

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,

and the American people immediately saw that big cloud on the horizon, for sure. The bill has been bandied around so much that the American people have finally come to the conclusion that what was passed was not in the best interest of America. So we are still debating this legislation, and the reason is the American people don't want this bill. Why do they not want it? They know it will do great harm to our economy—one-sixth of the whole economy of our country—and it is not going to significantly change the course of our Nation's spending on health care, nor is it going to add to its quality. The Senate bill is a failure in terms of resolving the concerns Americans have with our current health care system.

Most of us in this Chamber agree that the health care system today is not what it needs to be and that it is not sustainable. And we can probably agree on the causes—No. 1, health care costs are going up, and No. 2, a lot of people can't afford and don't have access to health care insurance. So limited access to affordable options and rising costs. But this bill makes it worse, not better.

The bill is so bad that the President and the leadership in Congress are going to use the unique budget procedure known as reconciliation to force additional health care measures through Congress. In fact, they are even talking about not actually passing the bill that passed the Senate—without any minority votes—in December, and they are talking about “passing it” by deeming it in the House, which means Members of the House won't actually vote on it, because it is so bad. Well, how much sense does that make?

The media is continuing to speculate about whether the Speaker of the House can secure the votes needed to pass the Senate bill as well as a new unseen, unknown additional bill that would change the bill that passed the Senate and take out some of its flaws. We haven't seen this new bill, either, and we are talking about getting it over on the Senate side next week.

Amid this media storm of speculation on whether a bill can be passed using reconciliation, we need to talk about why this bill represents the wrong approach to health care reform.

No. 1 is the cost of the bill. The bill costs more than \$2 trillion. Some may try to say it is actually less than that, but the truth is, there are 10 years of tax increases and 10 years of Medicare cuts to pay for 6 years of spending. Yes, that is right. The taxes start immediately, the Medicare cuts start immediately, and 4 years from now there will be presumed options for people to be able to have affordable health care. The true 10-year cost of this bill is \$2 trillion.

More taxes. The bill imposes 10 years of taxes—\$½ trillion of tax increases—most of which will start immediately or very shortly. More than \$100 billion in taxes on prescription drug compa-

nies, medical device manufacturers, and insurance companies is going to be levied. What do those taxes mean? Well, clearly, every study shows and every economist says those taxes will be passed on to individuals. They will be passed on to individuals in the form of higher cost for prescription drugs and higher cost of insurance premiums and medical devices. That all starts before we ever see any kind of affordable health care options.

I offered an amendment in the December debate that would say no taxes start until services are provided. I thought that was a pretty clear tax policy, one that maybe the American people would at least say: OK, at least it is fair; the taxes don't start until the services start.

Of course, my amendment was rejected. Now we have the bill that was passed which is 10 years of taxes for 6 years of services. There are taxes on those who cannot afford insurance, the higher of \$750 per individual or 2 percent of household income. That is the tax on people who do not purchase insurance. Employers are also hit with new taxes. The penalty could be as high as \$3,000 per employee under the Senate bill.

What will this do to small businesses, which create 70 percent of the new jobs in our country? In a letter sent to the majority leader, the Small Business Coalition for Affordable Health Care stated “with the new taxes, mandates, growth in government programs and overall price tag, the Patient Protection and Affordable Care Act,” the health care reform bill, “costs too much and delivers too little.”

That is pretty succinct, the Small Business Coalition speaking out and saying this bill costs too much and delivers too little. Small businesses are reeling. We are in a time when families are struggling to pay their mortgages, struggling to find a job, struggling to pay bills, and businesses are having a hard time, too, and they are not hiring. What are we doing? Providing more burdens on small businesses and expecting them to hire more people. This is so counterintuitive that the American people certainly see what is happening.

Those are all the taxes. The other side is the cuts to Medicare. The Senate bill includes \$½ trillion in cuts to Medicare over 10 years, including \$135 billion in cuts to hospitals. The Medicare Program is unsustainable. The Chief Actuary of Medicare has said as much as 20 percent of Medicare's providers will either go out of business or will have to stop seeing Medicare beneficiaries. Millions of seniors, including those who have chosen Medicare Advantage, will lose the coverage they now enjoy. Medicare is being used as a piggy bank, and it needs every penny that has been deposited. We cannot reform all of the health care system on the backs of our seniors. Cuts to hospitals will threaten access for seniors.

We have been asking the leadership of Congress to scrap this bill and work

with Republicans to achieve the reform that Americans want, reform that will reduce costs, increase competition, and improve access. This bill achieves none of that. I cannot understand why the President chose to base his proposal for reform on the Senate bill that was passed by the Senate, but the American people have consistently opposed it. Every poll shows the American people do not want the Senate bill. They saw it for what it was, a failure.

I hope the Members of Congress who are being cajoled into voting for this bill will listen to the American people. They do not want the government to take over their health care. They want affordable access, and that means we have to bring the costs down and give more options.

Let's talk about the right kind of reform, what Republicans are putting on the table: more choices. How about allowing small businesses to pull together so their risk pool is increased and costs are lowered; and create an online marketplace where the public can easily compare and select insurance plans. But it would be a marketplace that is free from mandates and government interference. The one that is in the Senate bill had so many mandates and so many requirements that the costs are going to be out of sight.

So what happens? In comes the government plan to supplant the new higher cost options because of all the taxes that have been put on the companies that are trying to provide health care.

No. 2, how can we reduce costs and lower expenses? For one thing, we could reform our litigious system of tort law that punishes doctors and hospitals. It drives physicians away from the practice of medicine. Tort reform alone could save at least \$54 billion. That is the low end of the projections of what tort reform could save.

No. 3, we could lower the cost to taxpayers by giving tax incentives to encourage the purchase of health insurance. We do not have to have a government takeover, and we don't have to have new taxes. Let's give incentives, tax breaks for individuals and families who will buy health insurance. We will help them have affordable access. Senator DEMINT and I have a bill that would offer a voucher to families: \$5,000 for a family to purchase their own health insurance, to go on the exchange, to determine what they can afford, to determine what their needs are, and it is not tied to their employer so it is portable, so it is theirs and they own it. No preexisting conditions would ever keep them from having that policy again, and they could take it to whatever employer they decided to work for. They would not be tied to employment for health care coverage.

These are options the Republicans have given to the majority to ask them to consider in a bill that would reform health care in the right way.

I urge my colleagues to listen to their constituents. Their constituents are speaking in volumes at a time

when we are seeing political games being played on the House side to strong-arm people to vote for a bill that their constituents do not want, and then they are going to send it over to the Senate with a new bill that is going to, supposedly, correct the problems in the Senate bill—except that we will still have the taxes, we will still have the increased costs, we will still have the cuts to Medicare. All of that will remain. It is a flawed bill.

Please, Members of Congress, listen to your constituents and let's start again and do this right. That is what the American people are asking for. It is the least that we owe them: not to pass a bill that is going to destroy one-sixth of the American economy and take away the choices that Medicare patients have, cut the services of Medicare, and tax every employer and every family whether they have not enough health insurance, no health insurance, or too much health insurance. They are going to be taxed no matter which way they go. That is not health reform. That is a government takeover of a system that needs improvement, but not killing.

Mr. President, I yield the floor.

#### CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

#### RECESS

The PRESIDING OFFICER. Under the previous order, the Senate stands in recess until 2:15.

Thereupon, the Senate, at 12:39 p.m., recessed until 2:15 and reassembled when called to order by the Presiding Officer (Mr. BEGICH).

#### TAX ON BONUSES RECEIVED FROM CERTAIN TARP RECIPIENTS

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of H.R. 1586, which the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 1586) to impose an additional tax on bonuses received from certain TARP recipients.

Pending:

Rockefeller amendment No. 3452, in the nature of a substitute.

Sessions/McCaskill modified amendment No. 3453 (to amendment No. 3452), to reduce the deficit by establishing discretionary spending caps.

Lieberman amendment No. 3456 (to amendment No. 3452), to reauthorize the DC opportunity scholarship program.

Vitter amendment No. 3458 (to amendment No. 3452), to clarify application requirements relating to the coastal impact assistance program.

DeMint amendment No. 3454 (to amendment No. 3452), to establish an earmark moratorium for fiscal years 2010 and 2011.

Feingold amendment No. 3470 (to amendment No. 3452), to provide for the rescission of unused transportation earmarks and to es-

tablish a general reporting requirement for any unused earmarks.

The PRESIDING OFFICER. The Senator from Arizona.

AMENDMENTS NOS. 3472, 3475, 3527, AND 3528 TO  
AMENDMENT NO. 3452

Mr. MCCAIN. Mr. President, I ask unanimous consent to set aside the pending amendment and that I be allowed to call up four amendments that are at the desk. They are amendment No. 3472, Amendment No. 3475, an amendment that has been at the desk on FAA reauthorization and—they are all at the desk—and the fourth concerns the Federal Aviation Administration finance proposal for development and implementation of technology for the Next Generation Air Transportation System.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report the amendments.

The legislative clerk read as follows:

The Senator from Arizona [Mr. MCCAIN] proposes amendments en bloc numbered 3472, 3475, 3527, and 3528 to amendment No. 3452.

Mr. MCCAIN. Is amendment No. 3528 on the Grand Canyon National Park?

The PRESIDING OFFICER. Yes, it is.

The amendments are as follows:

AMENDMENT NO. 3472

(Purpose: To prohibit the use of passenger facility charges for the construction of bicycle storage facilities)

On page 29, after line 21, insert the following:

SEC. 207(b) PROHIBITION ON USE OF PASSENGER FACILITY CHARGES TO CONSTRUCT BICYCLE STORAGE FACILITIES.—Section 40117(a)(3) is amended—

(1) by redesignating subparagraphs (A) through (G) as clauses (i) through (vii);

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

“(A) IN GENERAL.—The term”;

(3) by adding at the end the following:

“(B) BICYCLE STORAGE FACILITIES.—A project to construct a bicycle storage facility may not be considered an eligible airport-related project.”.

AMENDMENT NO. 3475

(Purpose: To prohibit earmarks in years in which there is a deficit)

At the end, insert the following:

SEC. \_\_\_\_ EARMARKS PROHIBITED IN YEARS IN WHICH THERE IS A DEFICIT.

(a) IN GENERAL.—It shall not be in order in the Senate or the House of Representatives to consider a bill, joint resolution, or conference report containing a congressional earmark or an earmark attributable to the President for any fiscal year in which there is or will be a deficit as determined by CBO.

(b) CONGRESSIONAL EARMARK.—In this section, the term “congressional earmark” means the following:

(1) A congressionally directed spending item, as defined in Rule XLIV of the Standing Rules of the Senate.

(2) A congressional earmark for purposes of Rule XXI of the House of Representatives.

(c) WAIVER AND APPEAL.—

(1) WAIVER.—This section may be waived or suspended in the Senate only by the affirmative vote of three-fifths of the Members, duly chosen and sworn.

(2) APPEALS.—Appeals in the Senate from the decisions of the Chair relating to any provision of this section shall be limited to 1 hour, to be equally divided between, and con-

trolled by, the appellant and the manager of the bill or joint resolution, as the case may be. An affirmative vote of three-fifths of the Members of the Senate, duly chosen and sworn, shall be required to sustain an appeal of the ruling of the Chair on a point of order raised under this section.

AMENDMENT NO. 3527

(Purpose: To require the Administrator of the Federal Aviation Administration to develop a financing proposal for fully funding the development and implementation of technology for the Next Generation Air Transportation System)

On page 84, between lines 21 and 22, insert the following:

SEC. 319. REPORT ON FUNDING FOR NEXTGEN TECHNOLOGY.

Not later than 90 days after the date of the enactment of this Act, the Administrator of the Federal Aviation Administration shall submit to Congress a report that contains—

(1) a financing proposal that—

(A) uses innovative methods to fully fund the development and implementation of technology for the Next Generation Air Transportation System in a manner that does not increase the Federal deficit; and

(B) takes into consideration opportunities for involvement by public-private partnerships; and

(2) recommendations with respect to how the Administrator and Congress can provide operational benefits, such as benefits relating to preferred airspace, routings, or runway access, for air carriers that equip their aircraft with technology necessary for the operation of the Next Generation Air Transportation System before the date by which the Administrator requires the use of such technology.

AMENDMENT NO. 3528

(Purpose: To provide standards for determining whether the substantial restoration of the natural quiet and experience of the Grand Canyon National Park has been achieved and to clarify regulatory authority with respect to commercial air tours operating over the Park)

At the end of title VII, add the following:

SEC. 723. OVERFLIGHTS IN GRAND CANYON NATIONAL PARK.

(a) DETERMINATIONS WITH RESPECT TO SUBSTANTIAL RESTORATION OF NATURAL QUIET AND EXPERIENCE.—

(1) IN GENERAL.—Notwithstanding any other provision of law, for purposes of section 3(b)(1) of Public Law 100-91 (16 U.S.C. 1a-1 note), the substantial restoration of the natural quiet and experience of the Grand Canyon National Park (in this subsection referred to as the “Park”) shall be considered to be achieved in the Park if, for at least 75 percent of each day, 50 percent of the Park is free of sound produced by commercial air tour operations that have an allocation to conduct commercial air tours in the Park as of the date of the enactment of this Act.

(2) CONSIDERATIONS.—

(A) IN GENERAL.—For purposes of determining whether substantial restoration of the natural quiet and experience of the Park has been achieved in accordance with paragraph (1), the Secretary of the Interior (in this section referred to as the “Secretary”) shall use—

(i) the 2-zone system for the Park in effect on the date of the enactment of this Act to assess impacts relating to subsectional restoration of natural quiet at the Park, including—

(I) the thresholds for noticeability and audibility; and

(II) the distribution of land between the 2 zones; and

(ii) noise modeling science that is—