

ONE HUNDRED FIFTEENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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July 2, 2018

The Honorable John McCain
Chairman
Senate Committee on Armed Services
228 Russell Senate Office Building
Washington, DC 20510

The Honorable Jack Reed
Ranking Member
Senate Committee on Armed Services
228 Russell Senate Office Building
Washington, DC 20510

The Honorable Mac Thornberry
Chairman
House Committee on Armed Services
2120 Rayburn House Office Building
Washington, DC 20515

The Honorable Adam Smith
Ranking Member
House Committee on Armed Services
2120 Rayburn House Office Building
Washington, DC 20515

Dear Sirs:

We write to express our strong opposition to section 3111 in the Senate-passed National Defense Authorization Act for Fiscal Year 2019.

We firmly believe this section will directly undermine the Secretary of Energy's responsibility to direct and oversee the Department of Energy's core nuclear security mission. Section 3111, which transfers critical policymaking and oversight authorities to a subordinate of the Secretary, weakens Cabinet-level accountability to the President for management of our nation's atomic energy defense programs, including maintenance and certification of our nuclear weapons stockpile, and threatens effective leadership over the nuclear deterrent at a critical moment for the nation.

Section 3111 effectively eliminates the Secretary of Energy's supervisory direction and control over the nuclear security enterprise.¹ The ostensible purpose of this section is to help

¹ Sections 202 and 213 of the Department of Energy Organization Act provide that the Secretary maintains "authority, direction, and control" over the nuclear security enterprise and that the Secretary establishes policy for and can review all programs and activities of the enterprise, as administered by the Department's National Nuclear Security Administration (NNSA). The sections also provide that the Secretary shall have the staff necessary to carry out these activities. Section 3111 eliminates the Secretary's "direction and control," limits policymaking authority

enable more efficient execution of the nuclear security mission by DOE's National Nuclear Security Administration (NNSA). Yet, by removing the Secretary's statutory authority and functional ability for supervising and directing this mission, the provision unintentionally reinforces and exacerbates defects in a problematic governance model that has contributed to many of the safety and security management failures in nuclear defense programs that Congress has confronted over the past 20 years.²

The limitation on the Secretary's supervisory authorities threatens effective oversight and enforcement of public and worker safety and security of operations at DOE sites. Section 3111 would undermine the necessary coordination across Departmental elements, including through the national laboratory system and shared interests of both civilian and national security programs. By doing so, this section would impede the orderly and cost-effective management and operations of the Department. Other provisions within this section would complicate legal and international activities of the Department, as well as environmental cleanup coordination. The confluence of these impacts harms not only efforts to ensure more efficient execution of the nuclear security missions, but also the nationally significant science and security missions that must intersect this work in other parts of the Department.

By eliminating the Secretary's authorities to supervise and oversee DOE's nuclear enterprise, Section 3111 does exactly the opposite of what was recommended to our respective Committees by the Congressional Advisory Panel on the Governance of the Nuclear Security Enterprise (known as Augustine-Mies). The policy direction recommended by that panel stressed the need to strengthen the Secretary's leadership over the nuclear missions as the critical step to reviving Cabinet-level leadership of nuclear programs. The panel recognized the imperative that the Secretary "own" the nuclear mission, and recommended reforming the underlying statutory authorities to more fully integrate the NNSA into DOE.³

Had section 3111 been subject to public hearing and debate, the consequences of this policy would have been made more clear. Unfortunately, there have been no legislative hearings, no public review by stakeholders, and no review by other Committees of jurisdiction through regular order. The consequences of getting the governance wrong for our national security and atomic energy defense programs are too great to rely upon reforms inserted into legislation, absent a full and robust review by all Congressional Committees of jurisdiction.

to NNSA, restricts the Secretary's oversight and review authority, and eliminates staff requirements to carry out these supervisory activities.

² Our respective Committees have documented in many hearings and investigations the missed schedules, tremendous cost-overruns, and project mismanagement—which are underscored by NNSA's decades-long presence on the Government Accountability Office's High Risk list. Moreover, following serious safety and security violations in the late 1990s that prompted formation of the NNSA, accidents and nuclear safety violations continued and contributed to the temporary shutdown of facilities at both Los Alamos and Lawrence Livermore in 2004 and 2005, respectively, costing taxpayers hundreds of millions of dollars in lost productivity. More recent high-profile safety and security failures include the penetration of security by protesters at the Y-12 facility in 2012 and the fire and explosion at the Waste Isolation Pilot Project in New Mexico, following safety process failures at Los Alamos National Laboratory in 2014.

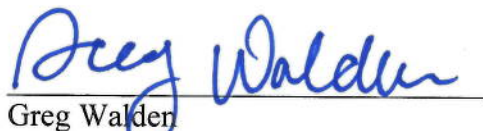
³ See February 24, 2016 testimony by The Honorable Norman Augustine and Admiral Richard Mies before the Committee on Energy and Commerce hearing entitled "[DOE for the 21st Century: Science, Environment, and National Security Missions](https://www.gpo.gov/fdsys/pkg/CHRG-114hhr20130/pdf/CHRG-114hhr20130.pdf)," at <https://www.gpo.gov/fdsys/pkg/CHRG-114hhr20130/pdf/CHRG-114hhr20130.pdf>

In fact, during this Congress, the Energy and Commerce Committee has undertaken an effort to review and improve the Secretary's management of the Department. Over the past year, the Committee has conducted multiple hearings and related inquiries to build a public record and identify what is necessary to ensure the Secretary has the supervisory authorities, structure, and policies for effective mission execution. Hearings on "DOE Modernization" have focused on the core national security mission and reviewed policies that need to be addressed legislatively. This included the NNSA's own work to reform its management. Additionally, the Committee has ongoing inquiries to identify the root cause of some of the most persistent complaints about performance and burdensome oversight.⁴ These activities augment the Committee's extensive body of work into DOE and NNSA management that we are confident will allow Congress to make practical, appropriate, and effective statutory changes to ensure DOE is fully aligned to robustly and successfully execute its critical missions.

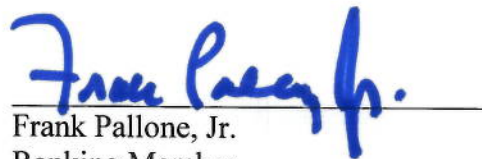
If there is to be meaningful reform of the NNSA's important mission, we believe the appropriate course is to join the Energy and Commerce Committee and your Senate colleagues in a thoughtful, deliberate review of what is needed to strengthen the Secretary's leadership and authorities over the nuclear security enterprise, to integrate mission management appropriately, and to harness the full capabilities of a cohesive, well-managed Department to the benefit of the nation's security needs.

Weakening Secretarial policymaking and oversight of safety, security, and taxpayer spending on nuclear weapons and related activities will not fix the specific management problems at NNSA and will not enhance the important national security mission of DOE. In light of the serious risks posed by this language to sound management of the Department and DOE's nuclear security operations, we strongly object to consideration of any form of section 3111 during the Conference Committee on the National Defense Authorization Act for Fiscal Year 2019.

Sincerely,



Greg Walden
Chairman



Frank Pallone, Jr.
Ranking Member

⁴ See, for example, January 9, 2018 Committee on Energy and Commerce hearing entitled, "[DOE Modernization: Advancing DOE's Mission for National, Economic, and Energy Security of the United States](#)." See, also, the Committee's [September 27, 2017](#) and [March 31, 2017](#) letters to the Government Accountability Office.