

AMENDMENT TO _____
OFFERED BY MR. SHIMKUS OF ILLINOIS

At the end, add the following:

1 **DIVISION C—NUCLEAR WASTE**
2 **POLICY ACT AMENDMENTS**

3 **SEC. 101. SHORT TITLE.**

4 This division may be cited as the “Nuclear Waste
5 Policy Amendments Act of 2018”.

6 **SEC. 102. APPLICATION PROCEDURES.**

7 (a) STATUS REPORT ON APPLICATION.—Section
8 114(c) of the Nuclear Waste Policy Act of 1982 (42
9 U.S.C. 10134(c)) is amended by striking “the date on
10 which such authorization is granted” and inserting “the
11 date on which the Commission issues a final decision ap-
12 proving or disapproving such application”.

13 (b) APPLICATION PROCEDURES AND INFRASTRUC-
14 TURE ACTIVITIES.—Section 114(d) of the Nuclear Waste
15 Policy Act of 1982 (42 U.S.C. 10134(d)) is amended by
16 striking “the expiration of 3 years after the date of the
17 submission of such application” and inserting “30 months
18 after the date of enactment of the Nuclear Waste Policy
19 Amendments Act of 2018”.

1 **SEC. 103. TITLE TO MATERIAL.**

2 Section 123 of the Nuclear Waste Policy Act of 1982
3 (42 U.S.C. 10143) is amended—

4 (1) by striking “Delivery” and inserting “(a) IN
5 GENERAL.—Delivery”;

6 (2) by striking “repository constructed under
7 this subtitle” and inserting “repository or monitored
8 retrievable storage facility”; and

9 (3) by adding at the end the following new sub-
10 section:

11 “(b) CONTRACT MODIFICATION.—The Secretary may
12 enter into new contracts or negotiate modifications to ex-
13 isting contracts, with any person who generates or holds
14 title to high-level radioactive waste or spent nuclear fuel
15 of domestic origin, for acceptance of title, subsequent
16 transportation, and storage of such high-level radioactive
17 waste or spent nuclear fuel (including to expedite such ac-
18 ceptance of title, transportation, and storage of such waste
19 or fuel from facilities that have ceased commercial oper-
20 ation) at a monitored retrievable storage facility author-
21 ized under subtitle C.”.

22 **SEC. 104. MONITORED RETRIEVABLE STORAGE.**

23 (a) PROPOSAL.—Section 141(b) of the Nuclear
24 Waste Policy Act of 1982 (42 U.S.C. 10161(b)) is amend-
25 ed—

26 (1) in paragraph (1)—

1 (A) by striking “1985” and inserting
2 “2019”; and

3 (B) by striking “the construction of”;
4 (2) in paragraph (2)—

5 (A) by amending subparagraph (C) to read
6 as follows:

7 “(C) designs, specifications, and cost estimates
8 sufficient to—

9 “(i) solicit bids for the construction of one
10 or more such facilities; and

11 “(ii) enable completion and operation of
12 such a facility as soon as practicable;”;

13 (B) in subparagraph (D), by striking “this
14 Act.” and inserting “this Act; and”; and

15 (C) by adding at the end the following:

16 “(E) options to enter into MRS agreements
17 with respect to one or more monitored retrievable
18 storage facilities.”; and

19 (3) by amending paragraph (4) to read as fol-
20 lows:

21 “(4) The Secretary shall, not later than 90 days after
22 the date of enactment of the Nuclear Waste Policy
23 Amendments Act of 2018, publish a request for informa-
24 tion to help the Secretary evaluate options for the Sec-

1 retary to enter into MRS agreements with respect to one
2 or more monitored retrievable storage facilities.”.

3 (b) ADDITIONAL AMENDMENTS.—

4 (1) IN GENERAL.—Section 141 of the Nuclear
5 Waste Policy Act of 1982 (42 U.S.C. 10161) is fur-
6 ther amended—

7 (A) in subsection (c)(2)—

8 (i) by striking “If the Congress” and
9 all that follows through “monitored retriev-
10 able storage facility, the” and inserting
11 “The”; and

12 (ii) by striking “construction of such
13 facility” and inserting “construction of a
14 monitored retrievable storage facility”; and

15 (B) by striking subsections (d) through
16 (h).

17 (2) DEFINITIONS.—Section 2 of the Nuclear
18 Waste Policy Act of 1982 (42 U.S.C. 10101) is
19 amended—

20 (A) in paragraph (34), by striking “the
21 storage facility” and inserting “a storage facil-
22 ity”; and

23 (B) by adding at the end the following:

24 “(35) The term ‘MRS agreement’ means a co-
25 operative agreement, contract, or other mechanism

1 that the Secretary considers appropriate to support
2 the storage of Department-owned civilian waste in
3 one or more monitored retrievable storage facilities
4 as authorized under section 142(b)(2).

5 “(36) The term ‘Department-owned civilian
6 waste’ means high-level radioactive waste, or spent
7 nuclear fuel, resulting from civilian nuclear activi-
8 ties, to which the Department holds title.”.

9 (3) TECHNICAL AMENDMENTS.—Section 146 of
10 the Nuclear Waste Policy Act of 1982 (42 U.S.C.
11 10166) is amended—

12 (A) in subsection (a), by striking “such
13 subsection” and inserting “subsection (f) of
14 such section”; and

15 (B) in subsection (b), by striking “this
16 subsection” and inserting “this section”.

17 **SEC. 105. AUTHORIZATION AND PRIORITY.**

18 Section 142 of the Nuclear Waste Policy Act of 1982
19 (42 U.S.C. 10162) is amended by striking subsection (b)
20 and inserting the following:

21 “(b) AUTHORIZATION.—Subject to the requirements
22 of this subtitle, the Secretary is authorized to—

23 “(1) site, construct, and operate one or more
24 monitored retrievable storage facilities; and

1 “(2) store, pursuant to an MRS agreement, De-
2 partment-owned civilian waste at a monitored re-
3 trievable storage facility for which a non-Federal en-
4 tity holds a license described in section 143(1).

5 “(c) PRIORITY.—

6 “(1) IN GENERAL.—Except as provided in para-
7 graph (2), the Secretary shall prioritize storage of
8 Department-owned civilian waste at a monitored re-
9 trievable storage facility authorized under subsection
10 (b)(2).

11 “(2) EXCEPTION.—

12 “(A) DETERMINATION.—Paragraph (1)
13 shall not apply if the Secretary determines that
14 it will be faster and less expensive to site, con-
15 struct, and operate a facility authorized under
16 subsection (b)(1), in comparison to a facility
17 authorized under subsection (b)(2).

18 “(B) NOTIFICATION.—Not later than 30
19 days after the Secretary makes a determination
20 described in subparagraph (A), the Secretary
21 shall submit to Congress written notification of
22 such determination.”.

1 **SEC. 106. CONDITIONS FOR MRS AGREEMENTS.**

2 (a) AMENDMENT.—Section 143 of the Nuclear Waste
3 Policy Act of 1982 (42 U.S.C. 10163) is amended to read
4 as follows:

5 **“SEC. 143. CONDITIONS FOR MRS AGREEMENTS.**

6 “(a) IN GENERAL.—The Secretary may not enter
7 into an MRS agreement under section 142(b)(2) unless—

8 “(1) the monitored retrievable storage facility
9 with respect to which the MRS agreement applies
10 has been licensed by the Commission under the
11 Atomic Energy Act of 1954 (42 U.S.C. 2011 et
12 seq.);

13 “(2) the non-Federal entity that is a party to
14 the MRS agreement has approval to store Depart-
15 ment-owned civilian waste at such facility from each
16 of—

17 “(A) the Governor of the State in which
18 the facility is located;

19 “(B) any unit of general local government
20 with jurisdiction over the area in which the fa-
21 cility is located; and

22 “(C) any affected Indian tribe;

23 “(3) except as provided in subsection (b), the
24 Commission has issued a final repository decision;
25 and

1 “(4) the MRS agreement provides that the
2 quantity of high-level radioactive waste and spent
3 nuclear fuel at the site of the facility at any one
4 time will not exceed the limits described in section
5 148(d)(3) and (4).

6 “(b) INITIAL AGREEMENT.—

7 “(1) AUTHORIZATION.—The Secretary may
8 enter into one MRS agreement under section
9 142(b)(2) before the Commission has issued a final
10 repository decision.

11 “(2) FUNDING.—There are authorized to be ap-
12 propriated to carry out this subsection—

13 “(A) for each of fiscal years 2020 through
14 2022, the greater of—

15 “(i) \$50,000,000; or

16 “(ii) the amount that is equal to 10
17 percent of the amounts appropriated from
18 the Waste Fund in that fiscal year; and

19 “(B) for each of fiscal years 2023 through
20 2025, the amount that is equal to 10 percent
21 of the amounts appropriated from the Waste
22 Fund in that fiscal year.

23 “(3) PRIORITY.—

24 “(A) IN GENERAL.—An MRS agreement
25 entered into pursuant to paragraph (1) shall, to

1 the extent allowable under this Act (including
2 under the terms of the standard contract estab-
3 lished in section 961.11 of title 10, Code of
4 Federal Regulations), provide for prioritization
5 of the storage of Department-owned civilian
6 waste that originated from any facility that—

7 “(i) has ceased commercial operation;

8 and

9 “(ii) is located in—

10 “(I) an area that is of high seis-
11 micity; and

12 “(II) close proximity to a major
13 body of water.

14 “(B) NO EFFECT ON STANDARD CON-
15 TRACT.—Nothing in subparagraph (A) shall be
16 construed to amend or otherwise alter the
17 standard contract established in section 961.11
18 of title 10, Code of Federal Regulations.

19 “(4) CONDITIONS.—

20 “(A) NO STORAGE.—Except as provided in
21 subparagraph (B), the Secretary may not store
22 any Department-owned civilian waste at the ini-
23 tial MRS facility until the Commission has
24 issued a final repository decision.

25 “(B) EXCEPTION.—

1 “(i) FINDING.—The Secretary may
2 make a finding that a final repository deci-
3 sion is imminent, which finding shall be
4 updated not less often than quarterly until
5 the date on which the Commission issues a
6 final repository decision.

7 “(ii) STORAGE.—If the Secretary
8 makes a finding under clause (i), the Sec-
9 retary may store Department-owned civil-
10 ian waste at the initial MRS facility in ac-
11 cordance with this section.

12 “(iii) NOTICE.—Not later than 7 days
13 after the Secretary makes or updates a
14 finding under clause (i), the Secretary
15 shall submit to Congress written notifica-
16 tion of such finding.

17 “(iv) REPORTING.—In addition to the
18 requirements of section 114(c), if the Sec-
19 retary makes a finding under clause (i),
20 the Secretary shall submit to Congress the
21 report described in such section 114(c) not
22 later than 1 month after the Secretary
23 makes such finding and monthly thereafter
24 until the date on which the Commission
25 issues a final repository decision.

1 “(C) NO EFFECT ON FEDERAL DISPOSAL
2 POLICY.—Nothing in this subsection affects the
3 Federal responsibility for the disposal of high-
4 level radioactive waste and spent nuclear fuel,
5 or the definite Federal policy with regard to the
6 disposal of such waste and spent fuel, estab-
7 lished under subtitle A, as described in section
8 111(b).

9 “(c) DEFINITIONS.—For purposes of this section:

10 “(1) FINAL REPOSITORY DECISION.—The term
11 ‘final repository decision’ means a final decision ap-
12 proving or disapproving the issuance of a construc-
13 tion authorization for a repository under section
14 114(d).

15 “(2) INITIAL MRS FACILITY.—The term ‘initial
16 MRS facility’ means the monitored retrievable stor-
17 age facility with respect to which an MRS agreement
18 is entered into pursuant to subsection (b)(1).”.

19 (b) CONFORMING AMENDMENT.—The item relating
20 to section 143 in the table of contents for the Nuclear
21 Waste Policy Act of 1982 is amended to read as follows:

“Sec. 143. Conditions for MRS agreements.”.

22 **SEC. 107. SURVEY.**

23 Section 144 of the Nuclear Waste Policy Act of 1982
24 (42 U.S.C. 10164) is amended—

1 (1) by striking “After the MRS Commission
2 submits its report to the Congress under section
3 143, the” and inserting “(a) IN GENERAL.—The”;

4 (2) in the matter preceding paragraph (1), by
5 striking “for a monitored retrievable storage facil-
6 ity” and inserting “for any monitored retrievable
7 storage facility authorized under section 142”;

8 (3) in paragraph (6), by striking “; and” and
9 inserting a semicolon;

10 (4) in paragraph (7), by striking the period at
11 the end and inserting “; and”; and

12 (5) by adding after paragraph (7) the following:

13 “(8) be acceptable to State authorities, affected
14 units of local government, and affected Indian
15 tribes.

16 “(b) REQUEST FOR PROPOSALS.—The Secretary
17 shall issue a request for proposals for an MRS agreement
18 authorized under section 142(b)(2) before conducting a
19 survey and evaluation under subsection (a), and shall con-
20 sider any proposals received in response to such request
21 in making the evaluation.”.

22 **SEC. 108. SITE SELECTION.**

23 Section 145 of the Nuclear Waste Policy Act of 1982
24 (42 U.S.C. 10165) is amended—

25 (1) in subsection (a)—

- 1 (A) by striking “select the site evaluated”
2 and inserting “select a site evaluated”;
3 (B) by striking “the most”; and
4 (C) by inserting “authorized under section
5 142(b)(1)” after “monitored retrievable storage
6 facility”; and
7 (2) by striking subsection (g).

8 **SEC. 109. BENEFITS AGREEMENT.**

9 Section 147 of the Nuclear Waste Policy Act of 1982
10 (42 U.S.C. 10167) is amended—

11 (1) by inserting “the Secretary intends to con-
12 struct and operate under section 142(b)(1)” after
13 “storage facility”; and

14 (2) by inserting “or once a non-Federal entity
15 enters into an MRS agreement under section
16 142(b)(2),” after “section 145,”.

17 **SEC. 110. LICENSING.**

18 (a) REVIEW OF LICENSE APPLICATION.—Section
19 148(c) of the Nuclear Waste Policy Act of 1982 (42
20 U.S.C. 10168(c)) is amended by striking “section 142(b)”
21 and inserting “section 142(b)(1)”.

22 (b) LICENSING CONDITIONS.—Section 148(d) of the
23 Nuclear Waste Policy Act of 1982 (42 U.S.C. 10168(d))
24 is amended—

1 (1) in paragraph (1), by striking “has issued a
2 license for the construction of a repository under
3 section 115(d)” and inserting “has issued a final de-
4 cision approving or disapproving the issuance of a
5 construction authorization for a repository under
6 section 114(d)”; and

7 (2) in paragraph (2), by striking “or construc-
8 tion of the repository ceases”.

9 **SEC. 111. FINANCIAL ASSISTANCE.**

10 Section 149 of the Nuclear Waste Policy Act of 1982
11 is amended by inserting “authorized under section
12 142(b)(1)” after “a monitored retrievable storage facil-
13 ity”.

14 **SEC. 112. ASSESSMENT AND COLLECTION OF FEES.**

15 (a) IN GENERAL.—Section 302(a)(4) of the Nuclear
16 Waste Policy Act of 1982 (42 U.S.C. 10222(a)(4)) is
17 amended—

18 (1) in the first sentence—

19 (A) by striking “(4) Not later than” and
20 inserting the following:

21 “(4) ASSESSMENT, COLLECTION, AND PAYMENT
22 OF FEES.—

23 “(A) ASSESSMENT OF FEES.—Not later
24 than”;

1 (B) by striking “the date of enactment of
2 this Act” and inserting “the date of enactment
3 of the Nuclear Waste Policy Amendments Act
4 of 2018”; and

5 (C) by striking “collection and payment”
6 and inserting “assessment”;

7 (2) in the second sentence, by striking “collec-
8 tion of the fee” and inserting “such amount”;

9 (3) in the third sentence, by striking “are being
10 collected” and inserting “will result from such
11 amounts”;

12 (4) in the fifth sentence, by striking “a period
13 of 90 days of continuous session” and all that fol-
14 lows through the period at the end and inserting
15 “the date that is 180 days after the date of such
16 transmittal.”; and

17 (5) by adding at the end the following:

18 “(B) COLLECTION AND PAYMENT OF
19 FEES.—

20 “(i) IN GENERAL.—Not later than
21 180 days after the date of enactment of
22 Nuclear Waste Policy Amendments Act of
23 2018, the Secretary shall establish proce-
24 dures for the collection and payment of the
25 fees established by paragraph (2) and

1 paragraph (3), or adjusted pursuant to
2 subparagraph (A).

3 “(ii) LIMITATION ON COLLECTION.—
4 The Secretary may not collect a fee estab-
5 lished under paragraph (2), including a fee
6 established under paragraph (2) and ad-
7 justed pursuant to subparagraph (A)—

8 “(I) until the date on which the
9 Commission issues a final decision ap-
10 proving or disapproving the issuance
11 of a construction authorization for a
12 repository under section 114(d); and

13 “(II) after such date, in an
14 amount that will cause the total
15 amount of fees collected under this
16 subsection in any fiscal year to exceed
17 90 percent of the amounts appro-
18 priated for that fiscal year for pur-
19 poses described in subsection (d).

20 The limitation in subclause (II) shall not
21 apply during a fiscal year if, at any time
22 during that fiscal year, the Waste Fund
23 has a balance of zero.

24 “(iii) PAYMENT OF FULL AMOUNTS.—
25 Notwithstanding the noncollection of a fee

1 by the Secretary pursuant to clause (ii) in
2 any fiscal year, a person who has entered
3 into a contract with the Secretary under
4 this subsection shall pay any uncollected
5 amounts when determined necessary by the
6 Secretary, subject to clause (ii), for pur-
7 poses described in subsection (d).”.

8 (b) **AUTHORITY TO MODIFY CONTRACTS.**—The Sec-
9 retary of Energy may seek to modify a contract entered
10 into under section 302(a) of the Nuclear Waste Policy Act
11 of 1982 (42 U.S.C. 10222(a)) before the date of enact-
12 ment of this Act to ensure that the contract complies with
13 the provisions of such section, as amended by this Act.

14 (c) **TECHNICAL AND CONFORMING AMENDMENTS.**—
15 Section 302(a) of the Nuclear Waste Policy Act of 1982
16 (42 U.S.C. 10222(a)) is amended—

17 (1) in paragraph (1), by striking “paragraphs
18 (2) and (3)” and inserting “paragraphs (2), (3), and
19 (4)”;

20 (2) in paragraph (3), by striking “126(b)”;

21 (3) in paragraph (4), by striking “insure” and
22 inserting “ensure”.

1 **SEC. 113. USE OF WASTE FUND.**

2 (a) IN GENERAL.—Section 302(d) of the Nuclear
3 Waste Policy Act of 1982 (42 U.S.C. 10222(d)) is amend-
4 ed—

5 (1) in paragraph (1), by striking “maintenance
6 and monitoring” and all that follows through the
7 semicolon at the end and inserting “maintenance
8 and monitoring of any repository or test and evalua-
9 tion facility constructed under this Act;”;

10 (2) in paragraph (4), by striking “to be dis-
11 posed of” and all that follows through the semicolon
12 at the end and inserting “to be disposed of in a re-
13 pository or to be used in a test and evaluation facil-
14 ity;”;

15 (3) in paragraph (5), by striking “at a reposi-
16 tory site” and all that follows through the end and
17 inserting “at a repository site or a test and evalua-
18 tion facility site and necessary or incident to such
19 repository or test and evaluation facility;”;

20 (4) in paragraph (6), by striking the period at
21 the end and inserting “; and”; and

22 (5) by inserting after paragraph (6) the fol-
23 lowing:

24 “(7) payments under benefits agreements for a
25 repository entered into under section 170.”.

1 (b) CONFORMING AMENDMENTS.—Section 117(d) of
2 the Nuclear Waste Policy Act of 1982 (42 U.S.C.
3 10137(d)) is amended by inserting “designated with re-
4 spect to a repository” after “such representatives”.

5 **SEC. 114. AVAILABILITY OF CERTAIN AMOUNTS.**

6 Section 302 of the Nuclear Waste Policy Act of 1982
7 (42 U.S.C. 10222) is amended by adding at the end the
8 following:

9 “(f) OFFSETTING FUNDING.—

10 “(1) IN GENERAL.—Fees collected after the
11 date of enactment of the Nuclear Waste Policy
12 Amendments Act of 2018 pursuant to subsection (a)
13 shall be credited to the Waste Fund and available,
14 to the extent provided in advance in appropriation
15 Acts and consistent with the requirements of this
16 section, to carry out activities authorized to be fund-
17 ed from the Waste Fund.

18 “(2) OFFSETTING COLLECTION.—Fees collected
19 in a fiscal year pursuant to paragraph (1) shall be
20 deposited and credited as offsetting collections to the
21 account providing appropriations for such activities
22 and shall be classified as discretionary appropria-
23 tions as defined by section 250(e)(7) of the Balanced
24 Budget and Emergency Deficit Control Act of 1985
25 (2 U.S.C. 900(c)(7)).

1 “(3) ESTIMATES.—For the purposes of the Bal-
2 anced Budget and Emergency Deficit Control Act of
3 1985 (2 U.S.C. 900 et seq.) and the Congressional
4 Budget Act of 1974 (2 U.S.C. 621 et seq.) and for
5 determining points of order pursuant to that Act or
6 any concurrent resolution on the budget, an estimate
7 provided under those Acts for a provision in a bill
8 or joint resolution, or amendment thereto or con-
9 ference report thereon, that provides discretionary
10 appropriations, derived from amounts in the Waste
11 Fund, for such activities shall include in that esti-
12 mate the amount of such fees that will be collected
13 during the fiscal year for which such appropriation
14 is made available. Any such estimate shall not in-
15 clude any change in net direct spending as result in
16 the appropriation of such fees.”.

17 **SEC. 115. BUDGETARY EFFECTS.**

18 (a) STATUTORY PAYGO SCORECARDS.—The budg-
19 etary effects of this division and the amendments made
20 by this division shall not be entered on either PAYGO
21 scorecard maintained pursuant to section 4(d) of the Stat-
22 utory Pay-As-You-Go Act of 2010.

23 (b) SENATE PAYGO SCORECARDS.—The budgetary
24 effects of this division and the amendments made by this
25 division shall not be entered on any PAYGO scorecard

1 maintained for purposes of section 4106 of H. Con. Res.
2 71 (115th Congress).

3 **SEC. 116. TRANSFER AUTHORITY.**

4 (a) TRANSFER OF FUNDS FOR NUCLEAR WASTE
5 DISPOSAL TO SUPPORT PROCESSING OF LICENSING AP-
6 PPLICATIONS AT THE YUCCA MOUNTAIN REPOSITORY AND
7 AN INTERIM STORAGE CAPABILITY.—

8 (1) IN GENERAL.—Notwithstanding any other
9 provision of law, the Secretary of Energy may trans-
10 fer to and merge with the Department of Energy’s
11 Nuclear Waste Disposal and Defense Nuclear Waste
12 Disposal appropriation accounts from any unobli-
13 gated balances available to the Secretary, up to
14 \$120,000,000, to remain available until expended, to
15 resume any of the activities funded by those appro-
16 priations, including the acquisition of any real prop-
17 erty or facility construction, or expansion, and in-
18 terim storage activities, and may, without further
19 appropriation, expend the funds so transferred and
20 merged to resume such activities.

21 (2) LIMITATION.—Of the funds transferred and
22 merged under this subsection, not more than 12.44
23 percent of the amount so transferred and merged
24 may be used for payments under sections 116(e),
25 117(c), 117(d), and 118(b) of the Nuclear Waste

1 Policy Act of 1982 (42 U.S.C. 10136(c), 10137(c),
2 (d), 10138(b)).

3 (b) TRANSFER OF FUNDS TO THE NUCLEAR REGU-
4 LATORY COMMISSION.—Notwithstanding any other provi-
5 sion of law, the Secretary of Energy may transfer to the
6 Nuclear Regulatory Commission, from any unobligated
7 balances available to the Secretary, and the Nuclear Regu-
8 latory Commission may accept and expend, up to
9 \$30,000,000 for processing of the Department of Energy’s
10 licensing applications related to the nuclear waste reposi-
11 tory at Yucca Mountain.

