

**Date: October 19, 2017**

**From: Robert Halstead, Nevada Agency for Nuclear Projects**

**To: Nevada Congressional Delegation**

**Subject: Revised Comments on Nuclear Waste Policy Amendments Act of 2017, H.R. 3053, as reported by the House Committee on Energy and Commerce, June 28, 2017**

## **Introduction**

As of October 19, 2017, neither the House Committee on Energy and Commerce, nor the Library of Congress website, has posted a version of H.R. 3053 that includes the amendments adopted June 28, 2017. [See: <https://www.congress.gov/bill/115th-congress/house-bill/3053> ] The bill was introduced June 26, 2017, after subcommittee mark-up, and adopted with amendments at the full Committee mark-up, by a vote of 49 to 4, on June 28, 2017. This analysis is based on our review of a preliminary version (July 13, 2017) of the bill as marked up by the full Committee. As of June 26, 2017, the bill was also referred to the House Natural Resources and Armed Services Committees. The Congressional Budget Office released its cost estimate on October 4, 2017. The Energy and Commerce Committee has not issued a report to accompany the bill. We believe the bill could be brought to the House floor for a vote as early as the week of October 23, 2017.

## **Overview**

H.R. 3053 would restart the forced siting of a high-level nuclear waste repository at Yucca Mountain in Nevada. H.R. 3053 continues and expedites the primary provision of the Nuclear Waste Policy Amendments Act (NWPAA) of 1987 [42 U.S.C. 10172], which designated Yucca Mountain as the only candidate site to be studied for a geologic repository. During the Subcommittee on Environment hearing on April 26, 2017, four Nevada Members of Congress testified in support of H.R. 456, the Nuclear Waste Informed Consent Act, which would extend consent to Nevada and affected local and tribal governments regarding the Yucca Mountain project. Neither the Subcommittee nor the Committee considered amending H.R. 3053 to extend consent regarding Yucca Mountain. In stark contrast, the Committee voted to adopt a consent-based siting process that parallels the provisions of H.R. 456, but for storage facilities only.

The absence of a Committee Report makes it difficult to fully evaluate the intentions and impacts of many provisions. The version we reviewed had 50 pages, and there were more than 40 instances [not including technical and conforming amendments] where the bill would strike a current provision in the US Code of Statutes, beginning with 42 U.S.C. 10101. Some of these strike-out provisions could have unexplained or unintended consequences, or unknowingly impact states other than Nevada. In particular, Sec. 604 (b), which appears to transfer certain U.S. Department of Energy (DOE) defense, demonstration and research waste functions to the Director of the Office of Civilian Radioactive Waste Management (OCRWM), could potentially have a significant impact on DOE facilities and activities in Idaho, New Mexico, New York, South Carolina, Tennessee, Washington, and other states.

## General Comments

- (1) Sec. 202 (b) would change or eliminate two major provisions of the NWPAA of 1987 that were intended to protect Nevada's interests – (1) it changes the prohibition on waste emplacement in excess of 70,000 metric tons of heavy metal (MTHM) at Yucca Mountain (until a second repository is in operation) to 110,000 MTHM, and (2) it eliminates the prohibition on the location of a monitored retrievable storage facility in Nevada. The bill originally proposed complete elimination of the 70,000 MTHM capacity limit. The increase to 110,000 MTHM by Committee adoption of the manager's amendment suggests that Congress could further revise upward or completely eliminate the capacity limit at any time.
- (2) Sec. 201 would expedite the transfer of federal land interests to the U.S. Department of Energy (DOE) from other agencies in order to give DOE full control of the Yucca Mountain site. Nine of the bill's 50 pages relate to land acquisition in one way or another. The provisions of H.R. 3053 originally intended to exempt DOE from state water laws and state air quality permitting requirements were deleted by the manager's amendment. The deletion of the original water and air provisions appeared to pass by a unanimous voice vote.
- (3) Sec. 202 (b) would impose a new deadline requiring the U.S. Nuclear Regulatory Commission (NRC) to approve or disapprove DOE's Yucca Mountain application for a construction authorization within 30 months of enactment (but appears to retain the current provision allowing NRC to request a one year extension). Other provisions in Sec. 202 (b) are generally intended to expedite the NRC licensing proceeding, regarding potential DOE license amendments, related infrastructure activities, environmental analyses, and off-site connected actions.
- (4) Title I Monitored Retrievable Storage (MRS) would amend the current statutory basis [42 U.S.C. 10161] for consolidated interim storage, authorizing DOE to take title to commercial spent nuclear fuel at MRS facilities. It would allow DOE to begin development of one such facility prior to final NRC action on the Yucca Mountain license application. The bill creates a consent-based siting process for MRS facilities, requiring approval by the host state Governor, any affected unit of local government, and any affected Indian tribe. However, DOE could not receive spent fuel for storage at the MRS before a final NRC approval or disapproval of the Yucca Mountain license application. The bill authorizes a minimum of \$50 million for MRS development for FY 2020, 2021, & 2022; and 10 percent of Waste Fund appropriations for FY 2023, 2024, & 2025. The bill authorizes benefits payments to host states (in consultation with local governments) totaling \$5 million per year before waste receipts and \$10 million per year thereafter. H.R. 3053 retains the 1987 revocation of MRS sites in the State of Tennessee, including Oak Ridge. [42 U.S.C. 10162(a)]
- (5) Sec. 604 retains the DOE OCRWM as the managing entity for the federal nuclear waste program [as established under 42 U.S.C. 10224], but proposes vastly expanded powers for the OCRWM Director. This is quite different from the approach we expect in the U.S. Senate. The Senate has previously proposed removing the program from DOE and creating a

new managing entity, a stand-alone federal agency, the Nuclear Waste Administration. The Blue Ribbon Commission (BRC) on America's Nuclear Future and the Nuclear Energy Institute have recommended transferring the nuclear waste program to a federal corporation.

- (6) Sec. 603 would expand the allowable uses of financial and technical assistance provided by OCRWM under the NWPAA Sec. 180c to States and Indian tribes affected by nuclear waste transportation to a repository or MRS facility. Otherwise the bill is silent regarding the radiological and social impacts of transporting spent nuclear fuel and high-level radioactive waste. The BRC, based on the National Academy of Sciences 2006 report, recommended that 13 specific measures should be adopted before the commencement of shipments to federal facilities, for the purposes of enhancing safety, security, and public acceptance. The potential shipping routes to Yucca Mountain identified by DOE in 2008 would affect 44 states and the District of Columbia, and traverse 330 congressional districts.
- (7) Title V Funding purports to establish a workable mechanism for financing the nuclear waste program outside of the annual congressional appropriations process. Without access to the Committee Report, we are not able to determine if and how well the funding provisions would actually work, nor precisely how much money would be provided for specific purposes. Moreover, Chairman Shimkus has disputed how the CBO cost estimate treats receipts from nuclear utilities collection of fees from ratepayers. And as far as we tell, CBO has not fully evaluated the year-by-year forecast of future income and disposal cost estimates reported in the 2013 DOE Fee Adequacy Report. Therefore the following comments are subject to further revision. Sec. 501 appears to retain suspension of DOE collection of utility fees until after a final NRC decision on the Yucca Mountain construction authorization. We interpret this to mean that no new utility payments would be coming into the Waste Fund during the licensing proceeding, which could cost \$2 billion over 3-5 years, or during the ten years prior to repository receipts when CBO estimates that benefits payments could total \$260 million and authorized expenditures for MRS facilities could total \$300 million. Those costs would have to be appropriated by Congress annually under current rules. Once collection restarted, the new income received by the Waste Fund from annual fees would be available to DOE through a combination of annual appropriations and newly established mandatory allocations.
- (8) Sec. 504 would establish four categories of mandatory percentage allocations from the Waste Fund (CBO estimates \$37 billion 2017 balance), that would be paid to DOE without further appropriation, after the beginning of waste receipts at the repository, for: (A) repository construction and operation over 25 years, one percent (\$370 million) per year; (B) a one-time, one percent (\$370 million) benefits payments to Nevada; (C) annual benefits payments to Nevada and Nevada local and tribal governments, 0.1 percent (\$37 million) per year; and (D) monitoring and waste package and drip shield fabrication (20 percent, or \$7.4 billion), after all waste is emplaced and the decommissioning period has begun. Additionally, (E) uncollected utility payments (estimated at \$2.6 billion plus interest by CBO) under NWPA subsection (a) (3), would be available to DOE in the year paid without further appropriation. What is lacking in the CBO cost estimate, and what needs to be provided in the Committee Report, is some basis for evaluating the adequacy of OCRWM funding provided under H.R.

3053 for the first 10 years after licensing, for construction and operation, compared to the DOE estimate that about \$8.9 billion (2012 dollars), would be needed for total disposal system costs in the first 10 years after licensing, after assuming 20 percent of total disposal costs would be paid from the Defense Nuclear Waste Account.

### **Comments on Transportation Routes through Las Vegas (Title II, Sec. 206)**

- The bill entrusts selection of routes to avoid Las Vegas to DOE, the same agency that after 20 years of transportation studies, selected a preferred rail route and two highway routes to Yucca Mountain that traverse Las Vegas.
- The bill does not require DOE to select routes to avoid Las Vegas; it says DOE “should consider” such routes “to the extent practicable.” There is no evidence in the DOE transportation studies that avoiding Las Vegas is practicable or practical.
- The bill has no enforcement mechanism for transportation routing decisions, other than the statement “It is the sense of the Congress that” DOE should do something, and the threshold definition of that something is that DOE “should consider” such routes.
- The bill does not prohibit DOE shipments through Las Vegas. The only way to require this would be to prohibit DOE from shipping spent nuclear fuel and high-level radioactive waste through Las Vegas.

### **Comments on Benefits to Host Community (Title IV)**

- The bill ignores Nevada’s position, stated by Gov. Sandoval in a letter to Chairman Shimkus on April 21, 2017: “No amount of monetary benefits can compensate for the coerced selection of an unsafe site.”
- Unless the Committee Report provides some legal analysis that supports the mandatory allocation funding provisions in Title V, we do not see how the bill can guarantee that future Congresses will pay the promised monetary benefits (\$15-30 million per year before waste receipts, \$370 million upon first receipt, and \$37 million annually thereafter) nor the promised preferences regarding future federal projects, education grants, and contracting. No enforcement mechanisms are specified in the bill.
- The bill does not address the amounts of funding that would be needed for participation in licensing. Federal funding for State, local, and tribal government participation in the NRC licensing proceeding and oversight and monitoring of the DOE program, must be provided from the Nuclear Waste Fund, and cannot be considered to be a benefit.
- The bill ignores potential adverse economic impacts that could result from developing Yucca Mountain or any other repository site, including uncertainty about liability (for example, limitations on liability for damages caused by DOE contractors), compensation for accident impacts that are not addressed under the Price Anderson Act (for example, the cost of precautionary evacuation following a transportation accident, reduction in property values resulting from a transportation accident, or business losses resulting from a transportation accident), and adverse economic impacts potentially resulting from routine operations.

- The bill states that acceptance or use of economic benefits by Nevada “shall not be considered to be an expression of consent, express or implied, to the siting of repository in such State.”

### **Comments on Other Provisions**

- Sec. 601 would invite the Administrator of the EPA to change the repository radiation protection standards (40 CFR 197) after NRC construction authorization but before NRC final licensing [p.45, lines 1 through p.46, line 3]
- Sec. 601 would invite the NRC to change the repository technical requirements & criteria (multiple barriers, retrieval, monitoring, closure, etc.) after NRC construction authorization but before NRC final licensing [p.46, lines 4-13]
- Sec. 604 (a) would allow the OCRWM Director to serve two 5-year terms (instead of serving at the pleasure of President), would limit the President’s ability to remove the Director (only for inefficiency, neglect of duty, or malfeasance in office), and require a report to Congress explaining the reason for such removal. [p.47, line 21 through p.48, line 18]
- Sec. 604 (b) would transfer to the OCRWM Director all nuclear waste functions currently assigned to one or more Assistant Secretaries of Energy by 42 U.S.C 7133(a). [p.48, line 19 through p.49, line 4] The responsibilities transferred included:

(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