Suspend the Rules and Pass the Bill, H. R. 1320, With an Amendment

(The amendment strikes all after the enacting clause and inserts a new text)

115TH CONGRESS 2D SESSION

H. R. 1320

To amend the Omnibus Budget Reconciliation Act of 1990 related to Nuclear Regulatory Commission user fees and annual charges, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 2, 2017

Mr. Kinzinger (for himself and Mr. Michael F. Doyle of Pennsylvania) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To amend the Omnibus Budget Reconciliation Act of 1990 related to Nuclear Regulatory Commission user fees and annual charges, and for other purposes.

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

2 SECTION 1. SHORT TITLE.

3 This Act may be cited as the “Nuclear Utilization of Keynote Energy Act”.

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SEC. 2. NUCLEAR REGULATORY COMMISSION USER FEES
AND ANNUAL CHARGES THROUGH FISCAL YEAR 2020.

(a) IN GENERAL.—Section 6101(c)(2)(A) of the Omnibus Budget Reconciliation Act of 1990 (42 U.S.C. 2214(c)(2)(A)) is amended—

(1) in clause (iii), by striking “and” at the end;
(2) in clause (iv), by striking the period at the end and inserting “; and”;
(3) by adding at the end the following:

“(v) amounts appropriated to the Commission for the fiscal year for activities related to the development of a regulatory infrastructure for advanced nuclear reactor technologies (which may not exceed $10,300,000).”.

(b) REPEAL.—Effective October 1, 2020, section 6101 of the Omnibus Budget Reconciliation Act of 1990 (42 U.S.C. 2214) is repealed.

SEC. 3. NUCLEAR REGULATORY COMMISSION USER FEES
AND ANNUAL CHARGES FOR FISCAL YEAR 2021 AND EACH FISCAL YEAR THEREAFTER.

(a) ANNUAL BUDGET JUSTIFICATION.—

(1) IN GENERAL.—In the annual budget justification submitted by the Commission to Congress, the Commission shall expressly identify anticipated
expenditures necessary for completion of the requested activities of the Commission anticipated to occur during the applicable fiscal year.

(2) Restriction.—The Commission shall, to the maximum extent practicable, use any funds made available to the Commission for a fiscal year for the anticipated expenditures identified under paragraph (1) for the fiscal year.

(3) Limitation on Corporate Support Costs.—With respect to the annual budget justification submitted to Congress, corporate support costs, to the maximum extent practicable, shall not exceed the following percentages of the total budget authority of the Commission requested in the annual budget justification:

(A) 30 percent for each of fiscal years 2021 and 2022.

(B) 29 percent for each of fiscal years 2023 and 2024.

(C) 28 percent for fiscal year 2025 and each fiscal year thereafter.

(b) Fees and Charges.—

(1) Annual Assessment.—

(A) In General.—Each fiscal year, the Commission shall assess and collect fees and
charges in accordance with paragraphs (2) and (3) in a manner that ensures that, to the maximum extent practicable, the amount assessed and collected is equal to an amount that approximates—

(i) the total budget authority of the Commission for that fiscal year; less

(ii) the budget authority of the Commission for the activities described in subparagraph (B).

(B) EXCLUDED ACTIVITIES DESCRIBED.—

The activities referred to in subparagraph (A)(ii) are the following:

(i) Any fee-relief activity, as identified by the Commission.

(ii) Amounts appropriated for the fiscal year to the Commission—

(I) from the Nuclear Waste Fund established under section 302(c) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222(c));

(II) for implementation of section 3116 of the Ronald W. Reagan National Defense Authorization Act for
Fiscal Year 2005 (50 U.S.C. 2601 note; Public Law 108–375);

(III) for the homeland security activities of the Commission (other than for the costs of fingerprinting and background checks required under section 149 of the Atomic Energy Act of 1954 (42 U.S.C. 2169) and the costs of conducting security inspections);

(IV) for the Inspector General services of the Commission provided to the Defense Nuclear Facilities Safety Board;

(V) for the partnership program with institutions of higher education established under section 244 of the Atomic Energy Act of 1954 (42 U.S.C. 2015c); and


(iii) Costs for activities related to the development of regulatory infrastructure
for advanced nuclear reactor technologies
(which may not exceed $10,300,000).

(C) EXCEPTION.—The exclusion described
in subparagraph (B)(iii) shall cease to be effec-
tive on January 1, 2026.

(D) REPORT.—Not later than December
31, 2023, the Commission shall submit to the
Committee on Appropriations and the Com-
mittee on Environment and Public Works of the
Senate and the Committee on Appropriations
and the Committee on Energy and Commerce
of the House of Representatives a report de-
scribing the views of the Commission on the
continued appropriateness and necessity of
funding for the activities described in subpara-
graph (B)(iii).

(2) FEES FOR SERVICE OR THING OF VALUE.—
In accordance with section 9701 of title 31, United
States Code, the Commission shall assess and collect
fees from any person who receives a service or thing
of value from the Commission to cover the costs to
the Commission of providing the service or thing of
value.

(3) ANNUAL CHARGES.—
(A) IN GENERAL.—Subject to subparagraph (B) and except as provided in subparagraph (D), the Commission may charge to any licensee or certificate holder of the Commission an annual charge in addition to the fees set forth in paragraph (2).

(B) CAP ON ANNUAL CHARGES OF CERTAIN LICENSEES.—

(i) OPERATING REACTORS.—The annual charge under subparagraph (A) charged to an operating reactor licensee, to the maximum extent practicable, shall not exceed the annual fee amount per operating reactor licensee established in the final rule of the Commission entitled “Revision of Fee Schedules; Fee Recovery for Fiscal Year 2015” (80 Fed. Reg. 37432 (June 30, 2015)), as may be adjusted annually by the Commission to reflect changes in the Consumer Price Index published by the Bureau of Labor Statistics of the Department of Labor.

(ii) FUEL FACILITIES.—

(I) IN GENERAL.—The total annual charges under subparagraph (A)
charged to fuel facility licensees, to
the maximum extent practicable, shall
not exceed an amount that is equal to
the total annual fees collected from
the fuel facilities class under the final
rule of the Commission entitled “Revi-
sion of Fee Schedules; Fee Recovery
for Fiscal Year 2016” (81 Fed Reg.
41171 (June 24, 2016)), which
amount may be adjusted annually by
the Commission to reflect changes in
the Consumer Price Index published
by the Bureau of Labor Statistics of
the Department of Labor.

(II) Exception.—Subclause (I)
shall not apply if the number of li-
censed facilities classified by the Com-
mission as fuel facilities exceeds
seven.

(III) Changes to Annual
Charges.—Any change in an annual
charge under subparagraph (A)
charged to a fuel facility licensee shall
be based on—
(aa) a change in the regulatory services provided with respect to the fuel facility; or

(bb) an adjustment described in subclause (I).

(iii) WAIVER.—The Commission may waive, for a period of 1 year, the cap on annual charges described in clause (i) or (ii) if the Commission submits to the Committee on Appropriations and the Committee on Environment and Public Works of the Senate and the Committee on Appropriations and the Committee on Energy and Commerce of the House of Representatives a written determination that the cap on annual charges may compromise the safety and security mission of the Commission.

(C) AMOUNT PER LICENSEE.—

(i) IN GENERAL.—The Commission shall establish by rule a schedule of annual charges fairly and equitably allocating the aggregate amount of charges described in clause (ii) among licensees and certificate holders.
(ii) Aggregate Amount.—For purposes of this subparagraph, the aggregate amount of charges for a fiscal year shall equal an amount that approximates—

(I) the amount to be collected under paragraph (1)(A) for the fiscal year; less

(II) the amount of fees to be collected under paragraph (2) for the fiscal year.

(iii) Requirement.—The schedule of charges under clause (i)—

(I) to the maximum extent practicable, shall be reasonably related to the cost of providing regulatory services; and

(II) may be based on the allocation of the resources of the Commission among licensees or certificate holders or classes of licensees or certificate holders.

(D) Exemption.—Subparagraph (A) shall not apply to the holder of any license for a federally owned research reactor used primarily for
educational training and academic research purposes.

(c) PERFORMANCE AND REPORTING.—

(1) IN GENERAL.—The Commission shall develop for the requested activities of the Commission—

(A) performance metrics; and

(B) milestone schedules.

(2) DELAYS IN ISSUANCE OF FINAL SAFETY EVALUATION.—If the final safety evaluation for a requested activity of the Commission is not completed by the completion date required by the performance metrics or milestone schedule under paragraph (1), the Executive Director for Operations of the Commission shall, not later than 30 days after such required completion date, inform the Commission of the delay.

(3) DELAYS IN ISSUANCE OF FINAL SAFETY EVALUATION EXCEEDING 180 DAYS.—If a final safety evaluation described in paragraph (2) is not completed by the date that is 180 days after the completion date required by the performance metrics or milestone schedule under paragraph (1), the Commission shall submit to the Committee on Environment and Public Works of the Senate and the Com-
mittee on Energy and Commerce of the House of Representatives a timely report describing the delay, including a detailed explanation accounting for the delay and a plan for timely completion of the final safety evaluation.

(d) ACCURATE INVOICING.—With respect to invoices for fees charged under subsection (b)(2), the Commission shall—

(1) ensure appropriate review and approval prior to the issuance of invoices;

(2) develop and implement processes to audit invoices to ensure accuracy, transparency, and fairness; and

(3) modify regulations to ensure fair and appropriate processes to provide licensees and applicants an opportunity to efficiently dispute or otherwise seek review and correction of errors in invoices for such fees.

(e) REPORT.—Not later than September 30, 2022, the Commission shall submit to the Committee on Appropriations and the Committee on Environment and Public Works of the Senate and the Committee on Appropriations and the Committee on Energy and Commerce of the House of Representatives a report describing the imple-
mentation of this section, including any effects of such implementa-
tion and recommendations for improvement.

(f) DEFINITIONS.—In this section:

(1) ADVANCED NUCLEAR REACTOR.—The term “advanced nuclear reactor” means a nuclear fission or fusion reactor, including a prototype plant (as de-

(2) COMMISSION.—The term “Commission” means the Nuclear Regulatory Commission.

(3) CORPORATE SUPPORT COSTS.—The term “corporate support costs” means expenditures for
acquisitions, administrative services, financial management, human resource management, information management, information technology, policy support, outreach, and training.

(4) RESEARCH REACTOR.—The term “research reactor” means a nuclear reactor that—

(A) is licensed by the Commission under section 104 c. of the Atomic Energy Act of 1954 (42 U.S.C. 2134(c)) for operation at a thermal power level of not more than 10 megawatts; and

(B) if so licensed for operation at a thermal power level of more than 1 megawatt, does not contain—

(i) a circulating loop through the core in which the licensee conducts fuel experiments;

(ii) a liquid fuel loading; or

(iii) an experimental facility in the core in excess of 16 square inches in cross-section.

(5) REQUESTED ACTIVITY OF THE COMMISSION.—The term “requested activity of the Commission” means—

(A) the processing of applications for—
(i) design certifications or approvals;
(ii) licenses;
(iii) permits;
(iv) license amendments;
(v) license renewals;
(vi) certificates of compliance; and
(vii) power uprates; and

(B) any other activity requested by a licensee or applicant.

(g) Effective Date.—This section takes effect on October 1, 2020.

SEC. 4. STUDY ON ELIMINATION OF FOREIGN LICENSING RESTRICTIONS.

Not later than 18 months after the date of enactment of this Act, the Comptroller General shall transmit to Congress a report containing the results of a study on the feasibility and implications of repealing restrictions under sections 103 d. and 104 d. of the Atomic Energy Act of 1954 (42 U.S.C. 2133(d); 2134(d)) on issuing licenses for certain nuclear facilities to an alien or an entity owned, controlled, or dominated by an alien, a foreign corporation, or a foreign government.
SEC. 5. STUDY ON THE IMPACT OF THE ELIMINATION OF MANDATORY HEARING FOR UNCONTESTED LICENSING APPLICATIONS.

Not later than 18 months after the date of enactment of this Act, the Comptroller General shall transmit to Congress a report containing the results of a study on the effects of eliminating the hearings required under section 189 a. of the Atomic Energy Act of 1954 (42 U.S.C. 2239(a)) for an application under section 103 or section 104 b. of such Act for a construction permit for a facility in the absence of a request of any person whose interest may be affected by the proceeding.

SEC. 6. INFORMAL HEARING PROCEDURES.

Section 189 a. of the Atomic Energy Act of 1954 (42 U.S.C. 2239(a)) is amended by adding at the end the following:

“(3) The Commission may use informal adjudicatory procedures for any hearing required under this section for which the Commission determines that adjudicatory procedures under section 554 of title 5, United States Code, are unnecessary.”.

SEC. 7. APPLICATION REVIEWS FOR NUCLEAR ENERGY PROJECTS.

Section 185 of the Atomic Energy Act of 1954 (42 U.S.C. 2235) is amended by adding at the end the following:
“c. APPLICATION REVIEWS FOR NUCLEAR ENERGY PROJECTS.—

“(1) STREAMLINING LICENSE APPLICATION REVIEW.—With respect to an application that is docketed seeking issuance of a construction permit, operating license, or combined construction permit and operating license for a production or utilization facility, the Commission shall include the following procedures:

“(A) Undertake an environmental review process and issue any draft environmental impact statement to the maximum extent practicable within 24 months after the application is accepted for docketing.

“(B) Complete the technical review process and issue any safety evaluation report and any final environmental impact statement to the maximum extent practicable within 42 months after the application is accepted for docketing.

“(2) EARLY SITE PERMIT.—

“(A) SUPPLEMENTAL ENVIRONMENTAL IMPACT STATEMENT.—In a proceeding for a combined construction permit and operating license for a site for which an early site permit has been issued, any environmental impact state-
ment prepared by the Commission and cooperating agencies shall be prepared as a supplement to the environmental impact statement prepared for the early site permit.

“(B) INCORPORATION BY REFERENCE.—

The supplemental environmental impact statement shall—

“(i) incorporate by reference the analysis, findings, and conclusions from the environmental impact statement prepared for the early site permit; and

“(ii) include additional discussion, analyses, findings, and conclusions on matters resolved in the early site permit proceeding only to the extent necessary to address information that is new and significant in that the information would materially change the prior findings or conclusions.

“(3) PRODUCTION OR UTILIZATION FACILITY LOCATED AT AN EXISTING SITE.—In reviewing an application for an early site permit, construction permit, operating license, or combined construction permit and operating license for a production or utilization facility located at the site of a licensed pro-
duction or utilization facility, the Commission shall, to the extent practicable, use information that was part of the licensing basis of the licensed production or utilization facility.

“(4) REGULATIONS.—The Commission shall initiate a rulemaking, not later than 1 year after the date of enactment of the Nuclear Utilization of Keynote Energy Act, to amend the regulations of the Commission to implement this subsection.

“(5) ENVIRONMENTAL IMPACT STATEMENT DEFINED.—In this subsection, the term ‘environmental impact statement’ means a detailed statement required under section 102(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)).

“(6) RELATIONSHIP TO OTHER LAW.—Nothing in this subsection exempts the Commission from any requirement for full compliance with section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).”.

SEC. 8. REPORT IDENTIFYING BEST PRACTICES FOR ESTABLISHMENT AND OPERATION OF LOCAL COMMUNITY ADVISORY BOARDS.

(a) BEST PRACTICES REPORT.—Not later than 18 months after the date of enactment of this Act, the Nuclear Regulatory Commission shall submit to Congress,
and make publicly available, a report identifying best prac-
tices with respect to the establishment and operation of
a local community advisory board to foster communication
and information exchange between a licensee planning for
and involved in decommissioning activities and members
of the community that decommissioning activities may af-
fect, including lessons learned from any such board in ex-
istence before the date of enactment of this Act.

(b) CONTENTS.—The report described in subsection
(a) shall include—

(1) a description of—

(A) the topics that could be brought before
a local community advisory board;

(B) how such a board’s input could be
used to inform the decision-making processes of
stakeholders for various decommissioning activi-
ties;

(C) what interaction such a board could
have with the Nuclear Regulatory Commission
and other Federal regulatory bodies to support
the board members’ overall understanding of
the decommissioning process and promote dia-
logue between the affected stakeholders and the
licensee involved in decommissioning activities;

and
(D) how such a board could offer opportunities for public engagement throughout all phases of the decommissioning process;

(2) a discussion of the composition of a local community advisory board; and

(3) best practices relating to the establishment and operation of a local community advisory board, including—

(A) the time of establishment of such a board;

(B) the frequency of meetings of such a board;

(C) the selection of board members;

(D) the term of board members;

(E) the responsibility for logistics required to support such a board’s meetings and other routine activities; and

(F) any other best practices relating to such a local community advisory board that are identified by the Commission.

(c) CONSULTATION.—In developing the report described in subsection (a), the Nuclear Regulatory Commission shall consult with any host State, any community within the emergency planning zone of an applicable nu-
clear facility, and any existing local community advisory board.

SEC. 9. REPORT ON STUDY RECOMMENDATIONS.

Not later than 90 days after the date of enactment of this Act, the Nuclear Regulatory Commission shall submit to Congress a report on the status of addressing and implementing the recommendations contained in the memorandum of the Executive Director of Operations of the Commission entitled “Tasking in Response to the Assessment of the Considerations Identified in a ‘Study of Reprisal and Chilling Effect for Raising Mission-Related Concerns and Differing Views at the Nuclear Regulatory Commission’” and dated June 19, 2018 (ADAMS Accession No.: ML18165A296).