

109TH CONGRESS  
2D SESSION

# S. 3962

To enhance the management and disposal of spent nuclear fuel and high-level radioactive waste, to assure protection of public health and safety, to ensure the territorial integrity and security of the repository at Yucca Mountain, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 27, 2006

Mr. DOMENICI (for himself and Mr. CRAIG) 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 enhance the management and disposal of spent nuclear fuel and high-level radioactive waste, to assure protection of public health and safety, to ensure the territorial integrity and security of the repository at Yucca Mountain, and for other purposes.

1       *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

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

6 **SEC. 2. DEFINITIONS.**

7       In this Act:

10 (4) REPOSITORY.—The term “repository” has  
11 the meaning given the term in section 2 of the Nu-  
12 clear Waste Policy Act of 1982 (42 U.S.C. 10101).

15 (6) SPENT NUCLEAR FUEL.—The term “spent  
16 nuclear fuel” has the meaning given the term in sec-  
17 tion 2 of the Nuclear Waste Policy Act of 1982 (42  
18 U.S.C. 10101).

### 23 SEC. 3. WITHDRAWAL OF LAND.

24 (a) LAND WITHDRAWAL; JURISDICTION; RESERVA-  
25 TION; ACQUISITION.—

- 7 (A) the mineral leasing laws;
- 8 (B) the geothermal leasing laws;
- 9 (C) materials sales laws; and
- 10 (D) the mining laws.

16 (A) transferred to the Secretary; and  
17 (B) under the jurisdiction of the Secretary.

24 (A) development;

12 (b) LAND DESCRIPTION.—

19 (2) LEGAL DESCRIPTION AND MAP.—

20 (A) IN GENERAL.—As soon as practicable  
21 after the date of enactment of this Act, the Sec-  
22 retary of the Interior shall—

23 (i) publish in the Federal Register a  
24 notice containing a legal description of the  
25 land described in this subsection; and

1 (ii) provide to Congress, the Governor  
2 of the State of Nevada, and the Archivist  
3 of the United States—

## 8 (B) TREATMENT.—

19 (c) REVOCATIONS.—

20 (1) PUBLIC LAND ORDER.—Public Land Order  
21 6802, dated September 25, 1990 (as extended by  
22 Public Land Order 7534), and any condition or  
23 memorandum of understanding accompanying the  
24 land order (as so extended), is revoked.

5 (d) MANAGEMENT OF WITHDRAWN LAND.—

15 (2) MANAGEMENT PLAN.—

16 (A) DEVELOPMENT.—Not later than 3  
17 years after the date of enactment of this Act,  
18 the Secretary, in consultation with the Sec-  
19 retary of the Air Force and the Secretary of the  
20 Interior, as appropriate, shall develop and sub-  
21 mit to Congress and the State of Nevada a  
22 management plan for the use of the land with-  
23 drawn under subsection (a)(1).

24 (B) PRIORITY.—Subject to subparagraphs  
25 (C), (D), and (E), use of the land withdrawn

1           under subsection (a)(1) for an activity not re-  
2           lating to the Project shall be subject to such  
3           conditions and restrictions as the Secretary con-  
4           siders to be appropriate to facilitate activities  
5           relating to the Project.

6           (C) AIR FORCE USE.—The management  
7           plan may provide for the continued use by the  
8           Department of the Air Force of the portion of  
9           the land withdrawn under subsection (a)(1) lo-  
10           cated within the Nellis Air Force base test and  
11           training range under such terms and conditions  
12           as may be agreed to by the Secretary and the  
13           Secretary of the Air Force.

14           (D) NEVADA TEST SITE USE.—The man-  
15           agement plan may provide for the continued use  
16           by the National Nuclear Security Administra-  
17           tion of the portion of the land withdrawn under  
18           subsection (a)(1) located within the Nevada test  
19           site of the Administration under such condi-  
20           tions as the Secretary considers to be necessary  
21           to minimize any effect on activities relating to  
22           the Project or other activities of the Adminis-  
23           tration.

24           (E) OTHER USES.—

1 (i) IN GENERAL.—The management  
2 plan shall include provisions—

3 (I) relating to the maintenance of  
4 wildlife habitat on the land withdrawn  
5 under subsection (a)(1); and

6 (II) under which the Secretary  
7 may permit any use not relating to  
8 the Project, as the Secretary considers  
9 to be appropriate, in accordance with  
10 the requirements under clause (ii).

## 11 (ii) REQUIREMENTS.—

12 (I) GRAZING.—The Secretary  
13 may permit any grazing use to con-  
14 tinue on the land withdrawn under  
15 subsection (a)(1) if the grazing use  
16 was established before the date of en-  
17 actment of this Act, subject to such  
18 regulations, policies, and practices as  
19 the Secretary, in consultation with the  
20 Secretary of the Interior, determines  
21 to be appropriate, and in accordance  
22 with applicable grazing laws and poli-  
23 cies, including—

24 (aa) the Act of June 28,  
25 1934 (commonly known as the

3 (bb) title IV of the Federal  
4 Land Policy Management Act of  
5 1976 (43 U.S.C. 1751 et seq.);  
6 and

7 (cc) the Public Rangelands  
8 Improvement Act of 1978 (43  
9 U.S.C. 1901 et seq.).

10 (II) HUNTING AND TRAPPING.—  
11 The Secretary may permit any hunt-  
12 ing or trapping use to continue on the  
13 land withdrawn under subsection  
14 (a)(1) if the hunting or trapping use  
15 was established before the date of en-  
16 actment of this Act, at such time and  
17 in such zones as the Secretary, in con-  
18 sultation with the Secretary of the In-  
19 terior and the State of Nevada, may  
20 establish, taking into consideration  
21 public safety, national security, ad-  
22 ministration, and public use and en-  
23 joyment of the land.

24 (F) PUBLIC ACCESS.—

1 (i) IN GENERAL.—The management  
2 plan may provide for limited public access  
3 to the portion of the land withdrawn under  
4 subsection (a)(1) that was under the con-  
5 trol of the Bureau of Land Management  
6 on the day before the date of enactment of  
7 this Act.

17 (3) MINING.—

23 (B) EVALUATION OF CLAIMS.—The Sec-  
24 retary of the Interior shall evaluate and adju-  
25 dicate the validity of any mining claim relating

1           to any portion of the land withdrawn under  
2           subsection (a)(1) that was under the control of  
3           the Bureau of Land Management on the day  
4           before the date of enactment of this Act.

5           (C) COMPENSATION.—The Secretary shall  
6           provide just compensation for the acquisition of  
7           any valid property right relating to mining pur-  
8           suant to the withdrawal under subsection  
9           (a)(1).

10          (4) CLOSURES.—If the Secretary, in consulta-  
11          tion with the Secretary of the Air Force and the  
12          Secretary of the Interior, as appropriate, determines  
13          that the health and safety of the public or the na-  
14          tional defense and security require the closure of a  
15          road, trail, or other portion of the land withdrawn  
16          under subsection (a)(1) (including the airspace  
17          above the land), the Secretary—

18           (A) may close the road, trail, or portion of  
19           land (including airspace); and

20           (B) shall provide to the public a notice of  
21           the closure.

22          (5) IMPLEMENTATION.—The Secretary and the  
23          Secretary of the Air Force or the Secretary of the  
24          Interior, as appropriate, shall implement the man-  
25          agement plan developed under paragraph (2) under

1       such terms and conditions as may be agreed to by  
2       the Secretaries.

3 **SEC. 4. RECEIPT AND STORAGE FACILITIES.**

4       Section 114(b) of the Nuclear Waste Policy Act of  
5 1982 (42 U.S.C. 10134(b)) is amended—

6               (1) by striking “If the President” and inserting  
7       the following:

8               “(1) IN GENERAL.—If the President”; and

9               (2) by adding at the end the following:

10               “(2) APPLICATION FOR RECEIPT AND STORAGE  
11       FACILITIES.—

12               “(A) IN GENERAL.—In conjunction with  
13       the submission of an application for a construc-  
14       tion authorization under this subsection, the  
15       Secretary shall apply to the Commission for a  
16       license in accordance with part 72 of title 10,  
17       Code of Federal Regulations (or a successor  
18       regulation), to construct and operate facilities  
19       to receive and store spent nuclear fuel and  
20       high-level radioactive waste at the Yucca Moun-  
21       tain site.

22               “(B) DEADLINE FOR FINAL DECISION BY  
23       COMMISSION.—The Commission shall issue a  
24       final decision approving or disapproving the  
25       issuance of the license not later than 18 months

1                   after the date of submission of the application  
2                   to the Commission.”.

3 **SEC. 5. REPEAL OF CAPACITY LIMITATION.**

4                   Section 114(d) of the Nuclear Waste Policy Act of  
5 1982 (42 U.S.C. 10134(d)) is amended by striking the  
6 second and third sentences.

7 **SEC. 6. INFRASTRUCTURE ACTIVITIES.**

8                   Section 114 of the Nuclear Waste Policy Act of 1982  
9 (42 U.S.C. 10134) is amended by adding at the end the  
10 following:

11                 “(g) INFRASTRUCTURE ACTIVITIES.—

12                 “(1) CONSTRUCTION OF CONNECTED FACILI-  
13 TIES.—At any time after the completion by the Sec-  
14 retary of a final environmental impact statement  
15 that evaluates the activities to be performed under  
16 this subsection, the Secretary may commence the  
17 following activities in connection with any activity or  
18 facility licensed or to be licensed by the Commission  
19 at the Yucca Mountain site:

20                 “(A) Preparation of the site for construc-  
21 tion of the facility (including such activities as  
22 clearing, grading, and construction of tem-  
23 porary access roads and borrow areas).

24                 “(B) Installation of temporary construc-  
25 tion support facilities (including such items as

1           warehouse and shop facilities, utilities, concrete  
2           mixing plants, docking and unloading facilities,  
3           and construction support buildings).

4           “(C) Excavation for facility structures.

5           “(D) Construction of service facilities (in-  
6           cluding such facilities as roadways, paving, rail-  
7           road spurs, fencing, exterior utility and lighting  
8           systems, transmission lines, and sanitary sewer-  
9           age treatment facilities).

10           “(E) Construction of structures, systems,  
11           and components that do not prevent or mitigate  
12           the consequences of possible accidents that  
13           could cause undue risk to the health and safety  
14           of the public.

15           “(F) Installation of structural foundations  
16           (including any necessary subsurface prepara-  
17           tion) for structures, systems, and components  
18           that prevent or mitigate the consequences of  
19           possible accidents that could cause undue risk  
20           to the health and safety of the public.

21           “(2) AUTHORIZATION TO RECEIVE AND  
22           STORE.—

23           “(A) DEFINITIONS.—In this paragraph:

24           “(i) DEFENSE WASTE.—The term ‘de-  
25           fense waste’ means high-level radioactive

1 waste, and spent nuclear fuel, that results  
2 from an atomic energy defense activity.

16                   “(B) AUTHORIZATION FOR DEFENSE  
17                   WASTE.—At any time after the issuance of a li-  
18                   cense for receipt and storage facilities under  
19                   subsection (b)(2), the Secretary may transport  
20                   defense waste to receipt and storage facilities at  
21                   the Yucca Mountain site.

1           receipt and storage facilities under subsection  
2           (b)(2), the Secretary may receive and store leg-  
3           acy spent nuclear fuel and high-level radioactive  
4           waste at the Yucca Mountain site.”.

5 **SEC. 7. RAIL LINE.**

6           (a) CONSTRUCTION OF RAIL LINE.—The Secretary  
7   shall acquire rights-of-way within the corridor designated  
8   in subsection (b) in accordance with this section, and shall  
9   construct and operate, or cause to be constructed and op-  
10   erated, a railroad and such facilities as are required to  
11   transport spent nuclear fuel and high-level radioactive  
12   waste from existing rail systems to the site of surface fa-  
13   cilities within the geologic repository operations area for  
14   the receipt, handling, packaging, and storage of spent nu-  
15   clear fuel and high-level radioactive waste prior to em-  
16   placement.

17           (b) ACQUISITION AND WITHDRAWAL OF LAND.—

18           (1) ROUTE DESIGNATION AND ACQUISITION.—  
19                   (A) RIGHTS-OF-WAY AND FACILITIES.—  
20           The Secretary shall acquire such rights-of-way  
21           and develop such facilities within the corridor  
22           referred to as “X” on the map dated [      ]  
23           and on file with the Secretary as are necessary  
24           to carry out subsection (a).

7 (C) NOTICE AND DESCRIPTION.—Not later  
8 than 180 days after the date of enactment of  
9 this section, the Secretary shall—

10 (i) publish in the Federal Register a  
11 notice containing a legal description of the  
12 corridor; and

13 (ii) file copies of the map referred to  
14 in paragraph (1) and the legal description  
15 of the corridor with—

16 (I) Congress;  
17 (II) the Secretary of the Interior;  
18 (III) the Governor of the State of  
19 Nevada;

20 (IV) the Board of County Com-  
21 missioners of Lincoln County, Ne-  
22 vada;

23 (V) the Board of County Com-  
24 missioners of Nye County, Nevada;  
25 and

1 (VI) the Archivist of the United  
2 States.

3 (D) ADMINISTRATION.—

4 (i) EFFECT.—The map and legal de-  
5 scription referred to in subparagraph (C)  
6 shall have the same force and effect as if  
7 the map and legal description were in-  
8 cluded in this Act.

14 (2) WITHDRAWAL AND RESERVATION.—

15 (A) PUBLIC LAND.—Subject to valid exist-  
16 ing rights, the public land depicted on the map  
17 referred to in paragraph (1)(C) is withdrawn  
18 from all forms of entry, appropriation, and dis-  
19 posal under the public land laws, including the  
20 mineral leasing laws, the geothermal laws, the  
21 material sale laws, and the mining laws.

22 (B) ADMINISTRATIVE JURISDICTION.—Ad-  
23 ministrative jurisdiction over the land is trans-  
24 ferred from the Secretary of the Interior to the  
25 Secretary.

7 (D) MEMORANDUM OF UNDER-  
8 STANDING.—The Secretary may also enter into  
9 a memorandum of understanding with the head  
10 of any other agency having administrative juris-  
11 diction over other Federal land used for pur-  
12 poses of the corridor referred to in paragraph  
13 (1)(A).

#### 14 (c) ENVIRONMENTAL IMPACT.—

1       an environmental impact statement prepared under  
2       this section.

3                   (3) EFFECT OF ADOPTION OF STATEMENT.—  
4       The adoption by a Federal agency of an environ-  
5       mental impact statement under paragraph (2) shall  
6       be considered to satisfy the responsibilities of the  
7       Federal agency under the National Environmental  
8       Policy Act of 1969 (42 U.S.C. 4321 et seq.), and no  
9       further consideration under that Act shall be re-  
10       quired by the Federal agency.

11 **SEC. 8. NEW PLANT CONTRACTS.**

12       Section 302(a) of the Nuclear Waste Policy Act of  
13       1982 (42 U.S.C. 10222(a)) is amended by striking para-  
14       graph (5) and inserting the following—

15                   “(5) REQUIRED PROVISIONS.—

16                   “(A) IN GENERAL.—Except as provided in  
17                   subparagraph (B), any contract entered into  
18                   under this section shall provide that—

19                   “(i) following issuance of a license to  
20                   construct and operate facilities to receive  
21                   and store spent nuclear fuel at the Yucca  
22                   Mountain site, the Secretary shall take  
23                   title to the high-level radioactive waste or  
24                   spent nuclear fuel involved as expeditiously  
25                   as practicable upon the request of the gen-

1 erator or owner of such waste or spent  
2 fuel; and

3 “(ii) in return for the payment of fees  
4 established by this section, the Secretary,  
5 beginning not later than January 31,  
6 1998, shall dispose of the high-level radio-  
7 active waste or spent nuclear fuel involved  
8 as provided in this subtitle.

9 “(B) EXCEPTION.—Notwithstanding sub-  
10 paragraph (A), with respect to a nuclear power  
11 facility for which a license application is filed  
12 with the Commission after January 1, 2007,  
13 under section 103 or 104 of the Atomic Energy  
14 Act of 1954 (42 U.S.C. 2133, 2134), a contract  
15 entered into under this section shall—

16 “(i) except as provided in clause (ii)  
17 and any terms and conditions relating to  
18 spent nuclear fuel generated before the  
19 date of enactment of the Nuclear Fuel  
20 Management and Disposal Act, be con-  
21 sistent with the terms and conditions of  
22 the contract entitled ‘Contract for Disposal  
23 of Spent Nuclear Fuel and/or High-Level  
24 Radioactive Waste’ that is included in sec-  
25 tion 961.11 of title 10 of the Code of Fed-

#### 14 SEC. 9. NUCLEAR WASTE FUND.

15 (a) BUDGET ACT ALLOCATIONS.—Effective for fiscal  
16 year 2007 and each fiscal year thereafter, funds appro-  
17 priated from the Nuclear Waste Fund established under  
18 section 302 of the Nuclear Waste Policy Act of 1982 (42  
19 U.S.C. 10222) shall not be subject to—

20 (1) the allocations for discretionary spending  
21 under section 302(a) of the Congressional Budget  
22 Act of 1974 (2 U.S.C. 633(a)); or

23 (2) the suballocations of appropriations commit-  
24 tees under section 302(b) of that Act.

1       (b) FUND USES.—Section 302(d)(4) of the Nuclear  
2 Waste Policy Act of 1982 (42 U.S.C. 10222(d)(4)) is  
3 amended by striking “with” and all that follows through  
4 “storage site” and inserting “with surface facilities within  
5 the geologic repository operations area (including surface  
6 facilities for the receipt, handling, packaging, and storage  
7 of spent nuclear fuel and high-level radioactive waste prior  
8 to emplacement, or transportation to the repository of  
9 spent nuclear fuel or high-level radioactive waste to sur-  
10 face facilities for the receipt, handling, packaging, and  
11 storage of spent nuclear fuel and high-level radioactive  
12 waste prior to emplacement and the transportation, treat-  
13 ing, or packaging of spent nuclear fuel or high-level radio-  
14 active waste to be disposed of in the repository, to be  
15 stored in a monitored retrievable storage site),”.

16       (c) BUDGET NEUTRALITY.—As soon as practicable  
17 after the date of enactment of this Act, the Chairperson  
18 of the Committee on the Budget of the House of Rep-  
19 resentatives and the Chairperson of the Committee on  
20 Budget of the Senate shall make adjustments in the allo-  
21 cation of new budget authority to the appropriate commit-  
22 tees in amounts equal to the fees reclassified by subsection  
23 (a).

1 **SEC. 10. WASTE CONFIDENCE.**

2 For purposes of a determination by the Nuclear Reg-  
3 ulatory Commission on whether to grant or amend any  
4 license to operate any civilian nuclear power reactor or  
5 high-level radioactive waste or spent fuel storage or treat-  
6 ment facility under the Atomic Energy Act of 1954 (42  
7 U.S.C. 2011 et seq.), the provisions of this Act (including  
8 the amendments made by this Act) and the obligation of  
9 the Secretary to develop a repository in accordance with  
10 the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101  
11 et seq.), shall provide sufficient and independent grounds  
12 for any further findings by the Nuclear Regulatory Com-  
13 mission of reasonable assurances that spent nuclear fuel  
14 and high-level radioactive waste would be disposed of safe-  
15 ly and in a timely manner.

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