

LEGISLATIVE PROVISIONS SUMMARY

Permanent Land Withdrawal: This provision would withdraw permanently approximately 147,000 acres of land currently controlled by the Bureau of Land Management, the Air Force, and the Nevada Test Site (NTS) and vest jurisdiction over the land in the Secretary of Energy to construct and operate a repository at Yucca Mountain. The area proposed for withdrawal is the area identified in the Final Environmental Impact Statement (FEIS) accompanying the Site Recommendation to the President in 2002.

Enactment of this proposal would satisfy one of the Nuclear Regulatory Commission (NRC) licensing conditions at Yucca Mountain---that the geologic repository operations area (GROA) be withdrawn permanently from public use (only a law can withdraw the land permanently).

Yucca Mountain Capacity: This provision would repeal the 70,000 metric ton statutory limit on emplacement of radioactive material at Yucca Mountain. The current and projected inventory of commercial spent nuclear fuel exceeds the statutory capacity of the repository. Removing this limit would allow the nearly 120,000 metric tons of spent nuclear fuel and high-level radioactive wastes whose potential environmental impact was analyzed in the FEIS to be emplaced safely at Yucca Mountain. Preliminary estimates have indicated that the site could safely isolate the entire commercial spent fuel inventory currently projected from existing reactors, including life extensions for those plants, in addition to all anticipated DOE high-level radioactive waste materials. Enactment of this provision would postpone indefinitely the decision to initiate a second repository program.

Licensing: The section on application procedures would amend the licensing process in several respects. First, it would make clear that an application for construction authorization need not include information on surface facilities other than those facilities necessary for initial operations. Second, it would establish an expedited one-year schedule and a simplified, informal process (including discovery procedures) for use by the NRC (if the NRC authorizes construction of the repository) to consider an application for permission to "receive and possess" nuclear materials and as well as applications for other license actions. A six-month extension would be allowed under the provision.

Current law sets no limits on this process beyond the construction authorization. If left unaddressed, the “receive and possess” licensing phase could take many years and would make achievement of near-term repository operations extremely unlikely. Finally, it would indicate that the NRC need not consider in its environmental review an action connected or otherwise related to the repository if the action is undertaken outside the geologic repository operations area and does not need an NRC license. This would help focus the NRC’s attention on the matters at the repository of most concern to it.

Infrastructure Activities: This provision would authorize the Secretary to undertake infrastructure activities needed to further waste disposal activities, including the construction of a rail line to connect the Yucca Mountain site with the national rail network. These activities could be undertaken outside or within the GROA and before or after an NRC construction authorization decision. This provision would permit DOE to begin fulfilling its responsibilities as soon as possible by authorizing it to initiate site preparation, utility, communications, and safety upgrades at Yucca Mountain before NRC grants construction authorization for the repository.

The provision would require the Department to conduct environmental reviews of infrastructure activities. The scope of environmental review of infrastructure activities would be limited in a manner similar to the way in which it is limited as to other activities under the NWPA as to need, alternatives, and the no-action alternative and would require other Federal agencies to adopt an environmental impact statement prepared under this provision without recirculation. The bill specifies that the undertaking of an infrastructure activity under this section would not be grounds for NRC rejection of an application for construction authorization for the repository or any other licensing action concerning the repository. The provision would direct relevant Federal, State, local, and Tribal officials to grant expeditiously, to the extent consistent with law, rights-of-way and other authorizations for infrastructure activities. Finally, the provision would make clear that the development, construction, and operation of an infrastructure activity is in the public interest and consistent with the public convenience and necessity.

Funding Reform: This provision, based on legislation the Administration sent to Congress with the FY 2005 budget, would

facilitate adequate funding for the licensing and construction phase of the program by making a technical budgetary scoring change. The provision would reclassify nuclear waste fees, in an amount equal to appropriations for the repository program. Currently, these receipts are recorded as mandatory receipts and do not offset discretionary appropriations for the civilian nuclear waste program. The proposed legislation would shift the classification from the mandatory category to the discretionary category in the Federal budget.

This provision also adds "infrastructure activities" to the list of activities for which expenditures may be made from the Nuclear Waste Fund.

Regulatory Requirements: This provision would exempt material that is owned by the Secretary and transported or stored in NRC-licensed containers or located at the Yucca Mountain site from Federal, State, and local environmental requirements under the Resource Conservation and Recovery Act. It also would designate the Environmental Protection Agency as the appropriate agency to issue, administer, and enforce any air quality permits required in connection with the nuclear waste project. These provisions would simplify the regulatory framework for the repository without compromising environmental protection or safety.

Transportation: This provision would clarify the Secretary of Energy can determine the extent to which any transportation done in carrying out the Secretary's functions under the NWPA would be regulated under the Atomic Energy Act of 1954, as is the case currently with respect to the transportation of weapons grade material. In addition, on request by the Secretary of Energy, the Secretary of Transportation would be authorized to determine pursuant to section 5125 of title 49, United States Code, that any requirement of a State, political subdivision of a State, or Indian tribe regarding transportation done by or on behalf of the Secretary of Energy in carrying out the NWPA is preempted, irrespective of whether the transportation otherwise is or would be subject to regulation under the Hazardous Materials Transportation Authorization Act of 1994.

Water Rights: This provision would declare water in quantities sufficient to accomplish the purposes of the Nuclear Waste Policy Act of 1982 that is used for the repository to be beneficial to interstate commerce and not detrimental to the public interest.

While Nevada has determined there is sufficient water, Nevada State law, in effect, deems that it is not in Nevada's public interest to allow the water to be used for repository development. This provision would result in non-discriminatory treatment of the Department. The provision also would authorize the Secretary to obtain water rights, by purchase or otherwise, to carry out the Department's functions under the NWPA.

Waste Confidence: This provision would require the NRC, in considering whether to permit the construction or operation of a nuclear reactor or a related facility, to deem, without further consideration, that sufficient capacity will be available in a timely manner to dispose of the spent nuclear fuel and high-level radioactive waste resulting from the operation of the reactor and any related facilities.