

1 **S.2589**

2 **Nuclear Fuel Management and Disposal Act (Introduced in Senate)**

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Nuclear Fuel Management and Disposal Act”.

5 **SEC. 2. DEFINITIONS.**

6 (a) NUCLEAR WASTE POLICY ACT OF 1982 DEFINITIONS.—For purposes
7 of this Act:

- 8 (1) “Commission”,
- 9 (2) “disposal”,
- 10 (3) “Federal agency”,
- 11 (4) “high-level radioactive waste”,
- 12 (5) “repository”,
- 13 (6) “Secretary”,
- 14 (7) “State”,
- 15 (8) “spent nuclear fuel”, and
- 16 (9) “Yucca Mountain site”

17 have the meaning given those terms in section 2 of the Nuclear Waste Policy Act of
18 1982 (42 U.S.C. 10101).

19 (b) OTHER DEFINITIONS.—For purposes of this Act—

- 20 (1) “Withdrawal” means the geographic area consisting of the land
21 described in section 3(c);
- 22 (2) “Secretary concerned” means the Secretary of the Air Force or the
23 Secretary of the Interior, or both, as appropriate; and
- 24 (3) “Project” means the Yucca Mountain Project.

25 **SEC. 3. LAND WITHDRAWAL AND RESERVATION.**

1 (a) LAND WITHDRAWAL, JURISDICTION, AND RESERVATION.—

2 (1) LAND WITHDRAWAL.—Subject to valid existing rights, and except
3 as provided otherwise in this Act, the lands described in subsection (c) are
4 withdrawn permanently from all forms of entry, appropriation, and disposal under
5 the public land laws, including without limitation the mineral leasing laws, the
6 geothermal leasing laws, and the mining laws.

7 (2) JURISDICTION.—Except as otherwise provided in this Act,
8 jurisdiction over the Withdrawal is vested in the Secretary. There are transferred
9 to the Secretary the lands within the Withdrawal under the jurisdiction of the
10 Secretary concerned on the date of enactment of this Act.

11 (3) RESERVATION.—The Withdrawal is reserved for use by the
12 Secretary for the development, preconstruction testing and performance
13 confirmation, licensing, construction, management and operation, monitoring,
14 closure, post-closure, and other activities associated with the disposal of high-
15 level radioactive waste and spent nuclear fuel under the Nuclear Waste Policy Act
16 of 1982 (42 U.S.C. 10101 et seq.).

17 (b) REVOCATION AND MODIFICATION OF PUBLIC LAND ORDERS AND
18 RIGHTS OF WAY.—

19 (1) PUBLIC LAND ORDER REVOCATION. —Public Land Order 6802 of
20 September 25, 1990, as extended by Public Land Order 7534, and any conditions
21 or memoranda of understanding accompanying those land orders, are revoked.

22 (2) RIGHT OF WAY RESERVATIONS.--Project right-of-way
23 reservations N-48602 and N-47748 of January 5, 2001, are revoked.

1 (c) LAND DESCRIPTION.—

2 (1) BOUNDARIES.--The lands and interests in lands withdrawn and
3 reserved by this Act comprise the approximately 147,000 acres of land in Nye
4 County, Nevada, as generally depicted on the Yucca Mountain Project Map,
5 YMP-03-024.2, entitled “Proposed Land Withdrawal” and dated July 21, 2005.

6 (2) LEGAL DESCRIPTION AND MAP. —As soon as practicable after the date
7 of enactment of this Act, the Secretary of the Interior shall:

8 (A) publish in the Federal Register a notice containing a legal
9 description of the Withdrawal; and

10 (B) file copies of the maps described in paragraph (1) and the legal
11 description of the Withdrawal with the Congress, the Governor of the
12 State of Nevada, and the Archivist of the United States.

13 (3) TECHNICAL CORRECTIONS. —The maps and legal description
14 referred to in this subsection have the same force and effect as if they were
15 included in this Act. The Secretary of the Interior may correct clerical and
16 typographical errors in the maps and legal description.

17 (d) RELATIONSHIP TO OTHER RESERVATIONS. —The provisions of
18 subtitle A of title XXX of the Military Lands Withdrawal Act of 1999 (sections 3011-
19 3023 of Pub. L. No. 106-65) and of Public Land Order 2568 do not apply to the lands
20 withdrawn and reserved by subsection (a). This Act does not apply to any other lands
21 withdrawn for use by the Department of Defense under subtitle A of title XXX of the
22 Military Lands Withdrawal Act of 1999.

23 (e) MANAGEMENT RESPONSIBILITIES.

1 (1) GENERAL AUTHORITY.—The Secretary shall manage the lands
2 withdrawn by subsection (a) consistent with the Federal Land Policy and
3 Management Act of 1976 (43 USC 1701 et seq.), this Act, and other applicable
4 law. The Secretary shall consult with the Secretary concerned in discharging that
5 responsibility.

6 (2) MANAGEMENT PLAN.—

7 (A) DEVELOPMENT. —The Secretary, after consulting with the
8 Secretary concerned, shall develop a management plan for the use of the
9 Withdrawal. Within 3 years after the date of enactment of this Act, the
10 Secretary shall submit the management plan to the Congress and the State
11 of Nevada.

12 (B) PRIORITY OF YUCCA MOUNTAIN PROJECT-RELATED
13 ISSUES. —Subject to subparagraphs (C), (D), and (E), any use of the
14 Withdrawal for activities not associated with the Project is subject to
15 conditions and restrictions that the Secretary considers necessary or
16 desirable to permit the conduct of Project-related activities.

17 (C) DEPARTMENT OF THE AIR FORCE USES. —The
18 management plan may provide for the continued use by the Department of
19 the Air Force of the portion of the Withdrawal within the Nellis Air Force
20 Base Test and Training Range under terms and conditions on which the
21 Secretary and the Secretary of the Air Force agree concerning Air Force
22 activities.

1 (D) NEVADA TEST SITE USES. —The Secretary may allow the
2 National Nuclear Security Administration to continue to use the portion of
3 the Withdrawal on the Nevada Test Site and may impose any conditions
4 on that use that the Secretary considers necessary to minimize any effect
5 on either Project or Administration activities.

6 (E) OTHER NON-YUCCA MOUNTAIN PROJECT USES. —
7 The management plan shall provide for the maintenance of wildlife habitat
8 and shall provide that the Secretary may permit non-Project-related uses
9 that the Secretary considers appropriate, including domestic livestock
10 grazing and hunting and trapping in accordance with the following
11 requirements:

12 (i) GRAZING. —The Secretary may permit grazing to
13 continue where established before the date of enactment of this
14 Act, subject to regulations, policies, and practices that the
15 Secretary, after consulting with the Secretary of the Interior,
16 determines to be necessary or appropriate. The management of
17 grazing shall be conducted in accordance with applicable grazing
18 laws and policies, including—

19 (I) the Act commonly known as the “Taylor
20 Grazing Act” (43 U.S.C. 315 et seq.);

21 (II) title IV of the Federal Land Policy Management
22 Act of 1976 (43 U.S.C. 1751 et seq.); and

1 (III) the Public Rangelands Improvement Act of
2 1978 (43 U.S.C. 1901 et seq.).

3 (ii) HUNTING AND TRAPPING. —The Secretary may
4 permit hunting and trapping within the Withdrawal where
5 established before the date of enactment of this Act, except that the
6 Secretary, after consulting with the Secretary of the Interior and
7 the State of Nevada, may designate zones where, and establish
8 periods when, no hunting or trapping is permitted for reasons of
9 public safety, national security, administration, or public use and
10 enjoyment.

11 (F) MINING. —

12 (i) IN GENERAL. —Except as provided in subparagraph
13 (B), surface or subsurface mining or oil or gas production,
14 including slant drilling from outside the boundaries of the
15 Withdrawal, is not permitted at any time on lands on or under the
16 Withdrawal. The Secretary of the Interior shall evaluate and
17 adjudicate the validity of all mining claims on the portion of the
18 Withdrawal that, on the date of enactment of this Act, was under
19 the control of the Bureau of Land Management. The Secretary
20 shall provide just compensation for the acquisition of any valid
21 property right.

22 (ii) CIND-R-LITE MINE. —Patented Mining Claim No.
23 27-83-0002, covering the Cind-R-Lite mine, shall not be affected

1 by establishment of the Withdrawal, unless the Secretary, after
2 consulting with the Secretary of the Interior, determines that the
3 mine's acquisition is required in furtherance of the reserved use of
4 the Withdrawal set forth in subsection (a)(3). In that event, the
5 Secretary shall provide just compensation.

6 (G) LIMITED PUBLIC ACCESS. —The management plan may
7 provide for limited public access to the portion of the Withdrawal under
8 Bureau of Land Management control on the date of enactment of this Act.
9 Permitted uses may include continuation of the Nye County Early
10 Warning Drilling Program, utility corridors, and other uses the Secretary,
11 after consulting with the Secretary of the Interior, considers consistent
12 with the purposes of the Withdrawal.

13 (3) CLOSURE.—If the Secretary, after consulting with the Secretary
14 concerned, determines that the health and safety of the public or the common
15 defense and security require the closure of a road, trail, or other portion of the
16 Withdrawal, or the airspace above the Withdrawal, the Secretary may effect and
17 maintain the closure and shall provide notice of the closure.

18 (4) IMPLEMENTATION.—The Secretary and the Secretary concerned
19 shall implement the management plan developed under paragraph (2) under terms
20 and conditions on which they agree.

21 (f) IMMUNITY.—The United States and its departments and agencies shall be
22 held harmless and shall not be liable for damages to persons or property suffered in the

1 course of any mining, mineral leasing, or geothermal leasing activity conducted on the
2 Withdrawal.

3 (g) LAND ACQUISITION.—The Secretary may acquire lands and interests in
4 lands within the Withdrawal. Those lands and interests in lands may be acquired by
5 donation, purchase, lease, exchange, easement, rights-of-way, or other appropriate
6 methods using donated or appropriated funds. The Secretary of the Interior shall conduct
7 any exchange of lands within the Withdrawal for Federal lands outside the Withdrawal.

8 **SEC. 4. APPLICATION PROCEDURES AND INFRASTRUCTURE ACTIVITIES.**

9 (a) APPLICATION.—Section 114(b) of the Nuclear Waste Policy Act of 1982
10 (42 U.S.C. 10134(b)) is amended by adding the following sentence after “such
11 application.”:

12 “An application for construction authorization need not contain information on surface
13 facilities other than surface facilities necessary for initial operation of the repository.”.

14 (b) APPLICATION PROCEDURES AND INFRASTRUCTURE
15 ACTIVITIES.—Section 114(d) of the Nuclear Waste Policy Act of 1982 (42 U.S.C.
16 10134(d)) is amended by--

17 (1) inserting “(1)” after “ACTION. —”;

18 (2) striking the last two sentences; and

19 (3) inserting the following new paragraphs (2) and (3) after paragraph (1)
20 as designated and amended in paragraphs (1) and (2) of this subsection:

21 “(2) If the Commission approves of an application for construction authorization
22 and the Secretary submits an application to amend the authorization to obtain permission
23 to receive and possess spent nuclear fuel and high-level radioactive waste, or to undertake

1 any other action concerning the repository, the Commission shall consider the application
2 using expedited, informal procedures, including discovery procedures that minimize the
3 burden on the parties to produce documents that the Commission does not need to render
4 a decision on an action under this section. The Commission shall issue a final decision
5 on whether to grant permission to receive and possess, or on any other application, within
6 one year of submission of the application, except that the Commission may extend that
7 deadline by not more than six months if, not less than 30 days before the deadline, the
8 Commission complies with the reporting requirements of subsection (e)(2).

9 “(3)(A) At any time before or after the Commission issues a final decision on an
10 application from the Secretary for construction authorization under this subsection, the
11 Secretary may undertake infrastructure activities that the Secretary deems are necessary
12 or appropriate to support construction or operation of a repository at the Yucca Mountain
13 site or transportation to such site of spent nuclear fuel and high level radioactive waste.
14 Infrastructure activities include, but are not limited to, safety upgrades; site preparation;
15 the construction of a rail line to connect the Yucca Mountain site with the national rail
16 network, including any facilities to facilitate rail operations; and construction, upgrade,
17 acquisition, or operation of electrical grids or facilities, other utilities, communication
18 facilities, access roads, rail lines, and non-nuclear support facilities.

19 “(B) The Secretary shall comply with all applicable requirements under the
20 National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) with respect to an
21 infrastructure activity undertaken under this paragraph. If the Secretary determines that
22 an environmental impact statement is required in connection with an infrastructure
23 activity undertaken under this paragraph, the Secretary need not consider the need for the

1 action, alternative actions, or a no-action alternative. To the extent a Federal agency
2 must consider the potential environmental impact of an infrastructure activity undertaken
3 under this paragraph, the agency shall adopt, to the extent practicable, an environmental
4 impact statement prepared under this paragraph without further action. Adoption satisfies
5 the responsibilities of the adopting agency under the National Environmental Policy Act
6 of 1969 (42 U.S.C. 4321 et seq.), and no further action is required by the agency.

7 “(C) The Commission may not deny construction authorization, permission to
8 receive and possess spent nuclear fuel and high-level radioactive waste, or any other
9 action concerning the repository on the grounds that the Secretary undertook an
10 infrastructure activity under this paragraph.”.

11 (c) CONNECTED ACTIONS.—Section 114(f)(6) of the Nuclear Waste Policy
12 Act of 1982 (42 U.S.C. 10134(f)(6)) is amended by striking “or” and inserting before the
13 period “, or an action connected or otherwise related to the repository to the extent the
14 action is undertaken outside the geologic repository operations area and does not require
15 a license from the Commission”.

16 (d) EXPEDITED AUTHORIZATIONS.—Section 120 of the Nuclear Waste
17 Policy Act of 1982 (42 U.S.C. 10140) is amended—

18 (1) in subsection (a)(i) by inserting “or an infrastructure activity” after
19 “repository”, by inserting “, State, local, or Indian tribe” after “Federal” both
20 places it appears, and by striking “repositories” and inserting “a repository or
21 infrastructure activity”;

22 (2) in subsection (b) by striking “, and may include terms and conditions
23 permitted by law”; and

1 (3) by adding after subsection (b) the following new subsections (c) and

2 (d):

3 “(c) An agency or officer that fails to grant authorization within one year of
4 receiving an application or request from the Secretary subject to subsection (a) shall
5 submit a written report to Congress explaining the reason for not meeting this deadline or
6 rejecting the application or request.

7 “(d) For purposes of applying any Federal, State, local, or Tribal law or
8 requirement, the taking of an action related to a repository or an infrastructure activity is
9 considered to be beneficial and not detrimental to the public interest and interstate
10 commerce and consistent with the public convenience and necessity.”.

11 **SEC. 5. NUCLEAR WASTE FUND.**

12 (a) CREDITING FEES.—Beginning on October 1, 2007, and continuing through
13 the end of the fiscal year when construction is complete for surface facilities for the fully
14 operational repository as described in the license application and for the Nevada rail line,
15 fees collected by the Secretary and deposited in the Nuclear Waste Fund under the
16 Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101 et seq.) shall be credited to the
17 Nuclear Waste Fund as discretionary offsetting collections each year in amounts not to
18 exceed the amounts appropriated from the Nuclear Waste Fund for that year.

19 (b) FUND USES.—Section 302(d)(4) of the Nuclear Waste Policy Act of 1982
20 (42 U.S.C. 10222(d)(4)) is amended by inserting “infrastructure activities that the
21 Secretary deems are necessary or appropriate to support construction or operation of a
22 repository at the Yucca Mountain site or transportation to such site of spent nuclear fuel
23 and high-level radioactive waste, and” after “with”.

1 **SEC. 6. REGULATORY REQUIREMENTS.**

2 (a) MATERIAL REQUIREMENTS.—Notwithstanding any other law, no
3 Federal, State, interstate, or local requirement, either substantive or procedural, that is
4 referred to in section 6001(a) of the Resource Conservation and Recovery Act (42 U.S.C.
5 6961(a)), applies to—

6 (1) any material owned by the Secretary if the material is transported or
7 stored in a package, cask, or other container that the Commission has certified for
8 transportation or storage of that type of material; or

9 (2) any material located at the Yucca Mountain site for disposal if the
10 management and disposal of the material is subject to a license issued by the
11 Commission.

12 (b) PERMITS.—The Administrator of the Environmental Protection Agency shall
13 be the permitting agency for purposes of issuing, administering, or enforcing any new or
14 existing air quality permit or requirement applicable to a Federal facility or activity
15 subject to the requirements of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101 et
16 seq.). A State or unit of local government shall not issue, administer, or enforce a new or
17 existing air quality permit or requirement affecting a Federal facility or activity in the
18 Withdrawal and subject to the requirements of the Nuclear Waste Policy Act of 1982.

19 **SEC. 7. TRANSPORTATION.**

20 The Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101 et seq.) is amended by
21 inserting the following new section after section 180:

22 “SEC. 181. (a) The Secretary is authorized to determine the extent to which any
23 transportation done in carrying out the Secretary's functions under this Act that is

1 regulated under the Hazardous Materials Transportation Authorization Act of 1994 shall
2 instead be regulated exclusively under the Atomic Energy Act of 1954.

3 “(b) On request by the Secretary, the Secretary of Transportation is authorized to
4 determine pursuant to section 5125 of title 49, United States Code, that any requirement
5 of a State, political subdivision of a State, or Indian tribe regarding transportation done by
6 or on behalf of the Secretary in carrying out this Act is preempted, irrespective of
7 whether the transportation otherwise is or would be subject to regulation under the
8 Hazardous Materials Transportation Authorization Act of 1994.”.

9 **SEC. 8. WATER RIGHTS.**

10 Section 124 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10144) is
11 amended by inserting “(a) WATER RIGHTS ACQUISITION EFFECT.—” after the
12 section number and by adding the following new subsection (b):

13 “(b) BENEFICIAL USE OF WATER.—Notwithstanding any other Federal,
14 State, or local law, the use of water from any source in quantities sufficient to accomplish
15 the purposes of this Act to carry out Department functions under this Act is declared to be
16 a use that is beneficial to interstate commerce and that does not threaten to prove
17 detrimental to the public interest. A State shall not enact or apply a law that
18 discriminates against this use. The Secretary, through purchase or otherwise, may obtain
19 water rights necessary to carry out Department functions under this Act.”.

20 **SEC. 9. WASTE CONFIDENCE.**

21 Notwithstanding any other law, in deciding whether to permit the construction or
22 operation of a nuclear reactor or any related facilities, the Commission shall deem,
23 without further consideration, that sufficient capacity will be available in a timely manner

- 1 to dispose of the spent nuclear fuel and high-level radioactive waste resulting from the
- 2 operation of the reactor and any related facilities.