

115TH CONGRESS
2D SESSION

H. R. 1320

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 26, 2018

Received; read twice and referred to the Committee on Environment and
Public Works

AN ACT

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Nuclear Utilization
3 of Keynote Energy Act”.

4 **SEC. 2. NUCLEAR REGULATORY COMMISSION USER FEES**
5 **AND ANNUAL CHARGES THROUGH FISCAL**
6 **YEAR 2020.**

7 (a) IN GENERAL.—Section 6101(c)(2)(A) of the Om-
8 nibus Budget Reconciliation Act of 1990 (42 U.S.C.
9 2214(c)(2)(A)) is amended—

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

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

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

14 “(v) amounts appropriated to the
15 Commission for the fiscal year for activi-
16 ties related to the development of a regu-
17 latory infrastructure for advanced nuclear
18 reactor technologies (which may not exceed
19 \$10,300,000).”.

20 (b) REPEAL.—Effective October 1, 2020, section
21 6101 of the Omnibus Budget Reconciliation Act of 1990
22 (42 U.S.C. 2214) is repealed.

23 **SEC. 3. NUCLEAR REGULATORY COMMISSION USER FEES**
24 **AND ANNUAL CHARGES FOR FISCAL YEAR**
25 **2021 AND EACH FISCAL YEAR THEREAFTER.**

26 (a) ANNUAL BUDGET JUSTIFICATION.—

1 (1) IN GENERAL.—In the annual budget jus-
2 tification submitted by the Commission to Congress,
3 the Commission shall expressly identify anticipated
4 expenditures necessary for completion of the re-
5 quested activities of the Commission anticipated to
6 occur during the applicable fiscal year.

7 (2) RESTRICTION.—The Commission shall, to
8 the maximum extent practicable, use any funds
9 made available to the Commission for a fiscal year
10 for the anticipated expenditures identified under
11 paragraph (1) for the fiscal year.

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

19 (A) 30 percent for each of fiscal years
20 2021 and 2022.

21 (B) 29 percent for each of fiscal years
22 2023 and 2024.

23 (C) 28 percent for fiscal year 2025 and
24 each fiscal year thereafter.

25 (b) FEES AND CHARGES.—

1 (1) ANNUAL ASSESSMENT.—

2 (A) IN GENERAL.—Each fiscal year, the
3 Commission shall assess and collect fees and
4 charges in accordance with paragraphs (2) and
5 (3) in a manner that ensures that, to the max-
6 imum extent practicable, the amount assessed
7 and collected is equal to an amount that ap-
8 proximates—

9 (i) the total budget authority of the
10 Commission for that fiscal year; less

11 (ii) the budget authority of the Com-
12 mission for the activities described in sub-
13 paragraph (B).

14 (B) EXCLUDED ACTIVITIES DESCRIBED.—

15 The activities referred to in subparagraph
16 (A)(ii) are the following:

17 (i) Any fee-relief activity, as identified
18 by the Commission.

19 (ii) Amounts appropriated for the fis-
20 cal year to the Commission—

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

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

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

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

18 (V) for the partnership program
19 with institutions of higher education
20 established under section 244 of the
21 Atomic Energy Act of 1954 (42
22 U.S.C. 2015c); and

23 (VI) for the scholarship and fel-
24 lowship programs under section 243

1 of the Atomic Energy Act of 1954 (42
2 U.S.C. 2015b).

3 (iii) Costs for activities related to the
4 development of regulatory infrastructure
5 for advanced nuclear reactor technologies
6 (which may not exceed \$10,300,000).

7 (C) EXCEPTION.—The exclusion described
8 in subparagraph (B)(iii) shall cease to be effec-
9 tive on January 1, 2026.

10 (D) REPORT.—Not later than December
11 31, 2023, the Commission shall submit to the
12 Committee on Appropriations and the Com-
13 mittee on Environment and Public Works of the
14 Senate and the Committee on Appropriations
15 and the Committee on Energy and Commerce
16 of the House of Representatives a report de-
17 scribing the views of the Commission on the
18 continued appropriateness and necessity of
19 funding for the activities described in subpara-
20 graph (B)(iii).

21 (2) FEES FOR SERVICE OR THING OF VALUE.—
22 In accordance with section 9701 of title 31, United
23 States Code, the Commission shall assess and collect
24 fees from any person who receives a service or thing
25 of value from the Commission to cover the costs to

1 the Commission of providing the service or thing of
2 value.

3 (3) ANNUAL CHARGES.—

4 (A) IN GENERAL.—Subject to subpara-
5 graph (B) and except as provided in subpara-
6 graph (D), the Commission may charge to any
7 licensee or certificate holder of the Commission
8 an annual charge in addition to the fees set
9 forth in paragraph (2).

10 (B) CAP ON ANNUAL CHARGES OF CER-
11 TAIN LICENSEES.—

12 (i) OPERATING REACTORS.—The an-
13 nual charge under subparagraph (A)
14 charged to an operating reactor licensee, to
15 the maximum extent practicable, shall not
16 exceed the annual fee amount per oper-
17 ating reactor licensee established in the
18 final rule of the Commission entitled “Re-
19 vision of Fee Schedules; Fee Recovery for
20 Fiscal Year 2015” (80 Fed. Reg. 37432
21 (June 30, 2015)), as may be adjusted an-
22 nually by the Commission to reflect
23 changes in the Consumer Price Index pub-
24 lished by the Bureau of Labor Statistics of
25 the Department of Labor.

(ii) FUEL FACILITIES.—

(I) IN GENERAL.—The total annual charges under subparagraph (A) charged to fuel facility licensees, to the maximum extent practicable, shall not exceed an amount that is equal to the total annual fees collected from the fuel facilities class under the final rule of the Commission entitled “Revision of Fee Schedules; Fee Recovery for Fiscal Year 2016” (81 Fed Reg. 41171 (June 24, 2016)), which amount may be adjusted annually by the Commission to reflect changes in the Consumer Price Index published by the Bureau of Labor Statistics of the Department of Labor.

(II) EXCEPTION.—Subclause (I) shall not apply if the number of licensed facilities classified by the Commission as fuel facilities exceeds seven.

(III) CHANGES TO ANNUAL CHARGES.—Any change in an annual charge under subparagraph (A)

1 charged to a fuel facility licensee shall
2 be based on—

3 (aa) a change in the regu-
4 latory services provided with re-
5 spect to the fuel facility; or

6 (bb) an adjustment de-
7 scribed in subclause (I).

8 (iii) WAIVER.—The Commission may
9 waive, for a period of 1 year, the cap on
10 annual charges described in clause (i) or
11 (ii) if the Commission submits to the Com-
12 mittee on Appropriations and the Com-
13 mittee on Environment and Public Works
14 of the Senate and the Committee on Ap-
15 propriations and the Committee on Energy
16 and Commerce of the House of Represent-
17 atives a written determination that the cap
18 on annual charges may compromise the
19 safety and security mission of the Commis-
20 sion.

21 (C) AMOUNT PER LICENSEE.—

22 (i) IN GENERAL.—The Commission
23 shall establish by rule a schedule of annual
24 charges fairly and equitably allocating the
25 aggregate amount of charges described in

1 clause (ii) among licensees and certificate
2 holders.

3 (ii) AGGREGATE AMOUNT.—For pur-
4 poses of this subparagraph, the aggregate
5 amount of charges for a fiscal year shall
6 equal an amount that approximates—

7 (I) the amount to be collected
8 under paragraph (1)(A) for the fiscal
9 year; less

10 (II) the amount of fees to be col-
11 lected under paragraph (2) for the fis-
12 cal year.

13 (iii) REQUIREMENT.—The schedule of
14 charges under clause (i)—

15 (I) to the maximum extent prac-
16 ticable, shall be reasonably related to
17 the cost of providing regulatory serv-
18 ices; and

19 (II) may be based on the alloca-
20 tion of the resources of the Commis-
21 sion among licensees or certificate
22 holders or classes of licensees or cer-
23 tificate holders.

24 (D) EXEMPTION.—Subparagraph (A) shall
25 not apply to the holder of any license for a fed-

1 erally owned research reactor used primarily for
2 educational training and academic research pur-
3 poses.

4 (c) PERFORMANCE AND REPORTING.—

5 (1) IN GENERAL.—The Commission shall de-
6 velop for the requested activities of the Commis-
7 sion—

8 (A) performance metrics; and

9 (B) milestone schedules.

10 (2) DELAYS IN ISSUANCE OF FINAL SAFETY
11 EVALUATION.—If the final safety evaluation for a
12 requested activity of the Commission is not com-
13 pleted by the completion date required by the per-
14 formance metrics or milestone schedule under para-
15 graph (1), the Executive Director for Operations of
16 the Commission shall, not later than 30 days after
17 such required completion date, inform the Commis-
18 sion of the delay.

19 (3) DELAYS IN ISSUANCE OF FINAL SAFETY
20 EVALUATION EXCEEDING 180 DAYS.—If a final safe-
21 ty evaluation described in paragraph (2) is not com-
22 pleted by the date that is 180 days after the comple-
23 tion date required by the performance metrics or
24 milestone schedule under paragraph (1), the Com-
25 mission shall submit to the Committee on Environ-

1 ment and Public Works of the Senate and the Com-
2 mittee on Energy and Commerce of the House of
3 Representatives a timely report describing the delay,
4 including a detailed explanation accounting for the
5 delay and a plan for timely completion of the final
6 safety evaluation.

7 (d) ACCURATE INVOICING.—With respect to invoices
8 for fees charged under subsection (b)(2), the Commission
9 shall—

10 (1) ensure appropriate review and approval
11 prior to the issuance of invoices;

12 (2) develop and implement processes to audit
13 invoices to ensure accuracy, transparency, and fair-
14 ness; and

15 (3) modify regulations to ensure fair and appro-
16 priate processes to provide licensees and applicants
17 an opportunity to efficiently dispute or otherwise
18 seek review and correction of errors in invoices for
19 such fees.

20 (e) REPORT.—Not later than September 30, 2022,
21 the Commission shall submit to the Committee on Appro-
22 priations and the Committee on Environment and Public
23 Works of the Senate and the Committee on Appropria-
24 tions and the Committee on Energy and Commerce of the
25 House of Representatives a report describing the imple-

1 mentation of this section, including any effects of such im-
2 plementation and recommendations for improvement.

3 (f) DEFINITIONS.—In this section:

4 (1) ADVANCED NUCLEAR REACTOR.—The term
5 “advanced nuclear reactor” means a nuclear fission
6 or fusion reactor, including a prototype plant (as de-
7 fined in sections 50.2 and 52.1 of title 10, Code of
8 Federal Regulations), with significant improvements
9 compared to commercial nuclear reactors under con-
10 struction as of the date of enactment of this Act, in-
11 cluding improvements such as—

12 (A) additional inherent safety features;

13 (B) significantly lower levelized cost of
14 electricity;

15 (C) lower waste yields;

16 (D) greater fuel utilization;

17 (E) enhanced reliability;

18 (F) increased proliferation resistance;

19 (G) increased thermal efficiency; or

20 (H) ability to integrate into electric and
21 nonelectric applications.

22 (2) COMMISSION.—The term “Commission”
23 means the Nuclear Regulatory Commission.

24 (3) CORPORATE SUPPORT COSTS.—The term
25 “corporate support costs” means expenditures for

1 acquisitions, administrative services, financial man-
2 agement, human resource management, information
3 management, information technology, policy support,
4 outreach, and training.

5 (4) RESEARCH REACTOR.—The term “research
6 reactor” means a nuclear reactor that—

7 (A) is licensed by the Commission under
8 section 104 c. of the Atomic Energy Act of
9 1954 (42 U.S.C. 2134(c)) for operation at a
10 thermal power level of not more than 10
11 megawatts; and

12 (B) if so licensed for operation at a ther-
13 mal power level of more than 1 megawatt, does
14 not contain—

15 (i) a circulating loop through the core
16 in which the licensee conducts fuel experi-
17 ments;

18 (ii) a liquid fuel loading; or

19 (iii) an experimental facility in the
20 core in excess of 16 square inches in cross-
21 section.

22 (5) REQUESTED ACTIVITY OF THE COMMIS-
23 SION.—The term “requested activity of the Commis-
24 sion” means—

25 (A) the processing of applications for—

- 1 (i) design certifications or approvals;
- 2 (ii) licenses;
- 3 (iii) permits;
- 4 (iv) license amendments;
- 5 (v) license renewals;
- 6 (vi) certificates of compliance; and
- 7 (vii) power uprates; and
- 8 (B) any other activity requested by a li-
- 9 censee or applicant.

10 (g) EFFECTIVE DATE.—This section takes effect on
11 October 1, 2020.

12 **SEC. 4. STUDY ON ELIMINATION OF FOREIGN LICENSING**
13 **RESTRICTIONS.**

14 Not later than 18 months after the date of enactment
15 of this Act, the Comptroller General shall transmit to Con-
16 gress a report containing the results of a study on the
17 feasibility and implications of repealing restrictions under
18 sections 103 d. and 104 d. of the Atomic Energy Act of
19 1954 (42 U.S.C. 2133(d); 2134(d)) on issuing licenses for
20 certain nuclear facilities to an alien or an entity owned,
21 controlled, or dominated by an alien, a foreign corpora-
22 tion, or a foreign government.

1 **SEC. 5. STUDY ON THE IMPACT OF THE ELIMINATION OF**
2 **MANDATORY HEARING FOR UNCONTESTED**
3 **LICENSING APPLICATIONS.**

4 Not later than 18 months after the date of enactment
5 of this Act, the Comptroller General shall transmit to Con-
6 gress a report containing the results of a study on the
7 effects of eliminating the hearings required under section
8 189 a. of the Atomic Energy Act of 1954 (42 U.S.C.
9 2239(a)) for an application under section 103 or section
10 104 b. of such Act for a construction permit for a facility
11 in the absence of a request of any person whose interest
12 may be affected by the proceeding.

13 **SEC. 6. INFORMAL HEARING PROCEDURES.**

14 Section 189 a. of the Atomic Energy Act of 1954 (42
15 U.S.C. 2239(a)) is amended by adding at the end the fol-
16 lowing:

17 “(3) The Commission may use informal adjudicatory
18 procedures for any hearing required under this section for
19 which the Commission determines that adjudicatory proce-
20 dures under section 554 of title 5, United States Code,
21 are unnecessary.”.

22 **SEC. 7. APPLICATION REVIEWS FOR NUCLEAR ENERGY**
23 **PROJECTS.**

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

1 “c. APPLICATION REVIEWS FOR NUCLEAR ENERGY
2 PROJECTS.—

3 “(1) STREAMLINING LICENSE APPLICATION RE-
4 VIEW.—With respect to an application that is dock-
5 eted seeking issuance of a construction permit, oper-
6 ating license, or combined construction permit and
7 operating license for a production or utilization facil-
8 ity, the Commission shall include the following pro-
9 cedures:

10 “(A) Undertake an environmental review
11 process and issue any draft environmental im-
12 pact statement to the maximum extent prac-
13 ticable within 24 months after the application is
14 accepted for docketing.

15 “(B) Complete the technical review process
16 and issue any safety evaluation report and any
17 final environmental impact statement to the
18 maximum extent practicable within 42 months
19 after the application is accepted for docketing.

20 “(2) EARLY SITE PERMIT.—

21 “(A) SUPPLEMENTAL ENVIRONMENTAL IM-
22 PACT STATEMENT.—In a proceeding for a com-
23 bined construction permit and operating license
24 for a site for which an early site permit has
25 been issued, any environmental impact state-

1 ment prepared by the Commission and cooper-
2 ating agencies shall be prepared as a supple-
3 ment to the environmental impact statement
4 prepared for the early site permit.

5 “(B) INCORPORATION BY REFERENCE.—

6 The supplemental environmental impact state-
7 ment shall—

8 “(i) incorporate by reference the anal-
9 ysis, findings, and conclusions from the en-
10 vironmental impact statement prepared for
11 the early site permit; and

12 “(ii) include additional discussion,
13 analyses, findings, and conclusions on mat-
14 ters resolved in the early site permit pro-
15 ceeding only to the extent necessary to ad-
16 dress information that is new and signifi-
17 cant in that the information would materi-
18 ally change the prior findings or conclu-
19 sions.

20 “(3) PRODUCTION OR UTILIZATION FACILITY

21 LOCATED AT AN EXISTING SITE.—In reviewing an
22 application for an early site permit, construction
23 permit, operating license, or combined construction
24 permit and operating license for a production or uti-
25 lization facility located at the site of a licensed pro-

1 duction or utilization facility, the Commission shall,
 2 to the extent practicable, use information that was
 3 part of the licensing basis of the licensed production
 4 or utilization facility.

5 “(4) REGULATIONS.—The Commission shall
 6 initiate a rulemaking, not later than 1 year after the
 7 date of enactment of the Nuclear Utilization of Key-
 8 note Energy Act, to amend the regulations of the
 9 Commission to implement this subsection.

10 “(5) ENVIRONMENTAL IMPACT STATEMENT DE-
 11 FINED.—In this subsection, the term ‘environmental
 12 impact statement’ means a detailed statement re-
 13 quired under section 102(C) of the National Envi-
 14 ronmental Policy Act of 1969 (42 U.S.C. 4332(C)).

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

20 **SEC. 8. REPORT IDENTIFYING BEST PRACTICES FOR ES-**
 21 **TABLISHMENT AND OPERATION OF LOCAL**
 22 **COMMUNITY ADVISORY BOARDS.**

23 (a) BEST PRACTICES REPORT.—Not later than 18
 24 months after the date of enactment of this Act, the Nu-
 25 clear Regulatory Commission shall submit to Congress,

1 and make publicly available, a report identifying best prac-
2 tices with respect to the establishment and operation of
3 a local community advisory board to foster communication
4 and information exchange between a licensee planning for
5 and involved in decommissioning activities and members
6 of the community that decommissioning activities may af-
7 fect, including lessons learned from any such board in ex-
8 istence before the date of enactment of this Act.

9 (b) CONTENTS.—The report described in subsection
10 (a) shall include—

11 (1) a description of—

12 (A) the topics that could be brought before
13 a local community advisory board;

14 (B) how such a board’s input could be
15 used to inform the decision-making processes of
16 stakeholders for various decommissioning activi-
17 ties;

18 (C) what interaction such a board could
19 have with the Nuclear Regulatory Commission
20 and other Federal regulatory bodies to support
21 the board members’ overall understanding of
22 the decommissioning process and promote dia-
23 logue between the affected stakeholders and the
24 licensee involved in decommissioning activities;
25 and

1 (D) how such a board could offer opportu-
2 nities for public engagement throughout all
3 phases of the decommissioning process;

4 (2) a discussion of the composition of a local
5 community advisory board; and

6 (3) best practices relating to the establishment
7 and operation of a local community advisory board,
8 including—

9 (A) the time of establishment of such a
10 board;

11 (B) the frequency of meetings of such a
12 board;

13 (C) the selection of board members;

14 (D) the term of board members;

15 (E) the responsibility for logistics required
16 to support such a board's meetings and other
17 routine activities; and

18 (F) any other best practices relating to
19 such a local community advisory board that are
20 identified by the Commission.

21 (c) CONSULTATION.—In developing the report de-
22 scribed in subsection (a), the Nuclear Regulatory Commis-
23 sion shall consult with any host State, any community
24 within the emergency planning zone of an applicable nu-

1 clear facility, and any existing local community advisory
2 board.

3 **SEC. 9. REPORT ON STUDY RECOMMENDATIONS.**

4 Not later than 90 days after the date of enactment
5 of this Act, the Nuclear Regulatory Commission shall sub-
6 mit to Congress a report on the status of addressing and
7 implementing the recommendations contained in the
8 memorandum of the Executive Director of Operations of
9 the Commission entitled “Tasking in Response to the As-
10 sessment of the Considerations Identified in a ‘Study of
11 Reprisal and Chilling Effect for Raising Mission-Related
12 Concerns and Differing Views at the Nuclear Regulatory
13 Commission’” and dated June 19, 2018 (ADAMS Acces-
14 sion No.: ML18165A296).

Passed the House of Representatives September 25,
2018.

Attest:

KAREN L. HAAS,
Clerk.