



H.R. 3053 — Nuclear Waste Policy Amendments Act of 2018 (Rep. Shimkus, R-IL)

CONTACT: [Nicholas Rodman](#), 202-226-8576

FLOOR SCHEDULE:

Scheduled for consideration on May 10, 2018, subject to a [structured rule](#). The rule provides for consideration of a Rules Committee Print for H.R. 3053. The rule makes in order three amendments to the Rules Committee Print.

TOPLINE SUMMARY:

[H.R. 3053](#) would amend nuclear waste management policy by directing the Department of Energy (DOE) to consolidate and temporarily store commercial spent nuclear fuel and would maintain the repository at Yucca Mountain, Nevada as the most viable location. Under the [Nuclear Waste Policy Act](#), the only authorized means of disposal involves constructing a geologic repository, and Yucca Mountain, is the only authorized site where such a repository can be located.

COST:

According to the [Congressional Budget Office](#) (CBO), the Rules Committee Print for [H.R. 3053](#) would increase direct spending by \$3.9 billion over the 2019-2028 period (\$385 million annually) from the bill's prohibition on the collection of certain annual fees -- classified as offsetting receipts -- that utilities are projected to pay under current law. CBO classifies the collection of offsetting receipts as reduction in mandatory spending, and accordingly a reduction in offsetting receipts would be classified as an increase in mandatory spending. The prohibition on collecting these fees would be lifted under the bill when the Nuclear Regulatory Commission (NRC) issues a decision related to DOE's application for a license to build a geologic repository to permanently dispose of civilian nuclear waste at Yucca Mountain. In its original cost estimate, CBO projected this would happen after four years, at which point the DOE would resume annual fee collections of \$385 million. However, the bill would direct that these fees be reclassified as offsetting collections -- and thus count against discretionary spending -- instead of offsetting receipts that count against mandatory spending. Therefore, the annual direct spending "increase" of \$385 million would continue even after fee collection resume, but those fees would reduce discretionary spending.

Additionally, because of the Obama Administration's lack of a strategy to meet the government responsibility for waste management, a 2014 court order required DOE to reduce the annual nuclear waste fees to zero until DOE completes an analysis showing that additional fees are necessary to pay the long term costs of nuclear waste disposal. However, as previously mentioned, "[CBO's](#) baseline includes

\$385 million annually in nuclear waste fees—roughly half the amount that had been collected before DOE reduced the fee to zero.” Accounting for current policy, “the House Committee on the Budget has directed CBO to estimate the legislation’s budgetary effects using an assumption that utilities will not pay such fees over the 2019 – 2028 period.” Under this direction, CBO estimates that the fee-related provisions of the committee print would have no effect on direct spending over that period.

In its [original cost estimate](#) for the bill as reported by the Energy and Commerce Committee, CBO estimated that implementing the bill would have discretionary costs of \$300 million over the 2020-2025 period for DOE to implement an initial monitored retrievable storage (MRS) agreement. “Specifically, over the 2020-2022 period, the bill would authorize the appropriation of up to \$50 million annually. For each of fiscal years 2023 through 2025, the bill would authorize appropriations in amounts equal to 10 percent of the amounts appropriated from the NWF. For this estimate, CBO assumes that authorization levels over the 2023-2025 period would remain in line with the \$50 million cap specified for earlier years. Thus, CBO estimates that H.R. 3053 would authorize appropriations totaling \$300 million over the 2020-2025 period for DOE to implement an initial MRS agreement and that the resulting discretionary spending over the period would be the same amount.” Such funds would be subject to appropriation. The Rules Committee Print does not modify these provisions.

In its original cost estimate, CBO estimated that direct spending authorized under the bill to provide assistance to state and local governments affected by the disposal program would increase direct spending over the 10-year period by \$260 million. The Rules Committee Print would not affect the amount of assistance to be provided, but would specify that any such sending be subject to appropriation. Accordingly, it would not affect direct spending.

CONSERVATIVE VIEWS:

Completing the Yucca Mountain nuclear waste repository has been a longstanding priority for many conservatives. Under the Nuclear Waste Policy Act of 1982, the federal government has a legal responsibility to assume responsibility for spent civilian nuclear fuel.

Conservatives may be pleased the bill would move a mandatory funding program to discretionary.

- **Expand the Size and Scope of the Federal Government?** No.
- **Encroach into State or Local Authority?** No.
- **Delegate Any Legislative Authority to the Executive Branch?** No.
- **Contain Earmarks/Limited Tax Benefits/Limited Tariff Benefits?** No.

DETAILED SUMMARY AND ANALYSIS:

H.R. 3053 would amend [section 141\(b\) of the Nuclear Waste Policy Act of 1982](#) (42 U.S.C. 10161(b)) by updating the requirement for the Secretary to complete a detailed study of the need for and feasibility of, and shall submit to the Congress a proposal for the construction of one or more monitored retrievable storage facilities for high-level radioactive waste and spent nuclear fuel by June 1, 2019. The proposal for such facility would include designs, specifications, and cost estimates sufficient to solicit bids for the construction of one or more such facilities; and enable completion and operation of such a facility as soon as practicable; and options to enter into monitored retrievable storage (MRS) agreements with respect to one or more monitored retrievable storage facilities.

Title I of the bill would define an MRS agreement to mean a cooperative agreement, contract, or other mechanism that the Secretary of Energy considers appropriate to support the storage of Department-

owned civilian waste in one or more monitored retrievable storage facilities. The bill would further authorize the Secretary of Energy to site, construct, and operate one or more monitored retrievable storage facilities; and store, pursuant to an MRS agreement, Department-owned civilian waste at a monitored retrievable storage facility for which a non-Federal entity holds a specific license.

The Secretary of Energy would be prohibited from entering into an MRS agreement unless the monitored retrievable storage facility has been licensed by the Nuclear Regulatory Commission; or unless the non-Federal entity that is a party to the MRS agreement has approval to store Department-owned civilian waste at such facility from each of the Governor of the State in which the facility is located, any unit of general local government with jurisdiction over the area in which the facility is located, and any affected Indian tribe; unless the Commission has issued a final repository decision; and the MRS agreement provides that the quantity of high-level radioactive waste and spent nuclear fuel at the site of the facility at any one time will not exceed specified limits. The Secretary would be authorized to enter into one MRS agreement before the Commission has issued a final repository decision.

H.R. 3053 would authorize the greater of \$50,000,000 or the amount that is equal to 10 percent of the amounts appropriated from the Nuclear Waste Fund in that fiscal year to be appropriated for each of fiscal years 2020 through 2022. The bill would authorize the amount that is equal to 10 percent of the amounts appropriated from the Nuclear Waste Fund in that fiscal year for each of fiscal years 2023 through 2025.

The Department of Energy would be prohibited from storing any Department-owned civilian waste at the initial MRS facility until the Commission has issued a final repository decision, except if the Secretary makes a finding that a final repository decision is imminent. If the Secretary makes such a finding, the Secretary may store Department-owned civilian waste at the initial MRS facility.

The bill would amend a requirement for a survey of potential sites of an MRS facility in the Nuclear Waste Policy Act of 1982 by requiring the Secretary to issue a request for proposals for an MRS agreement before commencing the survey. Title I would further update Nuclear Regulatory Commission licensing process and conditions for the MRS facility.

Title II would state that approximately 147,000 acres of land in Nye County, Nevada, as generally depicted on the Yucca Mountain Project are withdrawn permanently from all forms of entry, appropriation, and disposal under the public land laws, including the mineral leasing laws, the geothermal leasing laws, and the mining laws. Such lands would be placed under Department of Energy jurisdiction. The withdrawal would be reserved for use by the Secretary for development, preconstruction testing and performance confirmation, licensing, construction, management and operation, monitoring, closure, postclosure, and other activities associated with the disposal of high-level radioactive waste and spent nuclear fuel.

Title II would revoke [Public Land Order 6802 of September 25, 1990, as extended by Public Land Order 7534](#), and any conditions or memoranda of understanding accompanying those land orders, as well as [Project right-of-way reservations N-48602 and N-47748 of January 2001](#). These ordinances direct the Department of Energy (DOE) to maintain the physical integrity of the subsurface environment at Yucca Mountain, essentially prohibiting further development of the site. The Secretary of Energy would be directed to develop a management plan for the use of the withdrawal. Within 3 years after the bill's enactment, the Secretary would be required to submit the management plan to the Congress and the State of Nevada.

Any use of the withdrawal for activities not associated with the Yucca Mountain Project would be subject to conditions and restrictions that the Secretary considers necessary or desirable to permit the conduct of Project-related activities. The management plan may provide for the continued use by the Department of the Air Force of the portion of the withdrawal within the Nellis Air Force Base Test and Training Range, and may provide for the maintenance of a wildlife habitat. The Department of Energy would be authorized permit grazing conducted in accordance with applicable grazing laws and policies, as well as hunting and trapping. Surface or subsurface mining or oil or gas production, including slant drilling from outside the boundaries of the withdrawal, would not be permitted at any time on lands on or under the withdrawal. The Secretary of the Interior would be directed to evaluate and adjudicate the validity of all unpatented mining claims on the portion of the withdrawal that was under the control of the Bureau of Land Management on the date of the bill's enactment. The Secretary of Interior would be mandated to provide just compensation for the acquisition of any valid property right.

The Secretary of Energy would be authorized to acquire lands and interests in lands within the withdrawal. Those lands and interests in lands may be acquired by donation, purchase, lease, exchange, easement, rights-of-way, or other appropriate methods using donated or appropriated funds. The Secretary of the Interior would conduct any exchange of lands within the withdrawal for Federal lands outside the withdrawal.

Title II would authorize the Secretary of Energy to undertake infrastructure activities considered necessary or appropriate to support the construction or operation of a repository at the Yucca Mountain site or transportation to such site of spent nuclear fuel and high-level radioactive waste, at any time before or after the Nuclear Regulatory Commission issues a final decision approving or disapproving the issuance of a construction authorization for a repository.

The Secretary of Energy would be prohibited from taking any action relating to the planning, development, or construction of a defense waste repository until the date on which the Nuclear Regulatory Commission issues a final decision approving or disapproving the issuance of a construction authorization for a repository.

Title III would authorize the Secretary to enter into new contracts or negotiate modifications to existing contracts, with any person who generates or holds title to high-level radioactive waste or spent nuclear fuel of domestic origin, for acceptance of title, subsequent transportation, and storage of such high-level radioactive waste or spent nuclear fuel (including to expedite such acceptance of title, transportation, and storage of such waste or fuel from facilities that have ceased commercial operation) at a monitored retrievable storage facility.

Title IV would clarify the number of benefits agreements that may be available and would state that if the State of Nevada enters into a benefits agreement, such agreement would not be considered an expression of consent to siting the repository.

Title IV would amend the benefits table in the Nuclear Waste Policy Act of 1982 and would prohibit payments from a benefits agreement to be used to influence legislative action or any matter pending before Congress or a state legislature, for litigation purposes, or to support multistate efforts or other coalition-building activities inconsistent with the siting, construction, or operation of the monitored retrievable storage facility or repository concerned.

The Secretary of Energy would be directed to make payments to the State of Nevada under a benefits agreement concerning a repository from the Waste Fund. The signature of the Secretary on a valid

benefits agreement would constitute a commitment, but only to the extent that all amounts for that purpose are provided in advance in subsequent appropriations Acts, by the Secretary to make payments. The Secretary would also be authorized to enter into a benefits agreement with any covered unit of local government concerning a repository for the acceptance of high-level radioactive waste or spent nuclear fuel in the State of Nevada. The Secretary would also be directed to make payments to a covered unit of local government under a benefits agreement from the Waste Fund.

A State, covered unit of local government, or Indian tribe may only terminate a benefits agreement concerning a repository or a monitored retrievable storage facility, if the Secretary disqualifies the site under consideration for its failure to comply with technical requirements established by the Secretary; or concerning a repository, if the Commission issues a final decision disapproving the issuance of a construction authorization for a repository. In providing any funding to institutions of higher education from the Waste Fund, the Secretary of Energy would be directed to prioritize institutions of higher education that are located in Nevada. Any economic benefits derived from the retrieval of spent nuclear fuel would be shared with the State in which the repository is located, affected units of local government, and affected Indian tribes.

Title V would direct the Secretary of Energy to establish procedures for the assessment and collection of fees to provide sufficient revenues to offset the costs required by the Waste Fund. Title V would require the Department to submit a multi-year budget proposal annually, instead of triennially.

Beginning on the date of first spent fuel is received at the repository, no amount would be appropriated in any fiscal year for activities relating to the repository, including the transportation of additional spent fuel to the repository and the operation of the repository, unless the applicable amount required is appropriated for that fiscal year. Fees collected in a fiscal year would be deposited and credited as offsetting collections to the account providing appropriations for such activities and would be classified as discretionary appropriations.

A Congressional Budget Office (CBO) estimate provided for a provision in a bill that provides discretionary appropriations, derived from amounts in the Waste Fund, for such activities would include the amount of such fees that would be collected during the fiscal year for which such appropriation is made available.

Title VI would require the Environmental Protection Agency (EPA) to determine if standards promulgated under the Nuclear Waste Policy Act of 1982 should be updated and would require a report to Congress on such determination. If the EPA determines that the standards should be updated, the EPA would promulgate updated standards within two years of making such determination. The Commission would also be required by rule, to promulgate updated technical requirements and criteria under the Nuclear Waste Policy Act of 1982 as necessary to be consistent with such updated generally applicable standards. Title VI would strike a provision in the Nuclear Waste Policy Act that prohibits the Department from using a private facility for management of spent nuclear fuel.

The bill would further require a report to Congress from the EPA on containing the final remedy to be implemented at the West Lake Landfill and the expected timeline for implementation of such final remedy.

Title VI would direct the Secretary of Energy, subject to the availability of appropriations, to provide in-kind, financial, technical, and other appropriate assistance, for safety activities related to the transportation of high-level radioactive waste or spent nuclear fuel, to any entity receiving technical

assistance or funds. The title further establishes a maximum of two five-year terms for the Director of the Office of Civilian Radioactive Waste Management within the Department.

Title VI would prohibit the subseabed or ocean water disposal of spent nuclear fuel or high-level radioactive waste. No funds would be obligated for any activity relating to such disposal. The bill would repeal a reporting requirement on the ocean water disposal of spent nuclear fuel. The title would also express a sense of Congress that the Governments of the United States and Canada should not allow permanent or long-term storage of spent nuclear fuel or other radioactive waste near the Great Lakes.

The budgetary effects of the bill would not be entered on either PAYGO scorecard maintained pursuant to section 4(d) of the [Statutory Pay-As-You-Go Act of 2010](#) or for purposes of section 4106 of [H. Con. Res. 71](#), the 115th Congress's budget resolution.

The House Report accompanying H.R. 3053 (H. Rept. 115-355) can be found [here](#). An overview and a summary, as well as explanations of Interim Storage and the Nuclear Waste Fund from the House Committee on Energy and Commerce can be found [here](#), [here](#), [here](#) and [here](#) respectively. More information on the legislation from the committee can be found [here](#). A comparative print showing H.R. 3053, as reported, compared with the Rules Committee Print 115-69 can be found [here](#). A Rules Committee summary of modifications provided by the House Committee on Energy and Commerce can be found [here](#).

AMENDMENTS MADE IN ORDER:

1. [Rep. Keating \(D-MA\)](#): would require the Department of Energy to include a financial statements summary in each audit report on the Department of Energy Nuclear Waste Fund's fiscal year financial statement audit.
2. [Rep. Schneider \(D-IL\)](#): would direct the Secretary of Energy to establish a task force, to be known as the Stranded Nuclear Waste Task Force to conduct a study on existing public and private resources and funding for which affected communities may be eligible; and to develop immediate and long-term economic adjustment plans tailored to the needs of each affected community. The amendment would require the task force to submit a study to Congress.
3. [Rep. Titus \(D-NV\)](#) (Substitute): would strike the bill and would prohibit the Secretary of Energy from making an expenditure from the Waste Fund for the costs of the activities described in paragraphs (4) and (5) of section 302(d) of [the Nuclear Waste Policy Act of 1982](#) (42 U.S.C. 10222(d)) unless the Secretary has entered into an agreement to host a repository with the Governor of the State in which the repository is proposed to be located; each affected unit of local government; any unit of general local government contiguous to the affected unit of local government if spent nuclear fuel or high-level radioactive waste will be transported through that unit of general local government for disposal at the repository; and each affected Indian tribe. Any agreement to host a repository would be in writing and signed by all parties; would be binding on the parties; and would not be amended or revoked except by mutual agreement of the parties.

COMMITTEE ACTION:

H.R. 4335 was introduced on June 26, 2017, and was referred to the House Committee on Energy and Commerce. On [June 28, 2017](#), the committee ordered it to be reported (amended) by the yeas and nays: 49 - 4.

ADMINISTRATION POSITION:

A Statement of Administration Policy is not available.

CONSTITUTIONAL AUTHORITY:

According to the sponsor: "Congress has the power to enact this legislation pursuant to the following: The U.S. Constitution including Article 1, Section 8." No specific enumerating clause was listed.

NOTE: *RSC Legislative Bulletins are for informational purposes only and should not be taken as statements of support or opposition from the Republican Study Committee.*