



NATIONAL CONFERENCE *of* STATE LEGISLATURES

The Forum for America's Ideas

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State Trends on High-Level Waste

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Background

The U.S. Department of Energy (DOE) is currently hosting public hearings around the country to consider how “consent” should be defined and implemented in regard to the storage of high-level nuclear waste. In general, the role of state legislatures in regard to radioactive waste management is to assist with the development of interagency agreements, comment on DOE budgetary and other project decisions, and participate in working groups and local advisory bodies focused on the subject.

The Nuclear Waste Policy Act (NWPA) gives the federal government the primary role in regulating radioactive waste management. Any state law that is based on radiological health impacts is likely preempted by federal law. States play an important role in regards to emergency planning, transportation planning, implementing and enforcing environmental laws and regulating nuclear facilities.

Legislative Trends

Emergency Response and Preparedness. Several states have funding mechanisms and budget appropriations for emergency preparedness, response, and education associated with nuclear power plants (CA, VT, WA). Similar bills have passed through other states but either are pending (IL, MA, MO, NY) or failed (CT, NH).

Mitigation for Health Impacts. UT requires specific measures to mitigate the effects of high-level waste as it impacts the health and safety of citizens. IL has similar pending legislation.

Permanent Repository. Some states encourage the federal government to move forward with permanent repository options (MI, MO). WA attempted to introduce similar legislation, but it failed.

Interim Storage Site. NM passed a measure encouraging development of an interim storage site. MI enacted a statute encouraging the president and congress to explore/support policies to develop new facilities for

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reprocessing and recycling of spent nuclear fuel. ID encourages spent fuel to be sent to Idaho National Lab for Research Purposes. CA has pending legislation encouraging interim consolidated storage. KY introduced legislation requiring nuclear power facilities to have a plan for the interim storage of waste (but this measure failed).

For more information, please visit NCSL's Environment and Energy Legislative Database:
<http://www.ncsl.org/research/energy/energy-environment-legislation-tracking-database.aspx>

State Activity

California

- A.B. 361 (2015) (enacted) extended funding mechanisms for emergency preparedness and emergency response associated with a nuclear power plant with respect to a utility operating such power plant with specified generating capacity. Requires a peer review panel to conduct a review of seismic studies and surveys of local power plants, including areas of nuclear waste storage. Funding is now available through 2025.
- S.R.J. 23 (2016) (pending) urges the passage of the Interim Consolidated Storage Act of 2016 and urges the U.S. DOE to implement the prompt and safe relocation of spent nuclear fuel from the San Onofre Nuclear Generating Station to a licensed and regulated consolidated storage facility. (A.R.J. 29 (2015) (pending) urges the passage of the Interim Consolidated Storage Act of 2015.)
- S.B. 657 (2015) (pending-carryover) requires Public Utility Commission to convene an independent review panel to conduct review of seismic studies around nuclear power plants.
- S.B. 968 (2016) (pending) directs the Public Utilities Commission to require a specified entity to submit an assessment, conducted by an independent party, of the adverse and beneficial economic impacts, and net economic effects that could occur, and ways to mitigate the impact, if the Diablo Canyon Units 1 and 2 power plant were to temporarily or permanently shut down before the current operating licenses expire, or if it is decided not to pursue license renewable. Requires consideration of actions to offset closure.

Connecticut

- H.B. 5382 (2016) (failed) concerns the nuclear safety emergency preparedness program, assures CT's standards under its Radiological Emergency Preparedness and Response program and incorporate certain recommendations of the National Research Council.

Florida

- H.M. 1209 / S.M. 1706 (2016) (failed) included a moratorium on nuclear waste operations until a safe way to transport and store nuclear waste and protect storage sites against terrorist attacks is secured.

Idaho

- H.R.C. 60 (2016) (enacted) Urges Attorney General to allow quantities of spent nuclear fuel to enter into Idaho to be used for research purposes at Idaho National Laboratory (INL).

Illinois

- H.B. 348 / H.B. 4542 (2015) (pending) removes language preventing no new construction of nuclear power plants until there is technology or means for certain disposal.



- S.R. 1719 (2016) (pending) urges congress to pass legislation to allocate funds from the Interim Storage Fund to the local authorities in impacted communities to mitigate social and economic impacts arising from the storage of nuclear material.
- Several pending bills relating to appropriations for the State Emergency Management Agency (H.B. 2910 (2015), S.B. 3235 (2016), S.B. 1958 (2015), H.B. 4154 (2015), H.B. 6403 (2016)).

Kentucky

- S.B. 89 (2016) (failed-adjourned) requires that nuclear power facilities have a plan for the storage of nuclear waste, rather than a means of permanent disposal. Allows certification of the facility and its plans for waste storage approved by the NRC, eliminates the requirement for a facility have a plan for disposal of high-level waste, eliminates requirement that cost of waste disposal be known.

Massachusetts

- S.B. 1797 (2015) (pending) establishes a fee on the storage of spent nuclear fuel in pools.
- S.B. 1798 (2015) (pending) provides money for post-closure activities at nuclear power stations.
- H.B. 2020 (2015) (pending) creates public education zones near nuclear facilities.
- H.B. 2167 / H.D. 2861 (2015) (pending) directs the MA Emergency Management Agency to assess and report on the preparedness plans for a radiological accident at the Pilgrim Nuclear Power Station/Seabrook Nuclear Power Plant.

Michigan

- H.R. 220 (2016) (enacted) encourages development of new facilities for reprocessing and recycling of spent nuclear fuel.
- S.C.R. 6 (2015) (enacted), S.R.C. 7 (2015), and S.C.R. 8 (2015) (enacted) encourages the federal government to move forward with permanent repository.
- H.R. 21 (2015) (enacted) memorializes the congress of the U.S. to reinstate funding for Yucca Mountain.
- H.C.R. 9 (2015) (pending) urges the U.S. President to request the Secretary of State to evaluate the proposed underground nuclear waste repository in Ontario, Canada and similar facilities and urging Congress to support the request.
- S.R. 164 (2016) (pending) urges the president and congress to explore and support policies that will lead to the establishment of facilities within the US for the reprocessing and recycling of spent nuclear fuel.
- S.B. 14 (2015) (pending) prohibits storage radioactive waste in MI, requires study of impacts of repository located anywhere near great lakes shoreline.

Minnesota

- H.B. 1400 / S.B. 95 / S.B. 306 (2015) (failed- adjourned) requires any license extension or need for additional storage of spent nuclear fuel must address the impacts of continued operations over the period for which approval is sought.
- S.B. 1317 (2015) (failed-adjourned) requires the disapproval of any utility advertisement that is designed to promote the use of nuclear power or to promote a nuclear waste storage facility.

Mississippi



- H.B. 1502 (2016) (failed) creates standards for procurements by the solicitation of requests for proposals and the factors that must be considered when determining to use a RFP, including RFPs relating to storage and transportation of nuclear and hazardous waste.

Missouri

- H.C.R. 72 (2015) (pending) encourages the federal government to move forward with a permanent repository.
- S.B. 669 (2016) (pending) transfer specified fees from dedicated funds managed by the Department of Natural Resources to general revenue. Speaks to funds from nuclear waste and requirements for notice of shipments of the waste.

New Hampshire

- H.B. 1622 (2015) (failed) establishes the high-level radioactive waste act and establishes the nuclear waste storage fee.

New Jersey

- S.B. 261 / A.B. 1147 (2016) (pending) establishes the NJ Coordinating Council on the Decommissioning of Nuclear Power Generating Facilities.

New Mexico

- H.M. 40 and S.M. 34 (2016) (enacted) encourage development of a consolidated interim storage site. Request for Eddy-Lea Energy Alliance LLC (ELEA) develop the site.

New York

- A.B. 923 / S.B. 2285 / A.B. 6095 (2015) (pending) prohibits radioactive or hazardous waste disposal or transfer stations from being sited within one thousand five hundred feet of school property.
- S.B. 2839 (2015) (pending) amends the State Finance Law, in relation to establishing the NY state dry cask storage fund, directs certain nuclear generating facilities to transfer money in exchange for the storage of dry casks containing spent fuel.
- S.B. 5267 / A.B. 6512 (2015) (pending) establishes the nuclear power plant disaster preparedness plans study to be performed by the Division of Homeland Security and Emergency Services.

North Dakota

- State officials have opposed test deep borehole project to store nuclear waste. The legislature does not meet in 2016.

South Carolina

- H.B. 3899 (2015) (pending) provides that the Barnwell site must not accept any waste other than what was provided for in the Atlantic compact and to establish a water testing requirement be performed by the Department of Health and Environmental Control.

Tennessee



- H.B. 1563 (failed-adjourned) / S.B. 1627 (enacted) (2016) relates to transportation and safety of nuclear materials, clarifies that deadly force may be used by nuclear security officers at nuclear power reactor facilities and not just Category I nuclear facilities.

Utah

- H.B. 219 (2016) (enacted) modifies provisions relating to resource management plan, including specific provisions speaking to the siting of a storage or transfer facility for the placement of high-level nuclear waste. Requires specific measures to mitigate the effects of high-level waste as it impacts the health and safety of citizens of the state.
- H.B. 147 (2016) (enacted) includes efforts to study the needs and requirements for economic development on Native American reservations within the state to prevent the siting of any nuclear waste facility, and prepare a long-term strategic plan for economic development on the reservations.

Vermont

- H.B. 116 (2015) (failed-adjourned) relates to radioactive waste disposal fees assessed on small generators.
- H.B. 135 (2015) (enacted) allows the State Department of Health to charge fees necessary to support responsibilities relevant for agreements with the NRC. Specific provisions requiring anyone dealing with the receipt, storage, transfer, or disposal of nuclear materials to maintain records.

Washington

- H.B. 1047 (2015) (enacted) appoints a state coordinator for radioactive and hazardous waste emergency response programs.
- H.B. 1809 (indefinitely postponed) / S.B. 5697 (2015) (failed) establishes a minimum crew size on certain trains carrying nuclear and hazardous wastes.
- S.B. 5093 (2015) (indefinitely postponed) would establish a nuclear energy education program for students in the eighth through 12th grade.
- S.B. 6553 (2016) (failed) requires the director to appoint a state coordinator for radioactive and hazardous waste emergency response programs, including coordination of training programs offered to the federal emergency management agency.
- S.J.M. 8000 (2015) (indefinitely postponed) requests the permanent siting and development of a federal nuclear waste repository.

NCSL Policies

Energy Policy

Nuclear

NCSL believes that,

- Nuclear Energy generates an essential share of the nation's clean, non-emitting, zero carbon baseload electricity.
- The Nuclear Regulatory Commission (NRC) should provide strong, independent oversight of all commercial nuclear plant operations, including plant licensing (both license extensions, where appropriate, and over the

ongoing construction of new reactors) and used fuel and radioactive waste management, transportation and disposal, to ensure public health and safety. The rigorous NRC safety review process already employed in certifying new reactor designs should be maintained as additional designs are considered.

- The federally-supported public-private partnership that is pursuing the design, development and licensing of Small Modular Reactors should focus on maximizing the economic development and positive trade balance potential of this emerging technology. The federal government should assist the ongoing efforts of various states to establish U.S. leadership in this promising market.
- A federal government program for the long-term treatment and disposal of used nuclear fuel and high-level radioactive waste, already funded by nuclear utility ratepayers, should be pursued with the highest priority given to the safe reprocessing or transportation of waste and to the safety and technical suitability of storage or disposal sites. Such a program should be developed in full consultation with all of the affected states.
- Meaningful and effective state participation is necessary in public safety planning and transportation of commercial used nuclear fuel and high-level waste.
- The recommendations of the Blue Ribbon Commission on America's Nuclear Future appropriately comport with the longstanding position of NCSL in favor of a path forward for used fuel. In particular, NCSL favors: creation of a public-private partnership to manage the back end of the nuclear fuel cycle; assurance that ratepayer contributions to the Nuclear Waste Fund be available solely for their intended purpose; establishment of one or more NRC-licensed centralized interim used fuel storage facilities in willing host communities and states (with consultation of all state, local and tribal officials and other interested parties).
- States must continue to have the right to monitor operating conditions at nuclear power plants, waste storage and disposal facilities, and to exercise regulatory authority where consistent with federal law.
- Federal funding should complement private sector investments in the areas of waste management technologies, nuclear fusion, and plant retrofit and life extension.
- The tax treatment of decommissioning funds should be updated to ensure that existing funds are treated in the manner intended by the tax laws and to reflect new business conditions.

Radioactive Waste Management

The federal government should work with NCSL and similar organizations in an effort to ensure that state legislators are included in all aspects of nuclear waste management strategies.

Low-Level Waste

NCSL maintains that states are best prepared to license and regulate low-level waste disposal facilities that operate within their borders in order to protect the health, safety and welfare of their citizens. NCSL urges the federal government to continue to provide states both with support and flexibility in their efforts to dispose of low-level radioactive waste. States and state compacts should have authority to limit/allow the import and export of waste to and from their state or region. The federal government should adopt policies that clarify the responsibility of the federal government for federal waste, identify any federal waste that might be disposed at compact facilities, and

ensure that any federal waste disposed of at compact or unaffiliated state facilities is subject to negotiation and the same laws, regulations, fees and requirements as nonfederal waste. The federal government should adopt clear policies with regard to naturally occurring and accelerator produced radioactive material waste and mixed wastes that respect states' authority to protect the health, safety and welfare of their citizens. NCSL encourages the federal government to work with NCSL toward these ends.

High-Level Waste and Used Fuel Management

NCSL urges the federal government to expeditiously research, develop and license a high-level waste/used nuclear fuel disposal and consolidated interim storage facilities at technically and scientifically suitable sites. NCSL favors the creation of a public-private partnership to manage the back end of the nuclear cycle. The federal government should consult with states at each step of the process to ensure they play an integral role in the development of high-level waste/used nuclear fuel storage and disposal policies and obtain state, local and tribal government informed consent before locating permanent disposal or consolidated interim storage facilities. The federal government should provide fair and equitable compensation to state and local governments of host states. This should include funding of independent oversight activities by state executive and legislative branches so that the host state may participate in and conduct its own assessments of a proposed waste repository site and disposal technology. The federal government should comply with state laws and regulations during the process of site selection and characterization, and the construction, operation and decommissioning of permanent disposal or consolidated interim storage facilities.

Consolidated interim storage facilities should be licensed for a specific, limited period of time not to exceed 25 years. High-level waste/used nuclear fuel recycling should be a priority waste management strategy.

Annual funding from the Nuclear Waste Fund should be used for nuclear waste management and not subject to non-related federal discretionary spending. These funds should be isolated for developing permanent disposal and consolidated interim storage facilities.

Transportation of Radioactive Waste and Used Nuclear Fuel

NCSL urges the federal government to ensure safe and reliable modes of transportation of radioactive wastes. DOE should seek to enter into a memorandum of understanding with each corridor state to spell out responsibilities, liability, compensation, response time, cleanup, shipping, planning and other duties connected with emergency situations. State, local and tribal governments should be given funding and technical assistance for ongoing emergency preparedness, independent safety inspections of drivers, vehicles and shipping containers, training of state and local public safety officials along radioactive waste transportation routes, and state emergency management communications centers. State, local and tribal governments should be involved in a meaningful manner with regard to radiation emissions standards, cask designs, support facilities, transportation equipment and other elements of the transportation system. The federal government should respect state and tribal authority to assess reasonable fees which fund activities connected to the safe routine transportation of high-level waste/used nuclear fuel shipments. The federal government should assure transportation accident prevention through the use of superior drivers; carrier compliance with shipping contracts and all applicable federal, state and local regulations; independent safety inspections of drivers, vehicles and shipping containers; designation of safe parking areas during abnormal conditions; advance notice to the appropriate state and local agencies regarding shipments; and

state access to information on shipments' status (i.e. real-time shipment tracking information where appropriate). Special criteria should be applied to the shipment of high-level waste/used nuclear fuel, including the development of guidelines for routing when shipping by rail, the use of dedicated trains moving at safe speeds for rail shipments, safety inspections at origin and enroute, and full-scale testing of casks used for used fuel transport.

Defense-Generated Transuranic (TRU) Waste

NCSL urges the federal government to appropriate adequate funds and expedite its responsibilities with regard to disposal of defense-generated transuranic (TRU) waste.

The federal government should implement a compensation program that recognizes equity considerations for state and local governments hosting a TRU waste repository and the federal government's obligation to provide such compensation. Host communities should be given assistance to subsidize and maintain an independent environmental monitoring and analytical laboratory to assure the character of the waste and ensure public confidence and safety.

Federal Facilities Cleanup

The states insist that the cleanup and disposal programs at the federal government's network of nuclear weapons production facilities and national research labs advance in a safe, cost-effective and expeditious manner. The U.S. Department of Energy, the Department of Defense and any future owners should be subject to all state laws governing the cleanup of hazardous and radioactive waste materials. States are also committed to the cleanup and conversion of closed military and other federal facilities containing hazardous and radioactive waste materials to other beneficial uses as soon as possible. NCSL encourages the Department of Defense to lessen the impacts of closing these facilities by entering into partnerships with business and other private interests in order to turn them into sites of commerce and development.

All federal cleanup efforts must be conducted in full consultation with the affected state, tribal and local governments. An ongoing dialogue with the states should be maintained to ensure effective state involvement in critical cleanup related decisions. Cleanup work must be accomplished in strict compliance with federal facility agreements and federal and state laws governing the cleanup of hazardous and radioactive waste materials. The federal government should give state and federal regulators complete enforcement authority necessary to ensure such compliance.

The federal government should continue to use the contract review process to provide effective oversight and to evaluate integrated contracts for cost accountability. Cost-effective solutions must be developed and implemented by federal agencies to meet cleanup standards that protect human health and the environment. State, tribal and local governments must have a continuing, substantive role in the planning and oversight activities of the waste-management effort. The Department of Energy must recognize that cultural resources and artifacts may be present on DOE sites, and must partner with affected Indian tribes to identify and mitigate impacts to those resources.

Pollution prevention practices should be followed and whenever possible recovered materials should be recycled or reused. Action should be taken to manage federal radioactive, hazardous, and mixed waste sites as soon as possible, but safety and quality cleanup must remain the priority. Federal cleanup efforts should enforce priorities and meet milestones set forth in federal-state consent orders regarding the cleanup of specific sites. A fully funded

and comprehensive long-term stewardship program for all of the federal facilities must be developed to ensure that communities are protected in perpetuity.

Hazardous Materials Transportation

State-Federal Partnership

While the federal law embodies the notion of a state-federal partnership in hazardous materials transportation safety, the National Conference of State Legislatures believes that efficient regulation of hazardous materials transportation should be accomplished through a clear delineation of regulatory authority and responsibility at each level or branch of government. The state and federal government must work together to develop and implement requirements that improve public safety. NCSL supports a federal role to:

- coordinate the national regulation of hazardous materials transportation;
- provide technical guidance to states; and
- mediate disputes among states, while states retain authority to mediate disputes among their political subdivisions.

NCSL also supports an increased federal programmatic coordination of regulatory, training and data collection activities.

Uniform Federal Standards

Uniform standards for technical requirements, routing, rerouting and notification should be developed by the federal government, in consultation with states. Federal law should not preclude state regulations that exceed the federal requirements and provide for an equal or greater degree of safety. In the absence of federal regulation in any aspect of a uniform subject, states must retain authority to regulate. States may adopt federal regulations or state requirements that are substantively the same as federal requirements. States should be allowed, through a waiver process, to establish standards that do not conform to the federal regulations.

Determination of Preemption

NCSL finds the preemption determination process to be an improvement over the preexisting "inconsistency ruling" process. The utilization of the "substantively the same as" standard in assessing state conformance with federal requirements should ensure that the effect of a state requirement does not vary in effect with the federal standard. At no point during the administrative preemption determination proceedings should a state's option to seek judicial relief be denied.

Financing

The federal government has a responsibility to fully fund any activities administered or implemented by the states that are a result of federal requirements or federal preemption of state authority.



States should have the ability to levy and retain fines for transporters without federal registration credentials.

NCSL supports states ability to retain a percentage of the proceeds resulting from successful state enforcement of the federal registration program.

States' fiscal autonomy in the regulation of fees and penalties and the expenditures of such fees and penalties should not be restricted in any manner.

Federal Registration and Permitting

Federal registration and permit programs should be reviewed for consolidation and administration by better established state programs. NCSL finds that the parallel federal programs, which questionably enhance the overall safety of hazardous materials transportation, are an unnecessary duplication of ongoing state programs and an ever-present threat to the autonomy of state-administered programs.

NCSL continues to support the recommendations of the Alliance for Uniform Hazmat Transportation Procedures to facilitate uniformity in state permitting and registration requirements. NCSL urges the U.S. DOT to provide adequate incentives to states to participate in the program, but a state should not be forced into participation by either the U.S. DOT or Congress.

The ability of states to incorporate administration of federal permit and registration requirements should also be examined for possible consolidation of dual government programs. Under current law, both state and federal programs are duly authorized.