

118TH CONGRESS
2D SESSION

S. 5406

To establish an Office of Public Engagement and Participation within the Nuclear Regulatory Commission, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 2, 2024

Mr. MARKEY introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To establish an Office of Public Engagement and Participation within the Nuclear Regulatory Commission, 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “NRC Office of Public
5 Engagement and Participation Act of 2024”.

6 **SEC. 2. OFFICE OF PUBLIC ENGAGEMENT AND PARTICIPA-**
7 **TION.**

8 (a) DEFINITIONS.—In this section:

9 (1) CHAIR.—The term “Chair” means the
10 Chairman of the Commission.

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

3 (3) DIRECTOR.—The term “Director” means
4 the Director of the Office.

5 (4) FUND.—The term “Fund” means the Inter-
6 venor Trust Fund established under subsection
7 (i)(1).

8 (5) OFFICE.—The term “Office” means the Of-
9 fice of Public Engagement and Participation estab-
10 lished under subsection (b).

11 (6) PANEL.—The term “Panel” means the
12 Atomic Safety and Licensing Board Panel.

13 (7) PARTICIPANT.—The term “participant” has
14 the meaning given the term in section 2.4 of title 10,
15 Code of Federal Regulations (as in effect on the
16 date of enactment of this Act).

17 (8) PROCEEDING.—The term “proceeding”
18 means any proceeding under the jurisdiction of the
19 Panel.

20 (9) SIGNIFICANT FINANCIAL HARDSHIP.—The
21 term “significant financial hardship”, with respect
22 to a participant in a proceeding before the Commis-
23 sion, means that the participant cannot afford, with-
24 out undue hardship to that participant or the appli-
25 cable entities represented by that participant, to pay

1 the costs of effective participation in the proceeding,
2 including attorney’s fees, expert witness fees, and
3 other reasonable costs of participation.

4 (10) SUBSTANTIAL CONTRIBUTION.—The term
5 “substantial contribution”, with respect to a partici-
6 pant in a proceeding before the Commission, means
7 that, as determined by the Office, in consultation
8 with the Panel, the contributions of that participant
9 are likely to assist the Commission in making an
10 order or decision, based on the contentions made by
11 that participant for the purpose of protecting the
12 health and safety of the public with respect to issues
13 under the jurisdiction of the Commission.

14 (b) ESTABLISHMENT.—Under the authorities pro-
15 vided by sections 25 and 161 d. of the Atomic Energy
16 Act of 1954 (42 U.S.C. 2035, 2201(d)) and section 201(a)
17 of the Energy Reorganization Act of 1974 (42 U.S.C.
18 5841(a)), the Commission shall establish an office, to be
19 known as the “Office of Public Engagement and Partici-
20 pation”, not later than 180 days after the date of enact-
21 ment of this Act.

22 (c) DIRECTOR.—

23 (1) IN GENERAL.—The Office shall be adminis-
24 tered by a Director.

1 (2) APPOINTMENT.—The Chair shall initiate
2 the appointment, subject to the approval of the
3 Commission, of the Director from among individuals
4 who have demonstrated ability in public engagement,
5 public administration, or judicial proceedings.

6 (3) TERM.—Subject to paragraph (7), the Di-
7 rector shall serve for—

8 (A) a term of 5 years; and

9 (B) not more than 2 terms.

10 (4) DUTIES.—The Director—

11 (A) shall be responsible for the discharge
12 of the functions of the Office; and

13 (B) may appoint, and assign the duties of,
14 staff of the Office—

15 (i) as necessary to carry out the func-
16 tions of the Office; and

17 (ii) in accordance with all applicable
18 provisions of title 5, United States Code.

19 (5) SUPERVISION.—

20 (A) IN GENERAL.—The Director—

21 (i) shall report to and be under the
22 general supervision of the Commission; but

23 (ii) shall not report to, or be subject
24 to supervision by—

1 (I) any individual member of the
2 Commission, including the Chair; or

3 (II) any individual officer or em-
4 ployee of the Commission.

5 (B) LIMITATION.—Neither the Commission
6 nor any member, officer, or employee of the
7 Commission may prevent or prohibit the Direc-
8 tor from carrying out any function of the Office
9 described in subsection (d).

10 (6) COMPENSATION.—The Director shall be
11 compensated at a rate of pay not greater than the
12 maximum rate of pay prescribed for a senior execu-
13 tive in the Senior Executive Service under section
14 5382 of title 5, United States Code.

15 (7) EXPIRATION OF TERM.—A Director may
16 continue to serve after the expiration of the term of
17 such Director until a successor is appointed.

18 (d) FUNCTIONS OF THE OFFICE.—The functions of
19 the Office shall be—

20 (1) to support public participation in pro-
21 ceedings before the Commission;

22 (2) to serve as a liaison to those who advocate
23 for the public interest on matters within the jurisdic-
24 tion of the Commission;

1 (3) to provide educational and technical guid-
2 ance and assistance to members of the public with
3 respect to participating in proceedings before the
4 Commission, including guidance in submitting com-
5 ments, contentions, and hearing requests;

6 (4) to coordinate assistance, including financial
7 assistance, available to participants in proceedings
8 before the Commission, including by—

9 (A) providing widely accessible, plain-lan-
10 guage resources and guidance to the public re-
11 lating to—

12 (i) eligibility to request compensation
13 with respect to a proceeding before the
14 Commission;

15 (ii) completing and submitting a re-
16 quest for compensation, including informa-
17 tion on the documentation necessary to
18 demonstrate—

19 (I) a substantial contribution to
20 the proceeding; and

21 (II) significant financial hard-
22 ship; and

23 (iii) deadlines and any other matters
24 relating to a request for compensation, as

1 determined under rules promulgated by the
2 Commission; and

3 (B) publishing in a single location on a
4 website designated by the Office and in a timely
5 manner—

6 (i) a notice of a determination by the
7 Panel of eligibility or ineligibility to rel-
8 evant participants with respect to com-
9 pensation for participation in a proceeding
10 before the Commission; and

11 (ii) notice of a determination by the
12 Panel on up-front and final compensation,
13 as appropriate, to eligible participants;

14 (5) to increase opportunities for virtual attend-
15 ance and participation by members of the public in
16 Commission meetings and proceedings;

17 (6) to facilitate the implementation of rec-
18 ommendations included in the package of the Com-
19 mission entitled “Systematic Review of How Agency
20 Programs, Policies, and Activities Address Environ-
21 mental Justice”, dated March 29, 2022, and num-
22 bered SECY-22-0025 (including enclosures), or
23 subsequent documents, as approved and assigned to
24 the Office by the Commission;

1 (7) to coordinate assistance to the public with
2 respect to authorities exercised by the Commission;
3 and

4 (8) to conduct other activities to facilitate
5 transparency and opportunity for public engagement
6 with the Commission.

7 (e) INDEPENDENT OFFICE.—The Chair—

8 (1) shall take appropriate actions to ensure the
9 independence of the Office within the Commission,
10 including independence from other officers and em-
11 ployees of the Commission; and

12 (2) shall not prevent or prohibit the Office from
13 initiating, carrying out, or completing any support
14 for public participation, including guidance or assist-
15 ance, that the Office determines is necessary and ap-
16 propriate under this section.

17 (f) COMPENSATION.—

18 (1) IN GENERAL.—Notwithstanding section 502
19 of the Energy and Water Development Appropria-
20 tions Act, 1993 (5 U.S.C. 504 note; Public Law
21 102–377), and subject to the availability of appro-
22 priations to the Fund, the Panel, in consultation
23 with the Office, shall provide compensation for all
24 reasonable attorney’s fees, expert witness fees, and

1 other costs of participating in any proceeding before
2 the Commission to a participant, if—

3 (A) the Panel, in consultation with the Of-
4 fice, determines that the participation of that
5 participant in that proceeding without receipt of
6 compensation constitutes a significant financial
7 hardship with respect to that participant; and

8 (B) the Office, in consultation with the
9 Panel, determines that the participation of that
10 participant in that proceeding would likely pro-
11 vide a substantial contribution to the record of
12 the proceeding.

13 (2) GUIDELINES.—

14 (A) IN GENERAL.—Not later than 180
15 days after the date of enactment of this Act,
16 the Commission shall promulgate a rule pursu-
17 ant to which the Panel may provide compensa-
18 tion under paragraph (1).

19 (B) PARTICIPANT ELIGIBILITY DETER-
20 MINATION.—In establishing guidelines under
21 subparagraph (A), the Panel, in consultation
22 with the Office, shall establish a process pursu-
23 ant to which a participant has an opportunity
24 to file with the Panel, alongside a petition to in-
25 tervene, a notice of intent to request compensa-

1 tion, in order to receive, at the same time that
2 a decision on the petition to intervene is issued,
3 a notification of the eligibility of that partici-
4 pant to receive compensation based on the de-
5 terminations described in subparagraphs (A)
6 and (B) of paragraph (1).

7 (C) UP-FRONT COMPENSATION.—Pursuant
8 to the rule promulgated under subparagraph
9 (A), the Panel, in consultation with the Office,
10 shall establish a process to provide compensa-
11 tion, in the form of grants, prior to the conclu-
12 sion of the applicable proceeding, if—

13 (i) the participant has received ap-
14 proval to act as a party to the proceeding
15 under the requirements of section 2.309 of
16 title 10, Code of Federal Regulations (as
17 in effect on the date of enactment of this
18 Act); and

19 (ii) the participant submits a sum-
20 mary of eligible, reasonable costs that the
21 participant expects to incur as an acting
22 party to the proceeding.

23 (3) EFFECT OF OUTCOME OF PROCEEDING.—
24 After the Panel has affirmed the eligibility of a par-
25 ticipant to receive, and has provided, compensation

1 under paragraph (1), the compensation claim or
2 grant under this subsection shall not be affected by
3 the outcome of the related proceeding, including any
4 amendment or reversal of a final decision in the re-
5 lated proceeding.

6 (4) APPEAL OF DECISIONS.—

7 (A) IN GENERAL.—A participant may ap-
8 peal a decision described in subparagraph (B)
9 to the Commission under the procedures de-
10 scribed in section 2.1407 of title 10, Code of
11 Federal Regulations (as in effect on the date of
12 enactment of this Act).

13 (B) DECISION DESCRIBED.—A decision re-
14 ferred to in subparagraph (A) is any decision
15 made by the Panel relating to financial assist-
16 ance or compensation under this section with
17 respect to the applicable participant.

18 (g) ANNUAL REPORT.—

19 (1) IN GENERAL.—Not later than one year
20 after the date of enactment of this Act, and annually
21 thereafter, the Director shall submit to Congress a
22 report on the activities of the Office.

23 (2) REQUIREMENTS.—Each report under para-
24 graph (1) shall include, for the year covered by the
25 report—

1 (A) the number and types of requests for
2 assistance received by the Office;

3 (B) an assessment of the most common
4 difficulties encountered by members of the pub-
5 lic with participating or proposing to participate
6 in proceedings before the Commission;

7 (C) an accounting of requests for com-
8 pensation filed with the Panel pursuant to sub-
9 section (f), including an accounting of payments
10 made to fulfill approved compensation requests;
11 and

12 (D) a list of activities undertaken by the
13 Office to follow recommendations approved and
14 assigned to the Office by the Commission and
15 outlined in the package of the Commission enti-
16 tled “Systematic Review of How Agency Pro-
17 grams, Policies, and Activities Address Environ-
18 mental Justice”, dated March 29, 2022, and
19 numbered SECY–22–0025 (including enclo-
20 sures) or subsequent documents.

21 (h) NO EFFECT ON EXISTING PUBLIC ENGAGEMENT
22 STANDARDS.—Nothing in this Act reduces, or may be in-
23 terpreted as reducing, the standards for the Commission
24 to engage the public in any proceeding or decision.

25 (i) INTERVENOR TRUST FUND.—

1 (1) IN GENERAL.—The Commission shall estab-
2 lish a fund, to be known as the “Intervenor Trust
3 Fund”.

4 (2) ADMINISTRATION.—The Fund shall be ad-
5 ministered by the Office, in coordination with the
6 Panel.

7 (3) USE OF FUND.—Notwithstanding section
8 502 of the Energy and Water Development Approp-
9 riations Act, 1993 (5 U.S.C. 504 note; Public Law
10 102–377), amounts in the Fund shall be used by the
11 Panel to satisfy requests for compensation under
12 subsection (f), in accordance with rules promulgated
13 by the Commission under subsections (d)(4)(A)(iii)
14 and (f).

15 (4) AUTHORIZATION OF APPROPRIATIONS TO
16 FUND.—Notwithstanding section 502 of the Energy
17 and Water Development Appropriations Act, 1993
18 (5 U.S.C. 504 note; Public Law 102–377), there are
19 authorized to be appropriated to the Fund such
20 amounts as may be necessary to satisfy requests for
21 compensation under subsection (f), to remain avail-
22 able until expended.

23 (5) TRANSFER OF FUNDS.—Notwithstanding
24 section 1532 of title 31, United States Code, the
25 Commission may transfer amounts from an appro-

1 appropriate appropriations account to the Fund, as the
2 Commission determines necessary to meet the budg-
3 etary requirements of the Fund.

4 (j) USE OF EXISTING AUTHORITY.—In carrying out
5 this section, the Commission, to the maximum extent prac-
6 ticable, shall utilize the existing authority of the Commis-
7 sion under other law, including—

8 (1) the Atomic Energy Act of 1954 (42 U.S.C.
9 2011 et seq.);

10 (2) the Energy Reorganization Act of 1974 (42
11 U.S.C. 5801 et seq.); and

12 (3) any other applicable law.

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