

the direct pay option, contrary to that House staffer's assertion.

The Bond Buyer—that is a publication—the Bond Buyer also reported that the senior House staffer stated:

There is nobody that I know who does not view the Build America Bonds program as an enormous success, with the possible exception of one person.

I assume that staffer was referring to me. There are many Federal taxpayers who do not view the Build America Bonds program as an enormous success. To understand why, let's see which States benefit the most from the Build America Bonds.

In looking at data from Thomson Reuters on the 10 largest Build America Bonds deals, California alone issues 73 percent of those bonds. Between California and New York, those two States alone issue 92 percent of the bonds from the 10 largest Build America Bonds deals. California and New York are the biggest winners under the Build America Bonds, while American taxpayers from the remaining 48 States subsidize these States.

As Senator KYL pointed out in his "Dear Colleague" letter on Build America Bonds circulated on March 15, the Build America Bonds program actually rewards States for having a riskier credit rating by giving them more money. Build America Bonds creates a perverse incentive that causes State and local governments to borrow more than they otherwise would borrow. This is especially true regarding the school tax credit bonds.

This bill creates incentives where States and local governments should not even care what the interest rate is. The American taxpayers are picking up 100 percent of the interest cost. Actually, the cost borne by the American taxpayers is, in fact, more than 100 percent. At least with tax credit bonds, the taxpayers include the amount of the tax credit in income and the Federal Government collects taxes on that income. The only purchasers of tax credit bonds are those who have tax liabilities; otherwise, it makes no sense to buy tax credit bonds. However, Build America bonds are technically taxable bonds. But most of the investors do not pay tax on these bonds.

For example, under our tax rules, if a foreign person or a pension fund or a tax-exempt entity buys a Build America Bond, they do not pay tax on the interest they receive. Thus, the Federal Government not only cuts a check for 100 percent of the bond's interest cost, but it also loses most of the revenue it would have collected from the tax credit bonds.

State and local governments can view this Federal money as what it really is—free money—because they do not have to collect it from their residents. Therefore, of course, State and local governments turn out to be very big fans of the Build America Bonds program. They get Federal money that they do not have to pay back. The large Wall Street investment banks

love Build America Bonds. Why? Because they are getting richer off those bonds.

However, we all know there is no such thing as a free lunch. Washington is an island surrounded by reality. Consequently, everybody in this town thinks there are free lunches, and the common sense of the rest of the country has difficulty getting inside this island. It is our responsibility to point out that in this city, this District—the only real industry is government—you cannot have everybody in the wagon. In this town, everybody is in the wagon. Everybody outside the District is pulling the wagon. That cannot go on very long.

There is no such thing as a free lunch. Federal taxpayers are footing the bill for this big spending program, which only gets bigger every time Congress touches it. This legislation before us is just an example. As this program that started out as a little program in the stimulus bill—and presumably the word "stimulus" means temporary, doesn't it? But this is not turning out to be temporary and it is not turning out to be small because it has just been enhanced greatly in the other body. The American taxpayers are the ones we ought to be looking out for, and a temporary program ought to be temporary and a stimulus program ought to be stimulus and nothing else. And here we are expanding it.

The American taxpayers are the ones who, in the words of the senior House staffer, do "not view the Build America Bonds program as an enormous success."

I urge my colleagues to look beyond the fancy, well-funded lobbying campaign for this rich subsidy. Take a look at who wins. The winners are big Wall Street banks. Maybe a small number of governments will issue bonds they otherwise would not. Main Street is not helped very much by this program. The only certainty is that the Federal taxpayers are on the hook for the interest costs.

With record budget deficits under this Congress and administration, we cannot casually look away as new, open-ended subsidies are proposed.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alaska.

#### YUCCA MOUNTAIN

Ms. MURKOWSKI. Mr. President, last Wednesday, the Department of Energy submitted a motion to the Nuclear Regulatory Commission to withdraw its license application to construct a spent nuclear fuel and high-level radioactive waste repository at Yucca Mountain. What was the latest rationale for this? Simply because we need it too much.

That might seem like creative interpretation on my part, but just last week, Secretary of Energy Steven Chu noted that due to the revival of the nuclear industry, Yucca Mountain's re-

pository would hit its statutory capacity limit in the next several decades and would not meet future industry needs. Instead of moving forward with a permanent repository that billions of dollars have already been spent on and simply expanding the arbitrary limit the law puts on the size of the repository, spent nuclear fuel from commercial nuclear reactors will be stored on-site at over 100 locations across the country for at least the next several decades.

If we do have the nuclear revival that many of us believe is needed to reduce greenhouse gas emissions and meet our energy needs, the number of on-site storage locations across the country will only increase.

Not only is the Department of Energy seeking to withdraw its license application—and I am not absolutely convinced they have the authority to do so—they are seeking to withdraw it "with prejudice," making it very difficult, if not impossible, to resurrect Yucca Mountain as a possible option for spent nuclear fuel and high-level radioactive waste, regardless of what future scientific and engineering advances may offer and regardless of what the administration's blue ribbon panel that is directed to consider all of the options may conclude.

In fact, the Department of Energy argues in its motion that "scientific and engineering knowledge on issues relevant to disposition of high-level waste and spent nuclear fuel has advanced dramatically over the 20 years since the Yucca Mountain project was initiated."

Apparently, the Department is also arguing that scientific and engineering knowledge on the same issues will not advance any further over the next several decades to address issues with the Yucca Mountain site.

Setting the legal issues aside surrounding the Department's motion to withdraw, I wish to focus for a moment on what stopping work on the Yucca Mountain site will actually cost the American taxpayers.

Under the Nuclear Waste Policy Act of 1982, the Federal Government has a contractual obligation to collect spent nuclear fuel from individual nuclear powerplants starting in 1998. The government has clearly missed on that deadline.

According to the Department of Justice, the Federal Government has so far paid \$565 million in settlement costs for breaching this contract with the utilities. I say "so far" because the ultimate cost to the American taxpayer we know is going to be much higher.

Utility companies have filed 71 cases in Federal court alleging the Department of Energy's delay in taking title to spent nuclear fuel is a breach of contract. Of those 71 lawsuits, 10 have now been settled, 6 were withdrawn, and 4 were fully litigated, resulting in the \$565 million in payments. Of the 51 cases that are outstanding, then, the

judgment has been entered in 13 of those cases, putting government liability, so far—so far—for commercial spent nuclear fuel stored onsite between 1998 and 2007 at a cost of \$1.3 billion. And there remain another 38 cases for judgment to be entered on, so the amount of the liability for that time-frame is likely to increase significantly in the future. Keep in mind, this number does not take in account the level of liability for the increasing amount of spent nuclear fuel stored onsite from 2008 until the date when a permanent repository is opened, whenever that might be, nor do the costs include the \$24 million in attorney costs, \$91 million in expert funds, \$39 million in litigation support costs, or the thousands of hours the DOE and the NRC employees have already expended on this effort.

The Department of Energy estimates that the potential liability of the Federal Government to utilities will be \$12.3 billion—if the government starts taking title to the spent fuel by 2020, just 10 years from now. According to the CBO, the Congressional Budget Office, utility industry reports estimate that the claims will total \$50 billion. And both of these estimates were developed before the administration took steps to withdraw the Yucca application. So we have liability estimates of between \$12 billion and \$50 billion in taxpayer money—if a repository is opened and accepting spent fuels in the next 10 years. Keep in mind, it took us almost 30 years to get this far on Yucca Mountain. With the current administration shutting down all work on Yucca and beginning the search for a solution anew, it seems increasingly likely that the costs will greatly exceed the \$50 billion estimate.

At a time when we are already racking up trillions of dollars in debt for future generations, the administration has freely chosen—freely chosen—to incur additional future taxpayer liability in terms of tens of billions of dollars by withdrawing the Yucca Mountain repository license application because, in the words of Secretary Chu, “the statutory limit of Yucca Mountain would have been used up in the next several decades.”

So all Americans are on the hook for tens of billions of dollars because the Federal Government is in breach of its contract to take title to spent nuclear fuel. But it gets even better for those Americans whose utility gets some of its electricity from nuclear power plants: You get to pay twice. In return for the Federal Government taking title to commercial spent nuclear fuel, the Nuclear Waste Policy Act established a nuclear waste fund to provide for the construction of a spent nuclear fuel and high-level radioactive waste repository. Utilities that operate under nuclear power reactors are charged a fee by the Secretary of Energy, and that fee is then deposited into the waste fund. The cost of that fee is passed on from the utility to the con-

sumer. The utilities, and then hence their customers, contribute between \$750 million and \$800 million into the waste fund each year.

As of September 30, 2009, payments and interest credited to the fund totaled just over \$30 billion. That is a substantial amount of money. However, there are restrictions on what those funds can be used for. Funds from the nuclear waste fund may only be expended for the construction of a facility expressly authorized by the Nuclear Waste Policy Act or subsequent legislation. The only facility that meets this description is Yucca Mountain. Yet the Obama administration has shut down work on Yucca and filed a motion to withdraw its license application. So the natural question is, What happens to the money in the nuclear waste fund since it can't be spent on anything other than the construction of the Yucca Mountain repository? Well, the Nuclear Waste Policy Act directs the Secretary of Energy to adjust the fee paid by the utilities if the amount collected is insufficient or in excess of the amount needed to meet the cost of construction of the repository. It is hard to see how the \$24 billion balance in the fund is not sufficient to pay for work on a facility where no more work will ever occur.

Utilities have been suggesting that the fee be dispensed with, but Secretary Chu said that the collection will continue. So some ratepayers will continue to pay a higher electricity bill to contribute to a fund that no longer serves a purpose, at least until the courts should rule otherwise. If—or perhaps when—the courts order the reduction of the fee and the refund of the balances already paid into the fund, you can add the loss of over \$750 million in income to the Federal Government per year, as well as the refund of the \$30 billion already collected, to the taxpayers' debt.

Mr. President, I have focused on the impact stopping work at Yucca Mountain will have on the commercial operations and the individual taxpayer, but the license application withdrawal will also impact those 13 States that host Federal sites that hold high-level radioactive waste from the production of nuclear weapons dating back to the Manhattan Project. These are, most notably, Hanford, WA; Savannah River, SC; and the National Engineering and Environmental Lab in Idaho. Just as utilities have sued the Federal Government for breach of contract, the decision to terminate Yucca should open the door to a lawsuit from a State such as Idaho, which has a court-approved agreement with the Department of Energy to remove nuclear waste from the State by the year 2035.

I am also concerned that in the administration's haste to suspend the work on Yucca Mountain, valuable scientific data will be lost—for example, as the Sustainable Fuel Cycle Task Force noted, long-term corrosion samples containing decades of information that is irreplaceable.

To quote the task force, they say:

Scientific information developed at considerable cost in the Yucca Mountain program should be preserved to assist in future repository development, wherever that may be.

I call upon the administration to preserve the data it has collected so far. I support moving forward with the Yucca Mountain license application, but if the motion to withdraw the application is successful, the knowledge and data received so far in the process will be valuable for future repository siting needs.

Mr. President, taxpayers are on the hook for tens of billions of dollars. Some are paying twice for a repository that is being taken off the table. States are left with Federal holding sites that contain high-level radioactive waste. Valuable scientific data is at risk of being lost forever. And all the administration can offer in return is a 2-year delay while a panel studies the issue and offers a report.

It is encouraging to hear the administration voice its support for the development of additional nuclear power and back those words with a request for greater loan guarantee funding. That is good. But in order to have support for new nuclear at a national level, there must be support among the communities which host existing nuclear powerplants. I am increasingly concerned that until we can resolve what to do with the back end of the nuclear fuel cycle, local support for nuclear will erode as questions about how long the spent fuel will be stored onsite persist.

With the withdrawal of the Yucca Mountain license application, we are essentially back to square one, and the American taxpayer will continue to pay the cost—without receiving any answers.

Mr. President, with that, I yield the floor.

**THE PRESIDING OFFICER.** The Senator from Texas.

**Mrs. HUTCHISON.** Mr. President, am I correct that, procedurally, I am speaking in morning business?

**THE PRESIDING OFFICER.** That is correct.

#### HEALTH CARE

**Mrs. HUTCHISON.** Mr. President, I rise today to speak on this health care reform bill that is purportedly going through the House right now. I just have to speak on it because it is so obvious that the American people do not want this bill, and yet now the Democrats seem to be pushing it through the House with these elaborate procedures. So I want to talk about it, as I know many others on this floor are doing and have done, because really the only way we can bring to the attention of the American people what is going on here is to talk about it—both process as well as substance.

The health care bill that passed this Senate last December, on Christmas Eve, was passed really under a cloud,