

104TH CONGRESS  
1ST SESSION

# S. 167

To amend the Nuclear Waste Policy Act of 1982, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JANUARY 5, 1995

Mr. JOHNSTON introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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## A BILL

To amend the Nuclear Waste Policy Act of 1982, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*  
3       That the Nuclear Waste Policy Act of 1982 is amended  
4       to read as follows:

5       **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

6       (a) SHORT TITLE.—This Act may be cited as the  
7       “Nuclear Waste Policy Act of 1995”.

8       (b) TABLE OF CONTENTS.—

Sec. 1. Short title and table of contents.

Sec. 2. Definitions.

TITLE I—STORAGE AND DISPOSAL

Sec. 101. Interim storage.

- Sec. 102. Permanent disposal.
- Sec. 103. Land withdrawal.

#### TITLE II—TRANSPORTATION AND STATE RELATIONS

- Sec. 201. Multipurpose canisters.
- Sec. 202. Railroad.
- Sec. 203. Transportation requirements.
- Sec. 204. State consultation and assistance.
- Sec. 205. Preemption.

#### TITLE III—FUNDING AND ORGANIZATION

- Sec. 301. Budget priorities.
- Sec. 302. Nuclear Waste Fund.
- Sec. 303. Budget treatment.
- Sec. 304. Office of Civilian Radioactive Waste Management.
- Sec. 305. Defense contribution.

#### TITLE IV—GENERAL AND MISCELLANEOUS PROVISIONS

- Sec. 401. NRC regulations.
- Sec. 402. Judicial review of agency actions.
- Sec. 403. Title to material.
- Sec. 404. Licensing of facility expansions and transshipments.
- Sec. 405. Siting a second repository.
- Sec. 406. Financial arrangements for low-level radioactive waste site closure.
- Sec. 407. Nuclear Regulatory Commission training authorization.

#### TITLE V—NUCLEAR WASTE TECHNICAL REVIEW BOARD

- Sec. 501. Definitions.
- Sec. 502. Nuclear Waste Technical Review Board.
- Sec. 503. Functions.
- Sec. 504. Investigatory powers.
- Sec. 505. Compensation of members.
- Sec. 506. Staff.
- Sec. 507. Support services.
- Sec. 508. Report.
- Sec. 509. Authorization of appropriations.
- Sec. 510. Termination of the Board.

### 1 **SEC. 2. DEFINITIONS.**

2 For purposes of this Act:

- 3 (1) The term “affected unit of local govern-
- 4 ment” means the unit of local government with ju-
- 5 risdiction over the site of the repository or interim
- 6 storage facility. Such term may, at the discretion of

1 the Secretary, include other units of local govern-  
2 ment that are contiguous with such unit.

3 (2) The term “atomic energy defense activity”  
4 means any activity of the Secretary performed in  
5 whole or in part in carrying out any of the following  
6 functions:

7 (A) Naval reactors development.

8 (B) Weapons activities including defense  
9 inertial confinement fusion.

10 (C) Verification and control technology.

11 (D) Defense nuclear materials production.

12 (E) Defense nuclear waste and materials  
13 byproducts management.

14 (F) Defense nuclear materials security and  
15 safeguards and security investigations.

16 (G) Defense research and development.

17 (3) The term “civilian nuclear power reactor”  
18 means a civilian nuclear powerplant required to be  
19 licensed under section 103 or 104b. of the Atomic  
20 Energy Act of 1954 (42 U.S.C. 2133, 2134(b)).

21 (4) The term “Commission” means the Nuclear  
22 Regulatory Commission.

23 (5) The term “Department” means the Depart-  
24 ment of Energy.

1           (6) The term “disposal” means the emplace-  
2           ment in a repository of high-level radioactive waste,  
3           spent nuclear fuel, or other highly radioactive mate-  
4           rial with no foreseeable intent of recovery, whether  
5           or not such emplacement permits recovery of such  
6           waste.

7           (7) The term “engineered barriers” means  
8           manmade components of a disposal system designed  
9           to prevent the release of radionuclides into the geo-  
10          logic medium involved. Such term includes the high-  
11          level radioactive waste form, high-level radioactive  
12          waste canisters, and other materials placed over and  
13          around such canisters.

14          (8) The term “high-level radioactive waste”  
15          means—

16                 (A) the highly radioactive material result-  
17                 ing from the reprocessing of spent nuclear fuel,  
18                 including liquid waste produced directly in re-  
19                 processing and any solid material derived from  
20                 such liquid waste that contains fission products  
21                 in sufficient concentrations; and

22                 (B) other highly radioactive material that  
23                 the Commission, consistent with existing law,  
24                 determines by rule requires permanent isola-  
25                 tion.

1           (9) The term “federal agency” means any Ex-  
2           ecutive agency, as defined in section 105 of title 5,  
3           United States Code.

4           (10) The term “Indian tribe” means any Indian  
5           tribe, band, nation, or other organized group or com-  
6           munity of Indians recognized as eligible for the serv-  
7           ices provided to Indians by the Secretary of the Inte-  
8           rior because of their status as Indians, including any  
9           Alaska Native village, as defined in section 3(c) of  
10          the Alaska Native Claims Settlement Act (43 U.S.C.  
11          1602(c)).

12          (11) The term “interim storage facility” means  
13          a complex designed and constructed under section  
14          101 for the receipt, handling, possession, safeguard-  
15          ing, and storage of spent nuclear fuel prior to trans-  
16          fer to a repository for the permanent disposal of  
17          such spent nuclear fuel.

18          (12) The term “low-level radioactive waste”  
19          means radioactive material that—

20                 (A) is not high-level radioactive waste,  
21                 spent nuclear fuel, transuranic waste, or by-  
22                 product material as defined in section 11e.(2)  
23                 of the Atomic Energy Act of 1954 (42 U.S.C.  
24                 2014(e)(2)); and

1 (B) the Commission, consistent with exist-  
2 ing law, classifies as low-level radioactive waste.

3 (13) The term “Office” means the Office of Ci-  
4 vilian Radioactive Waste Management established in  
5 section 304.

6 (4) The term “package” means the primary  
7 container that holds, and is in contact with, solidi-  
8 fied high-level radioactive waste, spent nuclear fuel,  
9 or other radioactive materials, and any overpacks,  
10 that are used for the transportation, storage, or dis-  
11 posal of such waste, spent fuel, or other materials.

12 (15) The term “Program Approach” means the  
13 Secretary’s plan for site characterization activities  
14 described in the Yucca Mountain Technical Imple-  
15 mentation Plan for Fiscal Year 1995.

16 (16) The term “repository” means a complex  
17 designed and constructed under section 102 for the  
18 permanent geologic disposal of high-level radioactive  
19 waste and spent nuclear fuel, including both surface  
20 and subsurface areas at which high-level radioactive  
21 waste and spent nuclear fuel handling activities are  
22 conducted.

23 (17) The term “Secretary” means the Secretary  
24 of Energy.

1           (18) The term “site characterization” means  
2 activities, whether in a laboratory or in the field, un-  
3 dertaken to establish the geologic condition and the  
4 ranges of the parameters of a candidate site relevant  
5 to the location of a repository, including borings,  
6 surface excavations, excavations of exploratory  
7 shafts, limited subsurface lateral excavations and  
8 borings, and in situ testing needed to evaluate the  
9 suitability of a candidate site for the location of a  
10 repository, but not including preliminary borings and  
11 geophysical testing needed to assess whether site  
12 characterization should be undertaken.

13           (19) The term “spent nuclear fuel” means fuel  
14 that has been withdrawn from a nuclear reactor fol-  
15 lowing irradiation, the constituent elements of which  
16 have not been separated by reprocessing.

17           (20) The term “storage” means retention of  
18 high-level radioactive waste, spent nuclear fuel, or  
19 transuranic waste with the intent to recover such  
20 waste or fuel for subsequent use, processing, or dis-  
21 posal.

22           (21) The term “Waste Fund” means the Nu-  
23 clear Waste Fund established in section 302(c).

1           (22) The term “Yucca Mountain site” means  
2           the area in the State of Nevada described in section  
3           103(b).

4           TITLE I—STORAGE AND DISPOSAL

5   **SEC. 101. INTERIM STORAGE.**

6           (a) AUTHORIZATION.—The Secretary shall construct  
7           and operate a facility for the interim storage of high-level  
8           radioactive waste and spent nuclear fuel at the Yucca  
9           Mountain site.

10          (b) NRC LICENSING.—The Secretary shall apply to  
11          the Commission for a license to store high-level radioactive  
12          waste and spent nuclear fuel in the interim storage facil-  
13          ity. The Commission shall amend its regulations for licens-  
14          ing independent spent fuel storage installations as appro-  
15          priate to carry out the purposes of this section. The Com-  
16          mission shall act expeditiously on the Secretary’s applica-  
17          tion and shall license the facility in accordance with the  
18          provisions of this Act and the Commission’s regulations  
19          for licensing independent spent fuel storage installations  
20          as amended.

21          (c) DURATION OF THE LICENSE.—The Commission  
22          shall license storage of high-level radioactive waste and  
23          spent nuclear fuel at the facility for an initial term of 100  
24          years from the date of issuance of the license and may,

1 upon application by the Secretary, renew the license for  
2 additional terms.

3 (d) CAPACITY.—The interim storage facility shall  
4 provide sufficient capacity to store spent nuclear fuel from  
5 civilian nuclear power reactors until the Secretary is able  
6 to transfer the spent fuel to the repository, and shall be  
7 expandable if operation of the repository is delayed.

8 (e) ENVIRONMENTAL IMPACT STATEMENT.—(1)  
9 Construction and operation of the interim storage facility  
10 shall be considered a major Federal action significantly  
11 affecting the quality of the human environment for pur-  
12 poses of the National Environmental Policy Act of 1969  
13 (42 U.S.C. 4321 et seq.). The Secretary shall submit an  
14 environmental impact statement on the interim storage fa-  
15 cility to the Commission with the license application.

16 (2) For purposes of complying with the requirements  
17 of the National Environmental Policy Act of 1969 and this  
18 section, the Secretary need not consider the need for the  
19 interim storage facility or alternative sites or designs in  
20 the environmental impact statement.

21 (3) The Secretary's environmental impact statement  
22 and any supplements thereto shall, to the extent prac-  
23 ticable, be adopted by the Commission in connection with  
24 the issuance by the Commission of a license for storage  
25 of spent nuclear fuel at the interim storage facility. To

1 the extent such statement is adopted by the Commission,  
2 such adoption shall be deemed to also satisfy the respon-  
3 sibilities of the Commission under the National Environ-  
4 mental Policy Act of 1969.

5 (f) EXPEDITED ACTIONS.—The Secretary shall begin  
6 storing spent nuclear fuel at the interim storage facility  
7 at the earliest practicable date. All actions by the Sec-  
8 retary, the Commission, the Secretary of the Interior, or  
9 any Federal agency or officer with respect to consideration  
10 of applications or requests for the issuance or grant of  
11 any authorization related to the interim storage facility  
12 shall be expedited, and any such application or request  
13 shall take precedence over any similar applications or re-  
14 quests not related to the interim storage facility.

15 (g) WASTE CONFIDENCE.—Licensing and operation  
16 of the interim storage facility in accordance with this sec-  
17 tion shall constitute reasonable assurance that high-level  
18 radioactive waste and spent nuclear fuel can and will be  
19 disposed of safely for purposes of the Commission’s deci-  
20 sion to grant or amend any license to operate any civilian  
21 nuclear power reactor under the Atomic Energy Act of  
22 1954 (42 U.S.C. 2011 et seq.)

23 **SEC. 102. PERMANENT DISPOSAL.**

24 (a) SITE CHARACTERIZATION.—The Secretary shall  
25 carry out appropriate site characterization activities at the

1 Yucca Mountain site in accordance with the Secretary's  
2 Program Approach to site characterization. The Commis-  
3 sion shall review its existing regulations for the disposal  
4 of high-level radioactive waste in geologic repositories and  
5 shall amend them as may be necessary to reflect the Pro-  
6 gram Approach and this Act.

7 (b) ENVIRONMENTAL IMPACT STATEMENT.—(1)  
8 Construction and operation of the repository shall be con-  
9 sidered a major Federal action significantly affecting the  
10 quality of the human environment for purposes of the Na-  
11 tional Environmental Policy Act of 1969 (42 U.S.C. 4321  
12 et seq.). The Secretary shall submit an environmental im-  
13 pact statement on the construction and operation of the  
14 repository to the Commission with the license application.

15 (2) For purposes of complying with the requirements  
16 of the National Environmental Policy Act of 1969 and this  
17 section, the Secretary need not consider the need for the  
18 repository or alternative sites or designs in the environ-  
19 mental impact statement.

20 (3) The Secretary's environmental impact statement  
21 and any supplements thereto shall, to the extent prac-  
22 ticable, be adopted by the Commission in connection with  
23 the issuance by the Commission of a construction author-  
24 ization under subsection (d), a license under subsection  
25 (e), or a license amendment under subsection (f). To the

1 extent such statement or supplement is adopted by the  
2 Commission, such adoption shall be deemed to also satisfy  
3 the responsibilities of the Commission under the National  
4 Environmental Policy Act of 1969.

5 (c) SITE SUITABILITY DETERMINATION.—(1) The  
6 Secretary shall determine, based upon the results of the  
7 site characterization activities, whether the Yucca Moun-  
8 tain site is suitable for development of a geologic reposi-  
9 tory and report her determination to the Congress.

10 (2) If the Secretary determines that the Yucca Moun-  
11 tain site is unsuitable for development of a repository, the  
12 Secretary shall terminate site characterization activities at  
13 the site, notify Congress and the State of Nevada of her  
14 decision and the reasons therefor, and recommend to Con-  
15 gress not later than 6 months after such determination  
16 further actions, including the enactment of legislation,  
17 that may be needed to manage the nation's high-level ra-  
18 dioactive waste and spent nuclear fuel.

19 (3) If the Secretary determines that the Yucca Moun-  
20 tain site is suitable for development of a repository, the  
21 Secretary shall apply to the Commission for authorization  
22 to construct the repository.

23 (d) CONSTRUCTION AUTHORIZATION.—The Commis-  
24 sion shall initially grant the Secretary a construction au-  
25 thorization for the repository upon determining that there

1 is reasonable assurance that high-level radioactive waste  
2 and spent nuclear fuel can be disposed of in the reposi-  
3 tory—

4 (1) in conformity with the Secretary's applica-  
5 tion, the provisions of this Act, and the regulations  
6 of the Commission;

7 (2) without unreasonable risk to the health and  
8 safety of the public; and

9 (3) consistent with the common defense and se-  
10 curity.

11 (e) LICENSE.—Following substantial completion of  
12 construction and the filing of any additional information  
13 needed to complete the license application, the Commis-  
14 sion shall issue a license to dispose of high-level radio-  
15 active waste and spent nuclear fuel in the repository if  
16 the Commission determines that the repository has been  
17 constructed and will operate—

18 (1) in conformity with the Secretary's applica-  
19 tion, the provisions of this Act, and the regulations  
20 of the Commission;

21 (2) without unreasonable risk to the health and  
22 safety of the public; and

23 (3) consistent with the common defense and se-  
24 curity.

1 (f) CLOSURE.—After placing high-level radioactive  
2 waste and spent nuclear fuel in the repository, and after  
3 providing for the retrievability of such high-level radio-  
4 active waste and spent nuclear fuel during any period the  
5 Secretary determines to be appropriate, the Secretary  
6 shall apply to the Commission to amend the license to per-  
7 mit permanent closure of the repository. The Commission  
8 shall grant such license amendment upon finding that  
9 there is reasonable assurance that the repository can be  
10 permanently closed—

11 (1) in conformity with the provisions of this Act  
12 and the regulations of the Commission;

13 (2) without unreasonable risk to the health and  
14 safety of the public; and

15 (3) consistent with the common defense and se-  
16 curity.

17 (g) POST-CLOSURE OVERSIGHT.—Following reposi-  
18 tory closure, the Secretary shall continue to oversee the  
19 Yucca Mountain site to prevent any activity at the site  
20 that poses an unreasonable risk of—

21 (1) breaching the repository’s engineered or  
22 geologic barriers; or

23 (2) increasing the exposure of individual mem-  
24 bers of the public to radiation beyond allowable  
25 limits.

1 (h) LICENSING STANDARDS.—For purposes of mak-  
2 ing any licensing determination under this section:

3 (1) RELEASE STANDARDS.—The Commission  
4 shall find that the repository will not constitute an  
5 unreasonable risk to the health and safety of the  
6 public if there is reasonable assurance that the  
7 amount of radioactive materials and radioactivity re-  
8 leased from the site (excluding background radiation  
9 and other radiation arising from the natural geologi-  
10 cal characteristics of the site) over a 10,000-year pe-  
11 riod shall not result in an annual dose to an average  
12 member of the general population in the vicinity of  
13 the site in excess of one-third of the annual dose re-  
14 ceived from natural background sources by an aver-  
15 age member of the general population in the United  
16 States.

17 (2) OVERALL SYSTEM PERFORMANCE.—The  
18 Commission shall not deny the issuance of a license  
19 on the basis of the Secretary's failure to dem-  
20 onstrate satisfaction of any individual subsystem  
21 performance standard so long as the Commission  
22 finds reasonable assurance of satisfaction of the  
23 overall system performance standard.

24 (3) GROUNDWATER PROTECTION.—Notwith-  
25 standing the provisions of the Safe Drinking Water

1 Act (42 U.S.C. 300f et seq.), a Commission finding  
2 of reasonable assurance of satisfaction of the system  
3 performance standard and the design objective shall  
4 constitute a finding of adequate protection of  
5 groundwater. No maximum contaminant level limits  
6 or other groundwater protection measures shall  
7 apply.

8 (4) HUMAN INTRUSION.—The Commission shall  
9 assume that, following repository closure, the inclu-  
10 sion of engineered barriers and the Secretary’s post-  
11 closure oversight of the Yucca Mountain site, in ac-  
12 cordance with subsection (g), shall be sufficient to—

13 (A) prevent any activity at the site that  
14 poses an unreasonable risk of breaching the re-  
15 pository’s engineered or geologic barriers; and

16 (B) prevent any increase in the exposure of  
17 individual members of the public to radiation  
18 beyond allowable limits.

19 **SEC. 103. LAND WITHDRAWAL.**

20 (a) WITHDRAWAL AND RESERVATION.—(1) The  
21 Yucca Mountain site, as described in subsection (b), is  
22 withdrawn from all forms of entry, appropriation, and dis-  
23 posal under the public land laws, including without limita-  
24 tion the mineral leasing laws, the geothermal leasing laws,  
25 the material sale laws, and the mining laws.



1 were included in this Act. The Secretary may correct clerical and typographical errors in the map and legal description.

4 TITLE II—TRANSPORTATION AND STATE  
5 RELATIONS

6 **SEC. 201. MULTIPURPOSE CANISTERS.**

7 The Secretary shall design one or more multipurpose  
8 canister systems capable of holding spent nuclear fuel during interim storage, transportation, and disposal. The Secretary shall apply to the Commission to certify such systems for the storage and transportation of spent nuclear fuel. The Secretary is authorized to procure such systems in quantities necessary for the transportation, storage, and disposal of spent nuclear fuel as part of the integrated nuclear waste management system established under this Act. The Secretary is authorized to deploy such systems to holders of spent fuel disposal contracts under section 302.

19 **SEC. 202. RAILROAD.**

20 (a) AUTHORIZATION.—The Secretary shall acquire  
21 rights of way within the corridor designated in subsection  
22 (b) and shall construct and operate, or cause to be constructed and operated, a railroad and such facilities as are  
23 required to transport spent nuclear fuel and high-level ra-

1 dioactive waste from existing rail systems to the interim  
2 storage facility and the repository.

3 (b) ROUTE DESIGNATION.—(1) The Secretary shall  
4 acquire such rights of way and develop such facilities with-  
5 in the corridor depicted on the map .

6 (2) Within 30 days after the date of the enactment  
7 of this Act, the Secretary shall—

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

10 (B) file copies of the map described in para-  
11 graph (1) and the legal description of the corridor  
12 with the Congress, the Secretary of the Interior, the  
13 Governor of Nevada, and the Archivist of the United  
14 States.

15 (3) The map and legal description referred to in para-  
16 graph (2) shall have the same force and effect as if they  
17 were included in this Act. The Secretary may correct cleri-  
18 cal and typographical errors in the map and legal descrip-  
19 tion.

20 (c) WITHDRAWAL AND RESERVATION.—(1) The pub-  
21 lic lands depicted on such map are withdrawn from all  
22 forms of entry, appropriation, and disposal under the pub-  
23 lic land laws, including without limitation the mineral leas-  
24 ing laws, the geothermal laws, the material sale laws, and  
25 the mining laws.

1           (2) Jurisdiction of such land is transferred from the  
2 Secretary of the Interior to the Secretary of Energy.

3           (3) Such lands are reserved for the use of the Sec-  
4 retary for the construction and operation of such transpor-  
5 tation facilities and activities associated under this title.

6           (4) The lands depicted in the map that are within  
7 the Quail Springs Wilderness Study and the Nellis A, B,  
8 and C Wilderness Study Areas are released from further  
9 review and management under section 603 of the Federal  
10 Land Policy and Management Act (43 U.S.C. 1782). Such  
11 lands shall be managed in accordance with this Act, not-  
12 withstanding any contrary provisions of Federal, State, or  
13 local statutes, laws, regulations, ordinances, or orders.

14           (d) ENVIRONMENTAL IMPACT STATEMENT.—(1)  
15 Construction and operation of transportation facilities  
16 within the corridor shall constitute a major Federal action  
17 significantly affecting the quality of the human environ-  
18 ment for purposes of the National Environmental Policy  
19 Act of 1969 (42 U.S.C. 431 et seq.) The Secretary shall  
20 prepare an environmental impact statement on the con-  
21 struction and operation of such facilities prior to com-  
22 mencement of construction. In preparing such statement,  
23 the Secretary shall adopt, to the extent practicable, rel-  
24 evant environmental reports that have been developed by  
25 other Federal and State agencies.

1           (2) For purposes of complying with the requirements  
2 of the National Environmental Policy Act of 1969 and this  
3 section, the Secretary need not consider the need for the  
4 development or improvement of transportation facilities,  
5 alternative routes, or alternative means of transportation.

6           (3) Acquisition of rights of way within the corridor  
7 shall not constitute a major federal action significantly af-  
8 fecting the quality of the human environment for purposes  
9 of the National Environmental Policy Act of 1969 and  
10 shall not be delayed pending completion of the environ-  
11 mental impact statement required under paragraph (1).

12           (e) EXEMPTION.—Neither the Secretary nor any per-  
13 son constructing railroad facilities under contract with the  
14 Secretary under this section shall be considered a rail car-  
15 rier within the meaning of the Interstate Commerce Act  
16 (49 U.S.C. 10102 (19)) and shall not be subject to the  
17 jurisdiction of the Interstate Commerce Commission under  
18 49 U.S.C. 10901.

19 **SEC. 203. TRANSPORTATION REQUIREMENTS.**

20           (a) PACKAGE CERTIFICATION.—No spent nuclear  
21 fuel or high-level radioactive waste may be transported by  
22 or for the Secretary under this Act except in packages that  
23 have been certified for such purposes by the Commission.

24           (b) STATE NOTIFICATION.—The Secretary shall  
25 abide by regulations of the Commission regarding advance

1 notification of State and local governments prior to trans-  
2 portation of spent nuclear fuel or high-level radioactive  
3 waste under this Act.

4 (c) TECHNICAL ASSISTANCE.—The Secretary shall  
5 provide technical assistance and funds to States for train-  
6 ing for public safety officials of appropriate units of local  
7 government and Indian tribes through whose jurisdiction  
8 the Secretary plans to transport substantial amounts of  
9 spent nuclear fuel or high-level radioactive waste under  
10 this Act. Training shall cover procedures required for safe  
11 routine transportation of these materials, as well as proce-  
12 dures for dealing with emergency response situations. The  
13 Secretary's duty to provide technical and financial assist-  
14 ance under this subsection shall be limited to amounts  
15 specified in annual appropriations from the Waste Fund  
16 for such purpose.

17 (d) USE OF PRIVATE CARRIERS.—The Secretary, in  
18 providing for the transportation of spent nuclear fuel  
19 under this Act, shall utilize by contract private industry  
20 to the fullest extent possible in each aspect of such trans-  
21 portation. The Secretary shall use direct federal services  
22 for such transportation only upon a determination of the  
23 Secretary of Transportation, in consultation with the Sec-  
24 retary, that private industry is unable or unwilling to pro-  
25 vide such transportation services at a reasonable cost.

1 **SEC. 204. STATE CONSULTATION AND ASSISTANCE.**

2 (a) PROVISION OF INFORMATION.—(1) The Sec-  
3 retary, the Commission, and other agencies involved in the  
4 construction, operation, or regulation of any aspect of the  
5 interim storage facility or repository shall provide to the  
6 Governor and legislature of Nevada timely and complete  
7 information regarding determinations or plans made with  
8 respect to the site characterization, siting, development,  
9 design, licensing, construction, operation, regulation, or  
10 decommissioning of the interim storage facility and reposi-  
11 tory.

12 (2) Upon written request for information by the Gov-  
13 ernor or legislature, the Secretary shall provide a written  
14 response to such request within 30 days of the receipt of  
15 such request. Such response shall provide the information  
16 requested or, in the alternative, the reasons why the infor-  
17 mation cannot be so provided.

18 (b) CONSULTATION AND COOPERATION.—In per-  
19 forming any study of the Yucca Mountain site for the pur-  
20 pose of determining the suitability of the site for a reposi-  
21 tory, in developing and operating the interim storage facil-  
22 ity, and in developing and loading the repository, the Sec-  
23 retary shall consult and cooperate with the Governor and  
24 legislature of Nevada in an effort to resolve the concerns  
25 of the State regarding the public health and safety, envi-  
26 ronmental, and economic impacts of the interim storage

1 facility or repository. In carrying out her duties under this  
2 title, the Secretary shall take such concerns into account  
3 to the maximum extent feasible.

4 (c) FINANCIAL ASSISTANCE.—(1)(A) The Secretary  
5 shall make grants to the State of Nevada and any affected  
6 unit of local government for purposes of participating in  
7 activities required by this section. Any salary or travel ex-  
8 pense that would ordinarily be incurred by such State or  
9 affected unit of local government, may not be considered  
10 eligible for funding under this paragraph.

11 (B) The Secretary shall make grants to the State of  
12 Nevada and any affected unit of local government for pur-  
13 poses of enabling the State or affected unit of local govern-  
14 ment—

15 (i) to review activities taken under this title  
16 with respect to the Yucca Mountain site for purposes  
17 of determining any potential economic, social, public  
18 health and safety, and environmental impacts of the  
19 interim storage facility or repository on the State or  
20 affected unit of local government and its residents;

21 (ii) to develop a request for impact assistance  
22 under paragraph (2);

23 (iii) to engage in any monitoring, testing, or  
24 evaluation activities with respect to site characteriza-  
25 tion programs with regard to such site;

1 (iv) to provide information to Nevada residents  
2 regarding any activities of such State, the Secretary,  
3 or the Commission with respect to such site; and

4 (v) to request information from, and make com-  
5 ments and recommendations to, the Secretary re-  
6 garding such activities taken under this subtitle with  
7 respect to such site.

8 (C) Any salary or travel expense that would ordi-  
9 narily be incurred by the State of Nevada or any affected  
10 unit of local government may not be considered eligible  
11 for funding under this paragraph.

12 (2)(A)(i) The Secretary shall provide financial and  
13 technical assistance to the State of Nevada and any af-  
14 fected unit of local government requesting such assistance.

15 (ii) Such assistance shall be designed to mitigate the  
16 impact on the State or affected unit of local government  
17 of the development of the interim storage facility or reposi-  
18 tory and the characterization of such site.

19 (iii) Such assistance to the State or affected unit of  
20 local government shall commence upon the initiation of  
21 site characterization activities.

22 (B) The State of Nevada and any affected unit of  
23 local government may request assistance under this sub-  
24 section by preparing and submitting to the Secretary a  
25 report on the economic, social, public health and safety,

1 and environmental impacts that are likely to result from  
2 site characterization activities at the Yucca Mountain site.

3 (C) As soon as practicable, the Secretary shall seek  
4 to enter into a binding agreement with the State of Ne-  
5 vada setting forth—

6 (i) the amount of assistance to be provided  
7 under this subsection to such State or affected unit  
8 of local government; and

9 (ii) the procedures to be followed in providing  
10 such assistance.

11 (3)(A) In addition to financial assistance provided  
12 under paragraphs (1) and (2), the Secretary shall grant  
13 to the State of Nevada and any affected unit of local gov-  
14 ernment an amount each fiscal year equal to the amount  
15 the State or affected unit of local government, respec-  
16 tively, would receive if authorized to tax site characteriza-  
17 tion activities at such site, the development and operation  
18 of the interim storage facility, and the development and  
19 operation of the repository, as the State or affected unit  
20 of local government taxes the non-Federal real property  
21 and industrial activities occurring within the State or af-  
22 fected unit of local government.

23 (B) Such grants shall continue until such time as the  
24 respective activities, development, and operation are termi-  
25 nated at such site.

1       (4)(A) The State of Nevada or any affected unit of  
2 local government may not receive—

3           (i) any grant with respect to the interim storage  
4 facility under paragraph (1) after the expiration of  
5 the one-year period following the date on which the  
6 Commission disapproves an application for a license  
7 to store high-level radioactive waste and spent nu-  
8 clear fuel at the site; or

9           (ii) any grant with respect to the site character-  
10 ization activities or construction of the repository  
11 under paragraph (1) after the expiration of the one-  
12 year period following the earlier of—

13           (I) the date on which the Secretary notifies  
14 the Governor and legislature of the State of Ne-  
15 vada of the termination of site characterization  
16 activities at the Yucca Mountain site; or

17           (II) the date on which the Commission dis-  
18 approves an application for a construction au-  
19 thorization for a repository at such site.

20       (B) The State of Nevada or any affected unit of local  
21 government may not receive any further assistance under  
22 paragraph (2)—

23           (i) with respect to the interim storage facility if  
24 construction or operation of the interim storage fa-

1 cility are terminated by the Secretary or if such ac-  
2 tivities are permanently enjoined by any court; or

3 (ii) with respect to the repository if repository  
4 construction activities or site characterization activi-  
5 ties are terminated by the Secretary or if such ac-  
6 tivities are permanently enjoined by any court.

7 (C) At the end of the 2-year period beginning on the  
8 effective date of any license under section 102(c), no fed-  
9 eral funds shall be made available to the State of Nevada  
10 or affected unit of local government under paragraph (1)  
11 or (2), except for such funds as may be necessary to sup-  
12 port state activities pursuant to agreements or contracts  
13 for impact assistance entered into under paragraph (2) by  
14 the State with the Secretary during such 2-year period.

15 (5) Financial assistance authorized in this subsection  
16 shall be made out of amounts held in the Waste Fund.

17 **SEC. 205. PREEMPTION.**

18 (a) IN GENERAL.—The Secretary shall be subject to  
19 and comply with all federal, state, and local environmental  
20 or land use laws, requirements, or orders of general appli-  
21 cability, including those requiring permits or reporting, or  
22 those setting standards, criteria, or limitation.

23 (b) EXEMPTION.—(1) Notwithstanding subsection  
24 (a), the President shall exempt the Secretary from any  
25 federal, state, or local requirement (including any law, reg-

1 ulation, or order requiring any license, permit, certifi-  
2 cation, authorization, or approval, or setting any standard,  
3 criterion, or limitation) if the President determines, in his  
4 discretion, that—

5 (A) issuance of the required license, permit,  
6 certification, authorization, or approval is being un-  
7 reasonably delayed or denied;

8 (B) the requirement is not based on credible  
9 scientific data, is not generally applicable, or was  
10 not adopted by formal means; or

11 (C) the cost of complying with the law, require-  
12 ment, or order unreasonably exceeds the benefit to  
13 the public health and safety or the environment.

14 (2) In the event the President makes a determination  
15 under paragraph (1) with respect to any State require-  
16 ment (including any requirement of any agency or subdivi-  
17 sion of the State) and further determines, in his discre-  
18 tion, that such requirement was imposed for the purpose  
19 of delaying or obstructing construction or operation of the  
20 interim storage facility, repository, or associated facilities  
21 under this Act, the President may exempt the Secretary  
22 from all State requirements under this subsection or such  
23 portion thereof as the President determines necessary.

## 1 TITLE III—FUNDING AND ORGANIZATION

2 **SEC. 301. BUDGET PRIORITIES.**

3 For purposes of preparing annual requests for appro-  
4 priations from the Waste Fund and allocating appro-  
5 priated funds among competing requirements, the Sec-  
6 retary shall accord—

7 (1) the licensing, construction, and operation of  
8 the interim storage facility under section 101 the  
9 highest priority;

10 (2) the acquisition of rights of way and the con-  
11 struction and operation of the railroad under section  
12 202 the next highest priority; and

13 (3) the licensing, construction, and operation of  
14 the repository under section 102 the lowest priority.

15 **SEC. 302. NUCLEAR WASTE FUND.**

16 (a) CONTRACTS.—(1) In the performance of his func-  
17 tions under this Act, the Secretary is authorized to enter  
18 into contracts with any person who generates or holds title  
19 to high-level radioactive waste, or spent nuclear fuel, of  
20 domestic origin for the acceptance of title, subsequent  
21 transportation, and disposal of such waste or spent fuel.  
22 Such contracts shall provide for payment to the Secretary  
23 of fees pursuant to paragraphs (2) and (3) sufficient to  
24 offset expenditures described in subsection (d).

1           (2) For electricity generated by a civilian nuclear  
2 power reactor and sold on or after the date 90 days after  
3 January 7, 1983, the fee under paragraph (1) shall be  
4 equal to 1.0 mill per kilowatt-hour.

5           (3) For spent nuclear fuel, or solidified high-level ra-  
6 dioactive waste derived from spent nuclear fuel, which fuel  
7 was used to generate electricity in a civilian nuclear power  
8 reactor prior to the application of the fee under paragraph  
9 (2) to such reactor, the Secretary shall, not later than 90  
10 days after January 7, 1983, establish a 1 time fee per  
11 kilogram of heavy metal in spent nuclear fuel, or in solidi-  
12 fied high-level radioactive waste. Such fee shall be in an  
13 amount equivalent to an average charge of 1.0 mill per  
14 kilowatt-hour for electricity generated by such spent nu-  
15 clear fuel, or such solidified high-level radioactive waste  
16 derived therefrom, to be collected from any person deliver-  
17 ing such spent nuclear fuel or high-level waste, pursuant  
18 to section 402, to the Federal Government. Such fee shall  
19 be paid to the Treasury of the United States and shall  
20 be deposited in the separate fund established by subsection  
21 (c). In paying such a fee, the person delivering spent fuel,  
22 or solidified high-level radioactive wastes derived there-  
23 from, to the Federal Government shall have no further  
24 financial obligation to the Federal Government for the  
25 long-term storage and permanent disposal of such spent

1 fuel, or the solidified high-level radioactive waste derived  
2 therefrom.

3 (4) Not later than 180 days after January 7, 1983,  
4 the Secretary shall establish procedures for the collection  
5 and payment of the fees established by paragraph (2) and  
6 paragraph (3). The Secretary shall annually review the  
7 amount of the fees established by paragraphs (2) and (3)  
8 above to evaluate whether collection of the fee will provide  
9 sufficient revenues to offset the costs as defined in sub-  
10 section (d) herein. In the event the Secretary determines  
11 that either insufficient or excess revenues are being col-  
12 lected, in order to recover the costs incurred by the Fed-  
13 eral Government that are specified in subsection (d), the  
14 Secretary shall propose an adjustment to the fee to ensure  
15 full cost recovery. The Secretary shall immediately trans-  
16 mit this proposal for such an adjustment to Congress. The  
17 adjusted fee proposed by the Secretary shall be effective  
18 after a period of 90 days of continuous session have  
19 elapsed following the receipt of such transmittal unless  
20 during such 90-day period either House of Congress  
21 adopts a resolution disapproving the Secretary's proposed  
22 adjustment in accordance with the procedures set forth  
23 for congressional review of an energy action under section  
24 551 of the Energy Policy and Conservation Act.

1 (5) Contracts entered into under this section shall  
2 provide that—

3 (A) following commencement of operation of a  
4 repository, the Secretary shall take title to the high-  
5 level radioactive waste or spent nuclear fuel involved  
6 as expeditiously as practicable upon the request of  
7 the generator or owner of such waste or spent fuel;  
8 and

9 (B) in return for the payment of fees estab-  
10 lished by this section, the Secretary, beginning not  
11 later than January 31, 1998, will dispose of the  
12 high-level radioactive waste or spent nuclear fuel in-  
13 volved as provided in title I.

14 (6) The Secretary shall establish in writing criteria  
15 setting forth the terms and conditions under which such  
16 disposal services shall be made available.

17 (b) ADVANCE CONTRACTING REQUIREMENT.—(1)(A)  
18 The Commission shall not issue or renew a license to any  
19 person to use a utilization or production facility under the  
20 authority of section 103 or 104 of the Atomic Energy Act  
21 of 1954 (42 U.S.C. 2133, 2134) unless—

22 (i) such person has entered into a contract with  
23 the Secretary under this section; or

1           (ii) the Secretary affirms in writing that such  
2           person is actively and in good faith negotiating with  
3           the Secretary for a contract under this section.

4           (B) The Commission, as it deems necessary or appro-  
5           priate, may require as a precondition to the issuance or  
6           renewal of a license under section 103 or 104 of the Atom-  
7           ic Energy Act of 1954 (42 U.S.C. 2133, 2134) that the  
8           applicant for such license shall have entered into an agree-  
9           ment with the Secretary for the disposal of high-level ra-  
10          dioactive waste and spent nuclear fuel that may result  
11          from the use of such license.

12          (2) Except as provided in paragraph (1), no spent  
13          nuclear fuel or high-level radioactive waste generated or  
14          owned by any person (other than a department of the  
15          United States referred to in section 101 or 102 of title  
16          5, United States Code) may be disposed of by the Sec-  
17          retary in any repository constructed under this Act unless  
18          the generator or owner or such spent fuel or waste has  
19          entered into a contract with the Secretary under this sec-  
20          tion by not later than—

21                 (A) June 30, 1983; or

22                 (B) the date on which such generator or owner  
23          commences generation of, or takes title to, such  
24          spent fuel or waste; whichever occurs later.

1           (3) The rights and duties of a party to a contract  
2 entered into under this section may be assignable with  
3 transfer of title to the spent nuclear fuel or high-level ra-  
4 dioactive waste involved.

5           (4) No high-level radioactive waste or spent nuclear  
6 fuel generated or owned by any department of the United  
7 States referred to in section 101 or 102 of title 5, United  
8 States Code, may be disposed of by the Secretary in any  
9 repository constructed under this Act unless such depart-  
10 ment transfers to the Secretary, for deposit in the Nuclear  
11 Waste Fund, amounts equivalent to the fees that would  
12 be paid to the Secretary under the contracts referred to  
13 in this section if such waste or spent fuel were generated  
14 by any other person.

15           (c) ESTABLISHMENT OF NUCLEAR WASTE FUND.—  
16 There hereby is established in the Treasury of the United  
17 States a separate fund, to be known as the Nuclear Waste  
18 Fund. The Waste Fund shall consist of—

19                   (1) all receipts, proceeds, and recoveries real-  
20 ized by the Secretary under subsections (a), (b), and  
21 (e), which shall be deposited in the Waste Fund im-  
22 mediately upon their realization;

23                   (2) any appropriations made by the Congress to  
24 the Waste Fund; and

1           (3) any unexpended balances available on the  
2           date of the enactment of this Act for functions or  
3           activities necessary or incident to the disposal of ci-  
4           vilian high-level radioactive waste or civilian spent  
5           nuclear fuel, which shall automatically be trans-  
6           ferred to the Waste Fund on such date.

7           (d) USE OF WASTE FUND.—The Secretary may  
8           make expenditures from the Waste Fund, subject to sub-  
9           section (e), only for purposes of radioactive waste disposal  
10          activities under titles I and II, including—

11           (1) the identification, development, licensing,  
12           construction, operation, decommissioning, and post-  
13           decommissioning maintenance and monitoring of the  
14           interim storage facility or repository constructed  
15           under this Act;

16           (2) the conducting of nongeneric research, de-  
17           velopment, and demonstration activities under this  
18           Act;

19           (3) the administrative cost of the radioactive  
20           waste disposal program;

21           (4) any costs that may be incurred by the Sec-  
22           retary in connection with the transportation, treat-  
23           ing, or packaging of spent nuclear fuel or high-level  
24           radioactive waste to be disposed of in the repository  
25           or to be stored in the interim storage facility, includ-

1       ing the cost of designing and procuring multi-pur-  
2       pose canisters under section 201 and the cost of con-  
3       structing and operating rail systems under section  
4       202;

5           (5) the costs associated with acquisition, design,  
6       modification, replacement, operation, and construc-  
7       tion of facilities at the repository or interim storage  
8       facility and necessary or incident to such repository  
9       or interim storage facility; and

10          (6) the provision of assistance to the State of  
11       Nevada, and affected units of local government  
12       under section 204.

13       (e) ADMINISTRATION OF WASTE FUND.—(1) The  
14       Secretary of the Treasury shall hold the Waste Fund and,  
15       after consultation with the Secretary, annually report to  
16       the Congress on the financial condition and operations of  
17       the Waste Fund during the preceding fiscal year.

18          (2) The Secretary shall submit the budget of the  
19       Waste Fund to the Office of Management and Budget tri-  
20       ennially along with the budget of the Department of En-  
21       ergy submitted at such time in accordance with chapter  
22       11 of title 31, United States Code. The budget of the  
23       Waste Fund shall consist of the estimates made by the  
24       Secretary of expenditures from the Waste Fund and other  
25       relevant financial matters for the succeeding 3 fiscal years,

1 and shall be included in the Budget of the United States  
2 Government. The Secretary may make expenditures from  
3 the Waste Fund, subject to appropriations which shall re-  
4 main available until expended. Appropriations shall be  
5 subject to triennial authorization.

6 (3) If the Secretary determines that the Waste Fund  
7 contains at any time amounts in excess of current needs,  
8 the Secretary may request the Secretary of the Treasury  
9 to invest such amounts, or any portion of such amounts  
10 as the Secretary determines to be appropriate, in obliga-  
11 tions of the United States—

12 (A) having maturities determined by the Sec-  
13 retary of the Treasury to be appropriate to the  
14 needs of the Waste Fund; and

15 (B) bearing interest at rates determined to be  
16 appropriate by the Secretary of the Treasury, taking  
17 into consideration the current average market yield  
18 on outstanding marketable obligations of the United  
19 States with remaining periods to maturity com-  
20 parable to the maturities of such investments, except  
21 that the interest rate on such investments shall not  
22 exceed the average interest rate applicable to exist-  
23 ing borrowings.

24 (4) Receipts, proceeds, and recoveries realized by the  
25 Secretary under this section, and expenditures of amounts

1 from the Waste Fund, shall be exempt from annual appor-  
2 tionment under the provisions of subchapter II of chapter  
3 15 of title 31, United States Code.

4 (5) if at any time the moneys available in the Waste  
5 Fund are insufficient to enable the Secretary to discharge  
6 his responsibilities under this subtitle, the Secretary shall  
7 issue to the Secretary of the Treasury obligations in such  
8 form and denominations, bearing such maturities, and  
9 subject to such terms and conditions as may be agreed  
10 to by the Secretary and the Secretary of the Treasury.  
11 The total of such obligations shall not exceed amounts  
12 provided in appropriation Acts. Redemption of such obli-  
13 gations shall be made by the Secretary from moneys avail-  
14 able in the Waste Fund. Such obligations shall bear inter-  
15 est at a rate determined by the Secretary of the Treasury,  
16 which shall be not less than a rate determined by taking  
17 into consideration the average market yield on outstanding  
18 marketable obligations of the United States of comparable  
19 maturities during the month preceding the issuance of the  
20 obligations under this paragraph. The Secretary of the  
21 Treasury shall purchase any issued obligations, and for  
22 such purpose the Secretary of the Treasury is authorized  
23 to use as a public debt transaction the proceeds from the  
24 sale of any securities issued under chapter 31 of title 31,  
25 United States Code, and the purposes for which securities

1 may be issued under such Act are extended to include any  
2 purchase of such obligations. The Secretary of the Treas-  
3 ury may at any time sell any of the obligations acquired  
4 by him under this paragraph. All redemptions, purchases,  
5 and sales by the Secretary of the Treasury of obligations  
6 under this paragraph shall be treated as public debt trans-  
7 actions of the United States.

8       (6) Any appropriations made available to the Waste  
9 Fund for any purpose described in subsection (d) shall be  
10 repaid into the general fund of the Treasury, together with  
11 interest from the date of availability of the appropriations  
12 until the date of repayment. Such interest shall be paid  
13 on the cumulative amount of appropriations available to  
14 the Waste Fund, less the average undisbursed cash bal-  
15 ance in the Waste Fund account during the fiscal year  
16 involved. The rate of such interest shall be determined by  
17 the Secretary of the Treasury taking into consideration  
18 the average market yield during the month preceding each  
19 fiscal year on outstanding marketable obligations of the  
20 United States of comparable maturity. Interest payments  
21 may be deferred with the approval of the Secretary of the  
22 Treasury, but any interest payments so deferred shall  
23 themselves bear interest.

1 **SEC. 303. BUDGET TREATMENT.**

2 (a) SCOREKEEPING.—Notwithstanding any other  
3 provision of law, the receipts and disbursements of the  
4 Waste Fund for each fiscal year beginning after the date  
5 of the enactment of this Act shall be deemed to be equal  
6 to the amount of receipts and disbursements in fiscal year  
7 1995 for purposes of—

8 (1) the budget of the United States Govern-  
9 ment as submitted by the President;

10 (2) the congressional budget for the United  
11 States Government; and

12 (3) the Balanced Budget and Emergency Defi-  
13 cit Control Act of 1985.

14 (b) SEQUESTRATION.—Any disbursement from the  
15 Waste Fund shall be exempt from reduction under any  
16 order issued under part C of the Balanced Budget and  
17 Emergency Deficit Control Act of 1985.

18 (c) APPROPRIATIONS.—Any disbursement from the  
19 Waste Fund shall be subject to appropriations but shall  
20 be included in the discretionary spending limits as set  
21 forth in section 601 of the Congressional Budget and Im-  
22 poundment Control Act of 1974 in any fiscal year begin-  
23 ning after the date of the enactment of this Act only to  
24 the extent that funds were appropriated from the Waste  
25 Fund in fiscal year 1995.

1 **SEC. 304. OFFICE OF CIVILIAN RADIOACTIVE WASTE MAN-**  
2 **AGEMENT.**

3 (a) ESTABLISHMENT.—There hereby is established  
4 within the Department of Energy and Office of Civilian  
5 Radioactive Waste Management. The Office shall be head-  
6 ed by a Director, who shall be appointed by the President,  
7 by and with the advice and consent of the Senate, and  
8 who shall be compensated at the rate payable for level III  
9 of the Executive Schedule under section 5315 of title 5,  
10 United States Code.

11 (b) FUNCTIONS OF DIRECTOR.—The Director of the  
12 Office shall be responsible for carrying out the functions  
13 of the Secretary under this Act, subject to the general su-  
14 pervision of the Secretary. The Director of the Office shall  
15 be directly responsible to the Secretary.

16 (c) ANNUAL REPORT TO CONGRESS.—The Director  
17 of the Office shall annually prepare and submit to the  
18 Congress a comprehensive report on the activities and ex-  
19 penditures of the Office.

20 **SEC. 305. DEFENSE CONTRIBUTION.**

21 (a) ALLOCATION.—The Secretary shall determine the  
22 appropriate portion of the cost of managing high-level ra-  
23 dioactive waste and spent nuclear fuel under this Act allo-  
24 cable to the permanent disposal of high-level radioactive  
25 waste from atomic energy defense activities. In addition  
26 to any request for an appropriation from the Waste Fund

1 under section 302, the Secretary shall request annual ap-  
2 propriations from general revenues in amounts sufficient  
3 to pay the full cost of the permanent disposal of high-  
4 level radioactive waste from atomic energy defense activi-  
5 ties in the repository.

6 (b) AUTHORIZATION.—There is authorized to be ap-  
7 propriated to the Secretary, from general revenues, for  
8 carrying out the purposes of this Act, such sums as may  
9 be necessary to pay the full cost of the permanent disposal  
10 of high-level radioactive waste from atomic energy defense  
11 activities.

12 TITLE IV—GENERAL AND MISCELLANEOUS  
13 PROVISIONS

14 **SEC. 401. NRC REGULATIONS.**

15 Nothing in this Act shall be read to repeal or require  
16 the amendment or repromulgation of Commission regula-  
17 tions of the Commission in effect on the date of enactment  
18 of this Act except to the extent such regulations are incon-  
19 sistent with the provisions of this Act.

20 **SEC. 402. JUDICIAL REVIEW OF AGENCY ACTIONS.**

21 (a) JURISDICTION OF UNITED STATES COURTS OF  
22 APPEALS.—(1) Except for review in the Supreme Court  
23 of the United States, the United States courts of appeals  
24 shall have original and exclusive jurisdiction over any civil  
25 action—

1 (A) for review of any final decision or action of  
2 the Secretary, the President, or the Commission  
3 under this Act;

4 (B) alleging the failure of the Secretary, the  
5 President, or the Commission to make any decision,  
6 or take any action, required under this Act;

7 (C) challenging the constitutionality of any de-  
8 cision made, or action taken, under any provision of  
9 this Act; or

10 (D) for review of any environmental impact  
11 statement prepared or environmental assessment  
12 pursuant to the National Environmental Policy Act  
13 of 1969 (42 U.S.C. 4321 et seq.) with respect to any  
14 action under this Act or alleging a failure to prepare  
15 such statement with respect to any such action.

16 (2) The venue of any proceeding under this section  
17 shall be in the judicial circuit in which the petitioner in-  
18 volved resides or has its principal office, or in the United  
19 States Court of Appeals for the District of Columbia.

20 (b) DEADLINE FOR COMMENCING ACTION.—A civil  
21 action for judicial review described under subsection (a)(1)  
22 may be brought not later than the 180th day after the  
23 date of the decision or action or failure to act involved,  
24 as the case may be, except that if a party shows that he  
25 did not know of the decision or action complained of (or

1 of the failure to act), and that a reasonable person acting  
2 under the circumstances would not have known, such  
3 party may bring a civil action not later than the 180th  
4 day after the date such party acquired actual or construc-  
5 tive knowledge or such decision, action, or failure to act.

6 **SEC. 403. TITLE TO MATERIAL.**

7 Delivery, and acceptance by the Secretary, or any  
8 high-level radioactive waste or spent nuclear fuel for the  
9 interim storage facility or repository shall constitute a  
10 transfer to the Secretary of title to such waste or spent  
11 fuel.

12 **SEC. 404. LICENSING OF FACILITY EXPANSIONS AND**  
13 **TRANSSHIPMENTS.**

14 (a) ORAL ARGUMENT.—In any Commission hearing  
15 under section 189 of the Atomic Energy Act of 1954 (42  
16 U.S.C. 2239) on an application for a license, or for an  
17 amendment to an existing license, filed after January 7,  
18 1983, to expand the spent nuclear fuel storage capacity  
19 at the site of a civilian nuclear power reactor, through the  
20 use of high-density fuel storage racks, fuel rod compac-  
21 tion, the transshipment of spent nuclear fuel to another  
22 civilian nuclear power reactor within the same utility sys-  
23 tem, the construction of additional spent nuclear fuel pool  
24 capacity or dry storage capacity, or by other means, the  
25 Commission shall, at the request of any party, provide an

1 opportunity for oral argument with respect to any matter  
2 which the Commission determines to be in controversy  
3 among the parties. The oral argument shall be preceded  
4 by such discovery procedures as the rules of the Commis-  
5 sion shall provide. The Commission shall require each  
6 party, including the Commission staff, to submit in writ-  
7 ten form, at the time of the oral argument, a summary  
8 of the facts, data, and arguments upon which such party  
9 proposes to rely that are known at such time to such  
10 party. Only facts and data in the form of sworn testimony  
11 or written submission may be relied upon by the parties  
12 during oral argument. Of the materials that may be sub-  
13 mitted by the parties during oral argument, the Commis-  
14 sion shall only consider those facts and data that are sub-  
15 mitted in the form of sworn testimony or written submis-  
16 sion.

17 (b) ADJUDICATORY HEARING.—(1) At the conclusion  
18 of any oral argument under subsection (a), the Commis-  
19 sion shall designate any disputed question of fact, together  
20 with any remaining questions of law, for resolution in an  
21 adjudicatory hearing only if it determines that—

22 (A) there is a genuine and substantial dispute  
23 of fact which can only be resolved with sufficient ac-  
24 curacy by the introduction of evidence in an adju-  
25 dicatory hearing; and

1 (B) the decision of the Commission is likely to  
2 depend in whole or in part on the resolution of such  
3 dispute.

4 (2) In making a determination under this subsection,  
5 the Commission—

6 (A) shall designate in writing the specific facts  
7 that are in genuine and substantial dispute, the rea-  
8 son why the decision of the agency is likely to de-  
9 pend on the resolution of such facts, and the reason  
10 why an adjudicatory hearing is likely to resolve the  
11 dispute; and

12 (B) shall not consider—

13 (i) any issue relating to the design, con-  
14 struction, or operation of any civilian nuclear  
15 power reactor already licensed to operate at  
16 such site, or any civilian nuclear power reactor  
17 to which a construction permit has been grant-  
18 ed at such site, unless the Commission deter-  
19 mines that any such issue substantially affects  
20 the design, construction, or operation of the fa-  
21 cility or activity for which such license applica-  
22 tion, authorization, or amendment is being con-  
23 sidered; or

24 (ii) any siting or design issue fully consid-  
25 ered and decided by the Commission in connec-

1           tion with the issuance of a construction permit  
2           or operating license for a civilian nuclear power  
3           reactor at such site, unless (I) such issue re-  
4           sults from any revision of siting or design cri-  
5           teria by the Commission following such deci-  
6           sion; and (II) the Commission determines that  
7           such issue substantially affects the design, con-  
8           struction, or operation of the facility or activity  
9           for which such license application, authoriza-  
10          tion, or amendment is being considered.

11          (3) The provisions of paragraph (2)(B) shall apply  
12          only with respect to licenses, authorizations, or amend-  
13          ments to licenses or authorizations, applied for under the  
14          Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.) be-  
15          fore December 31, 2005.

16          (4) The provisions of this section shall not apply to  
17          the first application for a license or license amendment  
18          received by the Commission to expand onsite spent fuel  
19          storage capacity by the use of a new technology not pre-  
20          viously approved for use at any nuclear powerplant by the  
21          Commission.

22          (c) JUDICIAL REVIEW.—No court shall hold unlawful  
23          or set aside a decision of the Commission in any proceed-  
24          ing described in subsection (a) because of a failure by the

1 Commission to use a particular procedure pursuant to the  
2 section unless—

3 (1) an objection to the procedure used was pre-  
4 sented to the Commission in a timely fashion or  
5 there are extraordinary circumstances that excuse  
6 the failure to present a timely objection; and

7 (2) the court finds that such failure has pre-  
8 cluded a fair consideration and informed resolution  
9 of a significant issue of the proceeding taken as a  
10 whole.

11 **SEC. 405. SITING A SECOND REPOSITORY.**

12 (a) CONGRESSIONAL ACTION REQUIRED.—The Sec-  
13 retary may not conduct site-specific activities with respect  
14 to a second repository unless Congress has specifically au-  
15 thorized and appropriated funds for such activities.

16 (b) REPORT.—The Secretary shall report to the  
17 President and to Congress on or after January 1, 2007,  
18 but not later than January 1, 2010, on the need for a  
19 second repository.

20 **SEC. 406. FINANCIAL ARRANGEMENTS FOR LOW-LEVEL RA-**  
21 **DIOACTIVE WASTE SITE CLOSURE.**

22 (a) FINANCIAL ARRANGEMENTS.—(1) The Commis-  
23 sion shall establish by rule, regulation, or order, after pub-  
24 lic notice, and in accordance with section 181 of the Atom-  
25 ic Energy Act of 1954 (42 U.S.C. 2231), such standards

1 and instructions as the Commission may deem necessary  
2 or desirable to ensure in the case of each license for the  
3 disposal of low-level radioactive waste that an adequate  
4 bond, surety, or other financial arrangement (as deter-  
5 mined by the Commission) will be provided by a licensee  
6 to permit completion of all requirements established by the  
7 Commission for the decontamination, decommissioning,  
8 site closure, and reclamation of sites, structures, and  
9 equipment used in conjunction with such low-level radio-  
10 active waste. Such financial arrangements shall be pro-  
11 vided and approved by the Commission, or, in the case  
12 of sites within the boundaries of any agreement State  
13 under section 274 of the Atomic Energy Act of 1954 (42  
14 U.S.C. 2021), by the appropriate State or State entity,  
15 prior to issuance of licenses for low-level radioactive waste  
16 disposal or, in the case of licenses in effect on January  
17 7, 1983, prior to termination of such licenses.

18 (2) If the Commission determines that any long-term  
19 maintenance and monitoring, or both, will be necessary at  
20 a site described in paragraph (1), the Commission shall  
21 ensure before termination of the license involved that the  
22 licensee has made available such bonding, surety, or other  
23 financial arrangements as may be necessary to ensure that  
24 any necessary long-term maintenance or monitoring need-  
25 ed for such site will be carried out by the person having

1 title and custody for such site following license termi-  
2 nation.

3 (b) TITLE AND CUSTODY.—(1) The Secretary shall  
4 have authority to assume title and custody of low-level ra-  
5 dioactive waste and the land on which such waste is dis-  
6 posed of, upon request of the owner of such waste and  
7 land and following termination of the license issued by the  
8 Commission for such disposal, if the Commission deter-  
9 mines that—

10 (A) the requirements of the Commission for site  
11 closure, decommissioning, and decontamination have  
12 been met by the licensee involved and that such li-  
13 censee is in compliance with the provisions of sub-  
14 section (a);

15 (B) such title and custody will be transferred to  
16 the Secretary without cost to the Federal Govern-  
17 ment; and

18 (C) Federal ownership and management of such  
19 site is necessary or desirable in order to protect the  
20 public health and safety, and the environment.

21 (2) If the Secretary assumes title and custody of any  
22 such waste and land under this subsection, the Secretary  
23 shall maintain such waste and land in a manner that will  
24 protect the public health and safety, and the environment.

1           (c) SPECIAL SITES.—If the low-level radioactive  
2 waste involved is the result of a licensed activity to recover  
3 zirconium, hafnium, and rare earths from source material,  
4 the Secretary, upon request of the owner of the site in-  
5 volved, shall assume title and custody of such waste and  
6 the land on which it is disposed when such site has been  
7 decontaminated and stabilized in accordance with the re-  
8 quirements established by the Commission and when such  
9 owner has made adequate financial arrangements ap-  
10 proved by the Commission for the long-term maintenance  
11 and monitoring of such site.

12 **SEC. 407. NUCLEAR REGULATORY COMMISSION TRAINING**  
13 **AUTHORIZATION.**

14           The Commission is authorized and directed to pro-  
15 mulgate regulations, or other appropriate regulatory guid-  
16 ance, for the training and qualifications of civilian nuclear  
17 powerplant operators, supervisors, technicians, and other  
18 appropriate operating personnel. Such regulations or guid-  
19 ance shall establish simulator training requirements for  
20 applicants for civilian nuclear powerplant operator licenses  
21 and for operator requalification programs; requirements  
22 governing Commission administration of requalification  
23 examinations; requirements for operating tests at civilian  
24 nuclear powerplant simulators, and instructional require-

1 ments for civilian nuclear powerplant licensee personnel  
2 training programs.

3 TITLE V—NUCLEAR WASTE TECHNICAL  
4 REVIEW BOARD

5 **SEC. 501. DEFINITIONS.**

6 (a) The term “Chairman” means the Chairman of  
7 the Nuclear Waste Technical Review Board.

8 (b) The term “Board” means the Nuclear Waste  
9 Technical Review Board established under section 502.

10 **SEC. 502. NUCLEAR WASTE TECHNICAL REVIEW BOARD.**

11 (a) ESTABLISHMENT.—There is established a Nu-  
12 clear Waste Technical Review Board that shall be an inde-  
13 pendent establishment within the executive branch.

14 (b) MEMBERS.—(1) The Board shall consist of 11  
15 members who shall be appointed by the President not later  
16 than 90 days after December 22, 1987, from among per-  
17 sons nominated by the National Academy of Sciences in  
18 accordance with paragraph (3).

19 (2) The President shall designate a member of the  
20 Board to serve as chairman.

21 (3)(A) The National Academy of Sciences shall, not  
22 later than 90 days after December 22, 1987, nominate  
23 not less than 22 persons for appointment to the Board  
24 from among persons who meet the qualifications described  
25 in subparagraph (C).

1 (B) The National Academy of Sciences shall nomi-  
2 nate not less than 2 persons to fill any vacancy on the  
3 Board from among persons who meet the qualifications  
4 described in subparagraph (C).

5 (C)(i) Each person nominated for appointment to the  
6 Board shall be—

7 (I) eminent in a field of science or engineering,  
8 including environmental sciences; and

9 (II) selected solely on the basis of established  
10 records of distinguished service.

11 (ii) The membership of the Board shall be representa-  
12 tives of the broad range of scientific and engineering dis-  
13 ciplines related to activities under this title.

14 (iii) No person shall be nominated for appointment  
15 to the Board who is an employee of—

16 (I) the Department of Energy;

17 (II) a national laboratory under contract with  
18 the Department of Energy; or

19 (III) an entity performing high-level radioactive  
20 waste or spent nuclear fuel activities under contract  
21 with the Department of Energy.

22 (4) Any vacancy on the Board shall be filled by the  
23 nomination and appointment process described in para-  
24 graphs (1) and (3).

1 (5) Members of the Board shall be appointed for  
2 terms of 4 years, each such term to commence 120 days  
3 after December 22, 1987, except that of the 11 members  
4 first appointed to the Board, 5 shall serve for 2 years and  
5 6 shall serve for 4 years, to be designated by the President  
6 at the time of appointment.

7 **SEC. 503. FUNCTIONS.**

8 The Board shall evaluate the technical and scientific  
9 validity of activities undertaken by the Secretary after De-  
10 cember 22, 1987, including—

- 11 (1) site characterization activities; and  
12 (2) activities relating to the packaging or trans-  
13 portation of high-level radioactive waste or spent nu-  
14 clear fuel.

15 **SEC. 504. INVESTIGATORY POWERS.**

16 (a) HEARINGS.—Upon request of the Chairman or a  
17 majority of the members of the Board, the Board may  
18 hold such hearings, sit and act at such times and places,  
19 take such testimony, and receive such evidence, as the  
20 Board considers appropriate. Any member of the Board  
21 may administer oaths or affirmations to witnesses appear-  
22 ing before the board.

23 (b) PRODUCTION OF DOCUMENTS.—(1) Upon the re-  
24 quest of the Chairman or a majority of the members of  
25 the Board, and subject to existing law, the Secretary (or

1 any contractor of the Secretary) shall provide the Board  
2 with such records, files, papers, data, or information as  
3 may be necessary to respond to any inquiry of the Board  
4 under this title.

5 (2) Subject to existing law, information obtainable  
6 under paragraph (1) shall not be limited to final work  
7 products of the Secretary, but shall include drafts of such  
8 products and documentation of work in progress.

9 **SEC. 505. COMPENSATION OF MEMBERS.**

10 (a) IN GENERAL.—Each member of the Board shall  
11 be paid at the rate of pay payable for level III of the Exec-  
12 utive Schedule for each day (including travel time) such  
13 member is engaged in the work of the Board.

14 (b) TRAVEL EXPENSES.—Each member of the Board  
15 may receive travel expenses, including per diem in lieu of  
16 subsistence in the same manner as is permitted under sec-  
17 tions 5702 and 5703 of title 5, United States Code.

18 **SEC. 506. STAFF.**

19 (a) CLERICAL STAFF.—(1) Subject to paragraph (2),  
20 the Chairman may appoint and fix the compensation of  
21 such clerical staff as may be necessary to discharge the  
22 responsibilities of the Board.

23 (2) Clerical staff shall be appointed subject to the  
24 provisions of title 5, United States Code, governing ap-  
25 pointments in the competitive service, and shall be paid

1 in accordance with the provisions of chapter 51 and sub-  
2 chapter III of chapter 3 of such title relating to classifica-  
3 tion and General Schedule pay rates.

4 (b) PROFESSIONAL STAFF.—(1) Subject to para-  
5 graphs (2) and (3), the Chairman may appoint and fix  
6 the compensation of such professional staff as may be nec-  
7 essary to discharge the responsibilities of the Board.

8 (2) Not more than 10 professional staff members  
9 may be appointed under this subsection.

10 (3) Professional staff members may be appointed  
11 without regard to the provisions of title 5, United States  
12 Code, governing appointments in the competitive service,  
13 and may be paid without regard to the provisions of chap-  
14 ter 51 and subchapter III of chapter 53 of such title relat-  
15 ing to classification and General Schedule pay rates, ex-  
16 cept that no individual so appointed may receive pay in  
17 excess of the annual rate of basic pay payable for GS-  
18 18 of the General Schedule.

19 **SEC. 507. SUPPORT SERVICES.**

20 (a) GENERAL SERVICES.—To the extent permitted by  
21 law and requested by the Chairman, the Administrator of  
22 General Services shall provide the Board with necessary  
23 administrative services, facilities, and support on a reim-  
24 bursable basis.

1 (b) ACCOUNTING, RESEARCH, AND TECHNOLOGY AS-  
2 SESSMENT SERVICES.—The Comptroller General, the Li-  
3 brarian of Congress, and the Director of the Office of  
4 Technology Assessment shall, to the extent permitted by  
5 law and subject to the availability of funds, provide the  
6 Board with such facilities, support, funds and services, in-  
7 cluding staff, as may be necessary for the effective per-  
8 formance of the functions of the Board.

9 (c) ADDITIONAL SUPPORT.—Upon the request of the  
10 Chairman, the Board may secure directly from the head  
11 of any department or agency of the United States informa-  
12 tion necessary to enable it to carry out this title.

13 (d) MAILS.—The Board may use the United States  
14 mails in the same manner and under the same conditions  
15 as other departments and agencies of the United States.

16 (e) EXPERTS AND CONSULTANTS.—Subject to such  
17 rules as may be prescribed by the Board, the Chairman  
18 may procure temporary and intermittent services under  
19 section 3109(b) of title 5 of the United States Code, but  
20 at rates for individuals not to exceed the daily equivalent  
21 of the maximum annual rate of basic pay payable for GS-  
22 18 of the General Schedule.

23 **SEC. 508. REPORT.**

24 The Board shall report not less than 2 times per year  
25 to Congress and the Secretary its findings, conclusions,

1 and recommendations. The first such report shall be sub-  
2 mitted not later than 12 months after December 22, 1987.

3 **SEC. 509. AUTHORIZATION OF APPROPRIATIONS.**

4 Notwithstanding subsection (d) of section 302, and  
5 subject to subsection (e) of such section, there are author-  
6 ized to be appropriated for expenditures from amounts in  
7 the Waste Fund established in subsection (c) of such sec-  
8 tion such sums as may be necessary to carry out the provi-  
9 sions of this title.

10 **SEC. 510. TERMINATION OF THE BOARD.**

11 The Board shall cease to exist not later than 1 year  
12 after the date on which the Secretary begins disposal of  
13 high-level radioactive waste or spent nuclear fuel in the  
14 repository.

○

S 167 IS—2

S 167 IS—3

S 167 IS—4

S 167 IS—5