information about the number of mining claims in the area and the value of mining claims on federal land, CBO estimates that the cost of the mandate would fall below the annual threshold established in UMRA for private-sector mandates (\$156 million in 2017, adjusted annually for inflation).

Background: Under the NWPA, the federal government faces substantial costs to implement a program to permanently dispose of the nation’s nuclear waste.¹ Under the law, the only authorized means of disposal involves constructing a geologic repository, and Yucca Mountain, Nevada, is the only authorized site where such a repository can be located. In 2008, DOE submitted to the NRC an

¹For additional information about the federal government’s responsibilities and liabilities under the Nuclear Waste Policy Act, see the testimony of Kim Cawley, Chief, Natural and Physical Resources Cost Estimate Unit, Congressional Budget Office, before the Subcommittee on Environment and the Economy of the House Committee on Energy and Commerce, *The Federal Government’s Responsibilities and Liabilities Under the Nuclear Waste Policy Act* (December 3, 2015), www.cbo.gov/publication/51035.

application for a license to construct a repository at Yucca Mountain. However, starting in 2010, the Administration took a variety of actions to terminate that project. Since that time, the Congress has provided no new funding for the Yucca Mountain project. Meanwhile, after exhausting funds made available for the licensing effort, both DOE and the NRC have no effective capability to carry out the regulatory activities that must be completed before DOE can implement a program to dispose of nuclear waste.² (However, the Administration has requested funding to resume licensing activities in 2018.)

DOE has also incurred—and partially breached—contractual obligations to remove waste from existing nuclear facilities. Under contracts signed with electric utilities pursuant to the NWPA, in exchange for fees to cover the government’s costs, DOE was scheduled to start removing waste from storage sites at power plants and transport it to a federal storage or disposal facility by 1998. After the government missed that deadline, utilities with nuclear plants began to successfully sue the government for resulting damages. By the end of fiscal year 2016, utilities had received \$6.1 billion in payments from the Judgment Fund (a permanent indefinite appropriation available to pay judicially and administratively ordered monetary awards against the United States).

The potential timing and magnitude of additional spending that must occur to enable the government to meet its obligations under the NWPA and the extent to which federal costs will be defrayed by fees from nuclear utilities are all uncertain. Resuming activities to execute the program currently authorized under that law will require a significant and sustained increase in federal appropriations to rebuild DOE’s and the NRC’s capacity to complete licensing activities and to construct the facilities and infrastructure authorized under the act and CBO cannot predict whether the necessary funding will be provided.³ Likewise, although the NWPA requires DOE to charge fees to nuclear utilities to cover the government’s cost to dispose of the waste they generate, the extent to which the Secretary will exercise his discretion, under current law, to assess and collect such fees is uncertain, particularly in light of recent legal proceedings.

CBO’S BASELINE PROJECTIONS

On the basis of underlying provisions of the NWPA, federal cash flows related to the nuclear waste program involve a mix of discretionary spending and mandatory spending.

Under the NWPA, spending from the NWF is not automatically triggered by the collection of fees or transfers of amounts credited as intragovernmental interest. Instead, it is controlled by annual appropriation acts, and is therefore considered discretionary spend-

²See Government Accountability Office, *Commercial Nuclear Waste: Resuming Licensing of the Yucca Mountain Repository Would Require Rebuilding Capacity at DOE and NRC, Among Other Key Steps*, GAO-17-340 (April 2017), www.gao.gov/products/GAO-17-340.

³In 2008, DOE estimated that costs associated with geologic disposal of civilian and defense-related nuclear waste (including those related to transportation and project management) would total \$96 billion (in 2007 dollars) over a period of more than 100 years. See Department of Energy, Office of Civilian Radioactive Waste Management, *Analysis of the Total System Life Cycle Cost of the Civilian Radioactive Waste Management Program, Fiscal Year 2007*, DOE/RW-0591 (July 2008), <http://go.usa.gov/cjmtG>. In addition, the NRC previously estimated that completing activities related to its review and adjudication of DOE’s application for a license to construct a repository at Yucca Mountain would cost \$330 million.

ing. Under current law, no discretionary spending is occurring for permanent geologic disposal as authorized under the NWPA; as a result, CBO's baseline projections include no such spending.

In contrast, fees paid by nuclear utilities are governed by statutory provisions of the NWPA and the terms of contracts entered into pursuant to that act. As a result, they are classified as offsetting receipts, which are credited against mandatory spending. Likewise, ongoing spending for DOE's liabilities stemming from its partial breach of those contracts is classified as mandatory spending because the source of such spending—the Treasury's Judgment Fund—is governed by underlying law that provides permanent, indefinite budget authority for such payments.

Projected receipts from nuclear waste fees

CBO's baseline projections of receipts from fees paid by utilities reflect uncertainty about events that could transpire under current law. Following litigation in which the nuclear industry challenged DOE's authority to collect annual fees, DOE complied, in 2014, with a court order to reduce the rate of the fees from \$0.001 per kilowatt hour (kwh) of electricity generated by nuclear power to \$0.0 per kwh.⁴

However, that court order also referenced procedures established under the NWPA, which are still in effect under the order, by which DOE could reinstate annual fees under certain conditions. Specifically, the NWPA requires DOE to periodically review and, if necessary, adjust the rate of the annual fee to ensure that the projected balances of the NWF (including interest credited to the fund) are sufficient to pay the full long-term costs associated with geologic disposal of nuclear waste. Under the court order, if DOE completed such an analysis and determined that additional fees were needed, it could reinstate fees at whatever rate it considered necessary. Given that possibility—that DOE could reinstate annual fees under current law—CBO's baseline follows the agency's usual practices for projecting spending and receipts related to activities involving the possibility of administrative actions. Specifically, CBO estimates the total amounts that would be collected if fees were fully reinstated and to account for the uncertainty under current law, includes 50 percent of those amounts in its baseline. Thus, CBO's baseline includes \$385 million annually in nuclear waste fees—roughly half the amount that had been collected before DOE reduced the fee to zero. The Administration follows similar procedures in preparing baseline projections of nuclear waste fees.

Projected spending for DOE's contractual liabilities

CBO's projections of mandatory spending include significant amounts of spending for continued on-site storage of waste at civilian nuclear facilities—in the form of payments from the Judgment Fund related to DOE's contractual liabilities. Because of the timing

⁴The National Association of Regulatory Utility Commissioners and the Nuclear Energy Institute filed petitions with the U.S. Court of Appeals for the District of Columbia Circuit to end the federal government's collections of annual fees. In 2013, that court found that DOE had failed to provide a legally justifiable basis for continuing to collect fees in the absence of an identifiable strategy for waste management. The court ordered the Secretary of Energy to reduce the annual fee to zero until the agency either justifies a reinstatement of annual fees with a new study on the adequacy of the balances in the NWF or until the Congress enacts new legislation authorizing an alternative to Yucca Mountain as a disposal site.

lag between when such liabilities are incurred and damages are eventually paid, CBO expects that most of the anticipated nuclear waste-related spending from the Judgment Fund over at least the next 10 years—which CBO estimates will total at least \$5 billion—is attributable to liabilities that DOE has either already incurred or cannot avoid.

Estimates of the government’s remaining liabilities are uncertain and depend critically on when and how DOE begins to accept waste and how long eliminating the backlog will take. In 2016, DOE estimated that if it could begin to accept waste within the next 10 years, remaining liabilities would total \$25 billion.⁵ However, CBO estimates that even if that time frame could be achieved, the department will face a backlog in meeting contractually specified schedules for accepting waste that would take more than 20 years to clear. As long as DOE remains behind schedule, the government will continue to incur liabilities.

Estimated cost to the Federal Government: The estimated budgetary effect of H.R. 3053 is shown in the following table. The costs of this legislation fall within budget function 270 (energy).

Basis of estimate: In general, CBO expects that enacting H.R. 3053 would not significantly change the overall magnitude of costs the government will ultimately incur to dispose of civilian nuclear waste. The bill would not alter the government’s responsibility to permanently dispose of nuclear waste at a geologic repository, and although the bill would make important changes to provisions of the NWPA that pertain to the repository at Yucca Mountain, that site would remain the only authorized location where such a repository could be built.⁶ Similarly, enacting the bill would not change DOE’s obligation under the NWPA to levy fees on the nuclear industry at rates that are sufficient to ensure that projected balances in the Nuclear Waste Fund (or NWF, an accounting mechanism used to record cash flows related to the civilian nuclear waste program) will be sufficient to cover the full extent of long-term costs of disposing such waste.

⁵ Department of Energy, Fiscal Year 2016 Agency Financial Report, DOE/CF-0128 (November 2016), https://energy.gov/sites/prod/files/2016/11/f34/DOE_FY2016_AFR.pdf.

⁶ Key provisions of H.R. 3053 related to the repository authorized at Yucca Mountain would permanently withdraw from public use approximately 147,000 acres of land in Nye County, Nevada, that surround the site—which would then be administered by the Secretary of Energy. The bill also would amend the NWPA to allow DOE, at any time, to construct and upgrade infrastructure that the Secretary considers necessary to support the construction or operation of the repository. (Under current law, such activities cannot occur unless the NRC approves DOE’s license application.) Finally, the bill would increase, from 70,000 to 110,000 metric tons, the statutory cap on the volume of waste that can be disposed of at the repository. In the absence of such a change, the government could face additional costs to build further capacity to dispose of waste from nuclear utilities, which have already generated more than 70,000 metric tons of waste. Thus, increasing the authorized capacity of Yucca Mountain could affect the future long-term costs of disposing of civilian nuclear waste, but CBO has not estimated either the long-term costs the government already faces under current law or how that change might affect them.

	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2018-2022	2018-2027
By fiscal year, in millions of dollars—												
INCREASES IN DIRECT SPENDING RELATIVE TO DIRECTION BY THE HOUSE COMMITTEE ON THE BUDGET ^a												
Benefits Agreements:												
Estimated Budget Authority	15	30	35	35	20	20	30	25	25	25	135	260
Estimated Outlays	15	30	35	35	20	20	30	25	25	25	135	260
INCREASES IN SPENDING SUBJECT TO APPROPRIATION												
Estimated Authorization Level	0	0	50	50	50	50	50	50	0	0	150	300
Estimated Outlays	0	0	0	75	75	50	50	50	0	0	150	300
Memorandum:												
INCREASES IN DIRECT SPENDING RELATIVE TO CBO'S BASELINE PROJECTIONS												
Temporary Limits on Payments of Annual Fees:												
Estimated Budget Authority	385	385	385	385	0	0	0	0	0	0	1,540	1,540
Estimated Outlays	385	385	385	385	0	0	0	0	0	0	1,540	1,540
Total Changes in Direct Spending Relative to CBO's												
Baseline Projections: ^b												
Estimated Budget Authority	400	415	420	420	20	20	30	25	25	25	1,675	1,800
Estimated Outlays	400	415	420	420	20	20	30	25	25	25	1,675	1,800

^a Relative to CBO's baseline projections, we estimate that increases in direct spending over the 2018-2027 period would stem from provisions that would temporarily limit utilities' payments of fees and authorize DOE to provide benefits to nonfederal governments affected by waste-related facilities. However, the House Committee on the Budget has directed CBO to estimate the budgetary effects of H.R. 3053 on the assumption that utilities will pay none of the affected fees over the 2018-2027 period. On that basis, CBO estimates that fee-related provisions would have no effect, and increases in direct spending under H.R. 3053 resulting from benefits paid to nonfederal governments affected by waste-related facilities would total \$260 million over the 2018-2027 period.

^b Includes spending for benefits agreements with nonfederal governments that host or are affected by waste-related facilities.

Relative to CBO's baseline projections, however, provisions of the bill would increase direct spending over the 10-year period covered by this estimate by \$1.8 billion—due to a provision that would limit utilities' payments of fees under the NWPA (\$1.5 billion) and from benefits agreements (\$260 million). In addition, assuming appropriation of amounts authorized for new activities, CBO estimates that implementing the bill would have a discretionary cost of \$300 million.

However, for the estimate of H.R. 3035, the House Committee on the Budget has directed CBO to assume that, under current law, the affected utilities will not pay any annual fees over the 2018–2027 period. On that basis, CBO estimates that enacting H.R. 3053 would not affect the annual fees, and would increase direct spending by \$260 million over the 2018–2027 period. (The direction from the House Committee on the Budget would not affect CBO's estimate of discretionary spending.)

Estimate of direct spending as directed by the House Committee on the Budget

Relative to direction from the House Committee on the Budget, there would be no budgetary effect from prohibiting DOE from collecting annual fees from utilities with nuclear power plants. Direct spending over the 2018–2027 period would result entirely from provisions that would authorize DOE to provide assistance to non-federal governments affected by the disposal program.

Specifically, H.R. 3053 would authorize DOE to enter into “benefits agreements” with and make payments to state, local, or tribal governments that might host facilities related to the disposal program to help those governments mitigate potential related effects. The bill also would specify amounts to be paid annually to those governments that participate in benefits agreements. In general, the payments would be lower during the initial years (when siting, licensing and construction activities would occur) and, after a one-time payment in the year when a facility first accepts waste, would increase while the facility continues to operate. Under H.R. 3053, DOE and affected governments would negotiate the terms of any benefits agreements they enter into. Under certain conditions—namely, if sites are disqualified as candidates or, in the case of the authorized repository at Yucca Mountain, if the NRC disapproves DOE's license application—the agreements could be terminated. To the extent they remain in effect, however, participating state, local, or tribal governments would effectively be entitled to annual payments of benefits in accordance with schedules specified under the bill. Therefore, in CBO's view, such commitments would increase direct spending.

CBO estimates that increased direct spending stemming from benefits agreements under H.R. 3053 would total \$260 million over the 2018–2027 period. That amount includes \$195 million for benefits related to a repository at Yucca Mountain and \$65 million for benefits related to other facilities.

Repository-Related Benefits Agreements. H.R. 3053 would modify the NWPA to authorize DOE to enter into a benefits agreement with Nevada and specify amounts to be paid to that state on an

annual basis.⁷ In addition, the bill would authorize DOE, after one year, to negotiate benefits agreements with affected local governments within that state. Under H.R. 3053, CBO expects DOE would enter into an agreement with Nevada in 2018 and multiple agreements with other governments in 2019. CBO also expects that payments to those other governments would not, in total, exceed the amount authorized to be paid to Nevada—\$15 million annually until a repository begins to operate, which CBO does not expect will occur before 2027.⁸

The cost of repository-related benefits agreements is uncertain and would depend on the outcome of the NRC's licensing process. That agency's decision, which CBO expects would occur in 2021, would probably determine whether payments for benefits agreements related to a repository at Yucca Mountain continued. If the NRC approves the application, CBO anticipates that the affected governments would continue to receive benefits. However, if the NRC disapproves the application, CBO expects that DOE would exercise its authority to terminate any agreements governing such benefits.

CBO has no basis, though, for predicting the outcome of the NRC's licensing process. To account for that uncertainty, CBO assumes for this estimate that there is a 50 percent chance that payments to Nevada and local governments within that state would continue after 2021. On that basis, CBO estimates that direct spending for repository-related benefits agreements would increase by a total of \$195 million over the 2018–2027 period. That amount includes \$15 million in 2018 (for Nevada), \$30 million annually (for Nevada and local governments) over the 2019–2021 period—the full extent of payments CBO estimates would be authorized during those years while the NRC completes its licensing activities. To account for uncertainty about whether payments would continue in later years, CBO's estimate also includes payments to Nevada and affected governments totaling \$15 million annually over the 2022–2027 period (half the total amount CBO estimates might be paid in those years).

Benefits Agreements With Governments Hosting Other Facilities. Under H.R. 3053, DOE could enter into one agreement with each state or tribal government that has jurisdiction over land with a site identified as a potential candidate for hosting what is termed a monitored retrievable storage (MRS) facility. DOE could enter into only one such agreement with a state or tribe at any given time. Under the bill, during the initial years of siting, licensing, and constructing an MRS facility, the host government would receive \$5 million annually. When the facility first accepts spent fuel, the host government would receive a onetime payment of \$10 million. Subsequent payments would rise to \$10 million annually for the life of the facility.

⁷When Nevada Governor Guinn formally objected to President Bush's site recommendation of Yucca Mountain in 2002, the state forfeited the opportunity to receive benefits under the NWPA.

⁸H.R. 3053 also would authorize a onetime payment, upon the date when a repository first accepts waste, of an amount equal to 1 percent of the balance of funds credited to the NWF as of the date of the bill's enactment—or \$370 million, CBO estimates (on the basis of the fund's existing balance and assuming the bill is enacted early in 2018). After that onetime payment, annual payments would equal 0.1 percent of that balance—or \$37 million annually—and continue for decades until the repository ceases operations.

The amount and timing of direct spending to provide benefits to governments that host MSR facilities is uncertain. For this estimate, CBO assumes that under H.R. 3053, DOE would commit to pay at least one potential host government of an MRS facility over the 2018–2027 period. On the basis of the potential time frame for developing such a facility, CBO estimates that payments to that government would begin in 2020 (after a needs analysis by DOE, as required under the bill) and, assuming the facility begins to accept waste in 2024, would total \$65 million over the 2020–2027 period. After that time, federal spending of \$10 million annually for benefits would continue for several decades. (An MRS agreement would also lead to discretionary spending; more detail about those costs is provided below under the heading, “Spending Subject to Appropriation.”)

Direct spending relative to CBO’s baseline

Relative to CBO’s baseline projections, we estimate that enacting H.R. 3053 would increase net direct spending by \$1.8 billion over the 2018–2027 period. That 10-year cost includes:

- \$1.5 billion in forgone receipts resulting from a provision that would temporarily limit DOE’s authority to accept payments of annual fees that CBO expects might be paid in the future by nuclear utilities (there would be no cost for those foregone receipts under the direction of the Budget Committee), and
- \$260 million for benefits that would be paid to state, local, and tribal governments that might host or be affected by facilities related to the civilian nuclear waste program (those costs would be the same under both CBO’s baseline and the direction from the Budget Committee).

Temporary Limits on DOE’s Authority To Accept Payments of Annual Fees. Under the NWPA and the terms of related contracts entered into by DOE and utilities with nuclear plants, utilities pay two types of fees to cover the costs of disposing of the nuclear waste they generate. Annual fees are based on the amount of electricity they sell that is generated by nuclear power plants and onetime fees are based on the volume of waste those plants generated before the NWPA was enacted.

H.R. 3053 would direct DOE to establish separate procedures for assessing annual fees and accepting payments. Under the bill, DOE would establish, within 180 days, procedures for assessing the annual fees, which CBO expects would be consistent with the NWPA’s underlying requirement that the Secretary set the rate of annual fees at the level necessary to ensure that projected balances in the NWF are sufficient to cover the costs of disposing of civilian nuclear waste. Broadly speaking, because enacting H.R. 3053 would not substantively affect those costs, CBO expects that the new procedures would not significantly change the total amount of annual fees DOE would assess utilities.

However, the bill would prohibit DOE from accepting any payments of assessed fees until the NRC issues a decision regarding the agency’s license application. Relative to CBO’s baseline projections, CBO estimates that the temporary prohibition would reduce annual fees by a total of \$1.5 billion over the next four years.

In addition, DOE’s authority to collect fees in years following the NRC’s decision could be constrained by the amounts of future ap-

appropriations for the waste program. To fulfill its statutory obligation to charge fees sufficient to cover the costs of disposing of civilian waste, the department could need to adjust the fees each year depending on the appropriations received, but CBO has no basis for estimating such changes.

Estimated Effects of Temporary Limits on Payments of Annual Fees. Upon enactment, H.R. 3053 would prohibit DOE from accepting payments of annual fees until the NRC issues a decision regarding DOE's license application. The bill would not explicitly prevent DOE from assessing annual fees during that time; however, based on an analysis of information from the department, CBO expects that DOE would not assess annual fees when the prohibition is in effect. Thus, relative to CBO's baseline projections, enacting that provision would eliminate the possibility of DOE collecting any fees while the NRC conducts its analysis. On the basis of information from the NRC about the potential time frame required to resume and complete its review and adjudication of DOE's license application, CBO expects that the proposed prohibition would last about four years and thereby reduce receipts, relative to the baseline, by a total of \$1.5 billion.

Potential Limits on Payments of Assessed Fees Based on Future Appropriation Acts. In years following the NRC's decision, DOE's authority to collect fees that it assesses could be affected by the amount of funding provided for the waste disposal program. Specifically, H.R. 3053 would limit DOE's authority to collect, in any year, annual fees that total more than 90 percent of the amount appropriated in that year from the NWF for activities related to the Yucca Mountain project. The bill also would specify, however, that regardless of any limitation on the amount of payments that might occur in a given year, the utilities would remain liable for the full amount of the fees assessed and would set forth conditions under which the Secretary could require utilities to pay the uncollected portion of fees previously assessed.

Enacting those provisions could affect the timing and magnitude of receipts from payments of annual fees. CBO has no basis, however, for estimating the extent to which those receipts would differ from amounts projected in our baseline. More broadly, for the reasons described, receipts from annual fees paid in any given year under H.R. 3053, as under current law, would remain uncertain. As a result, this estimate does not reflect any potential changes to annual receipts after 2021.

Spending subject to appropriation

H.R. 3053 would direct DOE to determine by June 1, 2019, the need for MRS facilities to store waste—temporarily—until the department can permanently dispose of it in a geologic repository. The bill also would authorize DOE and willing utilities to enter into new contracts or renegotiate the terms of existing contracts to allow the department to accept waste and store it at an MRS facility, with priority given to waste generated by nuclear facilities that are no longer operating. Under current law, DOE can accept waste only for the purpose of permanently disposing of it in a geologic repository.

Unless the Secretary determines that constructing a federal MRS facility would be faster and less costly, the bill would direct DOE

to prioritize storage of civilian waste to which it takes title at non-federal MRS facilities. Under H.R. 3053, DOE could not enter into an MRS agreement unless the sponsor of the nonfederal facility obtained a license from the NRC as well as permission to store department-owned waste from the state’s governor, any local government units with jurisdiction over the area, and affected Indian tribes. In general, the bill would permit DOE to enter into multiple MRS agreements, but only one such agreement could be signed before the NRC issues its decision on DOE’s application for a license to build a repository at Yucca Mountain.

The bill would authorize appropriations to implement that initial MRS agreement. Specifically, over the 2020–2022 period, the bill would authorize the appropriation of up to \$50 million annually. For each of fiscal years 2023 through 2025, the bill would authorize appropriations in amounts equal to 10 percent of the amounts appropriated from the NWF. For this estimate, CBO assumes that authorization levels over the 2023–2025 period would remain in line with the \$50 million cap specified for earlier years.

Thus, CBO estimates that H.R. 3053 would authorize appropriations totaling \$300 million over the 2020–2025 period for DOE to implement an initial MRS agreement and that the resulting discretionary spending over the period would be the same amount. Based on an analysis of information from DOE, the NRC, and the nuclear industry, CBO further anticipates that such funding would support the development of one nonfederal MRS facility that would be licensed in 2021, be constructed over the 2022–2023 period, and begin to operate in 2024.

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 direction by the House Committee on the Budget to assume that nuclear utilities will not pay any fees over the 2018–2027 period under current law would not affect what is recorded under that act. Thus, CBO is providing our estimate of the net changes in outlays that are subject to those pay-as-you-go procedures in the following table. The Office of Management and Budget is responsible for recording any changes in direct spending or revenues under that act.

CBO ESTIMATE OF PAY-AS-YOU-GO EFFECTS FOR H.R. 3053, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON ENERGY AND COMMERCE ON JUNE 28, 2017

	By fiscal year, in millions of dollars—											
	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2018–2022	2018–2027
NET INCREASE IN THE DEFICIT												
Statutory Pay-As-You-Go Impact	400	415	420	420	20	20	30	25	25	25	1,675	1,800

Increase in long-term direct spending and deficits: For the four consecutive 10-year periods following 2027, CBO estimates that enacting H.R. 3053 would probably increase net direct spending by at least a few billion dollars and potentially as much as nearly \$20 billion dollars. Whether such higher costs would arise is uncertain and would depend on whether a geologic repository at Yucca Mountain is licensed, built, and put into operation. Those events depend on factors beyond the scope of this legislation—namely, whether

the NRC approves DOE's application for a license to construct a geologic repository at Yucca Mountain and whether the Congress enacts new laws to provide funding for the department to establish such a facility and implement other related activities. CBO has no basis for predicting the outcome of the NRC's licensing process or whether activities related to the disposal program will receive necessary funding. Nor can CBO estimate the extent to which enacting H.R. 3053 might reduce future direct spending related to DOE's contractual liabilities. As a result, CBO cannot determine whether net increases in direct spending would exceed \$5 billion in any of the four 10-year periods following 2027.

In addition to continued spending for benefits agreements, long-term increases in direct spending after 2027 are attributable to provisions of H.R. 3053 that would appropriate balances of the NWF and authorize DOE to spend onetime fees. CBO also expects that implementing provisions in H.R. 3053 that would authorize DOE to pursue temporary storage facilities could potentially reduce the government's exposure to contractual liabilities under the NWPA.

Authority to spend NWF balances

When DOE first accepts waste for disposal at Yucca Mountain, H.R. 3053 would permanently appropriate, on an annual basis for 25 years, 1 percent of the balance of funds credited to the NWF as of the date of enactment of H.R. 3053—or about \$370 million annually, CBO estimates. If provided, such funding would total \$9.3 billion over 25 years and remain available to DOE for repository-related construction costs and operating expenses. Later, when Yucca Mountain ceases operations, H.R. 3053 would provide a onetime appropriation equal to 20 percent of the fund's balance as of the date of enactment—or about \$7.4 billion—for activities related to monitoring and decommissioning that facility.

Thus, H.R. 3053 could increase direct spending of NWF balances by nearly \$17 billion over the next several decades. However, as explained previously, whether that facility will be constructed is uncertain and depends on factors that lie beyond the scope of H.R. 3053.

Authority to spend onetime fees

H.R. 3053 would authorize DOE to spend, without further appropriation, onetime fees established under the NWPA to cover the costs of disposing of waste that was generated before the law was enacted. Under that law, DOE gave utilities options for postponing payments of such fees, but utilities must pay their outstanding balance when the department accepts their waste to permanently dispose of it in the Yucca Mountain repository. Because that event is unlikely by the end of the projection period in 2027, CBO anticipates that the bulk of onetime fees are unlikely to be paid until after that time.⁹

⁹The MRS-related provisions of H.R. 3053 could accelerate payments of onetime fees. Specifically, to the extent that those provisions enable DOE to accept nuclear waste (for storage in an MRS facility) sooner than it otherwise could under current law, they might trigger payments of onetime fees as early as 2024, when CBO assumes such a facility would begin to store waste under the bill. Regardless of those timing issues, though, the total increase in direct spending attributable to the bill's provision regarding onetime fees would remain the same.

To date, several utilities have not paid the fees, and according to DOE, the balance of uncollected fees currently stands at roughly \$2.6 billion. Interest accrues on the balances due until the utilities pay them to the government; therefore, when the fees are paid, resulting receipts (and corresponding direct spending) will probably be greater than the current balances due. As a result, CBO estimates that enacting H.R. 3053 would increase direct spending by an amount that, in total, would be equivalent to \$2.6 billion in today's dollars, but that spending would occur after 2027.

Potential reductions in contractual liabilities

As previously noted, the federal government has already incurred significant liabilities for damages related to its partial breach of contracts with utilities. DOE is nearly 20 years behind schedule in meeting its contractual obligations to accept and dispose of civilian nuclear waste, and as long as it remains behind schedule, the government will continue to incur liabilities. The extent of those liabilities will ultimately depend on when and how the government fulfills its obligations to accept and dispose of the waste.

Even though those factors would be largely unaffected by H.R. 3053, the bill could enable DOE to avoid at least some future liabilities stemming from its partial breach of contracts, thereby reducing taxpayers' exposure to such costs. Specifically, H.R. 3053 would allow DOE and utilities to voluntarily renegotiate their contractual obligations, thus potentially enabling the government to begin to fulfil them sooner than it otherwise could under current law—if DOE is able to accept nuclear waste and store it at MRS facilities, as envisioned by the bill.

Thus, the total magnitude of federal contractual liabilities under H.R. 3053 could be less than under current law. CBO has no basis, however, for estimating the potential savings that might result; they would depend on uncertain factors such as the extent to which utilities chose to renegotiate contracts and the number and capacity of MRS facilities that might be developed. The savings could be significant but if they occurred they probably would not arise until well beyond 2027.

ESTIMATED IMPACT ON STATE, LOCAL, AND TRIBAL GOVERNMENTS

Mandates on public entities

The bill would impose intergovernmental mandates as defined in UMRA by preempting state and local regulatory authority over hazardous waste that would be transported to and stored in a nuclear waste repository in Nevada. Although the preemption would limit the application of state and local laws and regulations, CBO estimates that the preemption would impose no duty on state or local governments that would result in additional spending or a loss of revenues.

Other effects on public entities

While state, local, and tribal governments would not be required to participate in licensing and review proceedings related to Yucca Mountain or an MRS facility under the Nuclear Waste Policy Act, CBO expects that agencies of those governments would likely choose to participate in the review processes for such projects and

would incur costs. Costs of participation would include legal and administrative expenses, as well as the costs of conducting scientific and technical analyses. Any costs incurred by those entities would result from voluntary commitments. Based on an analysis of information provided by officials from Nevada's Agency for Nuclear Projects and from Nye County's Nuclear Waste Repository Project Office, CBO estimates that public agencies would spend \$10 million to \$15 million per year over the 2018–2022 period to participate in proceedings related to the Yucca Mountain repository. CBO estimates that costs would be lower for public agencies participating in proceedings related to an MRS facility because of the lower complexity involved with such a project. (The most likely location for an MRS facility would be in New Mexico or Texas). Under the NWPA, DOE is authorized to provide financial and technical assistance to defray the costs to public agencies of participating in review proceedings for a proposed repository or MRS facility.

Although H.R. 3053 would, by itself, establish no new enforceable duties on state, local, or tribal governments, shipments of nuclear waste for temporary storage at an MRS facility and for permanent storage at Yucca Mountain probably would increase the costs to state, local, and tribal agencies of complying with existing requirements for federal grants and conditions of participation in other federal programs. Those requirements include compliance with federal laws governing transportation, public safety, and environmental protection that are implemented by public agencies. Additional spending by state, local, and tribal agencies would support a number of activities, including emergency response planning and training, public health and safety, road and rail maintenance, inspections, and security activities such as escort of waste shipments. These indirect costs would not stem from mandates as defined by UMRA, but could total tens of millions of dollars per year across all public entities. In addition, costs for upgrading highway or rail infrastructure to accommodate waste shipments could range into the hundreds of millions of dollars, based on past studies by the Nevada Department of Transportation. In the event of an accident or attack involving shipment of radioactive waste, costs would likely be significantly higher.

To compensate state, local, and tribal governments in Nevada—and in states where an MRS facility is located—for the various governmental costs of accommodating a nuclear waste storage site, the bill would authorize the DOE to enter into benefits agreements with those governments. If state, local, and tribal governments choose to enter into such agreements, they would receive annual payments from DOE that would vary depending on whether an MRS facility or a repository is constructed in the state and on whether the site is accepting waste shipments for storage. Receipt of benefits would depend upon the outcome of the NRC's licensing process, and the amount of benefits received would ultimately depend upon negotiations between DOE and the affected governments.

For the purposes of this estimate, CBO assumes that DOE would make benefits payments to state and local governments in Nevada relating to Yucca Mountain totaling \$15 million 2018 and that payments would increase to \$30 million per year from 2019 through 2021. If the NRC approves DOE's license application for the reposi-

tory in 2021, CBO estimates that payments would continue at that level until the repository begins to accept waste sometime after 2027. When the repository first receives waste, parties to a benefits agreement would receive a one-time payment estimated at \$370 million, and would receive an estimated \$37 million each year thereafter until the repository ceases operations. If, on the other hand, the NRC disapproves DOE's licensee application, CBO assumes that DOE would exercise its authority to terminate any agreements governing such benefits. For the purposes of this estimate, CBO assumes that DOE would begin providing benefits to one host government relating to an MRS facility—likely in New Mexico, Texas, or Nevada totaling \$5 million per year beginning in 2020 and that payments would increase to \$10 million per year once the facility starts accepting waste in 2024. Finally, the bill also would require that any economic benefits derived from the future retrieval of spent nuclear fuel from Yucca Mountain be shared with the affected state, local, and tribal governments.

Estimated impact on the private sector: H.R. 3053 would impose a private-sector mandate as defined in UMRA on owners of mining claims by prohibiting mining on federal land withdrawn from public land laws for the construction of a repository. Based on information submitted in DOE's license application to NRC and information from the Government Accountability Office, CBO estimates that about 100 mining claims may be affected by the mandate. The mandate would apply only to owners of valid claims, as determined by the Secretary of the Interior, and the cost of the mandate would be the fair market value of the claim. Mining claims on federal land are determined to be valid only after the discovery of a valuable mineral deposit. Based on information about the value of mining claims, CBO estimates that the value per claim affected by the mandate would not be substantial. Consequently, CBO estimates that the cost of the mandate would fall below the annual threshold established in UMRA for private-sector mandates (\$156 million in 2017, adjusted annually for inflation). The bill would compensate owners for claims determined to be valid.

Estimate prepared by: Federal costs: Megan Carroll; Impact on state, local, and tribal governments: Jon Sperl; Impact on the private sector: Amy Petz.

Estimate approved by: H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII, the general performance goal or objective of this legislation is to amend the Nuclear Waste Policy Act of 1982 to enable the Department of Energy to manage, store, and permanently dispose of commercial spent nuclear fuel and high-level radioactive waste.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII, no provision of H.R. 3053 is known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of Public Law 111–139 or the most recent Catalog of Federal Domestic Assistance.

COMMITTEE COST ESTIMATE

Pursuant to clause 3(d)(1) of rule XIII, the Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

EARMARK, LIMITED TAX BENEFITS, AND LIMITED TARIFF BENEFITS

Pursuant to clause 9(e), 9(f), and 9(g) of rule XXI, the Committee finds that H.R. 3053 contains no earmarks, limited tax benefits, or limited tariff benefits.

DISCLOSURE OF DIRECTED RULE MAKINGS

Pursuant to section 3(i) of H. Res. 5, the Committee finds that H.R. 3053 contains no directed rule makings.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

The legislation includes the following provisions:

Section 1. Short title and table of contents

This section provides the short title, the “Nuclear Waste Policy Amendments Act of 2017” and identifies the sections of the bill as follows: Section 1, Short Title and Table of Contents; Title I, Monitored Retrievable Storage; Title II, Permanent Repository; Title III, DOE Contract Performance; Title IV, Benefits to Host Community; Title V, Funding; and, Title VI, Miscellaneous.

TITLE I. MONITORED RETRIEVABLE STORAGE

Sec. 101. Monitored retrievable storage

This section amends section 141(b) of the Nuclear Waste Policy Act of 1982 (NWPA) to direct the Secretary of Energy (Secretary) to complete a study of the need for and feasibility of the construction of one or more monitored retrievable storage facilities (MRS) and submit such report to Congress by June 1, 2019. The section also requires the Secretary to publish a request for information to

help the Secretary evaluate options to enter into MRS agreements with respect to one or more MRS.

Section 101(b) makes conforming changes to allow for more than one MRS and by striking section 141(d) through (h), and adds definitions to section 2 of the NWPA for “MRS agreement” and “Department-owned civilian waste.”

Sec. 102. Authorization and priority

This section amends section 142 of the NWPA to authorize the Secretary to site, construct, and operate one or more MRS and store, pursuant to a MRS agreement, Department-owned civilian waste at a non-Federal MRS that is licensed by the Nuclear Regulatory Commission (NRC or Commission). The section also directs the Secretary to prioritize storage at a non-Federal MRS unless the Secretary determines it is faster and less expensive for the Department of Energy (DOE) to site, construct, and operate an MRS. The Secretary must provide such determination to Congress within 30 days.

Sec. 103. Conditions for MRS agreements

This section amends section 143 of the NWPA to prohibit the Secretary from entering into an MRS agreement for an MRS unless (1) the MRS holds a license pursuant to the Atomic Energy Act of 1954 and has approval to store Department-owned civilian waste at such facility from the governor of the state, any unit of general local government with jurisdiction over the area, and any affected Indian tribe; (2) the Commission has issued a decision for a repository under section 114(d) of the NWPA, with the exception of the first agreement; and (3) the MRS agreement provides the quantity of high-level radioactive waste (HLW) and spent nuclear fuel (SNF) will not exceed the limits described in section 148(d)(3) and (4).

The new subsection 143(b) authorizes the Secretary to enter into one MRS agreement prior to the Commission issuing a final decision approving or disapproving the issuance of a construction authorization. For fiscal years 2020 through 2022 there is authorized the greater of \$50 million or an amount equal to 10 percent of the amounts appropriated from the Waste Fund in that fiscal year for the MRS agreement. For fiscal years 2023 through 2025, there is authorized an amount equal to 10 percent of amounts appropriated from the Waste Fund. The Secretary shall prioritize storage of Department-owned civilian waste from facilities that have ceased commercial operation at the first MRS facility. The Secretary is prohibited from storing spent nuclear fuel at the facility unless the Commission has issued a final decision or if the Secretary finds the decision is imminent. If a decision is imminent, the Secretary must notify Congress within seven days and provide a monthly report to Congress on the status of the license.

Sec. 104. Survey

This section amends section 144 of the NWPA to allow the Secretary to survey and evaluate sites for an MRS based on listed criteria, including acceptability to state authorities, affected units of local government, and affected Indian tribes. The section would require the Secretary to issue a request for proposals for a MRS agreement with a non-Federal MRS before conducting any survey.

Sec. 105. Site selection

This section amends section 145 of the NWPA to allow for more than one MRS site to be evaluated.

Sec. 106. Benefits agreement

This section amends section 147 of the NWPA to allow a non-Federal entity subject to a MRS agreement to enter into a benefits agreement with the Secretary under section 170.

Sec. 107. Licensing

This section amends section 148(c) of the NWPA to apply to a DOE MRS and amends section 148(d) of the NWPA to modify the requirement that the Commission issue a license for a construction authorization for a repository prior to licensing an MRS to require the Commission to issue a final decision approving or disapproving a construction authorization prior to MRS licensing.

TITLE II. PERMANENT REPOSITORY

Sec. 201. Land withdrawal, jurisdiction, and reservation

This section provides for the permanent withdrawal of lands described in subsection (c) and provides the Secretary jurisdiction over the withdrawal. The withdrawal is reserved by the Secretary for development, preconstruction testing and performance confirmation, licensing, construction, management and operation, monitoring, closure, postclosure, and other activities associated with the disposal of HLW and SNF under the NWPA.

Section 201(b) revokes previous public land orders and right-of-way within the withdrawal.

Section 201(c) describes the boundaries of the land subject to the withdrawal and requires the publication in the Federal Register and documentation of the copies of the described maps.

Section 201(d) describes the relationship of the withdrawal to lands previously withdrawn for use by the Department of Defense under subtitle A of title XXX of the Military Lands Withdrawal Act of 1999.

Section 201(e) assigns certain management responsibilities to the Secretary for lands in the withdrawal, including the development of a management plan for the lands; prioritizing Yucca Mountain Project activities; use by the Air Force under agreed terms and conditions with the Secretary; and related non-Yucca Mountain Project uses, such as grazing, hunting and trapping, and mining. The subsection provides for limited public access to continue the Nye County Early Warning Drilling Program, utility corridors, and other uses the Secretary considers consistent with the purposes of the withdrawal. The subsection also authorizes the Secretary to close a portion of the withdrawal or airspace above the withdrawal.

Section 201(f) provides that the United States and its departments and agencies shall be held harmless and shall not be liable for damages to persons or property as a result of mining, mineral leasing, or geothermal leasing activities conducted on the withdrawal.

Section 201(g) provides the Secretary authority to acquire lands and interests within the withdrawal.

Section 201(h) removes Federal, state, Interstate, and local requirements subject to section 6001(a) of the Solid Waste Disposal Act for material transported to a repository for disposal, or as, or after, such material is disposed of in a repository.

Section 201(i) defines terms used in this section consistent with the NWPA, in addition to defining the “withdrawal,” “Secretary concerned,” and “Project.”

Section 201(j) makes this section, except subsections (c), (e)(2)(A), (h), (i), and (j), effective on the date that the Commission approves the issuance of a construction authorization under section 114(d) of the NWPA for the Yucca Mountain site.

Sec. 202. Application procedures and infrastructure activities

This section amends section 114(d) of the NWPA to require NRC consideration of the construction authorization for the repository 30 months after the date of enactment of the Nuclear Waste Policy Amendments Act of 2017. It also removes certain conditions on the quantity of metric tons of heavy metal for Commission’s approval to authorize construction submitted under section 114(b). It also allows for amendments to an approved construction authorization license to be considered using expedited, informal procedures and directs the Commission to decide on such amendments within one year, unless the Commission notifies Congress that the deadline needs to be extended. The subsection allows the Secretary to undertake infrastructure activities at the Yucca Mountain site considered necessary or appropriate to support the construction or operation of a repository or transportation to such site. Infrastructure activities include safety upgrades; site preparation; the construction of a rail line to connect the Yucca Mountain site with the national rail network; and construction, upgrade, acquisition or operation of electrical grids or facilities, other utilities, communication facilities, access roads, and nonnuclear support facilities.

Section 202(b) amends section 114(f)(6) to add certain actions that are not required for an environmental analysis, prohibits the Commission from disapproving of the construction authorization, license to receive and possess or any other action, on the grounds that an infrastructure activity was undertaken. The section increases the statutory cap on the quantity of spent nuclear fuel at the repository from 70,000 metric tons to 110,000 metric tons. The section also provides that actions undertaken outside the geologic repository operations area do not require a license from the Commission.

Sec. 203. Pending repository license application

This section provides that nothing in this Act or amendments made by this Act shall be construed to require the Secretary to amend or otherwise modify an application for a construction authorization pending as of the date of enactment of this Act.

Sec. 204. Limitation on planning, development, or construction of defense waste repository

This section prohibits the Secretary from taking any action relating to planning, development, or construction of a defense waste repository until the Commission issues a final decision on an application for a construction authorization for a repository under section

114(d)(1) of the NWPA. The section also defines the term “defense waste repository.”

Sec. 205. Sense of Congress regarding transportation routes

This section expresses the Sense of Congress that the Secretary should consider transportation routes to the repository site to avoid Las Vegas, Nevada.

TITLE III. DOE CONTRACT PERFORMANCE

Sec. 301. Title to material

This section amends section 123 of the NWPA to allow the Secretary to accept title to HLW or SNF for a repository or an MRS. The section also provides the Secretary the authority to enter into new contracts or negotiate modifications to existing contracts for acceptance of title, subsequent transportation, and storage of HLW or SNF, including the expedited titling, transportation, and storage of fuel to an MRS from nuclear facilities that have ceased commercial operation.

TITLE IV. BENEFITS TO HOST COMMUNITY

Sec. 401. Consent

This section amends section 170 of the NWPA by clarifying the number of benefits agreements that may be available and by adding a new subsection (g) expressing that if the State of Nevada enters into a benefits agreement under this section, such agreement shall not be considered an expression of consent to siting the repository.

Sec. 402. Content of agreements

This section amends the table in section 171 of the NWPA titled “Benefits Schedule.”

Section 402(b) amends section 171(a) of the NWPA to prohibit payments from a benefits agreement to be used to influence legislative action or any matter pending before Congress or a state legislature, for litigation purposes, or to support multistate efforts or other activities inconsistent with the siting, construction, or operation of the MRS or repository concerned.

Section 402(c) amends section 171(b) of the NWPA to remove the State of Nevada’s agreement to waive its rights to disapprove of the recommendation of the Yucca Mountain site as a condition to enter into a benefits agreement.

Section 402(d) amends section 171(c) of the NWPA to provide that payments under a benefits agreement to the State of Nevada shall be made from the Waste Fund.

Sec. 403. Covered units of local government

This section inserts section 172A in the NWPA to allow covered units of local government, not earlier than one year after the date of enactment, to enter into a benefits agreement with the Secretary. Such benefits agreements are to mitigate impacts of locating a repository at the Yucca Mountain site, as described in section 175(b). Payments to covered units of local governments under a benefits agreement are provided by the Waste Fund and cannot be used to influence legislative action or any matter pending before

Congress or a state legislature, for litigation purposes, or to support multistate efforts or other activities inconsistent with the siting, construction, or operation of the repository. Entering into a benefits agreement under this section by a covered unit of local government shall not be considered to be an expression of consent to the siting of a repository in the State of Nevada. This section also defines covered unit of local government to mean any affected unit of local government with respect to a repository or any unit of general local government in the State of Nevada.

Section 403(b) makes conforming amendments to section 170(a)(4) relating to benefits agreements.

Sec. 404. Termination

This section amends section 173 of the NWPA to modify the conditions for the termination of a benefits agreement from a Secretarial determination to the Commission's disapproval of a license to authorize construction for a repository under section 114(d).

Sec. 405. Other benefits

This section amends section 174 of the NWPA to require the Secretary to prioritize funding for higher education from the Waste Fund to institutions located in the State of Nevada.

Sec. 406. Disposal of spent nuclear fuel

This section amends section 122 of the NWPA to require economic benefits derived from the retrieval of SNF to be shared with any state, affected units of local government, and affected Indian tribes, where the repository is located.

Sec. 407. Updated report

This section amends section 175(a) of the NWPA to require the Secretary to update a report identifying potential actions to mitigate impacts associated with the activities authorized under Subtitle A.

TITLE V. FUNDING

Sec. 501. Assessment and collection of fees

This section amends section 302(a)(4) of the NWPA to direct the Secretary to establish procedures for the assessment of fees to provide sufficient revenues to offset the costs required by the Waste Fund.

The section also directs the Secretary to establish procedures to collect fees. The Secretary may not collect a fee until the Commission issues a final decision on the construction authorization for a repository under section 114(d) and the fees collected cannot exceed 90 percent of the amounts appropriated from the Waste Fund. Assessed fees that are not collected pursuant to the requirements of this section shall be collected when the Secretary determines necessary for the purposes of the Waste Fund, subject to appropriations.

Section 501(b) provides the Secretary the authority to seek modification of a contract under section 302(a) of the NWPA to ensure the contract complies with this section.

Section 502(c) makes technical and conforming amendments to section 302(a) of the NWPA.

Sec. 502. Use of Waste Fund

This section amends section 302(d) of the NWPA to define allowable uses of the Waste Fund.

Section 502(b) makes conforming amendments in section 117(d) and 141(f) with respect to allowable uses of the Waste Fund.

Sec. 503. Annual multi-year budget proposal

This section amends section 302(e) of the NWPA to require DOE to submit a multi-year budget proposal annually.

Sec. 504. Availability of certain amounts

This section amends section 302 of the NWPA by adding a new subsection (f) that makes certain amounts of funding from the Waste Fund available to the Secretary, without further appropriations. One percent of Waste Fund amounts will be available for each of the 25 years after HLW or SNF is received at the Yucca Mountain site for costs associated with construction and operation of a repository or facilities at the Yucca Mountain site; one percent of Waste Fund amounts will be available for payments to the State of Nevada when Yucca Mountain receives first fuel; one tenth of one percent of Waste Fund amounts will be available for annual payments under a benefits agreement, 20 percent of Waste Fund amounts during the decommissioning period for waste package and drip shield fabrication activities, and fees not yet collected pursuant to subsection (a)(3) will be available for costs associated with construction and operation of a repository or facilities at the Yucca Mountain site.

TITLE VI. MISCELLANEOUS

Sec. 601. Certain standards and criteria

This section requires the Environmental Protection Agency to determine if standards promulgated under section 121(a) of the NWPA should be updated and to submit to Congress a report on such determination. If the Administrator determines that the standards promulgated under section 121(a) of the NWPA should be updated, the Administrator shall promulgate updated standards within two years of making such determination. This section also requires the NRC to promulgate updated technical requirements under section 121(b) of the NWPA to be consistent with updated generally applicable standards.

Section 601(b) states that nothing in this section shall affect the standards, technical requirements, and criteria for the Yucca Mountain site under section 801 of the Energy Policy Act of 1992.

Sec. 602 Application

This section makes a conforming amendment by striking section 135(h) of the NWPA, which prohibits DOE from using a private facility for management of spent nuclear fuel.

Sec. 603. Transportation safety assistance

This section amends section 180(c) of the NWPA to direct the Secretary to make in-kind, financial, technical, and other appropriate assistance for safety activities related to the transportation to state and regional entities currently receiving technical assistance for training.

Sec. 604. Office of Civilian Radioactive Waste Management

This section amends section 304(b) of the NWPA to provide for not more than two five-year terms for the Director of the Office of Civilian Radioactive Waste Management and requires the Director to be appointed from persons who have extensive expertise and experience in organizational and project management. The section also allows the Director to serve up to one year following the expiration of the term or until a new Director is confirmed.

Section 604(b) amends section 203(a) of the Department of Energy Organization Act by striking paragraph (8) and transferring all functions described in that paragraph to the Office of Civilian Radioactive Waste Management.

Section 604(c) makes a conforming amendment to section 2(17) of the NWPA.

Sec. 605. West Lake Landfill

This section requires the Administrator of the Environmental Protection Agency to submit to Congress a report containing a final remedy to be implemented at the West Lake Landfill not later than one year after the date of enactment of the Act.

Sec. 606. Subseabed or ocean water disposal

This section amends section 5 of the NWPA by prohibiting the subseabed or ocean water disposal of SNF or HLW and preventing the funding of any activity relating to such disposal.

Sec. 607. Sense of Congress regarding storage of nuclear waste near the Great Lakes

This section is a sense of Congress stating that the Governments of the United States and Canada should not allow permanent or long-term storage of SNF or other radioactive waste near the Great Lakes.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

NUCLEAR WASTE POLICY ACT OF 1982

SHORT TITLE AND TABLE OF CONTENTS

SECTION 1. This Act may be cited as the "Nuclear Waste Policy Act of 1982".

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<i>Sec. 143. Conditions for MRS agreements.</i>						
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subtitle SUBTITLE SUBTITLE F—BENEFITS						
*	*	*	*	*	*	*
<i>Sec. 172A. Covered units of local government.</i>						
SUBTITLE G—OTHER BENEFITS						
*	*	*	*	*	*	*
<i>Sec. 176. Priority funding for certain institutions of higher education.</i>						
*	*	*	*	*	*	*
TITLE II—RESEARCH, DEVELOPMENT, AND DEMONSTRATION REGARDING DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTE AND SPENT NUCLEAR FUEL						
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【Sec. 224. Subseabed disposal.】						
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DEFINITIONS

SEC. 2. For purposes of this Act:

(1) The term “Administrator” means the Administrator of the Environmental Protection Agency.

(2) The term “affected Indian tribe” means any Indian tribe—

(A) within whose reservation boundaries a monitored retrievable storage facility, test and evaluation facility, or a repository for high-level radioactive waste or spent fuel is proposed to be located;

(B) whose federally defined possessory or usage rights to other lands outside of the reservation’s boundaries arising out of congressionally ratified treaties may be substantially and adversely affected by the locating of such a facility: *Provided*, That the Secretary of the Interior finds, upon the petition of the appropriate governmental officials of the tribe, that such effects are both substantial and adverse to the tribe;

(3) The term “atomic energy defense activity” means any activity of the Secretary performed in whole or in part in carrying out any of the following functions:

(A) naval reactors development;

(B) weapons activities including defense inertial confinement fusion;

(C) verification and control technology;

(D) defense nuclear materials production;

(E) defense nuclear waste and materials by-products management;

- (F) defense nuclear materials security and safeguards and security investigations; and
- (G) defense research and development.
- (4) The term “candidate site” means an area, within a geologic and hydrologic system, that is recommended by the Secretary under section 112 for site characterization, approved by the President under section 112 for site characterization, or undergoing site characterization under section 113.
- (5) The term “civilian nuclear activity” means any atomic energy activity other than an atomic energy defense activity.
- (6) The term “civilian nuclear power reactor” means a civilian nuclear powerplant required to be licensed under section 103 or 104 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2133, 2134(b)).
- (7) The term “Commission” means the Nuclear Regulatory Commission.
- (8) The term “Department” means the Department of Energy.
- (9) The term “disposal” means the emplacement in a repository of high-level radioactive waste, spent nuclear fuel, or other highly radioactive material with no foreseeable intent of recovery, whether or not such emplacement permits the recovery of such waste.
- (10) The terms “disposal package” and “package” mean the primary container that holds, and is in contact with, solidified high-level radioactive waste, spent nuclear fuel, or other radioactive materials, and any overpacks that are emplaced at a repository.
- (11) The term “engineered barriers” means manmade components of a disposal system designed to prevent the release of radionuclides into the geologic medium involved. Such term includes the high-level radioactive waste form, high-level radioactive waste canisters, and other materials placed over and around such canisters.
- (12) The term “high-level radioactive waste” means—
- (A) the highly radioactive material resulting from the reprocessing of spent nuclear fuel, including liquid waste produced directly in reprocessing and any solid material derived from such liquid waste that contains fission products in sufficient concentrations; and
- (B) other highly radioactive material that the Commission, consistent with existing law, determines by rule requires permanent isolation.
- (13) The term “Federal agency” means any Executive agency, as defined in section 105 of title 5, United States Code.
- (14) The term “Governor” means the chief executive officer of a State.
- (15) The term “Indian tribe” means any Indian tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary of the Interior because of their status as Indians, including any Alaska Native village, as defined in section 3(c) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(c)).
- (16) The term “low-level radioactive waste” means radioactive material that—

(A) is not high-level radioactive waste, spent nuclear fuel, transuranic waste, or by-product material as defined in section 11e(2) of the Atomic Energy Act of 1954 (42 U.S.C. 2014(e)(2)); and

(B) the Commission, consistent with existing law, classifies as low-level radioactive waste.

(17) The term “Office” means the Office of Civilian Radioactive Waste Management established in [section 305] *section 304*.

(18) The term “repository” means any system licensed by the Commission that is intended to be used for, or may be used for, the permanent deep geologic disposal of high-level radioactive waste and spent nuclear fuel, whether or not such system is designed to permit the recovery, for a limited period during initial operation, of any materials placed in such system. Such term includes both surface and subsurface areas at which high-level radioactive waste and spent nuclear fuel handling activities are conducted.

(19) The term “reservation” means—

(A) any Indian reservation or dependent Indian community referred to in clause (a) or (b) of section 1151 of title 18, United States Code; or

(B) any land selected by an Alaska Native village or regional corporation under the provisions of the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.).

(20) The term “Secretary” means the Secretary of Energy.

(21) The term “site characterization” means—

(A) siting research activities with respect to a test and evaluation facility at a candidate site; and

(B) activities, whether in the laboratory or in the field, undertaken to establish the geologic condition and the ranges of the parameters of a candidate site relevant to the location of a repository, including borings, surface excavations, excavations of exploratory shafts, limited subsurface lateral excavations and borings, and in situ testing needed to evaluate the suitability of a candidate site for the location of a repository, but not including preliminary borings and geophysical testing needed to assess whether site characterization should be undertaken.

(22) The term “siting research” means activities, including borings, surface excavations, shaft excavations, subsurface lateral excavations and borings, and in situ testing, to determine the suitability of a site for a test and evaluation facility.

(23) The term “spent nuclear fuel” means fuel that has been withdrawn from a nuclear reactor following irradiation, the constituent elements of which have not been separated by reprocessing.

(24) The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and any other territory or possession of the United States.

(25) The term “storage” means retention of high-level radioactive waste, spent nuclear fuel, or transuranic waste with the

intent to recover such waste or fuel for subsequent use, processing, or disposal.

(26) The term "Storage Fund" means the Interim Storage Fund established in section 137(c).

(27) The term "test and evaluation facility" means an at-depth, prototypic, underground cavity with subsurface lateral excavations extending from a central shaft that is used for research and development purposes, including the development of data and experience for the safe handling and disposal of solidified high-level radioactive waste, transuranic waste, or spent nuclear fuel.

(28) The term "unit of general local government" means any borough, city, county, parish, town, township, village, or other general purpose political subdivision of a State.

(29) The term "Waste Fund" means the Nuclear Waste Fund established in section 302(c).

(30) The term "Yucca Mountain site" means the candidate site in the State of Nevada recommended by the Secretary to the President under section 112(b)(1)(B) on May 27, 1986.

(31) The term "affected unit of local government" means the unit of local government with jurisdiction over the site of a repository or a monitored retrievable storage facility. Such term may, at the discretion of the Secretary, include units of local government that are contiguous with such unit.

(32) The term "Negotiator" means the Nuclear Waste Negotiator.

(33) As used in title IV, the term "Office" means the Office of the Nuclear Waste Negotiator established under title IV of this Act.

(34) The term "monitored retrievable storage facility" means [the storage facility] *a storage facility* described in section 141(b)(1).

(35) *The term "MRS agreement" means a cooperative agreement, contract, or other mechanism that the Secretary considers appropriate to support the storage of Department-owned civilian waste in one or more monitored retrievable storage facilities as authorized under section 142(b)(2).*

(36) *The term "Department-owned civilian waste" means high-level radioactive waste, or spent nuclear fuel, resulting from civilian nuclear activities, to which the Department holds title.*

* * * * *

OCEAN DISPOSAL

SEC. 5. [Nothing in this Act] (a) *EFFECT ON MARINE PROTECTION, RESEARCH, AND SANCTUARIES ACT OF 1972.*—Nothing in this Act shall be deemed to affect the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1401 et seq.).

(b) *SUBSEABED OR OCEAN WATER DISPOSAL.*—Notwithstanding any other provision of law—

(1) *the subseabed or ocean water disposal of spent nuclear fuel or high-level radioactive waste is prohibited; and*

(2) no funds shall be obligated for any activity relating to the subseabed or ocean water disposal of spent nuclear fuel or high-level radioactive waste.

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TITLE I—DISPOSAL AND STORAGE OF HIGH-LEVEL RADIOACTIVE WASTE, SPENT NUCLEAR FUEL, AND LOW-LEVEL RADIOACTIVE WASTE

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SUBTITLE A—REPOSITORIES FOR DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTE AND SPENT NUCLEAR FUEL

* * * * *

SITE APPROVAL AND CONSTRUCTION AUTHORIZATION

SEC. 114. (a) HEARINGS AND PRESIDENTIAL RECOMMENDATION.—

(1) The Secretary shall hold public hearings in the vicinity of the Yucca Mountain site, for the purposes of informing the residents of the area of such consideration and receiving their comments regarding the possible recommendation of such site. If, upon completion of such hearings and completion of site characterization activities at the Yucca Mountain site, under section 113, the Secretary decides to recommend approval of such site to the President, the Secretary shall notify the Governor and legislature of the State of Nevada, of such decision. No sooner than the expiration of the 30-day period following such notification, the Secretary shall submit to the President a recommendation that the President approve such site for the development of a repository. Any such recommendation by the Secretary shall be based on the record of information developed by the Secretary under section 113 and this section, including the information described in subparagraph (A) through subparagraph (G). Together with any recommendation of a site under this paragraph, the Secretary shall make available to the public, and submit to the President, a comprehensive statement of the basis of such recommendation, including the following:

(A) a description of the proposed repository, including preliminary engineering specifications for the facility;

(B) a description of the waste form or packaging proposed for use at such repository, and an explanation of the relationship between such waste form or packaging and the geologic medium of such site;

(C) a discussion of data, obtained in site characterization activities, relating to the safety of such site;

(D) a final environmental impact statement prepared for the Yucca Mountain site pursuant to subsection (f) and the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), together with comments made concerning such environmental impact statement by the Secretary of the Interior, the Council on Environmental Quality, the Administrator, and the Commission, except that the Secretary shall not be required in any such environmental impact statement to consider the need for a repository, the alternatives to geological disposal, or alternative sites to the Yucca Mountain site;

(E) preliminary comments of the Commission concerning the extent to which the at-depth site characterization analysis and the waste form proposal for such site seem to be sufficient for inclusion in any application to be submitted by the Secretary for licensing of such site as a repository;

(F) the views and comments of the Governor and legislature of any State, or the governing body of any affected Indian tribe, as determined by the Secretary, together with the response of the Secretary to such views;

(G) such other information as the Secretary considers appropriate; and

(H) any impact report submitted under section 116(c)(2)(B) by the State of Nevada.

(2)(A) If, after recommendation by the Secretary, the President considers the Yucca Mountain site qualified for application for a construction authorization for a repository, the President shall submit a recommendation of such site to Congress.

(B) The President shall submit with such recommendation a copy of the statement of such site prepared by the Secretary under paragraph (1).

(3)(A) The President may not recommend the approval of the Yucca Mountain site unless the Secretary has recommended to the President under paragraph (1) approval of such site and has submitted to the President a statement for such site as required under such paragraph.

(B) No recommendation of a site by the President under this subsection shall require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), or to require any environmental review under subparagraph (E) or (F) of section 102(2) of such Act.

(b) SUBMISSION OF APPLICATION.—If the President recommends to the Congress the Yucca Mountain site under subsection (a) and the site designation is permitted to take effect under section 115, the Secretary shall submit to the Commission an application for a construction authorization for a repository at such site not later than 90 days after the date on which the recommendation of the site designation is effective under such section and shall provide to the Governor and legislature of the State of Nevada a copy of such application.

(c) STATUS REPORT ON APPLICATION.—Not later than 1 year after the date on which an application for a construction authorization is submitted under subsection (b), and annually thereafter until **the date on which such authorization is granted** *the date on which the Commission issues a final decision approving or disapproving such application*, the Commission shall submit a report to the Congress describing the proceedings undertaken through the date of such report with regard to such application, including a description of—

(1) any major unresolved safety issues, and the explanation of the Secretary with respect to design and operation plans for resolving such issues;

(2) any matters of contention regarding such application; and

(3) any Commission actions regarding the granting or denial of such authorization.

(d) COMMISSION ACTION.—**[The Commission shall consider]**

(1) *APPLICATIONS FOR CONSTRUCTION AUTHORIZATION.*—*The Commission shall consider an application for a construction authorization for all or part of a repository in accordance with the laws applicable to such applications, except that the Commission shall issue a final decision approving or disapproving the issuance of a construction authorization not later than [the expiration of 3 years after the date of the submission of such application] 30 months after the date of enactment of the Nuclear Waste Policy Amendments Act of 2017, except that the Commission may extend such deadline by not more than 12 months if, not less than 30 days before such deadline, the Commission complies with the reporting requirements established in subsection (e)(2). The Commission decision approving the first such application shall prohibit the emplacement in the first repository of a quantity of spent fuel containing in excess of [70,000 metric tons] 110,000 metric tons of heavy metal or a quantity of solidified high-level radioactive waste resulting from the reprocessing of such a quantity of spent fuel until such time as a second repository is in operation. In the event that a monitored retrievable storage facility, approved pursuant to subtitle C of this Act, shall be located, or is planned to be located, within 50 miles of the first repository, then the Commission decision approving the first such application shall prohibit the emplacement of a quantity of spent fuel containing in excess of [70,000 metric tons] 110,000 metric tons of heavy metal or a quantity of solidified high-level radioactive waste resulting from the reprocessing of spent fuel in both the repository and monitored retrievable storage facility until such time as a second repository is in operation.*

(2) *APPLICATIONS TO AMEND.*—*If the Commission issues a construction authorization for a repository pursuant to paragraph (1) and the Secretary submits an application to amend such authorization, the Commission shall consider the application to amend using expedited, informal procedures, including discovery procedures that minimize the burden on the parties to produce documents. The Commission shall issue a final decision on such application to amend within 1 year after the date of submission of such application, except that the Commission may extend such deadline by not more than 6 months if, not less than 30 days before such deadline, the Commission complies with the reporting requirements established in subsection (e)(2).*

(3) *INFRASTRUCTURE ACTIVITIES.*—

(A) *IN GENERAL.*—*At any time before or after the Commission issues a final decision approving or disapproving the issuance of a construction authorization for a repository pursuant to paragraph (1), the Secretary may undertake infrastructure activities that the Secretary considers necessary or appropriate to support construction or operation of a repository at the Yucca Mountain site or transportation to such site of spent nuclear fuel and high-level radioactive waste. Infrastructure activities include safety upgrades, site preparation, the construction of a rail line to connect the Yucca Mountain site with the national rail network (in-*

cluding any facilities to facilitate rail operations), and construction, upgrade, acquisition, or operation of electrical grids or facilities, other utilities, communication facilities, access roads, and nonnuclear support facilities.

(B) ENVIRONMENTAL ANALYSIS.—If the Secretary determines that an environmental analysis is required under the National Environmental Policy Act of 1969 with respect to an infrastructure activity undertaken under this paragraph, the Secretary need not consider alternative actions or a no-action alternative. To the extent any other Federal agency must consider the potential environmental impact of such an infrastructure activity, the agency shall adopt, to the extent practicable, any environmental analysis prepared by the Secretary under this subparagraph without further action. Such adoption satisfies the responsibilities of the adopting agency under the National Environmental Policy Act of 1969, and no further action is required by the agency.

(C) NO GROUNDS FOR DISAPPROVAL.—The Commission may not disapprove, on the grounds that the Secretary undertook an infrastructure activity under this paragraph—

(i) the issuance of a construction authorization for a repository pursuant to paragraph (1);

(ii) a license to receive and possess spent nuclear fuel and high-level radioactive waste; or

(iii) any other action concerning the repository.

(e) PROJECT DECISION SCHEDULE.—(1) The Secretary shall prepare and update, as appropriate, in cooperation with all affected Federal agencies, a project decision schedule that portrays the optimum way to attain the operation of the repository, within the time periods specified in this subtitle. Such schedule shall include a description of objectives and a sequence of deadlines for all Federal agencies required to take action, including an identification of the activities in which a delay in the start, or completion, of such activities will cause a delay in beginning repository operation.

(2) Any Federal agency that determines that it cannot comply with any deadline in the project decision schedule, or fails to so comply, shall submit to the Secretary and to the Congress a written report explaining the reason for its failure or expected failure to meet such deadline, the reason why such agency could not reach an agreement with the Secretary, the estimated time for completion of the activity or activities involved, the associated effect on its other deadlines in the project decision schedule, and any recommendations it may have or actions it intends to take regarding any improvements in its operation or organization, or changes to its statutory directives or authority, so that it will be able to mitigate the delay involved. The Secretary, within 30 days after receiving any such report, shall file with the Congress his response to such report, including the reasons why the Secretary could not amend the project decision schedule to accommodate the Federal agency involved.

(f) ENVIRONMENTAL IMPACT STATEMENT.—(1) Any recommendation made by the Secretary under this section shall be considered a major Federal action significantly affecting the quality of the human environment for purposes of the National Environmental

Policy Act of 1969 (42 U.S.C. 4321 et seq.). A final environmental impact statement prepared by the Secretary under such Act shall accompany any recommendation to the President to approve a site for a repository.

(2) With respect to the requirements imposed by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), compliance with the procedures and requirements of this Act shall be deemed adequate consideration of the need for a repository, the time of the initial availability of a repository, and all alternatives to the isolation of high-level radioactive waste and spent nuclear fuel in a repository.

(3) For purposes of complying with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and this section, the Secretary need not consider alternate sites to the Yucca Mountain site for the repository to be developed under this subtitle.

(4) Any environmental impact statement prepared in connection with a repository proposed to be constructed by the Secretary under this subtitle shall, to the extent practicable, be adopted by the Commission in connection with the issuance by the Commission of a construction authorization and license for such repository. To the extent such statement is adopted by the Commission, such adoption shall be deemed to also satisfy the responsibilities of the Commission under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and no further consideration shall be required, except that nothing in this subsection shall affect any independent responsibilities of the Commission to protect the public health and safety under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.).

(5) Nothing in this Act shall be construed to amend or otherwise detract from the licensing requirements of the Nuclear Regulatory Commission established in title II of the Energy Reorganization Act of 1974 (42 U.S.C. 5841 et seq.).

(6) In any such statement prepared with respect to the repository to be constructed under this subtitle, the Nuclear Regulatory Commission need not consider the need for a repository, the time of initial availability of a repository, alternate sites to the Yucca Mountain site, [or nongeologic alternatives to such site] *nongeologic alternatives to such site, or an action connected or otherwise related to the repository to the extent the action is undertaken outside the geologic repository operations area and does not require a license from the Commission.*

* * * * *

CONSULTATION WITH STATES AND AFFECTED INDIAN TRIBES

SEC. 117. (a) PROVISION OF INFORMATION.—(1) The Secretary, the Commission, and other agencies involved in the construction, operation, or regulation of any aspect of a repository in a State shall provide to the Governor and legislature of such State, and to the governing body of any affected Indian tribe, timely and complete information regarding determinations or plans made with respect to the site characterization siting, development, design, licensing, construction, operation, regulation, or decommissioning of such repository.

(2) Upon written request for such information by the Governor or legislature of such State, or by the governing body of any affected Indian tribe, as the case may be, the Secretary shall provide a written response to such request within 30 days of the receipt of such request. Such response shall provide the information requested or, in the alternative, the reasons why the information cannot be so provided. If the Secretary fails to so respond within such 30 days, the Governor or legislature of such State, or the governing body of any affected Indian tribe, as the case may be, may transmit a formal written objection to such failure to respond to the President. If the President or Secretary fails to respond to such written request within 30 days of the receipt by the President of such formal written objection, the Secretary shall immediately suspend all activities in such State authorized by this subtitle, and shall not renew such activities until the Governor or legislature of such State, or the governing body of any affected Indian tribe, as the case may be, has received the written response to such written request required by this subsection.

(b) CONSULTATION AND COOPERATION.—In performing any study of an area within a State for the purpose of determining the suitability of such area for a repository pursuant to section 112(c), and in subsequently developing and loading any repository within such State, the Secretary shall consult and cooperate with the Governor and legislature of such State and the governing body of any affected Indian tribe in an effort to resolve the concerns of such State and any affected Indian tribe regarding the public health and safety, environmental, and economic impacts of any such repository. In carrying out his duties under this subtitle, the Secretary shall take such concerns into account to the maximum extent feasible and as specified in written agreements entered into under subsection (c).

(c) WRITTEN AGREEMENT.—Not later than 60 days after (1) the approval of a site for site characterization for such a repository under section 112(c), or (2) the written request of the State or Indian tribe in any affected State notified under section 116(a) to the Secretary, whichever, first occurs, the Secretary shall seek to enter into a binding written agreement, and shall begin negotiations, with such State and, where appropriate, to enter into a separate binding agreement with the governing body of any affected Indian tribe, setting forth (but not limited to) the procedures under which the requirements of subsections (a) and (b), and the provisions of such written agreement, shall be carried out. Any such written agreement shall not affect the authority of the Commission under existing law. Each such written agreement shall, to the maximum extent feasible, be completed not later than 6 months after such notification. Such written agreement shall specify procedures—

(1) by which such State or governing body of an affected Indian tribe, as the case may be, may study, determine, comment on, and make recommendations with regard to the possible public health and safety, environmental, social, and economic impacts of any such repository;

(2) by which the Secretary shall consider and respond to comments and recommendations made by such State or governing body of an affected Indian tribe, including the period in which the Secretary shall so respond;

(3) by which the Secretary and such State or governing body of an affected Indian tribe may review or modify the agreement periodically;

(4) by which such State or governing body of an affected Indian tribe is to submit an impact report and request for impact assistance under section 116(c) or section 118(b), as the case may be;

(5) by which the Secretary shall assist such State, and the units of general local government in the vicinity of the repository site, in resolving the offsite concerns of such State and units of general local government, including, but not limited to, questions of State liability arising from accidents, necessary road upgrading and access to the site, ongoing emergency preparedness and emergency response, monitoring of transportation of high-level radioactive waste and spent nuclear fuel through such State, conduct of baseline health studies of inhabitants in neighboring communities near the repository site and reasonable periodic monitoring thereafter, and monitoring of the repository site upon any decommissioning and decontamination;

(6) by which the Secretary shall consult and cooperate with such State on a regular, ongoing basis and provide for an orderly process and timely schedule for State review and evaluation, including identification in the agreement of key events, milestones, and decision points in the activities of the Secretary at the potential repository site;

(7) by which the Secretary shall notify such State prior to the transportation of any high-level radioactive waste and spent nuclear fuel into such State for disposal at the repository site;

(8) by which such State may conduct reasonable independent monitoring and testing of activities on the repository site, except that such monitoring and testing shall not unreasonably interfere with or delay onsite activities;

(9) for sharing, in accordance with applicable law, of all technical and licensing information, the utilization of available expertise, the facilitating of permit procedures, joint project review, and the formulation of joint surveillance and monitoring arrangements to carry out applicable Federal and State laws;

(10) for public notification of the procedures specified under the preceding paragraphs; and

(11) for resolving objections of a State and affected Indian tribes at any stage of the planning, siting, development, construction, operation, or closure of such a facility within such State through negotiation, arbitration, or other appropriate mechanisms.

(d) ON-SITE REPRESENTATIVE.—The Secretary shall offer to any State, Indian tribe or unit of local government within whose jurisdiction a site for a repository or monitored retrievable storage facility is located under this title an opportunity to designate a representative to conduct on-site oversight activities at such site. Reasonable expenses of such representatives *designated with respect to a repository* shall be paid out of the Waste Fund.

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DISPOSAL OF SPENT NUCLEAR FUEL

SEC. 122. Notwithstanding any other provision of this subtitle, any repository constructed on a site approved under this subtitle shall be designed and constructed to permit the retrieval of any spent nuclear fuel placed in such repository, during an appropriate period of operation of the facility, for any reason pertaining to the public health and safety, or the environment, or for the purpose of permitting the recovery of the economically valuable contents of such spent fuel. The Secretary shall specify the appropriate period of retrievability with respect to any repository at the time of design of such repository, and such aspect of such repository shall be subject to approval or disapproval by the Commission as part of the construction authorization process under subsections (b) through (d) of section 114. *Any economic benefits derived from the retrieval of spent nuclear fuel pursuant to this section shall be shared with the State in which the repository is located, affected units of local government, and affected Indian tribes.*

TITLE TO MATERIAL

SEC. 123. [Delivery] (a) *IN GENERAL.*—*Delivery*, and acceptance by the Secretary, of any high-level radioactive waste or spent nuclear fuel for a [repository constructed under this subtitle] *repository or monitored retrievable storage facility* shall constitute a transfer to the Secretary of title to such waste or spent fuel.

(b) *CONTRACT MODIFICATION.*—*The Secretary may enter into new contracts or negotiate modifications to existing contracts, with any person who generates or holds title to high-level radioactive waste or spent nuclear fuel of domestic origin, for acceptance of title, subsequent transportation, and storage of such high-level radioactive waste or spent nuclear fuel (including to expedite such acceptance of title, transportation, and storage of such waste or fuel from facilities that have ceased commercial operation) at a monitored retrievable storage facility authorized under subtitle C.*

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SUBTITLE B—INTERIM STORAGE PROGRAM

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STORAGE OF SPENT NUCLEAR FUEL

SEC. 135. (a) *STORAGE CAPACITY.*—(1) Subject to section 8, the Secretary shall provide, in accordance with paragraph (5), not more than 1,900 metric tons of capacity for the storage of spent nuclear fuel from civilian nuclear power reactors. Such storage capacity shall be provided through any one or more of the following methods, used in any combination determined by the Secretary to be appropriate:

(A) use of available capacity at one or more facilities owned by the Federal Government on the date of the enactment of this Act, including the modification and expansion of any such facilities, if the Commission determines that such use will adequately protect the public health and safety, except that such use shall not—

(i) render such facilities subject to licensing under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) or the Energy Reorganization Act of 1974 (42 U.S.C. 5801 et seq.); or

(ii) except as provided in subsection (c) require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), such facility is already being used, or has previously been used, for such storage or for any similar purpose.

(B) acquisition of any modular or mobile spent nuclear fuel storage equipment, including spent nuclear fuel storage casks, and provision of such equipment, to any person generating or holding title to spent nuclear fuel, at the site of any civilian nuclear power reactor operated by such person or at any site owned by the Federal Government on the date of enactment of this Act;

(C) construction of storage capacity at any site of a civilian nuclear power reactor.

(2) Storage capacity authorized by paragraph (1) shall not be provided at any Federal or non-Federal site within which there is a candidate site for a repository. The restriction in the preceding sentence shall only apply until such time as the Secretary decides that such candidate site is no longer a candidate site under consideration for development as a repository.

(3) In selecting methods of providing storage capacity under paragraph (1), the Secretary shall consider the timeliness of the availability of each such method and shall seek to minimize the transportation of spent nuclear fuel, the public health and safety impacts, and the costs of providing such storage capacity.

(4) In providing storage capacity through any method described in paragraph (1), the Secretary shall comply with any applicable requirements for licensing or authorization of such method, except as provided in paragraph (1)(A)(i).

(5) The Secretary shall ensure that storage capacity is made available under paragraph (1) when needed, as determined on the basis of the storage needs specified in contracts entered into under section 136(a), and shall accept upon request any spent nuclear fuel as covered under such contracts.

(6) For purposes of paragraph (1)(A), the term “facility” means any building or structure.

(b) CONTRACTS.—(1) Subject to the capacity limitation established in subsections (a) (1) and (d) the Secretary shall offer to enter into, and may enter into, contracts under section 136(a) with any person generating or owning spent nuclear fuel for purposes of providing storage capacity for such spent fuel under this section only if the Commission determines that—

(A) adequate storage capacity to ensure the continued orderly operation of the civilian nuclear power reactor at which such spent nuclear fuel is generated cannot reasonably be provided by the person owning and operating such reactor at such site, or at the site of any other civilian nuclear power reactor operated by such person, and such capacity cannot be made available in a timely manner through any method described in subparagraph (B); and

(B) such person is diligently pursuing licensed alternatives to the use of Federal storage capacity for the storage of spent nuclear fuel expected to be generated by such person in the future, including—

- (i) expansion of storage facilities at the site of any civilian nuclear power reactor operated by such person;
- (ii) construction of new or additional storage facilities at the site of any civilian nuclear power reactor operated by such person;
- (iii) acquisition of modular or mobile spent nuclear fuel storage equipment, including spent nuclear fuel storage casks, for use at the site of any civilian nuclear power reactor operated by such person; and
- (iv) transshipment to another civilian nuclear power reactor owned by such person.

(2) In making the determination described in paragraph (1)(A), the Commission shall ensure maintenance of a full core reserve storage capability at the site of the civilian nuclear power reactor involved unless the Commission determines that maintenance of such capability is not necessary for the continued orderly operation of such reactor.

(3) The Commission shall complete the determinations required in paragraph (1) with respect to any request for storage capacity not later than 6 months after receipt of such request by the Commission.

(c) ENVIRONMENTAL REVIEW.—(1) The provision of 300 or more metric tons of storage capacity at any one Federal site under subsection (a)(1)(A) shall be considered to be a major Federal action requiring preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

(2)(A) The Secretary shall prepare, and make available to the public, an environmental assessment of the probable impacts of any provision of less than 300 metric tons of storage capacity at any one Federal site under subsection (a)(1)(A) that requires the modification or expansion of any facility at the site, and a discussion of alternative activities that may be undertaken to avoid such impacts. Such environmental assessment shall include—

- (i) an estimate of the amount of storage capacity to be made available at such site;
- (ii) an evaluation as to whether the facilities to be used at such site are suitable for the provision of such storage capacity;
- (iii) a description of activities planned by the Secretary with respect to the modification or expansion of the facilities to be used at such site;
- (iv) an evaluation of the effects of the provision of such storage capacity at such site on the public health and safety, and the environment;
- (v) a reasonable comparative evaluation of current information with respect to such site and facilities and other sites and facilities available for the provision of such storage capacity;
- (vi) a description of any other sites and facilities that have been considered by the Secretary for the provision of such storage capacity; and

(vii) an assessment of the regional and local impacts of providing such storage capacity at such site, including the impacts on transportation.

(B) The issuance of any environmental assessment under this paragraph shall be considered to be a final agency action subject to judicial review in accordance with the provisions of chapter 7 of title 5, United States Code. Such judicial review shall be limited to the sufficiency of such assessment with respect to the items described in clauses (i) through (vii) of subparagraph (A).

(3) Judicial review of any environmental impact statement or environmental assessment prepared pursuant to this subsection shall be conducted in accordance with the provisions of section 119.

(d) REVIEW OF SITES AND STATE PARTICIPATION.—(1) In carrying out the provisions of this subtitle with regard to any interim storage of spent fuel from civilian nuclear power reactors which the Secretary is authorized by section 135 to provide, the Secretary shall, as soon as practicable, notify, in writing, the Governor and the State legislature of any State and the Tribal Council of any affected Indian tribe in such State in which is located a potentially acceptable site or facility for such interim storage of spent fuel of his intention to investigate that site or facility.

(2) During the course of investigation of such site or facility, the Secretary shall keep the Governor, State legislature, and affected Tribal Council currently informed of the progress of the work, and results of the investigation. At the time of selection by the Secretary of any site or existing facility, but prior to undertaking any site-specific work or alterations, the Secretary shall promptly notify the Governor, the legislature, and any affected Tribal Council in writing of such selection, and subject to the provisions of paragraph (6) of this subsection, shall promptly enter into negotiations with such State and affected Tribal Council to establish a cooperative agreement under which such State and Council shall have the right to participate in a process of consultation and cooperation, based on public health and safety and environmental concerns, in all stages of the planning, development, modification, expansion, operation, and closure of storage capacity at a site or facility within such State for the interim storage of spent fuel from civilian nuclear power reactors. Public participation in the negotiation of such an agreement shall be provided for and encouraged by the Secretary, the State, and the affected Tribal Council. The Secretary, in cooperation with the States and Indian tribes, shall develop and publish minimum guidelines for public participation in such negotiations, but the adequacy of such guidelines or any failure to comply with such guidelines shall not be a basis for judicial review.

(3) The cooperative agreement shall include, but need not be limited to, the sharing in accordance with applicable law of all technical and licensing information, the utilization of available expertise, the facilitating of permitting procedures, joint project review, and the formulation of joint surveillance and monitoring arrangements to carry out applicable Federal and State laws. The cooperative agreement also shall include a detailed plan or schedule of milestones, decision points and opportunities for State or eligible Tribal Council review and objection. Such cooperative agreement shall provide procedures for negotiating and resolving objections of the State and affected Tribal Council in any stage of planning, de-

velopment, modification, expansion, operation, or closure of storage capacity at a site or facility within such State. The terms of any cooperative agreement shall not affect the authority of the Nuclear Regulatory Commission under existing law.

(4) For the purpose of this subsection, “process of consultation and cooperation” means a methodology by which the Secretary (A) keeps the State and eligible Tribal Council fully and currently informed about the aspects of the project related to any potential impact on the public health and safety and environment; (B) solicits, receives, and evaluates concerns and objections of such State and Council with regard to such aspects of the project on an ongoing basis; and (C) works diligently and cooperatively to resolve, through arbitration or other appropriate mechanisms, such concerns and objections. The process of consultation and cooperation shall not include the grant of a right to any State or Tribal Council to exercise an absolute veto of any aspect of the planning, development, modification, expansion, or operation of the project.

(5) The Secretary and the State and affected Tribal Council shall seek to conclude the agreement required by paragraph (2) as soon as practicable, but not later than 180 days following the date of notification of the selection under paragraph (2). The Secretary shall periodically report to the Congress thereafter on the status of the agreements approved under paragraph (3). Any report to the Congress on the status of negotiations of such agreement by the Secretary shall be accompanied by comments solicited by the Secretary from the State and eligible Tribal Council.

(6)(A) Upon deciding to provide an aggregate of 300 or more metric tons of storage capacity under subsection (a)(1) at any one site, the Secretary shall notify the Governor and legislature of the State where such site is located, or the governing body of the Indian tribe in whose reservation such site is located, as the case may be, of such decision. During the 60-day period following receipt of notification by the Secretary of his decision to provide an aggregate of 300 or more metric tons of storage capacity at any one site, the Governor or legislature of the State in which such site is located, or the governing body of the affected Indian tribe where such site is located, as the case may be, may disapprove the provision of 300 or more metric tons of storage capacity at the site involved and submit to the Congress a notice of such disapproval. A notice of disapproval shall be considered to be submitted to the Congress on the date of the transmittal of such notice of disapproval to the Speaker of the House and the President pro tempore of the Senate. Such notice of disapproval shall be accompanied by a statement of reasons explaining why the provision of such storage capacity at such site was disapproved by such Governor or legislature or the governing body of such Indian tribe.

(B) Unless otherwise provided by State law, the Governor or legislature of each State shall have authority to submit a notice of disapproval to the Congress under subparagraph (A). In any case in which State law provides for submission of any such notice of disapproval by any other person or entity, any reference in this subtitle to the Governor or legislature of such State shall be considered to refer instead to such other person or entity.

(C) The authority of the Governor and legislature of each State under this paragraph shall not be applicable with respect to any site located on a reservation.

(D) If any notice of disapproval is submitted to the Congress under subparagraph (A), the proposed provision of 300 or more metric tons of storage capacity at the site involved shall be disapproved unless, during the first period of 90 calendar days of continuous session of the Congress following the date of the receipt by the Congress of such notice of disapproval, the Congress passes a resolution approving such proposed provision of storage capacity in accordance with the procedures established in this paragraph and subsections (d) through (f) of section 115 and such resolution thereafter becomes law. For purposes of this paragraph, the term “resolution” means a joint resolution of either House of the Congress, the matter after the resolving clause of which is as follows: “That there hereby is approved the provision of 300 or more metric tons of spent nuclear fuel storage capacity at the site located at _____, with respect to which a notice of disapproval was submitted by _____ on _____.”. The first blank space in such resolution shall be filled with the geographic location of the site involved; the second blank space in such resolution shall be filled with the designation of the State Governor and legislature or affected Indian tribe governing body submitting the notice of disapproval involved; and the last blank space in such resolution shall be filled with the date of submission of such notice of disapproval.

(E) For purposes of the consideration of any resolution described in subparagraph (D), each reference in subsections (d) and (e) of section 115 to a resolution of repository siting approval shall be considered to refer to the resolution described in such subparagraph.

(7) As used in this section, the term “affected Tribal Council” means the governing body of any Indian tribe within whose reservation boundaries there is located a potentially acceptable site for interim storage capacity of spent nuclear fuel from civilian nuclear power reactors, or within whose boundaries a site for such capacity is selected by the Secretary, or whose federally defined possessory or usage rights to other lands outside of the reservation’s boundaries arising out of congressionally ratified treaties, as determined by the Secretary of the Interior pursuant to a petition filed with him by the appropriate governmental officials of such tribe, may be substantially and adversely affected by the establishment of any such storage capacity.

(e) LIMITATIONS.—Any spent nuclear fuel stored under this section shall be removed from the storage site or facility involved as soon as practicable, but in any event not later than 3 years following the date on which a repository or monitored retrievable storage facility developed under this Act is available for disposal of such spent nuclear fuel.

(f) REPORT.—The Secretary shall annually prepare and submit to the Congress a report on any plans of the Secretary for providing storage capacity under this section. Such report shall include a description of the specific manner of providing such storage selected by the Secretary, if any. The Secretary shall prepare and submit

the first such report not later than 1 year after the date of the enactment of this Act.

(g) **CRITERIA FOR DETERMINING ADEQUACY OF AVAILABLE STORAGE CAPACITY.**—Not later than 90 days after the date of the enactment of this Act, the Commission pursuant to section 553 of the Administrative Procedures Act, shall propose, by rule, procedures and criteria for making the determination required by subsection (b) that a person owning and operating a civilian nuclear power reactor cannot reasonably provide adequate spent nuclear fuel storage capacity at the civilian nuclear power reactor site when needed to ensure the continued orderly operation of such reactor. Such criteria shall ensure the maintenance of a full core reserve storage capability at the site of such reactor unless the Commission determines that maintenance of such capability is not necessary for the continued orderly operation of such reactor. Such criteria shall identify the feasibility of reasonably providing such adequate spent nuclear fuel storage capacity, taking into account economic, technical, regulatory, and public health and safety factors, through the use of high-density fuel storage racks, fuel rod compaction, transshipment of spent nuclear fuel to another civilian nuclear power reactor within the same utility system, construction of additional spent nuclear fuel pool capacity, or such other technologies as may be approved by the Commission.

[(h) **APPLICATION.**—Notwithstanding any other provision of law, nothing in this Act shall be construed to encourage, authorize, or require the private or Federal use, purchase, lease, or other acquisition of any storage facility located away from the site of any civilian nuclear power reactor and not owned by the Federal Government on the date of the enactment of this Act.]

[(i) **(h) COORDINATION WITH RESEARCH AND DEVELOPMENT PROGRAM.**—To the extent available, and consistent with the provisions of this section, the Secretary shall provide spent nuclear fuel for the research and development program authorized in section 217 from spent nuclear fuel received by the Secretary for storage under this section. Such spent nuclear fuel shall not be subject to the provisions of subsection (e).

* * * * *

SUBTITLE C—MONITORED RETRIEVABLE STORAGE

MONITORED RETRIEVABLE STORAGE

SEC. 141. (a) **FINDINGS.**—The Congress finds that—

(1) long-term storage of high-level radioactive waste or spent nuclear fuel in monitored retrievable storage facilities is an option for providing safe and reliable management of such waste or spent fuel;

(2) the executive branch and the Congress should proceed as expeditiously as possible to consider fully a proposal for construction of one or more monitored retrievable storage facilities to provide such long-term storage;

(3) the Federal Government has the responsibility to ensure that site-specific designs for such facilities are available as provided in this section;

(4) the generators and owners of the high-level radioactive waste and spent nuclear fuel to be stored in such facilities have the responsibility to pay the costs of the long-term storage of such waste and spent fuel; and

(5) disposal of high-level radioactive waste and spent nuclear fuel in a repository developed under this Act should proceed regardless of any construction of a monitored retrievable storage facility pursuant to this section.

(b) SUBMISSION OF PROPOSAL BY SECRETARY.—(1) On or before June 1, ~~1985~~ 2019, the Secretary shall complete a detailed study of the need for and feasibility of, and shall submit to the Congress a proposal for, ~~the construction of~~ one or more monitored retrievable storage facilities for high-level radioactive waste and spent nuclear fuel. Each such facility shall be designed—

(A) to accommodate spent nuclear fuel and high-level radioactive waste resulting from civilian nuclear activities;

(B) to permit continuous monitoring, management, and maintenance of such spent fuel and waste for the foreseeable future;

(C) to provide for the ready retrieval of such spent fuel and waste for further processing or disposal; and

(D) to safely store such spent fuel and waste as long as may be necessary by maintaining such facility through appropriate means, including any required replacement of such facility.

(2) Such proposal shall include—

(A) the establishment of a Federal program for the siting, development, construction, and operation of facilities capable of safely storing high-level radioactive waste and spent nuclear fuel, which facilities are to be licensed by the Commission;

(B) a plan for the funding of the construction and operation of such facilities, which plan shall provide that the costs of such activities shall be borne by the generators and owners of the high-level radioactive waste and spent nuclear fuel to be stored in such facilities;

~~[(C) site-specific designs, specifications, and cost estimates sufficient to (i) solicit bids for the construction of the first such facility; (ii) support congressional authorization of the construction of such facility; and (iii) enable completion and operation of such facility as soon as practicable following congressional authorization of such facility; and]~~

(C) designs, specifications, and cost estimates sufficient to—

(i) solicit bids for the construction of one or more such facilities; and

(ii) enable completion and operation of such a facility as soon as practicable;

(D) a plan for integrating facilities constructed pursuant to this section with other storage and disposal facilities authorized in ~~this Act.~~ *this Act; and*

(E) options to enter into MRS agreements with respect to one or more monitored retrievable storage facilities.

(3) In formulating such proposal, the Secretary shall consult with the Commission and the Administrator, and shall submit their comments on such proposal to the Congress at the time such proposal is submitted.

[(4) The proposal shall include, for the first such facility, at least 3 alternative sites and at least 5 alternative combinations of such proposed sites and facility designs consistent with the criteria of paragraph (b)(1). The Secretary shall recommend the combination among the alternatives that the Secretary deems preferable. The environmental assessment under subsection (c) shall include a full analysis of the relative advantages and disadvantages of all 5 such alternative combinations of proposed sites and proposed facility designs.]

(4) The Secretary shall, not later than 90 days after the date of enactment of the Nuclear Waste Policy Amendments Act of 2017, publish a request for information to help the Secretary evaluate options for the Secretary to enter into MRS agreements with respect to one or more monitored retrievable storage facilities.

(c) ENVIRONMENTAL IMPACT STATEMENTS.—(1) Preparation and submission to the Congress of the proposal required in this section shall not require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Secretary shall prepare, in accordance with regulations issued by the Secretary implementing such Act, an environmental assessment with respect to such proposal. Such environmental assessment shall be based upon available information regarding alternative technologies for the storage of spent nuclear fuel and high-level radioactive waste. The Secretary shall submit such environmental assessment to the Congress at the time such proposal is submitted.

(2) [If the Congress by law, after review of the proposal submitted by the Secretary under subsection (b), specifically authorizes construction of a monitored retrievable storage facility, the] *The* requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall apply with respect to [construction of such facility] *construction of a monitored retrievable storage facility*, except that any environmental impact statement prepared with respect to such facility shall not be required to consider the need for such facility or any alternative to the design criteria for such facility set forth in subsection (b)(1).

[(d) LICENSING.—Any facility authorized pursuant to this section shall be subject to licensing under section 202(3) of the Energy Reorganization Act of 1974 (42 U.S.C. 5842(3)). In reviewing the application filed by the Secretary for licensing of the first such facility, the Commission may not consider the need for such facility or any alternative to the design criteria for such facility set forth in subsection (b)(1).

[(e) CLARIFICATION.—Nothing in this section limits the consideration of alternative facility designs consistent with the criteria of paragraph (b)(1) in any environmental impact statement, or in any licensing procedure of the Commission, with respect to any monitored, retrievable facility authorized pursuant to this section.

[(f) IMPACT ASSISTANCE.—(1) Upon receipt by the Secretary of congressional authorization to construct a facility described in subsection (b), the Secretary shall commence making annual impact aid payments to appropriate units of general local government in order to mitigate any social or economic impacts resulting from the construction and subsequent operation of any such facility within the jurisdictional boundaries of any such unit.

[(2) Payments made available to units of general local government under this subsection shall be—

[(A) allocated in a fair and equitable manner, with priority given to units of general local government determined by the Secretary to be most severely affected; and

[(B) utilized by units of general local government only for planning, construction, maintenance, and provision of public services related to the siting of such facility.

[(3) Such payments shall be subject to such terms and conditions as the Secretary determines are necessary to ensure achievement of the purposes of this subsection. The Secretary shall issue such regulations as may be necessary to carry out the provisions of this subsection.

[(4) Such payments shall be made available entirely from funds held in the Nuclear Waste Fund established in section 302(c) and shall be available only to the extent provided in advance in appropriation Acts.

[(5) The Secretary may consult with appropriate units of general local government in advance of commencement of construction of any such facility in an effort to determine the level of payments each such unit is eligible to receive under this subsection.

[(g) LIMITATION.—No monitored retrievable storage facility developed pursuant to this section may be constructed in any State in which there is located any site approved for site characterization under section 112. The restriction in the preceding sentence shall only apply until such time as the Secretary decides that such candidate site is no longer a candidate site under consideration for development as a repository. Such restriction shall continue to apply to any site selected for construction as a repository.

[(h) PARTICIPATION OF STATES AND INDIAN TRIBES.—Any facility authorized pursuant to this section shall be subject to the provisions of sections 115, 116(a), 116(b), 116(d), 117, and 118. For purposes of carrying out the provisions of this subsection, any reference in sections 115 through 118 to a repository shall be considered to refer to a monitored retrievable storage facility.]

AUTHORIZATION OF MONITORED RETRIEVABLE STORAGE

SEC. 142. (a) NULLIFICATION OF OAK RIDGE SITING PROPOSAL.—The proposal of the Secretary (EC-1022, 100th Congress) to locate a monitored retrievable storage facility at a site on the Clinch River in the Roane County portion of Oak Ridge, Tennessee, with alternative sites on the Oak Ridge Reservation of the Department of Energy and on the former site of a proposed nuclear powerplant in Hartsville, Tennessee, is annulled and revoked. In carrying out the provisions of sections 144 and 145, the Secretary shall make no presumption or preference to such sites by reason of their previous selection.

[(b) AUTHORIZATION.—The Secretary is authorized to site, construct, and operate one monitored retrievable storage facility subject to the conditions described in sections 143 through 149.]

(b) AUTHORIZATION.—Subject to the requirements of this subtitle, the Secretary is authorized to—

(1) site, construct, and operate one or more monitored retrievable storage facilities; and

(2) store, pursuant to an MRS agreement, Department-owned civilian waste at a monitored retrievable storage facility for which a non-Federal entity holds a license described in section 143(1).

(c) PRIORITY.—

(1) IN GENERAL.—*Except as provided in paragraph (2), the Secretary shall prioritize storage of Department-owned civilian waste at a monitored retrievable storage facility authorized under subsection (b)(2).*

(2) EXCEPTION.—

(A) DETERMINATION.—*Paragraph (1) shall not apply if the Secretary determines that it will be faster and less expensive to site, construct, and operate a facility authorized under subsection (b)(1), in comparison to a facility authorized under subsection (b)(2).*

(B) NOTIFICATION.—*Not later than 30 days after the Secretary makes a determination described in subparagraph (A), the Secretary shall submit to Congress written notification of such determination.*

【MONITORED RETRIEVABLE STORAGE COMMISSION

【SEC. 143. (a) ESTABLISHMENT.—(1)(A) There is established a Monitored Retrievable Storage Review Commission (hereinafter in this section referred to as the “MRS Commission”), that shall consist of 3 members who shall be appointed by and serve at the pleasure of the President pro tempore of the Senate and the Speaker of the House of Representatives.

【(B) Members of the MRS Commission shall be appointed not later than 30 days after the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987 from among persons who as a result of training, experience and attainments are exceptionally well qualified to evaluate the need for a monitored retrievable storage facility as a part of the Nation’s nuclear waste management system.

【(C) The MRS Commission shall prepare a report on the need for a monitored retrievable storage facility as a part of a national nuclear waste management system that achieves the purposes of this Act. In preparing the report under this subparagraph, the MRS Commission shall—

【(i) review the status and adequacy of the Secretary’s evaluation of the systems advantages and disadvantages of bringing such a facility into the national nuclear waste disposal system;

【(ii) obtain comment and available data on monitored retrievable storage from affected parties, including States containing potentially acceptable sites;

【(iii) evaluate the utility of a monitored retrievable storage facility from a technical perspective; and

【(iv) make a recommendation to Congress as to whether such a facility should be included in the national nuclear waste management system in order to achieve the purposes of this Act, including meeting needs for packaging and handling of spent nuclear fuel, improving the flexibility of the repository development schedule, and providing temporary storage of spent nuclear fuel accepted for disposal.

[(2) In preparing the report and making its recommendation under paragraph (1) the MRS Commission shall compare such a facility to the alternative of at-reactor storage of spent nuclear fuel prior to disposal of such fuel in a repository under this Act. Such comparison shall take into consideration the impact on—

- [(A) repository design and construction;
- [(B) waste package design, fabrication and standardization;
- [(C) waste preparation;
- [(D) waste transportation systems;
- [(E) the reliability of the national system for the disposal of radioactive waste;
- [(F) the ability of the Secretary to fulfill contractual commitments of the Department under this Act to accept spent nuclear fuel for disposal; and
- [(G) economic factors, including the impact on the costs likely to be imposed on ratepayers of the Nation's electric utilities for temporary at-reactor storage of spent nuclear fuel prior to final disposal in a repository, as the costs likely to be imposed on ratepayers of the Nation's electric utilities in building and operating such a facility.

[(3) The report under this subsection, together with the recommendation of the MRS Commission, shall be transmitted to Congress on November 1, 1989.

[(4)(A)(i) Each member of the MRS Commission shall be paid at the rate provided for level III of the Executive Schedule for each day (including travel time) such member is engaged in the work of the MRS Commission, and shall receive travel expenses, including per diem in lieu of subsistence in the same manner as is permitted under sections 5702 and 5703 of title 5, United States Code.

[(ii) The MRS Commission may appoint and fix compensation, not to exceed the rate of basic pay payable for GS-18 of the General Schedule, for such staff as may be necessary to carry out its functions.

[(B)(i) The MRS Commission may hold hearings, sit and act at such times and places, take such testimony and receive such evidence as the MRS Commission considers appropriate. Any member of the MRS Commission may administer oaths or affirmations to witnesses appearing before the MRS Commission.

[(ii) The MRS Commission may request any Executive agency, including the Department, to furnish such assistance or information, including records, data, files, or documents, as the Commission considers necessary to carry out its functions. Unless prohibited by law, such agency shall promptly furnish such assistance or information.

[(iii) To the extent permitted by law, the Administrator of the General Services Administration shall, upon request of the MRS Commission, provide the MRS Commission with necessary administrative services, facilities, and support on a reimbursable basis.

[(iv) The MRS Commission may procure temporary and intermittent services from experts and consultants to the same extent as is authorized by section 3109(b) of title 5, United States Code, at rates and under such rules as the MRS Commission considers reasonable.

[(C) The MRS Commission shall cease to exist 60 days after the submission to Congress of the report required under this subsection.]

SEC. 143. CONDITIONS FOR MRS AGREEMENTS.

(a) *IN GENERAL.*—*The Secretary may not enter into an MRS agreement under section 142(b)(2) unless—*

(1) *the monitored retrievable storage facility with respect to which the MRS agreement applies has been licensed by the Commission under the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.);*

(2) *the non-Federal entity that is a party to the MRS agreement has approval to store Department-owned civilian waste at such facility from each of—*

(A) *the Governor of the State in which the facility is located;*

(B) *any unit of general local government with jurisdiction over the area in which the facility is located; and*

(C) *any affected Indian tribe;*

(3) *except as provided in subsection (b), the Commission has issued a final repository decision; and*

(4) *the MRS agreement provides that the quantity of high-level radioactive waste and spent nuclear fuel at the site of the facility at any one time will not exceed the limits described in section 148(d)(3) and (4).*

(b) *INITIAL AGREEMENT.*—

(1) *AUTHORIZATION.*—*The Secretary may enter into one MRS agreement under section 142(b)(2) before the Commission has issued a final repository decision.*

(2) *FUNDING.*—*There are authorized to be appropriated to carry out this subsection—*

(A) *for each of fiscal years 2020 through 2022, the greater of—*

(i) *\$50,000,000; or*

(ii) *the amount that is equal to 10 percent of the amounts appropriated from the Waste Fund in that fiscal year; and*

(B) *for each of fiscal years 2023 through 2025, the amount that is equal to 10 percent of the amounts appropriated from the Waste Fund in that fiscal year.*

(3) *PRIORITY.*—

(A) *IN GENERAL.*—*An MRS agreement entered into pursuant to paragraph (1) shall, to the extent allowable under this Act (including under the terms of the standard contract established in section 691.11 of title 10, Code of Federal Regulations), provide for prioritization of the storage of Department-owned civilian waste that originated from facilities that have ceased commercial operation.*

(B) *NO EFFECT ON STANDARD CONTRACT.*—*Nothing in subparagraph (A) shall be construed to amend or otherwise alter the standard contract established in section 691.11 of title 10, Code of Federal Regulations.*

(4) *CONDITIONS.*—

(A) *NO STORAGE.*—*Except as provided in subparagraph (B), the Secretary may not store any Department-owned ci-*

vilian waste at the initial MRS facility until the Commission has issued a final repository decision.

(B) EXCEPTION.—

(i) FINDING.—The Secretary, in consultation with the Chairman of the Commission, may make a finding that a final repository decision is imminent, which finding shall be updated not less often than quarterly until the date on which the Commission issues a final repository decision.

(ii) STORAGE.—If the Secretary makes a finding under clause (i), the Secretary may store Department-owned civilian waste at the initial MRS facility in accordance with this section.

(iii) NOTICE.—Not later than seven days after the Secretary makes or updates a finding under clause (i), the Secretary shall submit to Congress written notification of such finding.

(iv) REPORTING.—In addition to the requirements of section 114(c), if the Secretary makes a finding under clause (i), the Secretary shall submit to Congress the report described in such section 114(c) not later than 1 month after the Secretary makes such finding and monthly thereafter until the date on which the Commission issues a final repository decision.

(C) NO EFFECT ON FEDERAL DISPOSAL POLICY.—Nothing in this subsection affects the Federal responsibility for the disposal of high-level radioactive waste and spent nuclear fuel, or the definite Federal policy with regard to the disposal of such waste and spent fuel, established under subtitle A, as described in section 111(b).

(c) DEFINITIONS.—For purposes of this section:

(1) FINAL REPOSITORY DECISION.—The term “final repository decision” means a final decision approving or disapproving the issuance of a construction authorization for a repository under section 114(d)(1).

(2) INITIAL MRS FACILITY.—The term “initial MRS facility” means the monitored retrievable storage facility with respect to which an MRS agreement is entered into pursuant to subsection (b)(1).

SURVEY

SEC. 144. [After the MRS Commission submits its report to the Congress under section 143, the] (a) IN GENERAL.—The Secretary may conduct a survey and evaluation of potentially suitable sites [for a monitored retrievable storage facility] for any monitored retrievable storage facility authorized under section 142. In conducting such survey and evaluation, the Secretary shall consider the extent to which siting a monitored retrievable storage facility at each site surveyed would—

(1) enhance the reliability and flexibility of the system for the disposal of spent nuclear fuel and high-level radioactive waste established under this Act;

(2) minimize the impacts of transportation and handling of such fuel and waste;

(3) provide for public confidence in the ability of such system to safely dispose of the fuel and waste;

(4) impose minimal adverse effects on the local community and the local environment;

(5) provide a high probability that the facility will meet applicable environmental, health, and safety requirements in a timely fashion;

(6) provide such other benefits to the system for the disposal of spent nuclear fuel and high-level radioactive waste as the Secretary deems appropriate [; and];

(7) unduly burden a State in which significant volumes of high-level radioactive waste resulting from atomic energy defense activities are stored [.] ; and

(8) be acceptable to State authorities, affected units of local government, and affected Indian tribes.

(b) *REQUEST FOR PROPOSALS.*—The Secretary shall issue a request for proposals for an MRS agreement authorized under section 142(b)(2) before conducting a survey and evaluation under subsection (a), and shall consider any proposals received in response to such request in making the evaluation.

SITE SELECTION

SEC. 145. (a) *IN GENERAL.*—The Secretary may [select the site evaluated] *select a site evaluated* under section 144 that the Secretary determines on the basis of available information to be [the most] suitable for a monitored retrievable storage facility *authorized under section 142(b)(1)* that is an integral part of the system for the disposal of spent nuclear fuel and high-level radioactive waste established under this Act.

(b) *LIMITATION.*—The Secretary may not select a site under subsection (a) until the Secretary recommends to the President the approval of a site for development as a repository under section 114(a).

(c) *SITE SPECIFIC ACTIVITIES.*—The Secretary may conduct such site specific activities at each site surveyed under section 144 as he determines may be necessary to support an application to the Commission for a license to construct a monitored retrievable storage facility at such site.

(d) *ENVIRONMENTAL ASSESSMENT.*—Site specific activities and selection of a site under this section shall not require the preparation of an environmental impact statement under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The Secretary shall prepare an environmental assessment with respect to such selection in accordance with regulations issued by the Secretary implementing such Act. Such environmental assessment shall be based upon available information regarding alternative technologies for the storage of spent nuclear fuel and high-level radioactive waste. The Secretary shall submit such environmental assessment to the Congress at the time such site is selected.

(e) *NOTIFICATION BEFORE SELECTION.*—(1) At least 6 months before selecting a site under subsection (a), the Secretary shall notify the Governor and legislature of the State in which such site is located, or the governing body of the affected Indian tribe where such

site is located, as the case may be, of such potential selection and the basis for such selection.

(2) Before selecting any site under subsection (a), the Secretary shall hold at least one public hearing in the vicinity of such site to solicit any recommendations of interested parties with respect to issues raised by the selection of such site.

(f) NOTIFICATION OF SELECTION.—The Secretary shall promptly notify Congress and the appropriate State or Indian tribe of the selection under subsection (a).

[(g) LIMITATION.—No monitored retrievable storage facility authorized pursuant to section 142(b) may be constructed in the State of Nevada.]

NOTICE OF DISAPPROVAL

SEC. 146. (a) IN GENERAL.—The selection of a site under section 145 shall be effective at the end of the period of 60 calendar days beginning on the date of notification under [such subsection] *subsection (f) of such section*, unless the governing body of the Indian tribe on whose reservation such site is located, or, if the site is not on a reservation, the Governor and the legislature of the State in which the site is located, has submitted to Congress a notice of disapproval with respect to such site. If any such notice of disapproval has been submitted under this subsection, the selection of the site under section 145 shall not be effective except as provided under section 115(c).

(b) REFERENCES.—For purposes of carrying out the provisions of [this subsection] *this section*, references in section 115(c) to a repository shall be considered to refer to a monitored retrievable storage facility and references to a notice of disapproval of a repository site designation under section 116(b) or 118(a) shall be considered to refer to a notice of disapproval under this section.

BENEFITS AGREEMENT

SEC. 147. Once selection of a site for a monitored retrievable storage facility *the Secretary intends to construct and operate under section 142(b)(1)* is made by the Secretary under section 145, or once a non-Federal entity enters into an *MRS agreement under section 142(b)(2)*, the Indian tribes on whose reservation the site is located, or, in the case that the site is not located on a reservation, the State in which the site is located, shall be eligible to enter into a benefits agreement with the Secretary under section 170.

CONSTRUCTION AUTHORIZATION

SEC. 148. (a) ENVIRONMENTAL IMPACT STATEMENT.—(1) Once the selection of a site is effective under section 146, the requirements of the National Environmental Policy Act of 1969 (42 U.S.C 4321 et seq.) shall apply with respect to construction of a monitored retrievable storage facility, except that any environmental impact statement prepared with respect to such facility shall not be required to consider the need for such facility or any alternative to the design criteria for such facility set forth in section 141(b)(1).

(2) Nothing in this section shall be construed to limit the consideration of alternative facility designs consistent with the criteria described in section 141(b)(1) in any environmental impact state-

ment, or in any licensing procedure of the Commission, with respect to any monitored retrievable storage facility authorized under section 142(b).

(b) APPLICATION FOR CONSTRUCTION LICENSE.—Once the selection of a site for a monitored retrievable storage facility is effective under section 146, the Secretary may submit an application to the Commission for a license to construct such a facility as part of an integrated nuclear waste management system and in accordance with the provisions of this section and applicable agreements under this Act affecting such facility.

(c) LICENSING.—Any monitored retrievable storage facility authorized pursuant to [section 142(b)] *section 142(b)(1)* shall be subject to licensing under section 202(3) of the Energy Reorganization Act of 1974 (42 U.S.C. 5842(3)). In reviewing the application filed by the Secretary for licensing of such facility, the Commission may not consider the need for such facility or any alternative to the design criteria for such facility set forth in section 141(b)(1).

(d) LICENSING CONDITIONS.—Any license issued by the Commission for a monitored retrievable storage facility under this section shall provide that—

(1) construction of such facility may not begin until the Commission [has issued a license for the construction of a repository under section 115(d)] *has issued a final decision approving or disapproving the issuance of a construction authorization for a repository under section 114(d)(1)*;

(2) construction of such facility or acceptance of spent nuclear fuel or high-level radioactive waste shall be prohibited during such time as the repository license is revoked by the Commission [or construction of the repository ceases];

(3) the quantity of spent nuclear fuel or high-level radioactive waste at the site of such facility at any one time may not exceed 10,000 metric tons of heavy metal until a repository under this Act first accepts spent nuclear fuel or solidified high-level radioactive waste; and

(4) the quantity of spent nuclear fuel or high-level radioactive waste at the site of such facility at any one time may not exceed 15,000 metric tons of heavy metal.

FINANCIAL ASSISTANCE

SEC. 149. The provisions of section 116(c) or 118(b) with respect to grants, technical assistance, and other financial assistance shall apply to the State, to affected Indian tribes and to affected units of local government in the case of a monitored retrievable storage facility *authorized under section 142(b)(1)* in the same manner as for a repository.

* * * * *

SUBTITLE F—BENEFITS

BENEFITS AGREEMENTS

SEC. 170. (a) IN GENERAL.—(1) The Secretary may enter into a benefits agreement with the State of Nevada concerning a repository or with a State or an Indian tribe concerning a monitored retrievable storage facility for the acceptance of high-level radioactive

waste or spent nuclear fuel in that State or on the reservation of that tribe, as appropriate.

(2) The State or Indian tribe may enter into such an agreement only if the State Attorney General or the appropriate governing authority of the Indian tribe or the Secretary of the Interior, in the absence of an appropriate governing authority, as appropriate, certifies to the satisfaction of the Secretary that the laws of the State or Indian tribe provide adequate authority for that entity to enter into the benefits agreement.

(3) Any benefits agreement with a State under this section shall be negotiated in consultation with affected units of local government in such State.

(4) Benefits and payments under this subtitle *made available pursuant to a benefits agreement under this section* may be made available only in accordance [with a benefits agreement under this section] *with such benefits agreement*.

(b) AMENDMENT.—A benefits agreement entered into under subsection (a) may be amended only by the mutual consent of the parties to the agreement and terminated only in accordance with section 173.

(c) AGREEMENT WITH NEVADA.—The Secretary [shall offer] *may offer* to enter into a benefits agreement with the Governor of Nevada. Any benefits agreement with a State under this subsection shall be negotiated in consultation with any affected units of local government in such State.

(d) MONITORED RETRIEVABLE STORAGE.—The Secretary [shall] *may offer* to enter into a benefits agreement relating to a monitored retrievable storage facility with the governing body of the Indian tribe on whose reservation the site for such facility is located, or, if the site is not located on a reservation, with the Governor of the State in which the site is located and in consultation with affected units of local government in such State.

(e) LIMITATION.—Only one benefits agreement for a repository, and only one benefits agreement for a monitored retrievable storage facility *per State*, may be in effect *under this section* at any one time.

(f) JUDICIAL REVIEW.—Decisions of the Secretary under this section are not subject to judicial review.

(g) CONSENT.—*The acceptance or use of any of the benefits provided under a benefits agreement under this section by the State of Nevada shall not be considered to be an expression of consent, express or implied, to the siting of a repository in such State.*

CONTENT OF AGREEMENTS

SEC. 171. (a) IN GENERAL.—(1) In addition to the benefits to which a State, an affected unit of local government or Indian tribe is entitled under title I, the Secretary shall make payments to a State or Indian tribe that is a party to a benefits agreement under section 170 in accordance with the following schedule:

[BENEFITS SCHEDULE

[Amounts in millions]

Event	MRS	Repository
[(A) Annual payments prior to first spent fuel receipt	\$5	\$10

【BENEFITS SCHEDULE—Continued

[Amounts in millions]

Event	MRS	Repository
(B) Upon first spent fuel receipt	10	20
(C) Annual payments after first spent fuel receipt until closure of the facility	10	20】

BENEFITS SCHEDULE

<i>Event</i>	<i>MRS</i>	<i>Repository</i>
(A) Annual payments prior to first spent fuel receipt	\$5,000,000	\$15,000,000
(B) Upon first spent fuel receipt	\$10,000,000	The amount described in section 302(f)(1)(B)
(C) Annual payments after first spent fuel receipt until closure of the facility	\$10,000,000	The amounts described in section 302(f)(1)(C)

(2) For purposes of this section, the term—

(A) “MRS” means a monitored retrievable storage facility,

(B) “spent fuel” means high-level radioactive waste or spent nuclear fuel, and

(C) “first spent fuel receipt” does not include receipt of spent fuel or high-level radioactive waste for purposes of testing or operational demonstration.

(3) Annual payments prior to first spent fuel receipt under paragraph (1)(A) shall be made on the date of execution of the benefits agreement and thereafter on the anniversary date of such execution. Annual payments after the first spent fuel receipt until closure of the facility under paragraph (1)(C) shall be made on the anniversary date of such first spent fuel receipt.

(4) If the first spent fuel payment under paragraph (1)(B) is made within six months after the last annual payment prior to the receipt of spent fuel under paragraph (1)(A), such first spent fuel payment under paragraph (1)(B) shall be reduced by an amount equal to one-twelfth of such annual payment under paragraph (1)(A) for each full month less than six that has not elapsed since the last annual payment under paragraph (1)(A).

(5) Notwithstanding paragraph (1), (2), or (3), no payment under this section may be made before January 1, 1989, and any payment due under this title before January 1, 1989, shall be made on or after such date.

(6) Except as provided in **【paragraph (7) paragraphs (7) and (8)**, the Secretary may not restrict the purposes for which the payments under this section may be used.

(7)(A) Any State receiving a payment under this section shall transfer an amount equal to not less than one-third of the amount of such payment to affected units of local government of such State.

(B) A plan for this transfer and appropriate allocation of such portion among such governments shall be included in the benefits agreement under section 170 covering such payments.

(C) In the event of a dispute concerning such plan, the Secretary shall resolve such dispute, consistent with this Act and applicable State law.

(8) *None of the payments under this section may be used—*

(A) *directly or indirectly to influence legislative action on any matter pending before Congress or a State legislature or for any lobbying activity as provided in section 1913 of title 18, United States Code;*

(B) *for litigation purposes; or*

(C) *to support multistate efforts or other coalition-building activities inconsistent with the siting, construction, or operation of the monitored retrievable storage facility or repository concerned.*

(b) **CONTENTS.**—A benefits agreement under section 170 shall provide that—

(1) a Review Panel be established in accordance with section 172;

[(2) the State or Indian tribe that is party to such agreement waive its rights under title I to disapprove the recommendation of a site for a repository;]

[(3)] (2) the parties to the agreement shall share with one another information relevant to the licensing process for the repository or monitored retrievable storage facility, as it becomes available;

[(4)] (3) the State or Indian tribe that is party to such agreement participate [in the design of the repository or monitored retrievable storage facility and] in the preparation of documents required under law or regulations governing the effects of the facility on the public health and safety; and

[(5)] (4) the State or Indian tribe waive its rights, if any, to impact assistance under sections 116(c)(1)(B)(ii), 116(c)(2), 118(b)(2)(A)(ii), and 118(b)(3).

(c) [The Secretary shall make payments to the States or affected Indian tribes under a benefits agreement under this section from the Waste Fund.] *The Secretary shall make payments to the State of Nevada under a benefits agreement concerning a repository under section 170 from the Waste Fund.* The signature of the Secretary on a valid benefits agreement under section 170 shall constitute a commitment by the United States to make payments in accordance with such agreement.

* * * * *

SEC. 172A. COVERED UNITS OF LOCAL GOVERNMENT.

(a) **BENEFITS AGREEMENT.**—*Not earlier than 1 year after the date of enactment of this section, the Secretary may enter into a benefits agreement with any covered unit of local government concerning a repository for the acceptance of high-level radioactive waste or spent nuclear fuel in the State of Nevada.*

(b) **CONTENT OF AGREEMENTS.**—*In addition to any benefits to which a covered unit of local government is entitled under this Act, the Secretary shall make payments to such covered unit of local government that is a party to a benefits agreement under subsection (a) to mitigate impacts described in section 175(b).*

(c) **PAYMENTS FROM WASTE FUND.**—*The Secretary shall make payments to a covered unit of local government under a benefits agreement under this section from the Waste Fund.*

(d) **RESTRICTION ON USE.**—*None of the payments made pursuant to a benefits agreement under this section may be used—*

(1) *directly or indirectly to influence legislative action on any matter pending before Congress or a State legislature or for any lobbying activity as provided in section 1913 of title 18, United States Code;*

(2) *for litigation purposes; or*

(3) *to support multistate efforts or other coalition-building activities inconsistent with the siting, construction, or operation of the repository.*

(e) *CONSENT.—The acceptance or use of any of the benefits provided under a benefits agreement under this section by any covered unit of local government shall not be considered to be an expression of consent, express or implied, to the siting of a repository in the State of Nevada.*

(f) *COVERED UNIT OF LOCAL GOVERNMENT DEFINED.—In this section, the term “covered unit of local government” means—*

(1) *any affected unit of local government with respect to a repository; and*

(2) *any unit of general local government in the State of Nevada.*

TERMINATION

SEC. 173. (a) *IN GENERAL.—The Secretary may terminate a benefits agreement [under this title if] under this title—*

(1) *concerning a repository or a monitored retrievable storage facility, if the site under consideration is disqualified for its failure to comply with guidelines and technical requirements established by the Secretary in accordance with this Act; or*

(2) *[the Secretary determines that the Commission cannot license the facility within a reasonable time] concerning a repository, if the Commission issues a final decision disapproving the issuance of a construction authorization for a repository under section 114(d)(1).*

[(b) TERMINATION BY STATE OR INDIAN TRIBE.—A State or Indian tribe may terminate a benefits agreement under this title only if the Secretary disqualifies the site under consideration for its failure to comply with technical requirements established by the Secretary in accordance with this Act or the Secretary determines that the Commission cannot license the facility within a reasonable time.]

(b) *TERMINATION BY STATE OR INDIAN TRIBE.—A State, covered unit of local government (as defined in section 172A), or Indian tribe may only terminate a benefits agreement under this title—*

(1) *concerning a repository or a monitored retrievable storage facility, if the Secretary disqualifies the site under consideration for its failure to comply with technical requirements established by the Secretary in accordance with this Act; or*

(2) *concerning a repository, if the Commission issues a final decision disapproving the issuance of a construction authorization for a repository under section 114(d)(1).*

(c) *DECISIONS OF THE SECRETARY.—Decisions of the Secretary under this section shall be in writing, shall be available to Congress and the public, and are not subject to judicial review.*

SUBTITLE G—OTHER BENEFITS

* * * * *

REPORT

SEC. 175. (a) IN GENERAL.—Within one year of the date of the enactment of the [Nuclear Waste Policy Amendments Act of 1987] *Nuclear Waste Policy Amendments Act of 2017*, the Secretary shall report to Congress on the potential impacts of locating a repository at the Yucca Mountain site, including the recommendations of the Secretary for mitigation of such impacts and a statement of which impacts should be dealt with by the Federal Government, which should be dealt with by the State with State resources, including the benefits payments under section 171, and which should be a joint Federal-State responsibility. The report under this subsection shall include the analysis of the Secretary of the authorities available to mitigate these impacts and the appropriate sources of funds for such mitigation.

(b) IMPACTS TO BE CONSIDERED.—Potential impacts to be addressed in the report under this subsection (a) shall include impacts on—

(1) education, including facilities and personnel for elementary and secondary schools, community colleges, vocational and technical schools and universities;

(2) public health, including the facilities and personnel for treatment and distribution of water, the treatment of sewage, the control of pests and the disposal of solid waste;

(3) law enforcement, including facilities and personnel for the courts, police and sheriff's departments, district attorneys and public defenders and prisons;

(4) fire protection, including personnel, the construction of fire stations, and the acquisition of equipment;

(5) medical care, including emergency services and hospitals;

(6) cultural and recreational needs, including facilities and personnel for libraries and museums and the acquisition and expansion of parks;

(7) distribution of public lands to allow for the timely expansion of existing, or creation of new, communities and the construction of necessary residential and commercial facilities;

(8) vocational training and employment services;

(9) social services, including public assistance programs, vocational and physical rehabilitation programs, mental health services, and programs relating to the abuse of alcohol and controlled substances;

(10) transportation, including any roads, terminals, airports, bridges, or railways associated with the facility and the repair and maintenance of roads, terminals, airports, bridges, or railways damaged as a result of the construction, operation, and closure of the facility;

(11) equipment and training for State and local personnel in the management of accidents involving high-level radioactive waste;

(12) availability of energy;

(13) tourism and economic development, including the potential loss of revenue and future economic growth; and

(14) other needs of the State and local governments that would not have arisen but for the characterization of the site and the constructions operation, and eventual closure of the repository facility.

SEC. 176. PRIORITY FUNDING FOR CERTAIN INSTITUTIONS OF HIGHER EDUCATION.

(a) *IN GENERAL.*—*In providing any funding to institutions of higher education from the Waste Fund, the Secretary shall prioritize institutions of higher education that are located in the State of Nevada.*

(b) *DEFINITION.*—*In this section, the term “institution of higher education” has the meaning given that term in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001).*

SUBTITLE H—TRANSPORTATION

TRANSPORTATION

SEC. 180. (a) No spent nuclear fuel or high-level radioactive waste may be transported by or for the Secretary under subtitle A or under subtitle C except in packages that have been certified for such purposes by the Commission.

(b) The Secretary shall abide by regulations of the Commission regarding advance notification of State and local governments prior to transportation of spent nuclear fuel or high-level radioactive waste under subtitle A or under subtitle C.

(c) *TRAINING AND ASSISTANCE.*—

(1) *TRAINING.*—*The Secretary shall provide technical assistance and funds to States for training for public safety officials of appropriate units of local government and Indian tribes through whose jurisdiction the Secretary plans to transport spent nuclear fuel or high-level radioactive waste under subtitle A or under subtitle C. Training shall cover procedures required for safe routine transportation of these materials, as well as procedures for dealing with emergency response situations. [The Waste Fund]*

(2) *ASSISTANCE.*—*The Secretary shall, subject to the availability of appropriations, provide in-kind, financial, technical, and other appropriate assistance, for safety activities related to the transportation of high-level radioactive waste or spent nuclear fuel, to any entity receiving technical assistance or funds under paragraph (1).*

(3) *SOURCE OF FUNDING.*—*The Waste Fund shall be the source of funds for work carried out under this subsection.*

TITLE II—RESEARCH, DEVELOPMENT, AND DEMONSTRATION REGARDING DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTE AND SPENT NUCLEAR FUEL

* * * * *

【SUBSEABED DISPOSAL

【SEC. 224.

【(b) OFFICE OF SUBSEABED DISPOSAL RESEARCH.—(1) There is hereby established an Office of Subseabed Disposal Research within the Office of Science of the Department of Energy. The Office

shall be headed by the Director, who shall be member of the Senior Executive Service appointed by the Director of the Office of Science, and compensated at a rate determined by applicable law.

[(2) The Director of the Office of Subseabed Disposal Research shall be responsible for carrying out research, development, and demonstration activities on all aspects of subseabed disposal of high-level radioactive waste and spent nuclear fuel, subject to the general supervision of the Secretary. The Director of the Office shall be directly responsible to the Director of the Office of Science, and the first such Director shall be appointed within 30 days of the date of enactment of the Nuclear Waste Policy Amendments Act of 1987.

[(3) In carrying out his responsibilities under this Act, the Secretary may make grants to, or enter into contracts with, the Subseabed Consortium described in subsection (d) of this section, and other persons.

[(4)(A) Within 60 days of the date of enactment of the Nuclear Waste Policy Amendments Act of 1987, the Secretary shall establish a university-based Subseabed Consortium involving leading oceanographic universities and institutions, national laboratories, and other organizations to investigate the technical and institutional feasibility of subseabed disposal.

[(B) The Subseabed Consortium shall develop a research plan and budget to achieve the following objectives by 1995:

[(i) demonstrate the capacity to identify and characterize potential subseabed disposal sites;

[(ii) develop conceptual designs for a subseabed disposal system, including estimated costs and institutional requirements; and

[(iii) identify and assess the potential impacts of subseabed disposal on the human and marine environment.

[(C) In 1990, and again in 1995, the Subseabed Consortium shall report to Congress on the progress being made in achieving the objectives of paragraph (2).]

TITLE III—OTHER PROVISIONS RELATING TO RADIOACTIVE WASTE

* * * * *

NUCLEAR WASTE FUND

SEC. 302. (a) CONTRACTS.—(1) In the performance of his functions under this Act, the Secretary is authorized to enter into contracts with any person who generates or holds title to high-level radioactive waste, or spent nuclear fuel, of domestic origin for the acceptance of title, subsequent transportation, and disposal of such waste or spent fuel. Such contracts shall provide for payment to the Secretary of fees pursuant to [paragraphs (2) and (3)] *paragraphs (2), (3), and (4)* sufficient to offset expenditures described in subsection (d).

(2) For electricity generated by a civilian nuclear power reactor and sold on or after the date 90 days after the date of enactment of this Act, the fee under paragraph (1) shall be equal to 1.0 mil per kilowatt-hour.

(3) For spent nuclear fuel, or solidified high-level radioactive waste derived from spent nuclear fuel, which fuel was used to generate electricity in a civilian nuclear power reactor prior to the application of the fee under paragraph (2) to such reactor, the Secretary shall, not later than 90 days after the date of enactment of this Act, establish a 1 time fee per kilogram of heavy metal in spent nuclear fuel, or in solidified high-level radioactive waste. Such fee shall be in an amount equivalent to an average charge of 1.0 mil per kilowatt-hour for electricity generated by such spent nuclear fuel, or such solidified high-level waste derived therefrom, to be collected from any person delivering such spent nuclear fuel or high-level waste, pursuant to section 123, to the Federal Government. Such fee shall be paid to the Treasury of the United States and shall be deposited in the separate fund established by subsection (c) [126(b)]. In paying such a fee, the person delivering spent fuel, or solidified high-level radioactive wastes derived therefrom, to the Federal Government shall have no further financial obligation to the Federal Government for the long-term storage and permanent disposal of such spent fuel, or the solidified high-level radioactive waste derived therefrom.

[(4) Not later than]

(4) ASSESSMENT, COLLECTION, AND PAYMENT OF FEES.—

(A) ASSESSMENT OF FEES.—*Not later than 180 days after [the date of enactment of this Act] the date of enactment of the Nuclear Waste Policy Amendments Act of 2017, the Secretary shall establish procedures for the [collection and payment] assessment of the fees established by paragraph (2) and paragraph (3). The Secretary shall annually review the amount of the fees established by paragraphs (2) and (3) above to evaluate whether [collection of the fee] such amount will provide sufficient revenues to offset the costs as defined in subsection (d) herein. In the event the Secretary determines that either insufficient or excess revenues [are being collected] will result from such amounts, in order to recover the costs incurred by the Federal Government that are specified in subsection (d), the Secretary shall propose an adjustment to the fee to [insure] ensure full cost recovery. The Secretary shall immediately transmit this proposal for such an adjustment to Congress. The adjusted fee proposed by the Secretary shall be effective after [a period of 90 days of continuous session have elapsed following the receipt of such transmittal unless during such 90-day period either House of Congress adopts a resolution disapproving the Secretary's proposed adjustment in accordance with the procedures set forth for congressional review of an energy action under section 551 of the Energy Policy and Conservation Act.] the date that is 180 days after the date of such transmittal.*

(B) COLLECTION AND PAYMENT OF FEES.—

(i) IN GENERAL.—*Not later than 180 days after the date of enactment of Nuclear Waste Policy Amendments Act of 2017, the Secretary shall establish procedures for the collection and payment of the fees established by paragraph (2) and paragraph (3), or adjusted pursuant to subparagraph (A).*

(ii) *LIMITATION ON COLLECTION.*—*The Secretary may not collect a fee established under paragraph (2), including a fee established under paragraph (2) and adjusted pursuant to subparagraph (A)—*

(I) until the date on which the Commission issues a final decision approving or disapproving the issuance of a construction authorization for a repository under section 114(d)(1); and

(II) after such date, in an amount that will cause the total amount of fees collected under this subsection in any fiscal year to exceed 90 percent of the amounts appropriated for that fiscal year for purposes described in subsection (d).

(iii) *PAYMENT OF FULL AMOUNTS.*—*Notwithstanding the noncollection of a fee by the Secretary pursuant to clause (ii) in any fiscal year, a person who has entered into a contract with the Secretary under this subsection shall pay any uncollected amounts when determined necessary by the Secretary, subject to clause (ii), for purposes described in subsection (d).*

(5) Contracts entered into under this section shall provide that—

(A) following commencement of operation of a repository, the Secretary shall take title to the high-level radioactive waste or spent nuclear fuel involved as expeditiously as practicable upon the request of the generator or owner of such waste or spent fuel; and

(B) in return for the payment of fees established by this section, the Secretary, beginning not later than January 31, 1998, will dispose of the high-level radioactive waste or spent nuclear fuel involved as provided in this subtitle.

(6) The Secretary shall establish in writing criteria setting forth the terms and conditions under which such disposal services shall be made available.

(b) *ADVANCE CONTRACTING REQUIREMENT.*—(1)(A) The Commission shall not issue or renew a license to any person to use a utilization or production facility under the authority of section 103 or 104 of the Atomic Energy Act of 1954 (42 U.S.C. 2133, 2134) unless—

(i) such person has entered into a contract with the Secretary under this section; or

(ii) the Secretary affirms in writing that such person is actively and in good faith negotiating with the Secretary for a contract under this section.

(B) The Commission, as it deems necessary or appropriate, may require as a precondition to the issuance or renewal of a license under section 103 or 104 of the Atomic Energy Act of 1954 (42 U.S.C. 2133, 2134) that the applicant for such license shall have entered into an agreement with the Secretary for the disposal of high-level radioactive waste and spent nuclear fuel that may result from the use of such license.

(2) Except as provided in paragraph (1), no spent nuclear fuel or high-level radioactive waste generated or owned by any person (other than a department of the United States referred to in section 101 or 102 of title 5, United States Code) may be disposed of by the Secretary in any repository constructed under this Act unless

the generator or owner of such spent fuel or waste has entered into a contract with the Secretary under this section by not later than—

(A) June 30, 1983; or

(B) the date on which such generator or owner commences generation of, or takes title to, such spent fuel or waste; whichever occurs later.

(3) The rights and duties of a party to a contract entered into under this section may be assignable with transfer of title to the spent nuclear fuel or high-level radioactive waste involved.

(4) No high-level radioactive waste or spent nuclear fuel generated or owned by any department of the United States referred to in section 101 or 102 of title 5, United States Code, may be disposed of by the Secretary in any repository constructed under this Act unless such department transfers to the Secretary, for deposit in the Nuclear Waste Fund, amounts equivalent to the fees that would be paid to the Secretary under the contracts referred to in this section if such waste or spent fuel were generated by any other person.

(c) ESTABLISHMENT OF NUCLEAR WASTE FUND.—There hereby is established in the Treasury of the United States a separate fund, to be known as the Nuclear Waste Fund. The Waste Fund shall consist of—

(1) all receipts, proceeds, and recoveries realized by the Secretary under subsections (a), (b), and (e), which shall be deposited in the Waste Fund immediately upon their realization;

(2) any appropriations made by the Congress to the Waste Fund; and

(3) any unexpended balances available on the date of the enactment of this Act for functions or activities necessary or incident to the disposal of civilian high-level radioactive waste or civilian spent nuclear fuel, which shall automatically be transferred to the Waste Fund on such date.

(d) USE OF WASTE FUND.—The Secretary may make expenditures from the Waste Fund, subject to subsection (e), only for purposes of radioactive waste disposal activities under titles I and II, including—

(1) the identification, development, licensing, construction, operation, decommissioning, and post-decommissioning [maintenance and monitoring of any repository, monitored, retrievable storage facility or test and evaluation facility constructed under this Act;] *maintenance and monitoring of any repository or test and evaluation facility constructed under this Act;*

(2) the conducting of nongeneric research, development, and demonstration activities under this Act;

(3) the administrative cost of the radioactive waste disposal program;

(4) any costs that may be incurred by the Secretary in connection with the transportation, treating, or packaging of spent nuclear fuel or high-level radioactive waste [to be disposed of in a repository, to be stored in a monitored, retrievable storage site or to be used in a test and evaluation facility;] *to be disposed of in a repository or to be used in a test and evaluation facility;*

(5) the costs associated with acquisition, design, modification, replacement, operation, and construction of facilities [at a re-

pository site, a monitored, retrievable storage site or a test and evaluation facility site and necessary or incident to such repository, monitored, retrievable storage facility or test and evaluation facility; and] *at a repository site or a test and evaluation facility site and necessary or incident to such repository or test and evaluation facility;*

(6) the provision of assistance to States, units of general local government, and Indian tribes under sections 116, 118, and 219[.]; and

(7) *payments under benefits agreements for a repository entered into under section 170 or 172A.*

No amount may be expended by the Secretary under this subtitle for the construction or expansion of any facility unless such construction or expansion is expressly authorized by this or subsequent legislation. The Secretary hereby is authorized to construct one repository and one test and evaluation facility.

(e) ADMINISTRATION OF WASTE FUND.—(1) The Secretary of the Treasury shall hold the Waste Fund and, after consultation with the Secretary, annually report to the Congress on the financial condition and operations of the Waste Fund during the preceding fiscal year.

(2) The Secretary shall submit the budget of the Waste Fund to the Office of Management and Budget [triennially] *annually* along with the budget of the Department of Energy submitted at such time in accordance with chapter 11 of title 31, United States Code. The budget of the Waste Fund shall consist of the estimates made by the Secretary of expenditures from the Waste Fund and other relevant financial matters for the succeeding 3 fiscal years, and shall be included in the Budget of the United States Government. The Secretary may make expenditures from the Waste Fund, subject to appropriations which shall remain available until expended. Appropriations shall be subject to triennial authorization.

(3) If the Secretary determines that the Waste Fund contains at any time amounts in excess of current needs, the Secretary may request the Secretary of the Treasury to invest such amounts, or any portion of such amounts as the Secretary determines to be appropriate, in obligations of the United States—

(A) having maturities determined by the Secretary of the Treasury to be appropriate to the needs of the Waste Fund; and

(B) bearing interest at rates determined to be appropriate by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the maturities of such investments, except that the interest rate on such investments shall not exceed the average interest rate applicable to existing borrowings.

(4) Receipts, proceeds, and recoveries realized by the Secretary under this section, and expenditures of amounts from the Waste Fund, shall be exempt from annual apportionment under the provisions of subchapter II of chapter 15 of title 31, United States Code.

(5) If at any time the moneys available in the Waste Fund are insufficient to enable the Secretary to discharge his responsibilities under this subtitle, the Secretary shall issue to the Secretary of the Treasury obligations in such forms and denominations, bearing

such maturities, and subject to such terms and conditions as may be agreed to by the Secretary and the Secretary of the Treasury. The total of such obligations shall not exceed amounts provided in appropriation Acts. Redemption of such obligations shall be made by the Secretary from moneys available in the Waste Fund. Such obligations shall bear interest at a rate determined by the Secretary of the Treasury, which shall be not less than a rate determined by taking into consideration the average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the obligations under this paragraph. The Secretary of the Treasury shall purchase any issued obligations, and for such purpose the Secretary of the Treasury is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under chapter 31 of title 31, United States Code, and the purposes for which securities may be issued under such Act are extended to include any purchase of such obligations. The Secretary of the Treasury may at any time sell any of the obligations acquired by him under this paragraph. All redemptions, purchases, and sales by the Secretary of the Treasury of obligations under this paragraph shall be treated as public debt transactions of the United States.

(6) Any appropriations made available to the Waste Fund for any purpose described in subsection (d) shall be repaid into the general fund of the Treasury, together with interest from the date of availability of the appropriations until the date of repayment. Such interest shall be paid on the cumulative amount of appropriations available to the Waste Fund, less the average undisbursed cash balance in the Waste Fund account during the fiscal year involved. The rate of such interest shall be determined by the Secretary of the Treasury taking into consideration the average market yield during the month preceding each fiscal year on outstanding marketable obligations of the United States of comparable maturity. Interest payments may be deferred with the approval of the Secretary of the Treasury, but any interest payments so deferred shall themselves bear interest.

(f) AVAILABILITY OF CERTAIN AMOUNTS.—

(1) IN GENERAL.—Notwithstanding any other provision of this section, for the purposes described in subsection (d) that are specified in subparagraphs (A) through (E) of this paragraph, the following amounts from the Waste Fund shall be available to the Secretary without further appropriation:

(A) An amount equal to 1 percent of 2017 Waste Fund amounts, on the date on which high-level radioactive waste or spent nuclear fuel is received at the Yucca Mountain site, and in each of the 25 years thereafter, for costs associated with construction and operation of a repository or facilities at the Yucca Mountain site.

(B) An amount equal to 1 percent of 2017 Waste Fund amounts, on the date on which high-level radioactive waste or spent nuclear fuel is received at the Yucca Mountain site, to make payments under a benefits agreement entered into under section 170 with the State of Nevada concerning a repository.

(C) *An amount equal to 0.1 percent of 2017 Waste Fund amounts, on the date that is one year after the date on which high-level radioactive waste or spent nuclear fuel is received at the Yucca Mountain site, and in each year thereafter until closure of the repository, to make payments under a benefits agreement entered into under section 170 with the State of Nevada concerning a repository.*

(D) *An amount equal to 20 percent of 2017 Waste Fund amounts, on the date on which monitoring of the repository during the decommissioning period commences, for waste package and drip shield fabrication activities.*

(E) *An amount equal to the amount of any fee collected pursuant to subsection (a)(3) after the date of enactment of the Nuclear Waste Policy Amendments Act of 2017, on the date on which such fee is collected, for costs associated with construction and operation of a repository or facilities at the Yucca Mountain site.*

(2) *2017 WASTE FUND AMOUNTS.—For purposes of this subsection, the term “2017 Waste Fund amounts” means the amounts in the Waste Fund on the date of enactment of the Nuclear Waste Policy Amendments Act of 2017.*

* * * * *

OFFICE OF CIVILIAN RADIOACTIVE WASTE MANAGEMENT

SEC. 304. (a) **ESTABLISHMENT.**—There hereby is established within the Department of Energy an Office of Civilian Radioactive Waste Management. The Office shall be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate payable for level IV of the Executive Schedule under section 5315 of title 5, United States Code.

[(b) **FUNCTIONS OF DIRECTOR.**—The Director of the Office shall be responsible for carrying out the functions of the Secretary under this Act, subject to the general supervision of the Secretary. The Director of the Office shall be directly responsible to the Secretary.]

(b) **DIRECTOR.**—

(1) **FUNCTIONS.**—*The Director of the Office shall be responsible for carrying out the functions of the Secretary under this Act. The Director of the Office shall report directly to the Secretary.*

(2) **QUALIFICATIONS.**—*The Director of the Office shall be appointed from among persons who have extensive expertise and experience in organizational and project management.*

(3) **TENURE.**—*The Director of the Office may serve not more than two 5-year terms.*

(4) **SERVICE DURING INTERIM PERIOD.**—*Upon expiration of the Director’s term, the Director may continue to serve until the earlier of—*

(A) *the date on which a new Director is confirmed; or*

(B) *the date that is one year after the date of such expiration.*

(5) **REMOVAL.**—*The President may remove the Director only for inefficiency, neglect of duty, or malfeasance in office. If the*

President removes the Director, the President shall submit to Congress a statement explaining the reason for such removal.

(c) ANNUAL REPORT TO CONGRESS.—The Director of the Office shall annually prepare and submit to the Congress a comprehensive report on the activities and expenditures of the Office.

(d) AUDIT BY GAO.—If requested by either House of the Congress (or any committee thereof) or if considered necessary by the Comptroller General, the General Accounting Office shall conduct an audit of the Office, in accord with such regulations as the Comptroller General may prescribe. The Comptroller General shall have access to such books, records, accounts, and other materials of the Office as the Comptroller General determines to be necessary for the preparation of such audit. The Comptroller General shall submit a report on the results of each audit conducted under this section.

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DEPARTMENT OF ENERGY ORGANIZATION ACT

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TITLE II—ESTABLISHMENT OF THE DEPARTMENT

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ASSISTANT SECRETARIES

SEC. 203. (a) There shall be in the Department 8 Assistant Secretaries, each of whom shall be appointed by the President, by and with the advice and consent of the Senate; who shall be compensated at the rate provided for at level IV of the Executive Schedule under section 5315 of title 5, United States Code; and who shall perform, in accordance with applicable law, such of the functions transferred or delegated to, or vested in, the Secretary as he shall prescribe in accordance with the provisions of this Act. The functions which the Secretary shall assign to the Assistant Secretaries include, but are not limited to, the following:

- (1) Energy resource applications, including functions dealing with management of all forms of energy production and utilization, including fuel supply, electric power supply, enriched uranium production, energy technology programs, and the management of energy resource leasing procedures on Federal lands.
- (2) Energy research and development functions, including the responsibility for policy and management of research and development for all aspects of—
 - (A) solar energy resources;
 - (B) geothermal energy resources;
 - (C) recycling energy resources;
 - (D) the fuel cycle for fossil energy resources; and
 - (E) the fuel cycle for nuclear energy resources.
- (3) Environmental responsibilities and functions, including advising the Secretary with respect to the conformance of the Department's activities to environmental protection laws and principles, and conducting a comprehensive program of re-

search and development on the environmental effects of energy technologies and programs.

(4) International programs and international policy functions, including those functions which assist in carrying out the international energy purposes described in section 102 of this Act.

(6) Intergovernmental policies and relations including responsibilities for assuring that national energy policies are reflective of and responsible to the needs of State and local governments, and for assuring that other components of the Department coordinate their activities with State and local governments, where appropriate, and develop intergovernmental communications with State and local governments.

(7) Competition and consumer affairs, including responsibilities for the promotion of competition in the energy industry and for the protection of the consuming public in the energy policymaking processes, and assisting the Secretary in the formulation and analysis of policies, rules, and regulations relating to competition and consumer affairs.

[(8) Nuclear waste management responsibilities, including—

[(A) the establishment of control over existing Government facilities for the treatment and storage of nuclear wastes, including all containers, casks, buildings, vehicles, equipment, and all other materials associated with such facilities;

[(B) the establishment of control over all existing nuclear waste in the possession or control of the Government and all commercial nuclear waste presently stored on other than the site of a licensed nuclear power electric generating facility, except that nothing in this paragraph shall alter or effect title to such waste;

[(C) the establishment of temporary and permanent facilities for storage, management, and ultimate disposal of nuclear wastes;

[(D) the establishment of facilities for the treatment of nuclear wastes;

[(E) the establishment of programs for the treatment, management, storage, and disposal of nuclear wastes;

[(F) the establishment of fees or user charges for nuclear waste treatment or storage facilities, including fees to be charged Government agencies; and

[(G) the promulgation of such rules and regulations to implement the authority described in this paragraph, except that nothing in this section shall be construed as granting to the Department regulatory functions presently within the Nuclear Regulatory Commission, or any additional functions than those already conferred by law.]

(9) Energy conservation functions, including the development of comprehensive energy conservation strategies for the Nation, the planning and implementation of major research and demonstration programs for the development of technologies and processes to reduce total energy consumption, the administration of voluntary and mandatory energy conservation programs, and the dissemination to the public of all available information on energy conservation programs and measures.

(10) Power marketing functions, including responsibility for marketing and transmission of Federal power.

(11) Public and congressional relations functions, including responsibilities for providing a continuing liaison between the Department and the Congress and the Department and the public.

(b) At the time the name of any individual is submitted for confirmation to the position of Assistant Secretary, the President shall identify with particularity the function or functions described in subsection (a) (or any portion thereof) for which such individual will be responsible.

* * * * *

ADDITIONAL VIEWS

At the April 26, 2017 Environment Subcommittee legislative hearing and June 15, 2017 Subcommittee markup, numerous Democratic members discussed the importance of developing a solution to store spent nuclear fuel that is currently being stored at shutdown—or soon-to-be shutdown—reactors across the country. To that end, the manager’s amendment agreed to at the Full Committee markup contained a provision, based upon a proposal developed by Rep. Doris Matsui (D–CA), to allow the Secretary of Energy to enter into interim storage “pilot program” agreements for storing spent nuclear fuel from shutdown reactors across the country. The issue of waste at shutdown plants has become one of great concern to communities across the nation, particularly in light of the changing economics that have resulted in the early closure of many nuclear power facilities. This pilot program can move forward directly after enactment and is not linked to whether the Nuclear Regulatory Commission (NRC) has issued a decision on a permanent repository (e.g. the pending license application for the Yucca Mountain site).

Unfortunately, the bill leaves in place a restriction against licensing subsequent interim storage facilities (after the initial “pilot” facility) until the NRC decides whether to license a permanent repository. This limits the ability of the Department of Energy (DOE) to pursue a second interim storage facility to store spent nuclear fuel if licensing on a permanent repository is stalled.

The bill further leaves in place the current statutory cap (10,000 metric tons) on the amount of spent nuclear fuel that may be placed in the interim storage facility, which could provide an arbitrary limit on a facility that might otherwise be able to handle more spent nuclear fuel. The inventory of spent nuclear fuel in the United States is now over 72,000 metric tons and is expected to grow to 139,000 metric tons by 2067.¹ Most of the current inventory is stored onsite, where it was generated, in wet pools or dry casks.² Spent fuel is generally stored in pools for five years, and then transferred to dry casks after it has cooled to within the heat limits of the casks.³ However, at many facilities capacity for storage in wet pools has been exhausted, requiring more fuel to be transferred to dry casks and exacerbating the need for near-term solutions such as interim storage sites to store spent nuclear fuel.

The legislation was greatly improved by an amendment agreed to during the Full Committee markup that removed several troubling Nevada-related policies from the introduced bill. The amendment struck section 202 of the introduced bill, which declared the

¹ Government Accountability Office, *Outreach Needed to Help Gain Public Acceptance for Federal Activities that Address Liability*, at 11 (Oct. 2014) (GAO–15–141).

²*Id.* at 14.

³*Id.* at 7.

use of water at the Yucca Mountain site to be beneficial and not detrimental to the public interest. In 2002, the Nevada State Engineer denied DOE's request for water rights at the Yucca Mountain site on the basis that the use was not beneficial and was detrimental to the public interest.⁴ The amendment also removed language from the introduced bill that would have severely limited Nevada's Clean Air Act authority at the site.

Section 202 of the reported bill allows for amendments to an approved construction authorization license to be considered using expedited and informal procedures at NRC. Expedited and informal procedures at NRC place limits on challenges and adjudication of contentions, which could limit the ability of interveners to raise issues with amended applications. This section also requires any other federal agency considering the environmental impact of infrastructure activities at the Yucca Mountain site to adopt, to the extent practicable, the environmental impact statement prepared by DOE.

We continue to question the need for Congress to intervene legislatively in the debate over Yucca Mountain at this point in time. The Trump Administration, which has already announced its intention to revive the stalled project, already holds sufficient authority under current law to move forward on a license for a repository at that location. Without passing judgement on the merits or final disposition of the Yucca Mountain project, we remain concerned that any provisions addressing Yucca Mountain greatly narrow the legislation's path to enactment, thus hindering efforts to address more immediate and pressing needs for interim storage.

Nonetheless, while there are a few concerning provisions remaining in H.R. 3053, as highlighted above, we believe that, overall, the legislation is a balanced step in the right direction that will benefit ratepayers, taxpayers and those living near nuclear facilities housing nuclear waste.

FRANK PALLONE, JR.,
Rank Member.

PAUL TONKO,
Ranking Member, Subcommittee on Environment.

⁴ Congressional Research Service, *Legal Developments Relating to Nuclear Waste Storage and Disposal* (Aug. 2016) (R44151).

DISSENTING VIEWS

I oppose the Nuclear Waste Policy Amendments Act of 2017, which unfortunately makes it more likely that a future interim storage site becomes a permanent home for nuclear waste. As former Senator and chairman of the Senate Energy & Natural Resources Committee Jeff Bingaman once put it, "interim storage can play an important role in a comprehensive waste management program, but only as an integral part of the repository program and not as an alternative to, or de facto substitute for, permanent disposal."

There is no doubt that these issues are complicated and I believe that we have a responsibility to address the waste issues that result from our country entering the atomic age. But I do not believe that addressing nuclear waste is our only responsibility. Seventy years ago, rural New Mexico became ground zero for the detonation of the first nuclear bomb. While it would usher in the start of the atomic age, it also marked the beginning of sickness and suffering for generations of people who lived and grew up in the Tularosa Basin.

To help those Americans who sacrificed so much for our national security, Congress passed the Radiation Exposure Compensation Act (RECA) in 1990 and later broadened the scope of the Act's coverage in 2000. However, we have since learned that many additional individuals who are sick or dying from radiation exposure are unable to receive the compensation they deserve.

To address this failure, I have repeatedly introduced the Radiation Exposure Compensation Act Amendments, which expands compensation for those exposed to radiation while working in uranium mines or living downwind from atomic weapons tests. And, I have committed to my constituents that I will take every opportunity I can to educate my colleagues in the House on the critical need to compensate all those who played a key role in our national security during the Cold War and have suffered as a result of their efforts.

Thoughtful nuclear waste policy is incredibly important but so is fairly compensating those who were exposed to radiation as they worked to ensure our nation's security. We need to act. It is the right thing to do and is a vital part of addressing our nation's nuclear legacy.

Sincerely,

BEN RAY LUJÁN,
Member of Congress.

EXCHANGE OF LETTERS WITH ADDITIONAL COMMITTEES OF
REFERRAL

GREG WALDEN, OREGON
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FIFTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115
Majority (302) 226-2927
Minority (202) 225-3641

October 6, 2017

The Honorable Rob Bishop
Chairman
Committee on Natural Resources
1324 Longworth House Office Building
Washington, DC 20515

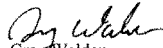
Dear Chairman Bishop:

On June 28, 2017, the Committee on Energy and Commerce ordered favorably reported H.R. 3053, the Nuclear Waste Policy Amendments Act of 2017. This bill was additionally referred to the Committee on Natural Resources.

I ask that the Committee on Natural Resources not insist on its referral of the bill so that H.R. 3053 may be scheduled for consideration by the Majority Leader. This concession in no way affects your jurisdiction over the subject matter of the bill, and it will not serve as precedent for future referrals. In addition, should a conference on the bill be necessary, I would support your request to have the Committee on Natural Resources represented on the conference committee. Finally, I would be pleased to include this letter and your response in the bill report and in the Congressional Record.

Thank you for your consideration of my request and for the extraordinary cooperation shown by you and your staff over matters of shared jurisdiction. I look forward to further opportunities to work with you this Congress.

Sincerely,


Greg Walden
Chairman

ROB BISHOP OF UTAH
CHAIRMAN

CODY STEWART
STAFF DIRECTOR

RAÚL GRIJALVA OF ARIZONA
RANKING MEMBER

DAVID WATKINS
DEMOCRATIC STAFF DIRECTOR

U.S. House of Representatives
Committee on Natural Resources
Washington, DC 20515

October 6, 2017

The Honorable Greg Walden
Chairman
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter concerning H.R. 3053, the Nuclear Waste Policy Amendments Act of 2017, which was additionally referred to the Committee on Natural Resources.

In the interest of permitting you to proceed expeditiously to floor consideration, I will allow the Committee on Natural Resources to be discharged from further consideration of the bill. I do so with the understanding that the Committee does not waive any jurisdictional claim over the subject matter contained in the bill that fall within its Rule X jurisdiction. I also request that you support my request to name members of the Committee on Natural Resources to any conference committee to consider such provisions. Finally, please include this letter in the report on the bill and into the Congressional Record during consideration of the measure on the House floor.

Thank you again for the very cooperative spirit in which you and your staff have worked regarding many issues of shared interest over the Congress.

Sincerely,



Rob Bishop
Chairman

cc: The Honorable Paul D. Ryan, Speaker
The Honorable Kevin McCarthy, Majority Leader
The Honorable Raul Grijalva, Ranking Member, Committee on Natural Resources
The Honorable Thomas J. Wickham, Jr., Parliamentarian

WILLIAM M. "MAC" THORNBERRY, TEXAS, CHAIRMAN
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COMMITTEE ON ARMED SERVICES
U.S. House of Representatives
 Washington, DC 20515-6035
 ONE HUNDRED FIFTEENTH CONGRESS

October 13, 2017

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 RO KHANNA, CALIFORNIA
 TOM O'HALLORAN, ARIZONA
 THOMAS R. SUOZZO, NEW YORK
 JIMMY PANETTA, CALIFORNIA

JENNIFER M. STEWART, STAFF DIRECTOR

The Honorable Greg Walden
 Chairman, Committee on Energy and Commerce
 U.S. House of Representatives
 2125 Rayburn House Office Building
 Washington, D.C. 20515


Dear Mr. Chairman:

I am writing to you concerning H.R. 3053, the "Nuclear Waste Policy Amendments Act of 2017." There are certain provisions in the bill which fall within the Rule X jurisdiction of the Committee on Armed Services.

In the interest of permitting your committee to proceed expeditiously to floor consideration of this important legislation, I am willing to waive this committee's further consideration of H.R. 3053. I do so with the understanding that by waiving consideration of the bill, the Committee on Armed Services does not waive any future jurisdictional claim over the subject matters contained in the legislation which fall within its Rule X jurisdiction. I request that you urge the Speaker to name members of this committee to any conference committee which is named to consider such provisions.

The decision to waive this committee's consideration is also based, in part, on an agreement with the Committee on Energy and Commerce that the DOE Record of Decision concerning rail corridor siting will not impinge on the activities of the Department of Defense and Department of Energy at the Nevada Nuclear Security Site and the Nevada Test and Training Range.

Please place a copy of this letter and your response acknowledging our jurisdictional interest, and our mutual understanding that a rail siting will not impede DoD and DoE sites, into the committee report on H.R. 3053 and into the *Congressional Record* during consideration of the measure on the House floor. Thank you for the cooperative spirit in which you have worked regarding this matter and others between our respective committees.

Sincerely,

 William M. "Mac" Thornberry
 Chairman

GREG WALDEN, OREGON
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FIFTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6115
Majority (207) 225-2857
Minority (207) 225-3631

October 13, 2017

The Honorable William M. "Mac" Thornberry
Chairman
Committee on Armed Services
2216 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Thornberry:

Thank you for your letter concerning H.R. 3053, Nuclear Waste Policy Amendments Act of 2017, which was additionally referred to the Committee on Armed Services.

I appreciate your willingness to waive your committee's further consideration of H.R. 3053, and I agree that by waiving consideration of the bill, the Committee on Armed Services does not waive any future jurisdictional claim over the subject matters contained in the legislation which fall within its Rule X jurisdiction. I will urge the Speaker to name members of your committee to any conference committee which is named to consider such provisions.

In addition, I agree that the DOE Record of Decision concerning rail corridor siting will not impinge on the activities of the Department of Defense and Department of Energy at the Nevada Nuclear Security Site and the Nevada Test and Training Range.

Finally, I will place a copy of your letter and this response into the committee report on H.R. 3053 and into the *Congressional Record* during consideration of the measure on the House floor.

Sincerely,


Greg Walden
Chairman

