

Union Calendar No. 322

108TH CONGRESS
2^D SESSION

H. R. 4614

[Report No. 108-554]

Making appropriations for energy and water development for the fiscal year ending September 30, 2005, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JUNE 18, 2004

Mr. HOBSON, from the Committee on Appropriations, reported the following bill; which was committed to the Committee of the Whole House on the State of the Union and ordered to be printed

A BILL

Making appropriations for energy and water development for the fiscal year ending September 30, 2005, 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 That the following sums are appropriated, out of any
4 money in the Treasury not otherwise appropriated, for the
5 fiscal year ending September 30, 2005, for energy and
6 water development, and for other purposes, namely:

1 TITLE III
2 DEPARTMENT OF ENERGY
3 ENERGY PROGRAMS
4 ENERGY SUPPLY

5 For Department of Energy expenses including the
6 purchase, construction, and acquisition of plant and cap-
7 ital equipment, and other expenses necessary for energy
8 supply activities in carrying out the purposes of the De-
9 partment of Energy Organization Act (42 U.S.C. 7101 et
10 seq.), including the acquisition or condemnation of any
11 real property or any facility or for plant or facility acqui-
12 sition, construction, or expansion, and the purchase of
13 not to exceed 9 passenger motor vehicles for replacement
14 only, and one ambulance, \$817,126,000, to remain avail-
15 able until expended.

16 NON-DEFENSE SITE ACCELERATION COMPLETION

17 For Department of Energy expenses, including the
18 purchase, construction, and acquisition of plant and cap-
19 ital equipment and other expenses necessary for non-de-
20 fense environmental management site acceleration com-
21 pletion activities in carrying out the purposes of the De-
22 partment of Energy Organization Act (42 U.S.C. 7101 et
23 seq.), including the acquisition or condemnation of any
24 real property or any facility or for plant or facility acqui-

1 sition, construction, or expansion, \$151,850,000, to re-
2 main available until expended.

3 URANIUM ENRICHMENT DECONTAMINATION AND
4 DECOMMISSIONING FUND

5 For necessary expenses in carrying out uranium en-
6 richment facility decontamination and decommissioning,
7 remedial actions, and other activities of title II of the
8 Atomic Energy Act of 1954, as amended, and title X,
9 subtitle A, of the Energy Policy Act of 1992,
10 \$500,200,000, to be derived from the Fund, to remain
11 available until expended, of which \$100,614,000 shall be
12 available in accordance with title X, subtitle A, of the
13 Energy Policy Act of 1992.

14 NON-DEFENSE ENVIRONMENTAL SERVICES

15 For Department of Energy expenses necessary for
16 non-defense environmental services activities that indi-
17 rectly support the accelerated cleanup and closure mis-
18 sion at environmental management sites, including the
19 purchase, construction, and acquisition of plant and cap-
20 ital equipment and other necessary expenses,
21 \$291,296,000, to remain available until expended.

22 SCIENCE

23 For Department of Energy expenses including the
24 purchase, construction and acquisition of plant and cap-
25 ital equipment, and other expenses necessary for science

1 activities in carrying out the purposes of the Department
2 of Energy Organization Act (42 U.S.C. 7101 et seq.), in-
3 cluding the acquisition or condemnation of any real prop-
4 erty or facility or for plant or facility acquisition, con-
5 struction, or expansion, and purchase of not to exceed
6 four passenger motor vehicles for replacement only, in-
7 cluding one ambulance, \$3,599,964,000, to remain avail-
8 able until expended.

9 DEPARTMENTAL ADMINISTRATION

10 For salaries and expenses of the Department of En-
11 ergy necessary for departmental administration in car-
12 rying out the purposes of the Department of Energy Or-
13 ganization Act (42 U.S.C. 7101 et seq.), including the
14 hire of passenger motor vehicles and official reception
15 and representation expenses (not to exceed \$35,000),
16 \$243,876,000, to remain available until expended, plus
17 such additional amounts as necessary to cover increases
18 in the estimated amount of cost of work for others not-
19 withstanding the provisions of the Anti-Deficiency Act
20 (31 U.S.C. 1511 et seq.): *Provided*, That such increases
21 in cost of work are offset by revenue increases of the
22 same or greater amount, to remain available until ex-
23 pended: *Provided further*, That moneys received by the
24 Department for miscellaneous revenues estimated to total
25 \$122,000,000 in fiscal year 2005 may be retained and

1 used for operating expenses within this account, and may
2 remain available until expended, as authorized by section
3 201 of Public Law 95–238, notwithstanding the provi-
4 sions of 31 U.S.C. 3302: *Provided further*, That the sum
5 herein appropriated shall be reduced by the amount of
6 miscellaneous revenues received during fiscal year 2005,
7 and any related unappropriated receipt account balances
8 remaining from prior years’ miscellaneous revenues, so as
9 to result in a final fiscal year 2005 appropriation from
10 the general fund estimated at not more than
11 \$121,876,000.

12 OFFICE OF THE INSPECTOR GENERAL

13 For necessary expenses of the Office of the Inspec-
14 tor General in carrying out the provisions of the Inspec-
15 tor General Act of 1978, as amended, \$41,508,000, to
16 remain available until expended.

17 ATOMIC ENERGY DEFENSE ACTIVITIES

18 NATIONAL NUCLEAR SECURITY ADMINISTRATION

19 WEAPONS ACTIVITIES

20 For Department of Energy expenses, including the
21 purchase, construction, and acquisition of plant and cap-
22 ital equipment and other incidental expenses necessary
23 for atomic energy defense weapons activities in carrying
24 out the purposes of the Department of Energy Organiza-
25 tion Act (42 U.S.C. 7101 et seq.), including the acquisi-

1 tion or condemnation of any real property or any facility
2 or for plant or facility acquisition, construction, or expan-
3 sion; and the purchase of not to exceed 19 passenger
4 motor vehicles, for replacement only, including not to ex-
5 ceed two buses; \$6,514,424,000 to remain available until
6 expended.

7 DEFENSE NUCLEAR NONPROLIFERATION

8 For Department of Energy expenses, including the
9 purchase, construction and acquisition of plant and cap-
10 ital equipment and other incidental expenses necessary
11 for atomic energy defense, defense nuclear nonprolifera-
12 tion activities, in carrying out the purposes of the De-
13 partment of Energy Organization Act (42 U.S.C. 7101 et
14 seq.), including the acquisition or condemnation of any
15 real property or any facility or for plant or facility acqui-
16 sition, construction, or expansion, \$1,348,647,000, to re-
17 main available until expended.

18 NAVAL REACTORS

19 For Department of Energy expenses necessary for
20 naval reactors activities to carry out the Department of
21 Energy Organization Act (42 U.S.C. 7101 et seq.), in-
22 cluding the acquisition (by purchase, condemnation, con-
23 struction, or otherwise) of real property, plant, and cap-
24 ital equipment, facilities, and facility expansion,
25 \$807,900,000, to remain available until expended.

1 OFFICE OF THE ADMINISTRATOR

2 For necessary expenses of the Office of the Adminis-
3 trator in the National Nuclear Security Administration,
4 including official reception and representation expenses
5 (not to exceed \$12,000), \$356,200,000, to remain avail-
6 able until expended.

7 ENVIRONMENTAL AND OTHER DEFENSE

8 ACTIVITIES

9 DEFENSE SITE ACCELERATION COMPLETION

10 For Department of Energy expenses, including the
11 purchase, construction, and acquisition of plant and cap-
12 ital equipment and other expenses necessary for atomic
13 energy defense site acceleration completion activities in
14 carrying out the purposes of the Department of Energy
15 Organization Act (42 U.S.C. 7101 et seq.), including the
16 acquisition or condemnation of any real property or any
17 facility or for plant or facility acquisition, construction,
18 or expansion, \$5,930,837,000, to remain available until
19 expended.

20 DEFENSE ENVIRONMENTAL SERVICES

21 For Department of Energy expenses necessary for
22 defense-related environmental services activities that indi-
23 rectly support the accelerated cleanup and closure mis-
24 sion at environmental management sites, including the
25 purchase, construction, and acquisition of plant and cap-

1 ital equipment and other necessary expenses, and the
2 purchase of not to exceed three ambulances for replace-
3 ment only, \$957,976,000, to remain available until ex-
4 pended.

5 OTHER DEFENSE ACTIVITIES

6 For Department of Energy expenses, including the
7 purchase, construction, and acquisition of plant and cap-
8 ital equipment and other expenses, necessary for atomic
9 energy defense, other defense activities, and classified ac-
10 tivities, in carrying out the purposes of the Department
11 of Energy Organization Act (42 U.S.C. 7101 et seq.), in-
12 cluding the acquisition or condemnation of any real prop-
13 erty or any facility or for plant or facility acquisition,
14 construction, or expansion, \$697,059,000, to remain
15 available until expended.

16 DEFENSE NUCLEAR WASTE DISPOSAL

17 For nuclear waste disposal activities to carry out the
18 purposes of Public Law 97-425, as amended, including
19 the acquisition of real property or facility construction or
20 expansion, \$131,000,000, to remain available until ex-
21 pended.

22 POWER MARKETING ADMINISTRATIONS

23 BONNEVILLE POWER ADMINISTRATION FUND

24 Expenditures from the Bonneville Power Adminis-
25 tration Fund, established pursuant to Public Law 93-

1 454, are approved for official reception and representa-
2 tion expenses in an amount not to exceed \$1,500. During
3 fiscal year 2005, no new direct loan obligations may be
4 made.

5 OPERATION AND MAINTENANCE, SOUTHEASTERN POWER
6 ADMINISTRATION

7 For necessary expenses of operation and mainte-
8 nance of power transmission facilities and of marketing
9 electric power and energy, including transmission wheel-
10 ing and ancillary services, pursuant to the provisions of
11 section 5 of the Flood Control Act of 1944 (16 U.S.C.
12 825s), as applied to the southeastern power area,
13 \$5,200,000, to remain available until expended: *Provided,*
14 That, notwithstanding the provisions of 31 U.S.C. 3302,
15 up to \$34,000,000 collected by the Southeastern Power
16 Administration pursuant to the Flood Control Act of
17 1944 to recover purchase power and wheeling expenses
18 shall be credited to this account as offsetting collections,
19 to remain available until expended for the sole purpose
20 of making purchase power and wheeling expenditures.

21 OPERATION AND MAINTENANCE, SOUTHWESTERN
22 POWER ADMINISTRATION

23 For necessary expenses of operation and mainte-
24 nance of power transmission facilities and of marketing
25 electric power and energy, for construction and acquisi-

1 tion of transmission lines, substations and appurtenant
2 facilities, and for administrative expenses, including offi-
3 cial reception and representation expenses in an amount
4 not to exceed \$1,500 in carrying out the provisions of
5 section 5 of the Flood Control Act of 1944 (16 U.S.C.
6 825s), as applied to the southwestern power area,
7 \$29,352,000, to remain available until expended: *Pro-*
8 *vided*, That, notwithstanding the provisions of 31 U.S.C.
9 3302, up to \$1,800,000 collected by the Southwestern
10 Power Administration pursuant to the Flood Control Act
11 of 1944 to recover purchase power and wheeling expenses
12 shall be credited to this account as offsetting collections,
13 to remain available until expended for the sole purpose
14 of making purchase power and wheeling expenditures.

15 CONSTRUCTION, REHABILITATION, OPERATION AND
16 MAINTENANCE, WESTERN AREA POWER ADMINIS-
17 TRATION

18 For carrying out the functions authorized by title
19 III, section 302(a)(1)(E) of the Act of August 4, 1977
20 (42 U.S.C. 7152), and other related activities including
21 conservation and renewable resources programs as au-
22 thorized, including official reception and representation
23 expenses in an amount not to exceed \$1,500,
24 \$173,100,000, to remain available until expended, of
25 which \$170,756,000 shall be derived from the Depart-

1 ment of the Interior Reclamation Fund: *Provided*, That,
2 notwithstanding the provisions of 31 U.S.C. 3302, up to
3 \$186,000,000 collected by the Western Area Power Ad-
4 ministration pursuant to the Flood Control Act of 1944
5 and the Reclamation Project Act of 1939 to recover pur-
6 chase power and wheeling expenses shall be credited to
7 this account as offsetting collections, to remain available
8 until expended for the sole purpose of making purchase
9 power and wheeling expenditures.

10 FALCON AND AMISTAD OPERATING AND MAINTENANCE
11 FUND

12 For operation, maintenance, and emergency costs
13 for the hydroelectric facilities at the Falcon and Amistad
14 Dams, \$2,827,000, to remain available until expended,
15 and to be derived from the Falcon and Amistad Oper-
16 ating and Maintenance Fund of the Western Area Power
17 Administration, as provided in section 423 of the Foreign
18 Relations Authorization Act, Fiscal Years 1994 and
19 1995.

20 FEDERAL ENERGY REGULATORY COMMISSION
21 SALARIES AND EXPENSES

22 For necessary expenses of the Federal Energy Regu-
23 latory Commission to carry out the provisions of the De-
24 partment of Energy Organization Act (42 U.S.C. 7101 et
25 seq.), including services as authorized by 5 U.S.C. 3109,

1 the hire of passenger motor vehicles, and official recep-
2 tion and representation expenses (not to exceed \$3,000),
3 \$210,000,000, to remain available until expended: *Pro-*
4 *vided*, That, notwithstanding any other provision of law,
5 not to exceed \$210,000,000 of revenues from fees and
6 annual charges, and other services and collections in fis-
7 cal year 2005 shall be retained and used for necessary
8 expenses in this account, and shall remain available until
9 expended: *Provided further*, That the sum herein appro-
10 priated from the general fund shall be reduced as reve-
11 nues are received during fiscal year 2005 so as to result
12 in a final fiscal year 2005 appropriation from the general
13 fund estimated at not more than \$0.

14 GENERAL PROVISIONS

15 DEPARTMENT OF ENERGY

16 SEC. 301. (a)(1) None of the funds in this or any
17 other appropriations Act for fiscal year 2005 or any pre-
18 vious fiscal year may be used to make payments for a
19 noncompetitive management and operating contract un-
20 less the Secretary of Energy has published in the Federal
21 Register and submitted to the Committees on Appropria-
22 tions of the House of Representatives and the Senate a
23 written notification, with respect to each such contract,
24 of the Secretary's decision to use competitive procedures

1 for the award of the contract, or to not renew the con-
2 tract, when the term of the contract expires.

3 (2) Paragraph (1) does not apply to an extension for
4 up to two years of a noncompetitive management and op-
5 erating contract, if the extension is for purposes of allow-
6 ing time to award competitively a new contract, to pro-
7 vide continuity of service between contracts, or to com-
8 plete a contract that will not be renewed.

9 (b) In this section:

10 (1) The term “noncompetitive management and
11 operating contract” means a contract that was
12 awarded more than 50 years ago without competi-
13 tion for the management and operation of Ames
14 Laboratory, Argonne National Laboratory, Lawrence
15 Berkeley National Laboratory, Lawrence Livermore
16 National Laboratory, and Los Alamos National Lab-
17 oratory.

18 (2) The term “competitive procedures” has the
19 meaning provided in section 4 of the Office of Fed-
20 eral Procurement Policy Act (41 U.S.C. 403) and
21 includes procedures described in section 303 of the
22 Federal Property and Administrative Services Act of
23 1949 (41 U.S.C. 253) other than a procedure that
24 solicits a proposal from only one source.

1 (c) For all management and operating contracts
2 other than those listed in subsection (b)(1), none of the
3 funds appropriated by this Act may be used to award a
4 management and operating contract, or award a signifi-
5 cant extension or expansion to an existing management
6 and operating contract, unless such contract is awarded
7 using competitive procedures or the Secretary of Energy
8 grants, on a case-by-case basis, a waiver to allow for such
9 a deviation. The Secretary may not delegate the authority
10 to grant such a waiver. At least 60 days before a contract
11 award for which the Secretary intends to grant such a
12 waiver, the Secretary shall submit to the Committees on
13 Appropriations of the House of Representatives and the
14 Senate a report notifying the Committees of the waiver
15 and setting forth, in specificity, the substantive reasons
16 why the Secretary believes the requirement for competition
17 should be waived for this particular award.

18 SEC. 302. None of the funds appropriated by this
19 Act may be used to—

- 20 (1) develop or implement a workforce restruc-
21 turing plan that covers employees of the Department
22 of Energy; or
- 23 (2) provide enhanced severance payments or
24 other benefits for employees of the Department of
25 Energy under section 3161 of the National Defense

1 Authorization Act for Fiscal Year 1993 (P.L. 102–
2 484; 42 U.S.C. 7274h).

3 SEC. 303. None of the funds appropriated by this
4 Act may be used to augment the funds made available for
5 obligation by this Act or any other appropriations Act for
6 fiscal year 2005 or any previous fiscal year for severance
7 payments and other benefits and community assistance
8 grants under section 3161 of the National Defense Au-
9 thorization Act for Fiscal Year 1993 (P.L. 102–484; 42
10 U.S.C. 7274h) unless the Department of Energy submits
11 a reprogramming request subject to approval by the ap-
12 propriate congressional committees.

13 SEC. 304. None of the funds appropriated by this
14 Act may be used to prepare or initiate Requests For Pro-
15 posals (RFPs) for a program if the program has not been
16 funded by Congress.

17 (TRANSFERS OF UNEXPENDED BALANCES)

18 SEC. 305. The unexpended balances of prior appro-
19 priations provided for activities in this Act may be trans-
20 ferred to appropriation accounts for such activities estab-
21 lished pursuant to this title. Balances so transferred may
22 be merged with funds in the applicable established ac-
23 counts and thereafter may be accounted for as one fund
24 for the same time period as originally enacted.

25 SEC. 306. None of the funds in this or any other Act
26 for the Administrator of the Bonneville Power Adminis-

1 tration may be used to enter into any agreement to per-
2 form energy efficiency services outside the legally defined
3 Bonneville service territory, with the exception of services
4 provided internationally, including services provided on a
5 reimbursable basis, unless the Administrator certifies in
6 advance that such services are not available from private
7 sector businesses.

8 SEC. 307. When the Department of Energy makes
9 a user facility available to universities or other potential
10 users, or seeks input from universities or other potential
11 users regarding significant characteristics or equipment
12 in a user facility or a proposed user facility, the Depart-
13 ment shall ensure broad public notice of such availability
14 or such need for input to universities and other potential
15 users. When the Department of Energy considers the
16 participation of a university or other potential user as a
17 formal partner in the establishment or operation of a
18 user facility, the Department shall employ full and open
19 competition in selecting such a partner. For purposes of
20 this section, the term “user facility” includes, but is not
21 limited to: (1) a user facility as described in section
22 2203(a)(2) of the Energy Policy Act of 1992 (42 U.S.C.
23 13503(a)(2)); (2) a National Nuclear Security Adminis-
24 tration Defense Programs Technology Deployment Cen-

1 ter/User Facility; and (3) any other Departmental facility
2 designated by the Department as a user facility.

3 SEC. 308. The Administrator of the National Nu-
4 clear Security Administration may authorize the manager
5 of a covered nuclear weapons research, development, test-
6 ing or production facility to engage in research, develop-
7 ment, and demonstration activities with respect to the en-
8 gineering and manufacturing capabilities at such facility
9 in order to maintain and enhance such capabilities at
10 such facility: *Provided*, That of the amount allocated to
11 a covered nuclear weapons facility each fiscal year from
12 amounts available to the Department of Energy for such
13 fiscal year for national security programs, not more than
14 an amount equal to 2 percent of such amount may be
15 used for these activities: *Provided further*, That for pur-
16 poses of this section, the term “covered nuclear weapons
17 facility” means the following:

- 18 (1) the Kansas City Plant, Kansas City, Mis-
19 souri;
- 20 (2) the Y-12 Plant, Oak Ridge, Tennessee;
- 21 (3) the Pantex Plant, Amarillo, Texas;
- 22 (4) the Savannah River Plant, South Carolina;
- 23 and
- 24 (5) the Nevada Test Site.

1 SEC. 309. Funds appropriated by this or any other
2 Act, or made available by the transfer of funds in this
3 Act, for intelligence activities are deemed to be specifically
4 authorized by the Congress for purposes of section 504
5 of the National Security Act of 1947 (50 U.S.C. 414) dur-
6 ing fiscal year 2005 until the enactment of the Intelligence
7 Authorization Act for fiscal year 2005.

8 SEC. 310. None of the funds made available in this
9 or any other appropriations Act for fiscal year 2005 or
10 any previous fiscal year may be used to select a site for
11 a Modern Pit Facility during fiscal year 2005.

12 SEC. 311. None of the funds made available in this
13 Act for fiscal year 2005 or any previous fiscal year may
14 be used to finance laboratory directed research and devel-
15 opment activities at Department of Energy laboratories on
16 behalf of other Federal agencies.

17 SEC. 312. (a) None of the funds made available by
18 this Act may be used to issue any license, approval, or
19 authorization for the export or reexport, or transfer, or
20 retransfer, whether directly or indirectly, of nuclear mate-
21 rials and equipment or sensitive nuclear technology, in-
22 cluding items and assistance authorized by section 57 b.
23 of the Atomic Energy Act of 1954 and regulated under
24 part 810 of title 10, Code of Federal Regulations, and nu-
25 clear-related items on the Commerce Control List main-

1 tained under part 774 of title 15 of the Code of Federal
2 Regulations, to any country whose government has been
3 identified by the Secretary of State as engaged in state
4 sponsorship of terrorist activities (specifically including
5 any country the government of which has been determined
6 by the Secretary of State under section 620A(a) of the
7 Foreign Assistance Act of 1961 (22 U.S.C. 2371(a)), sec-
8 tion 6(j)(1) of the Export Administration Act of 1979 (50
9 U.S.C. App. 2405(j)(1)), or section 40(d) of the Arms Ex-
10 port Control Act (22 U.S.C. 2780(d)) to have repeatedly
11 provided support for acts of international terrorism).

12 (b) This section shall not apply to exports, reexports,
13 transfers, or retransfers of radiation monitoring tech-
14 nologies, surveillance equipment, seals, cameras, tamper-
15 indication devices, nuclear detectors, monitoring systems,
16 or equipment necessary to safely store, transport, or re-
17 move hazardous materials, whether such items, services,
18 or information are regulated by the Department of En-
19 ergy, the Department of Commerce, or the Nuclear Regu-
20 latory Commission, except to the extent that such tech-
21 nologies, equipment, seals, cameras, devices, detectors, or
22 systems are available for use in the design or construction
23 of nuclear reactors or nuclear weapons.

24 (c) The President may waive the application of sub-
25 section (a) to a country if the President determines and

1 certifies to Congress that the waiver will not result in any
2 increased risk that the country receiving the waiver will
3 acquire nuclear weapons, nuclear reactors, or any mate-
4 rials or components of nuclear weapons and—

5 (1) the government of such country has not
6 within the preceding 12-month period willfully aided
7 or abetted the international proliferation of nuclear
8 explosive devices to individuals or groups or willfully
9 aided and abetted an individual or groups in acquir-
10 ing unsafeguarded nuclear materials;

11 (2) in the judgment of the President, the gov-
12 ernment of such country has provided adequate,
13 verifiable assurances that it will cease its support for
14 acts of international terrorism;

15 (3) the waiver of that subsection is in the vital
16 national security interest of the United States; or

17 (4) such a waiver is essential to prevent or re-
18 spond to a serious radiological hazard in the country
19 receiving the waiver that may or does threaten pub-
20 lic health and safety.

21 (d) This section shall apply with respect to exports
22 that have been approved for transfer as of the date of the
23 enactment of this Act but have not yet been transferred
24 as of that date.