

104TH CONGRESS  
1ST SESSION

# S. 1478

To facilitate the ability of a private consortium to site, design, license, construct, operate, and decommission a private facility for the interim storage of commercial spent nuclear fuel, subject to licensing by the Nuclear Regulatory Commission, to authorize the Secretary of Energy to contract with the consortium for storage services, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

DECEMBER 14, 1995

Mr. GRAMS 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 facilitate the ability of a private consortium to site, design, license, construct, operate, and decommission a private facility for the interim storage of commercial spent nuclear fuel, subject to licensing by the Nuclear Regulatory Commission, to authorize the Secretary of Energy to contract with the consortium for storage services, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.**

2 (a) SHORT TITLE.—This Act may be cited as the  
3 “Private Interim Storage Facility Authorizing Act of  
4 1995”.

5 (b) TABLE OF CONTENTS.—The table of contents for  
6 this Act is as follows:

- Sec. 1. Short title and table of contents.
- Sec. 2. Findings and purposes.
- Sec. 3. Definitions.
- Sec. 4. Authorization and siting of private interim storage facility.
- Sec. 5. Funding of private interim storage facility.
- Sec. 6. Design of private interim storage facility.
- Sec. 7. Activities of the Secretary.
- Sec. 7. Activities of the Commission.

7 **SEC. 2. FINDINGS AND PURPOSES.**

8 (a) FINDINGS.—Congress finds that—

9 (1) the Nuclear Waste Policy Act of 1982 (42  
10 U.S.C. 10101 et seq.) directed the Secretary of En-  
11 ergy to enter into disposal contracts with persons  
12 that generate or hold title to high-level radioactive  
13 waste or commercial spent nuclear fuel of domestic  
14 origin specifying the terms and conditions under  
15 which the Secretary would accept title to, transport,  
16 and dispose of the waste or spent fuel;

17 (2) under the terms of that Act and those dis-  
18 posal contracts, the Secretary has an unconditional  
19 obligation to begin taking title to, possession of, and  
20 delivery of commercial spent nuclear fuel for pur-  
21 poses of interim storage and permanent disposal, be-  
22 ginning not later than January 31, 1998;

1           (3) the Nation's domestic utilities have consist-  
2           ently met their fee obligations under the disposal  
3           contracts,     paying,     with     interest,     over  
4           \$10,000,000,000 into the Waste Fund;

5           (4) the Secretary's most recent estimate of the  
6           date for beginning operations at a repository is  
7           2010;

8           (5) the Nuclear Waste Policy Act of 1982 (42  
9           U.S.C. 10101 et seq.) links the schedule for siting,  
10          development, licensing and operation of a monitored  
11          retrievable storage facility to the schedule for devel-  
12          opment of a repository, making it impossible for the  
13          Secretary to begin operation of a monitored retriev-  
14          able storage facility by 1998;

15          (6) private initiatives to develop an interim  
16          storage facility for commercial spent nuclear fuel  
17          away from a reactor site have not been successful to  
18          date, primarily because of siting restrictions;

19          (7) if a repository is ultimately developed at the  
20          Yucca Mountain site, the location of an interim stor-  
21          age facility in close proximity to the site of the re-  
22          pository would benefit the civilian radioactive waste  
23          management system by, among other things—

24                  (A) reducing overall systemwide costs to  
25                  both the Government and the utility industry;

1 (B) increasing the efficiency of system op-  
2 erations;

3 (C) reducing transportation impacts; and

4 (D) providing lag storage for the reposi-  
5 tory;

6 (8) if the repository is not ultimately developed  
7 at the Yucca Mountain site, the location of an in-  
8 terim storage facility in Nevada would still be bene-  
9 ficial to the civilian radioactive waste management  
10 system; and

11 (9) while commercial spent nuclear fuel can be  
12 safely stored at reactor sites, the expeditious move-  
13 ment to and storage of commercial spent nuclear  
14 fuel at a centralized facility will enhance the Na-  
15 tion's environmental protection.

16 (b) PURPOSES.—The purposes of this Act are—

17 (1) to facilitate the ability of a consortium to  
18 site, design, license, construct, operate, and decom-  
19 mission a facility for the storage of commercial  
20 spent nuclear fuel and to establish procedures that  
21 will facilitate the availability of such a facility by  
22 1998;

23 (2) to authorize a consortium to designate a  
24 site for the private interim storage facility within  
25 Area 25 of the Nevada test site and provide for the

1 withdrawal and reservation of the site for use by the  
2 consortium under a lease agreement with the Sec-  
3 retary;

4 (3) to provide a means by which the Secretary  
5 may fulfill the Secretary's obligation to begin accept-  
6 ing commercial spent nuclear fuel by not later than  
7 January 31, 1998; and

8 (4) to require the Secretary to contract to use  
9 the private interim storage facility, in the same man-  
10 ner as a private entity, for the storage of commercial  
11 spent nuclear fuel.

12 **SEC. 3. DEFINITIONS.**

13 In this Act:

14 (1) AREA 25.—The term “Area 25” means the  
15 specific area within the Nevada Test Site that is  
16 designated by the Secretary and withdrawn and re-  
17 served in accordance with the Nuclear Waste Policy  
18 Act of 1982 (42 U.S.C. 10101 et seq.) for the loca-  
19 tion of an interim storage facility.

20 (2) COMMERCIAL SPENT NUCLEAR FUEL.—The  
21 term “commercial spent nuclear fuel” means fuel  
22 that has been withdrawn from a commercial nuclear  
23 reactor following irradiation, the constituent ele-  
24 ments of which have not been separated by repro-  
25 cessing.

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

3           (4) CONSORTIUM.—The term “consortium”  
4 means a consortium, composed of domestically  
5 owned and controlled private and public utility com-  
6 panies, and other domestically owned and controlled  
7 private entities, that is formed for the purpose of de-  
8 veloping a private interim storage facility under this  
9 Act, with which the secretary enters into a lease  
10 agreement under section 4.

11           (5) DISPOSAL CONTRACT.—The term “disposal  
12 contract” means a contract executed under section  
13 302 of the Nuclear Waste Policy Act of 1982 (42  
14 U.S.C. 10222), between the Secretary and any per-  
15 son that generates or holds title to high-level radio-  
16 active waste or commercial spent nuclear fuel of do-  
17 mestic origin, providing for the acceptance of title to  
18 and disposal of waste or fuel by the Secretary and  
19 the payment of fees to offset the Secretary’s expend-  
20 itures.

21           (6) DISPOSAL CONTRACT HOLDER.—The term  
22 “disposal contract holder” means a party to a dis-  
23 posal contract other than the Secretary.

24           (7) LEASE PERIOD.—The term “lease period”  
25 means the period during which a private interim

1 storage facility site is leased by the Secretary to the  
2 consortium, including the period of any renewal of  
3 the lease.

4 (8) PRIVATE INTERIM STORAGE FACILITY.—  
5 The term “private interim storage facility” means a  
6 facility designed and constructed by a consortium  
7 for the receipt, handling, possession, safeguarding,  
8 and storage of commercial spent nuclear fuel in ac-  
9 cordance with this Act.

10 (9) PRIVATE INTERIM STORAGE FACILITY  
11 SITE.—The term “private interim storage facility  
12 site” means the specific site within Area 25 that is  
13 designated by the consortium and withdrawn and re-  
14 served in accordance with section 4 for the location  
15 of the private interim storage facility.

16 (10) SECRETARY.—The term “Secretary”  
17 means the Secretary of Energy.

18 (11) SITE CHARACTERIZATION.—The term “site  
19 characterization” has the meaning stated in section  
20 302 of the Nuclear Waste Policy Act of 1982 (42  
21 U.S.C. 10101).

22 (12) STORAGE.—The term “storage” means re-  
23 tention of commercial spent nuclear fuel with the in-  
24 tent to recover the fuel for subsequent use, process-  
25 ing, or disposal.

1           (13) WASTE FUND.—The term “Waste Fund”  
2 means the Nuclear Waste Fund established in the  
3 United States Treasury by section 302 of the Nu-  
4 clear Waste Policy Act of 1982 (42 U.S.C. 10222).

5           (14) WITHDRAWAL.—The term “withdrawal”  
6 has the meaning stated in section 103 of the Federal  
7 Land Policy and Management Act of 1976 (43  
8 U.S.C. 1702).

9 **SEC. 4. AUTHORIZATION AND SITING OF PRIVATE INTERIM**  
10 **STORAGE FACILITY.**

11 (a) AUTHORIZATION.—

12           (1) IN GENERAL.—The consortium may site,  
13 design, license, construct, operate, and decommission  
14 a private interim storage facility for the interim  
15 storage of commercial spent nuclear fuel.

16           (2) DESIGNATION, WITHDRAWAL, RESERVA-  
17 TION, AND LEASE.—The private interim storage fa-  
18 cility site shall be designated by the consortium in  
19 accordance with subsection (b), withdrawn and re-  
20 served for development and operation of the facility  
21 in accordance with subsection (c), and leased by the  
22 Secretary to the consortium in accordance with sub-  
23 section (d).

24           (3) LICENSE.—On application by the consor-  
25 tium, the private interim storage facility shall be li-

1 censed by the Commission in accordance with its  
2 regulations governing the licensing of independent  
3 spent fuel storage installations, as modified in ac-  
4 cordance with section 8.

5 (b) DESIGNATION OF PRIVATE INTERIM STORAGE  
6 FACILITY SITE.—

7 (1) IN GENERAL.—The consortium may des-  
8 ignate a site for the private interim storage facility  
9 within Area 25.

10 (2) CONSULTATION.—Prior to designating a  
11 site under paragraph (1), the consortium may con-  
12 sult with the Secretary, the Secretary of the Inte-  
13 rior, or the Secretary of Defense, who shall assist  
14 the consortium to the extent practicable, including  
15 providing the consortium with any unclassified envi-  
16 ronmental data or other information concerning the  
17 site that is available to the Secretary, the Secretary  
18 of the Interior, or the Secretary of Defense, respec-  
19 tively.

20 (4) MAP AND LEGAL DESCRIPTION.—On des-  
21 ignation of a site under paragraph (1), the consor-  
22 tium shall transmit to the Secretary a map depicting  
23 the boundaries of the site entitled “Private Interim  
24 Storage Facility Site Withdrawal Map”, and a legal

1 description of the private interim storage facility  
2 site.

3 (5) BOUNDARIES.—The boundaries depicted on  
4 the map transmitted under paragraph (4) are estab-  
5 lished as the boundaries of the private interim stor-  
6 age facility site.

7 (6) PUBLICATION AND FILING.—No later than  
8 30 days following the designation of the private in-  
9 terim storage facility site by the consortium and the  
10 receipt of the map from the consortium under para-  
11 graph (2), the Secretary shall—

12 (A) publish in the Federal Register a no-  
13 tice containing a legal description of the private  
14 interim storage facility site; and

15 (B) file copies of the map and the legal de-  
16 scription of the private interim storage facility  
17 site with Congress, the Secretary of the Inte-  
18 rior, the Governor of Nevada, and the Archivist  
19 of the United States.

20 (7) LEGAL EFFECT.—The map and legal de-  
21 scription of the private interim storage facility site  
22 described in this subsection shall have the same  
23 force and effect as if they were included in this Act.

1           (8) CORRECTIONS.—The Secretary may correct  
2 clerical and typographical errors in the maps and  
3 legal descriptions.

4           (c) WITHDRAWAL AND RESERVATION.—

5           (1) WITHDRAWAL.—The private interim storage  
6 facility site is withdrawn from all forms of entry, ap-  
7 propriation, and disposal under the public land laws,  
8 including the mineral leasing laws, the geothermal  
9 leasing laws, the material sale laws, and the mining  
10 laws.

11           (2) TRANSFER OF JURISDICTION.—Jurisdiction  
12 over any land within the private interim storage fa-  
13 cility site managed by the Secretary of the Interior,  
14 the Secretary of Defense, or any other Federal offi-  
15 cer is transferred to the Secretary.

16           (3) RESERVATION.—The private interim stor-  
17 age facility site is reserved for the construction and  
18 operation of the private interim storage facility and  
19 activities associated with the purposes of this Act by  
20 the consortium, acting under a lease agreement with  
21 the Secretary.

22           (d) LEASE AGREEMENT.—

23           (1) IN GENERAL.—Not later than 60 days fol-  
24 lowing withdrawal and reservation of the private in-  
25 terim storage facility site, the Secretary shall exe-

1       cute a lease agreement with the consortium estab-  
2       lishing terms and conditions under which the Sec-  
3       retary shall lease the private interim storage facility  
4       site to the consortium.

5               (2) CONTENTS.—The lease agreement shall in-  
6       clude the following terms and conditions:

7               (A) LEASE FEE.—The consortium shall  
8       not pay a lease fee.

9               (B) OWNERSHIP OF FACILITY.—The pri-  
10       vate interim storage facility shall be owned by  
11       the consortium, but the consortium shall trans-  
12       fer title to the Secretary at no cost—

13               (i) prior to conclusion of the oper-  
14       ational period; or

15               (ii) prior to decommissioning,  
16       at the option of the consortium.

17               (C) LEASE PERIOD.—The lease period  
18       shall commence on execution of the lease agree-  
19       ment and shall terminate on the date on which  
20       title is transferred under subparagraph (B).

21               (D) ACTIVITIES.—The consortium shall be  
22       authorized to conduct specified activities at the  
23       private interim storage facility site, including  
24       the design, licensing, construction, operation,  
25       and decommissioning of the private interim

1 storage facility and related activities, with the  
2 scope of activities to be determined by the con-  
3 sortium.

4 (3) EFFECT.—The Secretary’s execution of the  
5 lease agreement shall not—

6 (A) convert the private interim storage fa-  
7 cility into a governmental facility; or

8 (B) convert the consortium, or its contrac-  
9 tors or subcontractors, into government con-  
10 tractors or subcontractors.

11 **SEC. 5. FUNDING OF PRIVATE INTERIM STORAGE FACILITY.**

12 (a) SOURCE OF FUNDING.—The Waste Fund shall  
13 be the source of funding for actions by the consortium  
14 with respect to the siting, design, licensing, construction,  
15 operation, and decommissioning of the private interim  
16 storage facility.

17 (b) FUNDING AGREEMENT.—

18 (1) IN GENERAL.—Not later than 60 days fol-  
19 lowing designation of a private interim storage facil-  
20 ity site, the Secretary shall execute a funding agree-  
21 ment with the consortium that establishes terms and  
22 conditions for the transfer of funds to the consor-  
23 tium from the Waste Fund to reimburse the consor-  
24 tium for all reasonable costs incurred in connection  
25 with the site characterization and designation of the

1 private interim storage facility site, and the design,  
2 licensing, construction, operation, and decommission-  
3 ing of the private interim storage facility during the  
4 lease period.

5 (2) INCORPORATION INTO LEASE AGREE-  
6 MENT.—The funding agreement may be incor-  
7 porated into the lease agreement under section 4(d).

8 (c) AUTHORIZATION OF APPROPRIATIONS.—There  
9 are authorized to be appropriated to the Secretary, out  
10 of the Waste Fund, for carrying out this Act, such sums  
11 as are necessary to pay the reasonable costs described in  
12 subsection (b)(1).

13 **SEC. 6. DESIGN OF PRIVATE INTERIM STORAGE FACILITY.**

14 (a) CRITERIA.—In designing the private interim stor-  
15 age facility, the consortium shall, to the extent practicable,  
16 satisfy the following criteria:

17 (1) STORAGE CAPACITY.—The private interim  
18 storage facility shall have a storage capacity of not  
19 less than 40,000 metric tons of commercial spent  
20 nuclear fuel, which capacity shall be expanded as  
21 necessary if the receipt of spent nuclear fuel at the  
22 repository is delayed beyond 2010.

23 (2) CANISTER SYSTEMS.—The design shall pro-  
24 vide for the use of such storage technologies as are

1 licensed or certified by the Commission for use at  
2 the private interim storage facility.

3 (b) TEMPORARY USE OF FACILITIES.—The design of  
4 the private interim storage facility may provide for the  
5 temporary use, as necessary, of any facility owned by the  
6 Government on the date of enactment of this Act and  
7 within the boundaries of the private interim storage facil-  
8 ity site, regardless of whether the facility is licensed by  
9 the Commission, in connection with the storage, transpor-  
10 tation, and handling of commercial spent nuclear fuel at  
11 the private interim storage facility.

12 **SEC. 7. ACTIVITIES OF THE SECRETARY.**

13 (a) COOPERATION WITH CONSORTIUM.—The Sec-  
14 retary shall encourage efforts by the consortium to develop  
15 a private interim storage facility for commercial spent nu-  
16 clear fuel in accordance with this Act by, among other  
17 things—

18 (1) providing any requested information, envi-  
19 ronmental data, and assistance to the consortium;  
20 and

21 (2) cooperating with the consortium to facilitate  
22 compatibility between the private interim storage fa-  
23 cility and the Secretary's activities under the Nu-  
24 clear Waste Policy Act of 1982 (42 U.S.C. 10101 et  
25 seq.).

1 (b) OBLIGATION.—Development of the private in-  
2 terim storage facility by the consortium shall not affect  
3 the Secretary’s obligations under the Nuclear Waste Pol-  
4 icy Act of 1982 (42 U.S.C. 10101 et seq.), including the  
5 Secretary’s obligation to characterize and site a perma-  
6 nent waste facility.

7 (c) SERVICE AGREEMENT.—

8 (1) IN GENERAL.—Not later than 180 days  
9 after the date of enactment of this Act, the Sec-  
10 retary shall offer to execute a service agreement with  
11 the consortium for the storage of commercial spent  
12 nuclear fuel and attendant services at the private in-  
13 terim storage facility after the facility has been li-  
14 censed by the Commission.

15 (2) EFFECT.—The Secretary’s execution of a  
16 service agreement with the consortium shall not—

17 (A) convert the private interim storage fa-  
18 cility into a Government facility or its owner or  
19 lessee into a Government contractor or sub-  
20 contractor;

21 (B) impose any obligation on the private  
22 interim storage facility that is unique to con-  
23 tracts with the Government; or

24 (C) impose any obligation on the Secretary  
25 that would not apply to a private entity that

1 contracts with the private interim storage facil-  
2 ity, and specifically shall not—

3 (i) impose any requirement on the  
4 Secretary under the National Environ-  
5 mental Policy Act of 1969 (42 U.S.C.  
6 4321 et seq.); or

7 (ii) subject the Secretary to Federal  
8 laws (including regulations) governing the  
9 Secretary's procurement of goods or serv-  
10 ices or the Secretary's hiring, employment,  
11 payment, or firing of personnel.

12 (3) FUNDING.—The Waste Fund shall be used  
13 to fund the Secretary's actions in executing the serv-  
14 ice agreement and implementing the Secretary's re-  
15 sponsibilities under the service agreement, including  
16 the acceptance of commercial spent nuclear fuel at  
17 disposal contract holder sites and transportation of  
18 the fuel to the private interim storage facility.

19 (d) TRANSPORTATION.—

20 (1) IN GENERAL.—The Secretary may use any  
21 available system, certified by the Commission, for  
22 the transportation of commercial spent nuclear fuel  
23 to the private interim storage facility.

24 (2) NECESSARY MEASURES.—Following with-  
25 drawal and reservation of the private interim storage

1 facility site under section 4, the Secretary shall take  
2 such measures, consistent with the Secretary's au-  
3 thority under applicable law, as are necessary to en-  
4 sure that the Secretary is able to—

5 (A) accept delivery of commercial spent  
6 nuclear fuel at disposal contract holders' sites;  
7 and

8 (B) transport commercial spent nuclear  
9 fuel to the private interim storage facility in  
10 safe, cost-efficient, and effective manner.

11 **SEC. 8. ACTIVITIES OF THE COMMISSION.**

12 (a) REGULATIONS.—Not later than 180 days after  
13 the date of enactment of this Act, the Commission shall  
14 amend its regulations governing the licensing of independ-  
15 ent spent fuel storage installations, as necessary, to pro-  
16 vide for the licensing of the private interim storage facility  
17 upon application by the consortium.

18 (b) CONTENTS.—The regulations under subsection  
19 (a) shall incorporate the following provisions:

20 (1) LOCATION OF FACILITY.—The private in-  
21 terim storage facility shall be located at the private  
22 interim storage facility site, under a lease agreement  
23 under section 4.

24 (2) STORAGE SERVICES.—The license shall au-  
25 thorize the consortium to provide storage services to

1 the Secretary under a service agreement under sec-  
2 tion 7(c).

3 (3) TERM OF LICENSE.—The private interim  
4 storage facility shall be licensed for the maximum  
5 period consistent with applicable law, not to exceed  
6 100 years.

7 (4) TEMPORARY USE.—If it is proposed in the  
8 license application and facility design, the license  
9 shall authorize temporary use of a facility, owned by  
10 the Government on the date of enactment of this Act  
11 and within the boundaries of the private interim  
12 storage facility site, regardless of whether the facil-  
13 ity is licensed by the Commission, under such rea-  
14 sonable terms and conditions as the Commission  
15 may specify for the use of the facility, including pro-  
16 vision for oversight by the Commission to ensure  
17 that the facility does not pose an unreasonable risk  
18 to public health and safety or the environment.

19 (c) LICENSING.—On application by the consortium  
20 for a license for construction and operation of the private  
21 interim storage facility at the private interim storage facil-  
22 ity site, the Commission shall review the license applica-  
23 tion and issue a final decision on the license application  
24 at the earliest practicable date, to the extent permitted

1 by applicable law (including regulations), but not later  
2 than 18 months after receipt of the license application.

3 (d) COMPLIANCE WITH THE NATIONAL ENVIRON-  
4 MENTAL POLICY ACT OF 1969.—Any environmental im-  
5 pact statement prepared by the Commission under section  
6 102(2)(C) of the National Environmental Policy Act of  
7 1969 (42 U.S.C. 4332(2)(C)) in conjunction with the li-  
8 censing of the private interim storage facility authorized  
9 by this Act shall not be required to, and shall not, con-  
10 sider—

11 (1) the need for the private interim storage fa-  
12 cility, including any individual component of the fa-  
13 cility;

14 (2) any alternative to ownership of the private  
15 interim storage facility by the consortium;

16 (3) the timing of the availability of the private  
17 interim storage facility;

18 (4) any alternative to the private interim stor-  
19 age facility site;

20 (5) any alternative to the design criteria for the  
21 facility or any individual component of the facility as  
22 specified in the license application; or

23 (6) the environmental impact of storage of com-  
24 mercial spent nuclear fuel at the facility beyond the

1 term of the license or the term of the renewal period  
2 for which application is made.

3 **SEC. 9. AUDITS AND OVERSIGHT.**

4 (a) BOOKS AND RECORDS.—The Comptroller General  
5 shall have access to all books and records of the consor-  
6 tium.

7 (b) ANNUAL AUDIT.—The Comptroller General shall  
8 perform an annual audit of the consortium.

9 (c) REPORT.—The Secretary shall provide each an-  
10 nual audit performed under subsection (b) to the Senate  
11 and the House of Representatives.

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