U.S. Senate
Republican Policy
Committee

Larry E. Craig, Chairman
Jade West, Staff Director

Legislative Notice

Editor, Judy Gorman Prinkey

No. 69

June 2, 1998

H.R. 1270 – Nuclear Waste Policy Act

Calendar No. 312

Received from the House of Representatives on February 23, 1998, read twice and placed on the calendar.

NOTEWORTHY

- The Senate by unanimous consent will today at 4 p.m. begin debate on the motion to proceed to H.R. 1270 with a vote on cloture to occur at 6 p.m. On May 22, the Majority Leader filed and withdrew a cloture petition on this bill.

- H.R. 1270 provides for the interim and permanent storage of spent nuclear fuel and high-level radioactive waste, generated either by the commercial nuclear power industry or by the federal government. The facility is a site known as Yucca Mountain, Nevada.

- The Senate passed its Nuclear Waste Policy Act bill, S. 104, on April 15, 1997, by a vote of 65-34. H.R. 1270 was passed by the House by a vote of 307-120 on October 30, 1997. Because S. 104 was regarded by the House as a revenue-raising bill (which must originate in the House), the House on March 5, 1998, passed a procedural resolution returning S. 104 to the Senate. Because the House returned S. 104, the Senate must take up H.R. 1270 and, if amended, return it to the House for passage and transmission to the President.

- If cloture is invoked, and once on H.R. 1270, Energy and Natural Resources Committee Chairman Murkowski is expected to introduce a substitute that will contain the text of S. 104 as passed by the Senate, and further amended with one additional provision by Senator Bingaman with regard to siting the interim storage facility, or, if available, the text of a House/Senate agreement. This Notice addresses what is anticipated to be the Murkowski substitute.

- The Administration on April 7, 1997, and again on October 24, 1997, issued notice that it would veto S. 104 or H.R. 1270 because the President wants to postpone storage at Yucca Mountain until its viability as a permanent site has been determined. It is hoped that the Murkowski substitute will garner votes sufficient to override a veto, if required.

funding to states and Indian Tribes for the training of the emergency response teams along those routes.

BACKGROUND

Nuclear power plants provide more than 20 percent of the nation's electric generating capacity. Nuclear reactors were designed with on-site storage pools that were intended to serve as temporary storage facilities. Currently, no permanent storage exists, and so nuclear power plants must store their nuclear waste on site. At this time, about 35,000 metric tons of spent fuel are now in temporary storage at nuclear power plants in some 75 sites in 34 states.

According to the Senate Energy Committee's report from the 104th Congress, 23 reactors were anticipated to run out of room in their temporary storage pools by 1998, and an additional 55 are expected to run out of storage space by 2010.

In addition, 2,500 metric tons of spent nuclear fuel and 403,000 cubic meters of high-level nuclear waste had as of last year been produced by the federal government through defense and research activities. That spent fuel and waste currently are stored at DOE sites in 11 states. In all, nuclear waste is being stored in at least 80 sites in 41 states.

The 1982 Law

The Nuclear Waste Policy Act of 1982 required the DOE to design and implement a permanent geologic repository for spent nuclear fuel from commercial reactors, but specified no site. It was given a deadline to begin accepting waste by 1998. The law also called for developing plans by 1985 to build "monitored, retrievable storage" facilities as a possible alternative to permanent underground geologic storage. (In 1985, the President determined that defense-related spent fuel could also be disposed of in the same repository.)

To pay for constructing and operating a permanent facility, the law established the Nuclear Waste Fund in the U.S. Treasury. It currently receives about $630 million per year from collections of a fee paid by ratepayers of nuclear-generated electricity. The fund currently contains almost $14 billion in tax and interest. In addition, defense funds are annually appropriated to cover the cost of storing defense spent fuel and waste. [Note that S. 104 would convert the fee paid by electricity consumers into a user fee that would be assessed based on the level of appropriations for the year beginning in Fiscal Year 2004 (Sec. 401).]

The 1987 Law

In 1987, Congress passed the Nuclear Waste Policy Amendments Act as part of the 1988 deficit-reduction legislation, and instructed the DOE to study the suitability of the Yucca Mountain site to serve as the permanent repository. That site was one of several DOE had

previously identified. The 1987 law authorized DOE to move forward with so-called "site characterization" activities to evaluate the licensability of the site to serve as a repository. The law also authorized a monitored retrievable storage facility, contingent upon the permanent repository being sited and licensed.

Nevada's Response

The state of Nevada subsequently took the issue to court, asserting the state's authority to prevent DOE from proceeding with site characterization activities. Although the state of Nevada lost in a case decided by the Supreme Court, the state succeeded in delaying site characterization activities for several years. Since enactment of the 1987 law, DOE has spent approximately $4 billion in characterizing the Yucca Mountain site (out of total program expenditures of almost $6 billion since 1982).

Pending Litigation

The Department of Energy in 1994 admitted that it would be unable to meet that 1998 deadline for beginning to accept nuclear waste, as required by the 1982 law. As a result of this, a lawsuit was filed by a group of state regulatory agencies, nuclear utilities and state Attorneys General against DOE for breaching the contracts entered into under the 1982 law (*Indiana Michigan Power Company, et al. v. U.S. Dept. of Energy)*. On July 23, 1996, the U.S. Court of Appeals for the District of Columbia decided the case, holding that DOE had an obligation to begin accepting spent nuclear fuel from civilian reactors by January 1998. After DOE subsequently acknowledged that it would be unable to meet this deadline, a second lawsuit was filed by a group of 46 state regulatory agencies and 33 utilities, asking the Court to suspend collection of the nuclear waste fee and order DOE to develop a program to take used nuclear fuel in 1998 (*State of Michigan, et al. v. U.S. Dept. of Energy*). On November 14, 1997, the Court ordered DOE to pay contractual damages. Damage estimates range into tens of billions of dollars. The bill includes a provision to make clear that the legislation is not intended to have any effect on the outcome of the lawsuits currently pending in that case, or any subsequent litigation regarding those contracts.

BILL PROVISIONS

Title I — Obligations

This title establishes the obligation of the Secretary of Energy to develop an integrated management system for accepting, transporting, storing, and disposing of spent nuclear fuel and high-level radioactive waste.

Title II — Integrated Spent Nuclear Fuel Management System

Transportation Provisions

This title provides that DOE is responsible for the transportation of the nuclear waste. Trucks would transport nuclear waste from the main rail line at Caliente, Nevada, to

the storage facility at the Test Site. The bill requires the Energy Department to improve existing roads between Caliente and the site for year-round safe transportation.

The Energy Secretary also must take all actions necessary, including logistical planning, to ensure safe waste acceptance beginning in November 1999. Key transportation provisions in the bill provide that:

- Only NRC-certified transportation containers may be used. (The NRC regulates container design and manufacturing to ensure that they maintain their integrity under routine transportation conditions and during severe accidents.)

- DOE is required to use Department of Transportation and NRC regulations to pick routes and modes of transportation and specifies certain considerations that are to be taken into account when DOT regulations do not apply. DOE is required to pick a "primary route" for transportation from each reactor or DOE site, and focus funding for emergency response training for states and Indian Tribes along the preferred routes. Except for emergency cases, DOE may not ship nuclear waste along routes if specified technical assistance and funding has not been provided.

- DOE will conduct a nationwide public education program on transport of spent nuclear fuel.

- The Hazardous Waste Materials Transportation Act (HMTA) shall apply to all shipments. [Under the HMTA, the Secretary of Transportation regulates highway routing, packaging, labeling, shipping papers, personnel training, loading and unloading, handling and storage, as well as transportation vehicle requirements. The HMTA provides that states may regulate shipments to the extent not preempted by federal law, and provides a mechanism for the designation of preferred routes by state governments. The NRC also examines shipping routes to ensure the security of spent fuel shipments.] The bill requires that the transportation of spent fuel under the bill shall be governed by all requirements of federal, state and local governments and Indian Tribes to the same extent that any person engaging in transportation in interstate commerce must comply with those requirements, as provided by the HMTA.

- The bill also requires the Secretary to provide technical assistance and funds for training to unions with experience with safety training for transportation workers. It also clarifies that existing employee protections concerning the refusal to work in hazardous conditions apply to this act, and provides that certain inspection activities only will be carried out if

workers are adequately trained. The Transportation Secretary may establish training standards for workers.

Interim Storage Facility Requirements

This section also requires the DOE Secretary to begin placing nuclear waste in an interim storage facility no later than June 30, 2003. DOE is prohibited from commencing construction of the interim facility until the NRC issues an environmental impact statement for the facility, but otherwise shall proceed with activities necessary to begin accepting the waste by the deadline.

The bill provides that an assessment of the viability of the Yucca Mountain site be provided to the President and Congress by December 1998. No construction would take place if the site is deemed unsuitable as a repository.

After the Yucca Mountain site is deemed to be viable, the Secretary must apply for a license for interim storage facility, which will have a capacity (approximately 18,000 metric tons) that allows DOE to take spent fuel at the interim facility until the permanent facility opens.

The bill requires the NRC to prepare an Environmental Impact Statement (EIS) as required by the National Environmental Policy Act. The EIS will be required in connection with any licensing decision with respect to the interim storage facility. Essentially, the bill requires the NRC to treat the DOE's licensing application in the same way that it would any private applicant seeking an operating license. However, the bill does focus the EIS on the licensing issues rather than site selections issues, as site selection will have been determined by Congress in this legislation, or in any future legislation to approve the President's selection of an alternative interim site.

Nuclear waste (i.e., spent fuel) will first come from civilian nuclear power reactors, pursuant to contracts executed under the 1982 law. However, the bill sets aside a portion of the annual acceptance rate for deposits from other sources, including reactors that have ceased operations; foreign research reactors; and fuel from naval reactors and high-level radioactive waste from defense activities.

Permanent Facility Requirements

The Secretary is required to apply to the NRC for the construction of the repository by December 31, 2002. If, prior to that time, the Secretary determines that the site cannot satisfy the licensing requirements, the Secretary shall terminate the site characterization, and notify Congress and the state of Nevada. The Secretary must also,
within six months of that time, make recommendations to Congress of further actions needed to manage the nation's nuclear waste.

The bill provides that the repository may not release radioactivity at a maximum annual dose to an average member of the general population in the vicinity of Yucca Mountain that exceeds a risk-based standard equivalent to 25-30 millirem. This is the NRC's general public

protection standard, and is more protective than the current national and international standards designed to protect public health and safety and the environment.

The Secretary is also required to conduct research and report to Congress on alternatives for the permanent disposal of nuclear waste.

Intermodal Transfer Facility

The bill requires that the Secretary of Energy must construct an intermodal transfer facility.

Title III — Funding and Organization

This title continues the Nuclear Waste Fund, which was established under the Nuclear Waste Policy Act of 1982. It also reenacts provisions of the old law establishing the Office of Civilian Radioactive Waste Management; and it provides priorities for the spending of funds appropriated to nuclear waste.

Title III also provides financial and technical assistance grants for oversight activities and payments in lieu of taxes to affected units of local governments and Indian tribes in the state of Nevada. The bill also transfers certain Bureau of Land Management parcels to Nye County, Nevada.

Titles IV and V — General and Miscellaneous Provisions, Nuclear Waste Technical Review Board

These titles continue various provisions of the 1982 act, including the activities of the Office of Civilian Radioactive Waste Management and the Nuclear Waste Technical Review Board.

The bill changes the mandatory annual nuclear waste fee collected for the Nuclear Waste Fund beginning in Fiscal Year 2004 to a discretionary user fee that is dedicated for the purposes of the Nuclear Waste Program. The discretionary user fee will be assessed at levels approximating the level of appropriations for the Nuclear Waste Program for the year in which the fee is collected. In addition, a "mandatory" fee will be collected that is equal to the difference between the user fee and one mill. Also, the "one-time fee" required of nuclear utilities (which utilities may wait to pay until the stored spent fuel at the reactors is actually sent to the interim storage site) is accelerated to Fiscal Year 2002. [See "Cost," below.]

The bill requires that actions under the bill be governed by the Nuclear Waste Policy Act, the Atomic Energy Act, and the Hazardous Materials Transportation Act and any other requirement of federal, state or local law that is not inconsistent with those acts.

The bill also authorizes the Secretary to take title to the spent fuel owned by Dairyland Power Cooperative's La Crosse reactor, and authorizes the Secretary to pay for the on-site storage of the fuel until the DOE removes the fuel from the site under the Act. Energy Committee Chairman Murkowski and bill author Senator Craig observed in their July 10, 1996, Dear Colleague, that equity demands that the Department take title to the fuel promptly, because Dairyland is paying $2.8 million per year to store the approximately 38 metric tons of the spent fuel, which the Department sold to Dairyland in 1973 for $1.00. At that time, it was assumed that the fuel could be reprocessed and sold as new fuel, but reprocessing is no longer available in this country.

ADMINISTRATION POSITION

A Statement of Administration Policy issued on April 7, 1997 (regarding S. 104 as reported to the Senate) and again, on October 24, 1997 (on H.R. 1270 as reported to the House), stated that the President would veto the bill, because in both cases the bill "would undermine the credibility of the Nation's nuclear waste disposal program by designating a specified site for an interim storage facility before the viability of that site as a permanent geological repository has been assessed." The Administration's position on the Murkowski substitute is not known.

COST

The bill has not yet been scored by CBO. However, the scoring is expected to be almost identical to the memorandum prepared for the Senate Energy Committee dated July 9, 1996, in which CBO estimated the 10-year direct spending implications of its nuclear waste policy act bill, very similar to S. 104. At that time, the CBO estimated that the acceleration of the "one-time fee" under the Nuclear Policy Act would yield $2.7 billion in additional revenues in Fiscal Year 2002, but the bill's change of the mandatory nuclear waste fee to a discretionary fee beginning in Fiscal Year 2003 would reduce revenues by $2.4 billion between Fiscal Year 2003 and 2006. CBO therefore concluded the net budgetary impact to be a gain of $300 million during the period Fiscal Years 1997 through 2006. However, CBO added that annual reductions of $600 million per year compared to current revenues from the mandatory nuclear waste fee would continue "for many years after 2006."

REGULATORY IMPACT

The Committee expects little or no regulatory impact as a result of this legislation. In general, the bill requires the use of current NRC and Hazardous Materials Transportation Act rules.

POSSIBLE AMENDMENTS

As noted earlier, if cloture is invoked on the motion to proceed, and the Senate is able to turn to H.R. 1270, Senator Murkowski is expected to introduce an amendment that will contain the text of S. 104 as passed by the Senate last year, further amended by a provision of Senator Bingaman's with regard to siting the interim facility; if available, the text of a House/Senate agreement might be offered in lieu thereof.

Staff Contact: John Peschke, 224-2946