

115TH CONGRESS
2D SESSION

S. 2388

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

IN THE SENATE OF THE UNITED STATES

FEBRUARY 7, 2018

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

A BILL

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

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Nuclear Plant Decom-
5 missioning Act of 2018”.

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

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

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

8 “a. DEFINITIONS.—In this section:

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

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

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

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

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

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

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

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

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

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

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

22 “(1) each affected State; and

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

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

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

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

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

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

11 “(i) the proposed PSDAR; or

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

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

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

23 “(3) EXCLUSION OF CERTAIN INFORMATION.—
24 In making a proposed PSDAR or application for
25 transfer of a license, as applicable, available to the

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

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

8 “(B) national security.

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

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

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

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

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

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

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

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

16 or

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

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

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

line specified in paragraph (1), the Commission shall issue a determination regarding whether the proposed PSDAR is adequate or inadequate or a determination regarding whether to provide consent for the proposed license transfer, as applicable—

“(i) based on the considerations described in subparagraph (B); and

“(ii) after taking into consideration—

“(I) any written comments submitted by the host State, other affected States, and local communities with respect to the proposed PSDAR or license transfer; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 “(C) DECISION DOCUMENT.—

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

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

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

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

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

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

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

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

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

21 “(4) DEADLINE FOR DECISION DOCUMENT.—

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

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

“(B) PROPOSED INTERMEDIATE LICENSE TRANSFERS.—

“(i) DEFINITION OF PROPOSED INTERMEDIATE LICENSE TRANSFER.—In this subparagraph, the term ‘proposed intermediate license transfer’ means a proposed transfer of license—

“(I) for a covered facility on behalf of which a proposed PSDAR has been submitted by the licensee to the Commission under subsection c. (1)(A)(i); and

“(II) the notice of which is submitted to the Commission under subsection c. (1)(A)(ii) before the applicable deadline under subparagraph (A) for the issuance by the Commission of a decision document relating to the

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

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

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

22 “f. ADDITIONAL REQUIREMENTS.—

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

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

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

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

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

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

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

3 “(i) decontamination and dismantle-
 4 ment activities described in the PSDAR
 5 have not commenced at the covered facil-
 6 ity; or

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

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

16 “(2) PROCESS.—

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

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

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

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

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

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

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

10 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

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

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

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

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

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

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

4 “a. The Nuclear”.

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

“CHAPTER 10. ATOMIC ENERGY LICENSES

“Sec. 101. License required.

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

“Sec. 103. Commercial licenses.

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

“Sec. 105. Antitrust provisions.

“Sec. 106. Classes of facilities.

“Sec. 107. Operators’ licenses.

“Sec. 108. War or national emergency.

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

“Sec. 110. Exclusions.

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

“Sec. 112. Domestic medical isotope production.

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

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