

109TH CONGRESS
2D SESSION

H. R. 5430

To establish sound criteria for civilian nuclear cooperation with certain countries.

IN THE HOUSE OF REPRESENTATIVES

MAY 19, 2006

Mr. BERMAN introduced the following bill; which was referred to the Committee on International Relations, and in addition to the Committee on Rules, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To establish sound criteria for civilian nuclear cooperation with certain countries.

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. AGREEMENTS FOR COOPERATION WITH**
4 **STATES NOT PARTY TO THE TREATY ON THE**
5 **NON-PROLIFERATION OF NUCLEAR WEAP-**
6 **ONS.**

7 (a) IN GENERAL.—Chapter 11 of title I of the Atomic
8 Energy Act of 1954 (42 U.S.C. 2151 et seq.) is amended
9 by inserting after section 123 the following new section:

1 “NUCLEAR COOPERATION WITH STATES NOT PARTY TO
2 THE TREATY ON THE NON-PROLIFERATION OF NU-
3 CLEAR WEAPONS

4 “SEC. 123A. a. REQUIREMENTS.—Cooperation may
5 be undertaken under section 53, 54 a., 57, 64, 82, 103,
6 or 104 with a state that is not a party to the Treaty on
7 the Non-Proliferation of Nuclear Weapons as of January
8 2002, if that state—

9 “(1) has not carried out any nuclear weapon
10 test explosion or any other nuclear explosion after
11 May 1998, and is adhering to a unilateral morato-
12 rium on carrying out any such explosion, or has
13 signed and is adhering to a multilateral treaty pro-
14 hibiting any such explosion;

15 “(2) either—

16 “(A) is adhering to a unilateral morato-
17 rium on the production of fissile material for
18 nuclear weapons;

19 “(B) is adhering to a multilateral morato-
20 rium on the production of fissile material for
21 nuclear weapons; or

22 “(C) has signed and is adhering to a mul-
23 tilateral treaty banning the production of fissile
24 material for nuclear weapons;

1 “(3) has provided the United States and the
2 International Atomic Energy Agency with a credible
3 and comprehensive plan to separate all civil and
4 military nuclear facilities, materials, and programs;

5 “(4) has entered into and is implementing an
6 agreement with the IAEA requiring the application
7 of safeguards in perpetuity to civil nuclear facilities
8 and associated nuclear materials as declared in the
9 plan described in paragraph (3);

10 “(5) has provided credible assurances, as part
11 of the plan described in paragraph (3), that all fu-
12 ture nuclear reactors that generate electricity will be
13 designated as civil and placed under IAEA safe-
14 guards in perpetuity;

15 “(6) has signed and ratified, and is imple-
16 menting, an IAEA Additional Protocol;

17 “(7) is playing an active and constructive role
18 in addressing nuclear proliferation challenges posed
19 by states of proliferation concern, preventing illicit
20 nuclear transactions, and eliminating illicit nuclear
21 commercial networks;

22 “(8) has established, and is successfully imple-
23 menting, a national export control system capable of
24 effectively controlling transfers of nuclear and nu-
25 clear-related material, equipment, technology, and

1 related data, including stringent rules and proce-
2 dures prohibiting unauthorized contacts and co-
3 operation by personnel with nuclear expertise;

4 “(9) is adhering to the guidelines of the Nu-
5 clear Suppliers Group and the Missile Technology
6 Control Regime;

7 “(10) has committed not to export enrichment,
8 reprocessing, or other sensitive fuel-cycle equipment
9 or technology to states that do not possess such
10 equipment or technology or to any nongovernmental
11 entity;

12 “(11) is applying stringent physical protection,
13 control, and accountancy measures to all nuclear
14 weapons, nuclear facilities, source material, and spe-
15 cial nuclear material in its territory;

16 “(12) is in full compliance with any nuclear co-
17 operation agreement previously entered into with the
18 United States and with any derivative obligations
19 stemming from such agreement that continue to
20 apply;

21 “(13) is not engaged in illicit efforts to procure
22 materials, equipment, or technology for a nuclear
23 weapons program;

1 “(14) has a democratically-elected government
2 that exerts effective control over the armed forces in
3 its territory; and

4 “(15) meets the requirements under paragraphs
5 (1), (3), (4), (5), (6), (7), (8), and (9) of section 123
6 a.

7 “b. EXCLUSIONS.—No cooperation under this section
8 may include the transfer of any enrichment or reprocess-
9 ing equipment or technology, heavy water, or the means
10 to produce heavy water.

11 “c. PROCEDURAL REQUIREMENTS.—Cooperation
12 under this section shall become effective only if—

13 “(1) the President certifies to the Congress that
14 all the requirements set forth in subsection a. have
15 been met;

16 “(2) the President certifies to the Congress that
17 the agreement between the state with which an
18 agreement for cooperation has been entered into and
19 the IAEA requiring the application of safeguards in
20 perpetuity to civil nuclear facilities and associated
21 nuclear materials conforms substantially to IAEA
22 safeguards standards, principles, and practices;

23 “(3) the President, after meeting the require-
24 ments under paragraphs (1)) and (2), submits the
25 proposed agreement for cooperation to the Congress,

1 and, within a period of 60 days of continuous ses-
2 sion (as defined in section 130 g.) beginning on the
3 date of the submission, the Congress adopts, and
4 there is enacted, a joint resolution stating that the
5 Congress does favor the agreement; and

6 “(4) the President certifies to the Congress that
7 the NSG has reached a consensus decision to allow
8 NSG participating governments to transfer trigger
9 list items and related technology for use in civil nu-
10 clear facilities to the state with which an agreement
11 for cooperation has been entered into, and that such
12 decision does not allow transfers of nuclear or nu-
13 clear-related material, equipment, or technology that
14 is prohibited under United States law or the terms
15 of the agreement for cooperation with that state.

16 Any such proposed agreement for cooperation shall be con-
17 sidered pursuant to the procedures set forth in section 130
18 i. for the consideration of Presidential submissions.

19 “d. INAPPLICABILITY OF CERTAIN PROVISIONS.—

20 “(1) PRIOR ACTIVITIES.—Section 129 shall not
21 apply to a state with which an agreement for co-
22 operation is entered into under this section, with re-
23 spect to actions by that state before January 1,
24 2006.

1 “(2) FUTURE ACTIVITIES.—Section 129(1)(D)
2 shall not apply to a state with which an agreement
3 for cooperation is entered into under this section,
4 with respect to actions by that state after the enact-
5 ment of this section

6 “e. CONDUCT RESULTING IN TERMINATION OF NU-
7 CLEAR EXPORTS.—

8 “(1) IN GENERAL.—Nuclear or nuclear-related
9 material, equipment, or technology may not be ex-
10 ported to a state with which an agreement for co-
11 operation has been entered into under this section if
12 the President determines the state, or any person or
13 entity under the jurisdiction of the state, has—

14 “(A) materially violated the agreement for
15 cooperation with the United States,

16 “(B) terminated or abrogated IAEA safe-
17 guards that the state is required to maintain,

18 “(C) materially violated an IAEA safe-
19 guards agreement,

20 “(D) made any transfers of nuclear or nu-
21 clear-related material, equipment or technology
22 that do not conform to NSG guidelines,

23 “(E) made any transfers of ballistic mis-
24 siles or missile-related equipment or technology
25 that does not conform to MTCR guidelines,

1 “(F) produced fissile material for nuclear
2 weapons,

3 “(G) carried out any nuclear weapon test
4 explosion or any other nuclear explosion, or

5 “(H) assisted, encouraged, or induced any
6 non-nuclear weapon state to engage in activities
7 involving source and special nuclear material
8 and having direct significance for the manufac-
9 ture or acquisition of nuclear explosive devices,
10 unless the President determines that cessation of
11 such exports would be seriously prejudicial to the
12 achievement of United States non-proliferation ob-
13 jectives or otherwise jeopardize the common defense
14 and security.

15 “(2) CONGRESSIONAL REVIEW.—

16 “(A) IN GENERAL.—A determination of
17 the President under paragraph (1) regarding
18 cessation of exports being seriously prejudicial
19 shall become effective only if—

20 “(i) the President submits the deter-
21 mination, together with a report containing
22 the reasons for the determination, to the
23 Congress; and

24 “(ii) during the period of 60 days of
25 continuous session (as defined in sub-

1 section 130 g.) after the submission of the
2 determination under clause (i), there is en-
3 acted a joint resolution stating in sub-
4 stance that the Congress does favor the de-
5 termination.

6 “(B) PROCEDURES.—Any determination of
7 the President submitted to the Congress under
8 subparagraph (A)—

9 “(i) shall be referred to the Com-
10 mittee on International Relations of the
11 House of Representatives and the Com-
12 mittee on Foreign Relations of the Senate;
13 and

14 “(ii) shall be considered pursuant to
15 the procedures set forth in section 130 for
16 the consideration of Presidential submis-
17 sions, except that the reference in sub-
18 section f. of that section to a concurrent
19 resolution shall be deemed to refer to a
20 joint resolution.

21 “f. ANNUAL REPORT.—For each state that has en-
22 tered into an agreement for cooperation under this section,
23 the President shall submit to the Congress, not later than
24 1 year after such agreement has been entered into, and
25 every 12 months thereafter, a report containing the Presi-

1 dent’s assessment of that state with respect to the matters
 2 addressed in subparagraphs (A) through (H) of subsection
 3 e.(1).

4 “g. DEFINITIONS.—In this section:

5 “(1) IAEA.—The term ‘IAEA’ means the
 6 International Atomic Energy Agency.

7 “(2) MTCR.—The term ‘MTCR’ means the
 8 Missile Technology Control Regime.

9 “(3) NSG.—The term ‘NSG’ means the Nu-
 10 clear Suppliers Group.”.

11 (b) CONFORMING AMENDMENT.—Section 130 of the
 12 Atomic Energy Act of 1954 (42 U.S.C. 2159) is amend-
 13 ed—

14 (1) in subsection a., by striking “subsection 126
 15 a. (2)” and inserting “section 123A e. (2), 126 a.
 16 (2)”; and

17 (2) in subsection i. (2), by inserting “or 123A
 18 d.” after “123 d.”.

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