To provide for restrictions related to nuclear cooperation with the People’s Republic of China, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 26, 2016

Mr. MARKEY (for himself and Mr. RUBIO) introduced the following bill; which was read twice and referred to the Committee on Foreign Relations

A BILL

To provide for restrictions related to nuclear cooperation with the People’s Republic of China, and for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “U.S.-China Nuclear Cooperation and Nonproliferation Act of 2016”.

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) A 2001 report from the Department of Defense found that “China supplied Pakistan with nuclear material and expertise and has provided critical
assistance in the production of Pakistan’s nuclear facilities.” China is also alleged to have provided Pakistan with 50 kilograms of highly enriched uranium, and designs for a nuclear weapon.

(2) An unclassified 2011 report to Congress from the Director of National Intelligence found that Chinese entities “continue to supply a variety of missile-related items to multiple customers, including Iran and Pakistan.” Previous reports from the Director of National Intelligence have confirmed that Chinese entities have provided support for the missile program of North Korea.

(3) China has failed to bring to justice Li Fangwei, also known as Karl Lee, who has been indicted in the United States on charges of providing sensitive missile technology to Iran. According to a report from the Congressional Research Service, “concerns persist about Chinese willingness as well as ability to detect and prevent illicit transfers” of dual-use and sensitive nuclear and missile items.

(4) At a May 12, 2015, hearing, members of the Committee on Foreign Relations of the Senate raised concerns that China may have diverted reactor cooling pumps produced by Curtiss-Wright Corporation to its nuclear submarine program, bol-
stering the stealth of its submarines, and violating
the Previous Nuclear Cooperation Agreement (as
that term is defined in section 3(3)).

(5) China has announced plans to provide Paki-
stan with additional nuclear reactors, beyond those
it had already agreed to construct prior to 2004, in
violation of its 2004 commitments to the Nuclear
Suppliers Group (NSG).

(6) Five members of the Chinese People’s Lib-
eration Army have been indicted in the United
States on charges of hacking into the computer net-
works of Westinghouse and stealing United States
intellectual property, including the design of nuclear
power plants.

(7) China has announced plans to export nu-
clear power plants based on technology acquired
from Westinghouse, one of China’s primary commer-
cial partners under its current and previous nuclear
cooperation agreements with the United States.
While China has committed not to export United
States-origin technology without a marketing license
from Westinghouse, there is no definition of “United
States-origin technology” in the Federal Register,
complicating United States enforcement of this pro-
vision.
(8) China General Nuclear Power Company, a state-owned nuclear power provider, has been indicted in the United States on charges of unlawfully producing special nuclear material outside the United States without the authorization of the Department of Energy.

(9) China’s plans to reprocess United States-origin spent fuel raise the risk that China could divert plutonium to military purposes, enabling it to produce additional nuclear weapons that threaten the United States and its allies.

(10) Secretary of Energy Ernest Moniz, in Beijing on March 17, 2016, told the Wall Street Journal that the United States does not “support large-scale reprocessing” and China’s plan to proceed with a commercial-scale reprocessing facility “certainly isn’t a positive in terms of nonproliferation”.

(11) China’s pursuit of commercial plutonium reprocessing will increase the likelihood that Japan expands its commercial reprocessing program and that South Korea will increase efforts to initiate a similar program of its own. Growing stockpiles of plutonium in East Asia increase the chances of military diversion and theft, raising the risk of nuclear proliferation, nuclear terrorism, and interstate nu-
clear conflict. It is in the interest of the United
States to prevent the stockpiling of plutonium in
East Asia.

SEC. 3. DEFINITIONS.

In this Act:

(1) APPROPRIATE CONGRESSIONAL COMMIT-
TEES.—The term “appropriate congressional com-
mittees” means—

(A) the Committee on Foreign Relations
and the Select Committee on Intelligence of the
Senate; and

(B) the Committee on Foreign Affairs and
the Permanent Select Committee on Intelligence
of the House of Representatives.

(2) CHINA.—The term “China” means the Peo-
ple’s Republic of China.

(3) CHINESE PERSON.—The term “Chinese
person” means—

(A) an individual who is a citizen or na-
tional of the People’s Republic of China; or

(B) an entity organized under the laws of
the People’s Republic of China or otherwise
subject to the jurisdiction of the Government of
the People’s Republic of China.

(5) United States.—The term “United States” means the several States, the District of Columbia, and any territory or possession of the United States.

(6) United States person.—The term “United States person” means any United States citizen, any alien admitted to the United States for permanent residence, any entity organized under the laws of the United States or any jurisdiction within the United States, including a foreign branch of such an entity.

(7) United States-China nuclear cooperation agreement.—The term “United States-China Nuclear Cooperation Agreement” means the Agreement for Cooperation Between the United States and the Government of the People’s Republic of China that was submitted to the appropriate congressional committees under section 123 of the

SEC. 4. NOTICE REGARDING TRANSFERS OF NUCLEAR TECHNOLOGY TO CHINA.

The Secretary of Energy shall, not later than 5 days after receiving an application for the proposed transfer of nuclear technology to China under section 57b. of the Atomic Energy Act of 1954 (42 U.S.C. 2077(b)), including an application for specific authorization to be provided for in a subsequent arrangement under section 131 of that Act (42 U.S.C. 2160), notify the appropriate congressional committees of the receipt of such application. The notice shall describe with particularity the items contained in the proposed transfer of nuclear technology.

SEC. 5. ADDITIONAL REQUIREMENT FOR APPROVAL OF RE-
TRANSFERS OF UNITED STATES-ORIGIN TECHNOLOGY.

(a) IN GENERAL.—Any request for authorization to transfer United States-origin technology (as defined pursuant to subsection (b)) from China, or with the significant participation of Chinese persons not located in the United States, to a country other than the United States or China, shall be subject to the authorization requirements in section 57b. of the Atomic Energy Act of 1954

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(42 U.S.C. 2077(b)). Furthermore, such requests for authori-

zation shall be denied unless the applicant can dem-

onstrate—

(1) significant ongoing participation by United

States persons in the transfer;

(2) in the case of nuclear reactors and reactor

components, significant United States content in-

volved in, or attendant to, the proposed transfer;

and

(3) in the case of the transfer of technology de-

developed with the participation of the United States

Government, timely and adequate reimbursement of

the United States Government for any grants or

loans provided by the United States Government to

entities involved in the development of the tech-

nology.

(b) Definition of United States-Origin Tech-

nology.—Not later than 90 days after the date of the

enactment of this Act, the Secretary of Energy shall issue

a definition of items covered by the term “United States-

origin technology” in subsection (a), including items de-

rived from such technology. The term shall include items

developed by United States persons or persons subject to

the jurisdiction of the United States, and items developed
with the participation of the United States Government,
including large, passive light water reactors.

SEC. 6. STATEMENT OF POLICY ON CHINA-PAKISTAN NU-
CLEAR COOPERATION.

It is the policy of the United States—

(1) to oppose the provision by China of assist-
ance in the construction of any nuclear reactor in
Pakistan other than the first 2 reactors constructed
at Chasma, which were consistent with the condi-
tions concerning China’s participation in the Nuclear
Suppliers Group; and

(2) to assist Pakistan with the acquisition and
development of sufficient electrical power to meet its
domestic requirements for electrical power through
means other than nuclear power.

SEC. 7. ADDITIONAL NOTIFICATION REQUIREMENTS.

(a) DETERMINATION REQUIRED.—Not later than
180 days after the date of the enactment of this Act, and
annually thereafter, the President, in consultation with the
Secretary of State, the Secretary of Energy, the Secretary
of Defense, and the Director of National Intelligence, shall
determine whether the Government of China, persons act-
ing on behalf of the Government of China, or Chinese per-
sons have, since the entry into force of the United States-
China Nuclear Cooperation Agreement—
(1) retransferred any United States nuclear items to a third country without the permission of the United States Government;

(2) diverted or attempted to divert United States nuclear items to military use;

(3) stolen or attempted to steal United States nuclear items;

(4) failed to undertake measures necessary to prevent transfers of goods, services, and technology described in section 2(a) of the Iran, North Korea, and Syria Nonproliferation Act (Public Law 106–178; 50 U.S.C. 1701 note), or to make substantial progress in preventing such transfers;

(5) failed to undertake measures to enforce the sanctions provided for in United Nations Security Council Resolution 2270, adopted on March 2, 2016, and previous relevant resolutions recalled in Resolution 2270;

(6) refused to adhere to the Nuclear Suppliers Group guidelines regarding the export of any new civilian nuclear reactors, regardless of any prior or future contract obligations; or

(7) otherwise violated the terms and conditions of the United States-China Nuclear Cooperation Agreement, or any authorization issued by the
United States Government concerning transfers of United States nuclear items.

(b) SUSPENSION OF COOPERATION.—If the President makes a determination described in subsection (a), the President shall immediately suspend all cooperation under the United States-China Nuclear Cooperation Agreement, including any transfers of nuclear technology or materials, until the President submits to the appropriate congressional committees—

(1) a plan of corrective action to—

(A) address the activity described in subsection (a);

(B) mitigate any damage to the national security of the United States because of such activity; and

(C) prevent further such activity; and

(2) a certification to the appropriate congressional committees that the plan described in paragraph (1) is being implemented.

(e) DEFINITION.—In this section, the term “United States nuclear items” means any items that are transferred to China under—

(1) the United States-China Nuclear Cooperation Agreement;
(2) section 57b. of the Atomic Energy Act of 1954 (42 U.S.C. 2077(b)); or

(3) part 110 of title 10, Code of Federal Regulations.

SEC. 8. IMPLEMENTATION OF AGREED MINUTE.

The President may not bring into effect the procedures described in the section of the Agreed Minute to the United States-China Nuclear Cooperation Agreement that appear under the heading “Technology and Information Exchanges” unless the President, at least 60 days of continuous session of Congress before those procedures become effective—

(1) provides to the appropriate congressional committees the details concerning the implementation of those provisions; and

(2) certifies to the appropriate congressional committees that those procedures protect the national security of the United States to an extent that is equal to or greater than those procedures provided for under part 810 of title 10, Code of Federal Regulations.

SEC. 9. REPROCESSING UNDER THE UNITED STATES-CHINA NUCLEAR COOPERATION AGREEMENT.

(a) SENSE OF CONGRESS.—It is the sense of Congress that the United States should encourage countries
in East Asia to forgo the commencement of new spent fuel reprocessing activities, as part of a mutual effort to pre-
vent the increased or expanded stockpiling of separated plutonium in the region.

(b) IMPLEMENTATION OF REPROCESSING CONSENT RIGHTS UNDER AGREEMENT.—The President shall not agree to the reprocessing, recycling, or other alteration in form or content of nuclear material, as described in Article 6.2 of the United States-China Nuclear Cooperation Agreement, at any individual facility to which the International Atomic Energy Agency (IAEA) safeguards are not applied, unless, for each proposed facility at which such activity will take place, the President certifies to the appropriate congressional committees that—

(1) the President has made a formal request to the IAEA to apply safeguards to the facility;

(2) the IAEA has refused the request described in paragraph (1); and

(3) the arrangements and procedures under which such reprocessing, recycling, or other alteration in form or content will occur—

(A) include a requirement that nuclear ma-
terial transferred pursuant to the United States-China Nuclear Cooperation Agreement
and nuclear material used in or produced through the use of such material—

(i) not be commingled with any other nuclear material;

(ii) be clearly marked as United States-obligated nuclear material;

(iii) be stored in separate facilities from any other nuclear material; and

(iv) be available for inspection immediately and without prior notice upon request by the IAEA or either party to the agreement; and

(B) are sufficient to detect in a timely manner—

(i) the diversion for military purposes of nuclear material transferred pursuant to the United States-China Nuclear Cooperation Agreement and nuclear material used in or produced through the use of such material; and

(ii) the transfer to facilities or locations not agreed to by the United States of nuclear material transferred pursuant to the United States-China Nuclear Cooperation Agreement and nuclear material used
in or produced through the use of such material.

(c) Notification Required.—If the President issues a certification described in subsection (b), the President shall include with that certification a detailed description of—

(1) the facility at which the reprocessing, recycling, or other alteration in form and content will take place;

(2) the safeguards applied to the facility;

(3) the measures that will be undertaken to secure and prevent the theft or diversion to military purposes of any separated plutonium that will result from the activities at the facility;

(4) the amounts of materials to be processed at the facility;

(5) the amount of processed fissile material that might be stockpiled as a result of the activities at the facility, and the estimated time that it may be stockpiled prior to its civilian use in a nuclear reactor; and

(6) the risks to United States national security posed by the potential diversion of nuclear material at the facility.
SEC. 10. REPORTS.

(a) Initial Report.—

(1) In general.—No later than 90 days after the date of the enactment of this Act, the Secretary of State, with the concurrence of the Director of National Intelligence, shall submit to the appropriate congressional committees a report on China’s history of compliance with the peaceful use and non-proliferation provisions of the Previous Nuclear Cooperation Agreement.

(2) Elements.—The report required under paragraph (1) shall include—

(A) a detailed examination of every suspected or alleged violation of such previous agreement;

(B) the response by China to any inquiries by the United States regarding any such suspected or alleged violations of the previous agreement;

(C) an assessment of the likelihood of future violations under the terms of the United States-China Nuclear Cooperation Agreement; and

(D) an assessment of the potential advantages that a large civil nuclear infrastructure or program may provide the People’s Republic of
China as it seeks to meet its future nuclear
weapons requirements.

(b) **Annual Intelligence Report.**—

(1) **In General.**—Not later than April 15, 2017, and annually thereafter, the Director of Na-
tional Intelligence shall submit to the appropriate
congressional committees a report on the status of
the United States-China Nuclear Cooperation Agree-
ment and compliance by China with the agreement.

(2) **Elements.**—The report required under
paragraph (1) shall include, at a minimum—

(A) a detailed examination of every sus-
pected or alleged violation of the Agreement by
the People’s Republic of China that may have
occurred during the prior calendar year;

(B) the response by China to any inquiries
by the United States regarding any such sus-
pected or alleged violations;

(C) an accounting of the specific roles
played in the civil and military nuclear pro-
grams of the People’s Republic of China by all
Chinese persons visiting United States nuclear
labs and facilities;

(D) an assessment of whether the People’s
Republic of China or any entity acting on its
behalf has targeted and United States nuclear-
related private-sector or governmental entities,
enterprises, or assets for any form of cyber
trespass, theft, or attack, or has taken specific
actions pursuant to such targeting by any enti-
ty;

(E) an assessment of the risks of diversion
of special nuclear material transferred pursuant
to this Agreement, the likely consequences of
such diversion, and steps taken to avert any po-
tential diversion;

(F) an assessment of the potential military
utility of diverted civil nuclear technology;

(G) an assessment of any civil and criminal
law enforcement actions taken by the People’s
Republic of China’s against any entities or indi-
viduals within its government or its jurisdiction
that have—

(i) violated non-proliferation or peace-
ful use requirements of this or any other
bilateral or multilateral nuclear agreement
to which People’s Republic of China is a
party;

(ii) committed cyber trespass, theft, or
attack on any United States nuclear-re-
lated private sector or governmental entities, enterprises, or assets; or

(iii) conducted cyber trespass or cyber exploitation against any private sector nuclear entities, enterprises, or assets for commercial gain; and

(H) a description of the extent to which the Government of the People’s Republic of China has honored United States requests for enforcement of United States legal action against any entities or individuals described in subparagraph (G), including requests for extradition by the United States.

(e) FORM.—The reports required under subsections (a) and (b) may be submitted in classified form, but shall also contain an unclassified executive summary and may contain an unclassified annex.

(d) ANNUAL EXPORTS REPORT.—Not later than April 15, 2017, and annually thereafter, the President shall submit to the appropriate congressional committees a report that—

(1) identifies all export licenses issued in the previous calendar year pursuant to the United States-China Nuclear Cooperation Agreement, including at a minimum, the license applicant, pro-
posed end user, items licensed, value, and term of
the license; and

(2) assesses China’s progress in strengthening,
implementing, and enforcing laws to ensure re-
stricted dual-use technology is not transferred to
countries of proliferation concern.