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S. 1285

To require certifications and reporting in an unclassified form related to the national security implications of the New START Treaty, to provide for arms limitations in the event of the treaty’s non-renewal, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 2, 2019

Mr. MARKEY (for himself, Mrs. GILLIBRAND, Ms. WARREN, Mr. LEAHY, and Mr. BROWN) introduced the following bill; which was read twice and referred to the Committee on Foreign Relations

A BILL

To require certifications and reporting in an unclassified form related to the national security implications of the New START Treaty, to provide for arms limitations in the event of the treaty’s non-renewal, 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 “Save Arms control and
5 Verification Efforts Act of 2019” or “SAVE Act”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

1 (1) Every United States president since John
2 F. Kennedy has successfully concluded at least one
3 agreement with Russia to reduce nuclear dangers.

4 (2) If the Intermediate Range Nuclear Forces
5 Treaty is terminated, and the New START Treaty
6 is not extended, or a new treaty is not negotiated
7 and ratified before 2021, there would be no legally
8 binding, verifiable limits on the United States or
9 Russian nuclear arsenals for the first time since
10 1972.

11 (3) For both the United States and the Russian
12 Federation, the New START Treaty's transparency
13 and verification measures provide invaluable insight
14 into the size, capabilities, and operations of both
15 countries' nuclear forces beyond that provided by
16 more traditional intelligence collection and assess-
17 ment methods, helping create a mutually beneficial
18 environment of stability and predictability.

19 (4) Former Republican and Democratic na-
20 tional security leaders, including George Shultz, Wil-
21 liam Perry, Richard Burt, Sam Nunn, Richard
22 Lugar, and others, have expressed support for a
23 prompt decision to extend the New START Treaty.

24 (5) United States military leaders continue to
25 see value in the New START Treaty, including Gen.

1 John Hyten, Commander of United States Strategic
2 Command, who told Congress in March 2018 that
3 “bilateral, verifiable arms control agreements are es-
4 sential to our ability to provide an effective deter-
5 rent,” and testified before Congress in February
6 2019 that the New START Treaty is important be-
7 cause it provides to the United States “a cap on
8 [Russia’s] strategic baseline nuclear weapons, and
9 their ballistic missiles, both submarine and ICBM,
10 as well as their bombers” and “just as important it
11 gives me insight through the verification regime to
12 their Russia’s real capabilities”.

13 (6) The United States NATO allies have con-
14 sistently expressed support for a decision by the
15 United States and the Russian Federation to extend
16 New START before the scheduled expiration date in
17 2021.

18 (7) Russian President Vladimir Putin said in
19 July 2018 that “I reassured President Trump that
20 Russia stands ready to extend this treaty, to prolong
21 it, but we have to agree on the specifics . . .”.

22 (8) The Department of Defense Report on the
23 Strategic Nuclear Forces of the Russian Federation
24 submitted pursuant to section 1240 of the National
25 Defense Authorization Act for Fiscal Year 2012

1 (Public Law 112–81; 125 Stat. 1643) determined
2 that Russia “would not be able to achieve a mili-
3 tarily significant advantage by any plausible expan-
4 sion of its strategic nuclear forces, even in a cheat-
5 ing or breakout scenario under the New START
6 Treaty, primarily because of the inherent surviv-
7 ability of the planned United States strategic force
8 structure, particularly the Ohio-class ballistic missile
9 submarines, a number of which are at sea at any
10 given time”.

11 (9) For as long as it must exist, the United
12 States nuclear arsenal must be maintained and mod-
13 ernized in a cost-effective manner to ensure it re-
14 mains a safe, secure, and reliable effective nuclear
15 force that can continue to deter nuclear attack on
16 the United States and its allies, and so that the
17 United States can continue to pursue further
18 verifiable reduction in global nuclear stockpiles con-
19 sistent with its obligations under the Nuclear Non-
20 proliferation Treaty.

21 (10) The New START Treaty created a Bilat-
22 eral Consultative Commission to resolve issues re-
23 lated to implementation of the New START Treaty,
24 and Article II of the New START Treaty states,
25 “When a Party believes that a new kind of strategic

1 offensive arm is emerging, that Party shall have the
2 right to raise the question of such a strategic offen-
3 sive arm for consideration in the Bilateral Consult-
4 ative Commission.”

5 **SEC. 3. SENSE OF THE SENATE.**

6 It is the sense of the Senate that—

7 (1) extending the New START Treaty by a pe-
8 riod of five years is in the national security interest
9 of the United States, so long as the Russian Federa-
10 tion continues to meet the central limits of the trea-
11 ty;

12 (2) the United States should immediately seek
13 to begin discussions with the Russian Federation on
14 agreeing to a 5-year extension of the New START
15 Treaty;

16 (3) the United States should use the Bilateral
17 Consultative Commission mechanism within the New
18 START Treaty to address issues related to new
19 Russian strategic nuclear weapons it believes may
20 fall under New START treaty limits;

21 (4) extending the New START Treaty would
22 facilitate efforts by the United States to pursue ad-
23 ditional arms control efforts with the Russian Fed-
24 eration, including efforts to address the Russian

1 Federation’s nonstrategic nuclear weapons and
2 emerging technologies such as hypersonic weapons;

3 (5) the United States should resume more reg-
4 ular talks on strategic stability with Russia, as well
5 as additional bilateral and multilateral arms control
6 efforts worldwide to address a changing global secu-
7 rity environment; and

8 (6) extending the New START Treaty would
9 facilitate efforts by the United States to engage with
10 the People’s Republic of China to reduce dangers as-
11 sociated with its nuclear arsenal, which is fundamen-
12 tally different than the Russian Federation’s and re-
13 quires a separate, focused arms control effort.

14 **SEC. 4. CERTIFICATIONS IN EVENT NEW START TREATY IS**
15 **NOT EXTENDED.**

16 Not later than 90 days after the date of the enact-
17 ment of this Act, and every 180 days thereafter, if the
18 parties to the New START Treaty have not completed the
19 procedures outlined in the treaty and its related protocols
20 and annexes to extend the treaty’s effective date by up
21 to five years beyond February 5, 2021—

22 (1) the President, the Secretary of Defense, and
23 the Secretary of State shall separately submit to the
24 appropriate congressional committees a justification
25 for why New START has not been extended and a

1 certification that the absence of an extension of the
2 treaty is in the national security interest of the
3 United States; and

4 (2) the Director of National Intelligence shall
5 submit to the appropriate congressional commit-
6 tees—

7 (A) an intelligence community-coordinated
8 assessment of why the New START Treaty has
9 not been extended;

10 (B) a certification that the absence of an
11 extension of the treaty is in the national secu-
12 rity interest of the United States; and

13 (C)(i) a certification that the United
14 States is not losing intelligence insight into the
15 Russian Federation’s strategic nuclear pro-
16 gram; or

17 (ii) a report detailing how the Director of
18 National Intelligence and the intelligence com-
19 munity will account for any lost intelligence ca-
20 pabilities.

21 **SEC. 5. NATIONAL INTELLIGENCE ESTIMATE.**

22 (a) IN GENERAL.—Not later than 180 days after the
23 date of the enactment of this Act, the Director of National
24 Intelligence shall submit to the appropriate congressional
25 committees a National Intelligence Estimate, consisting of

1 an unclassified executive summary and judgments and a
2 more detailed, classified report on the Russian Federa-
3 tion's compliance with the New START Treaty and the
4 impact to the intelligence collection capabilities of the
5 United States if the New START Treaty and its related
6 information exchanges and associated inspections regimes
7 were to lapse. The report shall include the following ele-
8 ments:

9 (1) A description of the Russian Federation's
10 compliance with the New START Treaty.

11 (2) An assessment of the Russian Federation's
12 intentions with regard to extending the New START
13 Treaty.

14 (3) A description of the intelligence collection
15 benefits gained as a result of the ratification and im-
16 plementation of the New START Treaty.

17 (4) An assessment of what specific capabilities
18 the United States intelligence community would have
19 to develop and deploy to ensure that no loss of col-
20 lection capability would occur in the event of the
21 lapse of the New START Treaty.

22 (5) A cost estimate and estimated timeline for
23 developing these new or additional capabilities, and
24 a description of how new intelligence gathering re-
25 quirements related to the Russian Federation's nu-

1 clear forces may affect other United States intel-
2 ligence gathering needs.

3 (6) An assessment of projections for Russian
4 Federation nuclear and non-nuclear force size, struc-
5 ture, and composition with the New START Treaty
6 limitations in place and without the limitations in
7 place.

8 (7) An assessment of Russian Federation ac-
9 tions, intentions, and likely responses to the United
10 States withdrawing from, suspending its obligations
11 under, or allowing to lapse the New START Treaty
12 and subsequently developing platforms and weapons
13 beyond the New START Treaty's limitations.

14 (b) BRIEFINGS.—The Director of National Intel-
15 ligence shall brief the appropriate congressional commit-
16 tees on the elements set forth in subsection (a) when the
17 National Intelligence Estimate is submitted under such
18 subsection and every 120 days thereafter.

19 **SEC. 6. REPORTING REQUIREMENTS.**

20 (a) DEPARTMENT OF DEFENSE.—

21 (1) REPORT ON EXPECTED FORCE STRUCTURE
22 CHANGES IN EVENT OF TREATY LAPSE.—Not later
23 than 90 days after the date of the enactment of this
24 Act, and not later than February 5, 2021, if the
25 New START Treaty is allowed to lapse, the Sec-

1 retary of Defense shall submit to the appropriate
2 congressional committees a report discussing
3 changes to the expected force structure of the
4 United States Armed Forces if the New START
5 Treaty is no longer in place and estimating the ex-
6 pected costs necessary to make such changes.

7 (2) REPORT ON IMPACTS TO MODERNIZATION
8 PLAN.—Not later than 90 days after the date of the
9 enactment of this Act, and not later than February
10 5, 2021, if the New START Treaty is allowed to
11 lapse, the Secretary of Defense and the Secretary of
12 Energy shall jointly submit to the appropriate con-
13 gressional committees a report on how the current
14 program of record to replace and upgrade United
15 States nuclear weapons delivery systems and war-
16 heads, which anticipates the continued existence of
17 the New START Treaty, would be modified without
18 the existence of the New START Treaty. The report
19 shall include the information required to be sub-
20 mitted in the report required by section 1043 of the
21 National Defense Authorization Act for Fiscal Year
22 2012 (Public Law 112–81; 125 Stat. 1576) and
23 shall include—

24 (A) a separate 10-year cost estimate from
25 the Department of Defense to implement a nu-

1 clear sustainment plan that does and does not
2 anticipate the continued existence of the New
3 START Treaty, including possible costs associ-
4 ated with conversion or uploading of strategic
5 delivery vehicles and warheads;

6 (B) a separate 10-year cost estimate from
7 the Department of Energy to implement a nu-
8 clear sustainment and modernization plan that
9 does and does not anticipate the continued ex-
10 istence of the New START Treaty, including
11 uploading warheads previously withdrawn from
12 service;

13 (C) a description of how the absence of the
14 New START Treaty limits would impact the
15 schedule and cost of Department of Energy's
16 Stockpile Stewardship management plan; and

17 (D) an assessment of the potential impacts
18 on how these changes will impact the Depart-
19 ment of Energy's nuclear weapons complex.

20 (b) DEPARTMENT OF STATE.—Not later than 90
21 days after the date of the enactment of this Act, and not
22 later than February 5, 2021, if the New START Treaty
23 is allowed to lapse, the Secretary of State shall submit
24 to the appropriate congressional committees a report on
25 the likely foreign policy implications of and potential im-

1 pacts to United States diplomatic relations if the New
2 START Treaty lapses. The report shall include the fol-
3 lowing elements:

4 (1) An assessment of the likely reactions of the
5 North Atlantic Treaty Organization (NATO) and
6 NATO member countries, United States allies, Asia,
7 and each permanent member of the United Nations
8 Security Council.

9 (2) A description of the expected impacts on the
10 Nuclear Nonproliferation Treaty and the ability of
11 the United States to key nonproliferation objectives.

12 (3) A description of the risks posed to the long-
13 term health of the Nuclear Nonproliferation Treaty
14 in the absence of United States-Russia bilateral nu-
15 clear arms control agreements and dialogue.

16 (c) PRESIDENTIAL REPORT ON STRATEGIC ARMS
17 CONTROL STRATEGY.—Not later than February 5, 2020,
18 the President shall submit to the appropriate congres-
19 sional committees a report including—

20 (1) a 5-year strategy for future strategic arms
21 control agreements with the Russian Federation;

22 (2) an update on the status of any current dis-
23 cussions that may be in progress at time of report;
24 and

1 (3) a description of other United States bilat-
 2 eral and multilateral arms control efforts globally.

3 **SEC. 7. PROHIBITION ON INCREASES IN CERTAIN WAR-**
 4 **HEADS, MISSILES, AND LAUNCHERS.**

5 (a) PROHIBITION.—

6 (1) IN GENERAL.—If either of the conditions in
 7 paragraph (2) occurs, the United States Government
 8 may not, except as provided under subsection (b),
 9 obligate or expend any funds to—

10 (A) increase above 1,550 the number of
 11 United States warheads operationally deployed
 12 on launchers for ICBMs, SLBMs, and heavy
 13 bombers;

14 (B) increase above 700 the number of de-
 15 ployed Intercontinental Ballistic Missiles
 16 (ICBMs), Submarine-Launched Ballistic Mis-
 17 siles (SLBMs), and heavy bombers; or

18 (C) increase above 800 the number of de-
 19 ployed and non-deployed ICBM launchers,
 20 SLBM launchers, and heavy bombers,

21 as such terms are defined and such systems are
 22 counted in the New START Treaty.

23 (2) CONDITIONS.—The conditions referred to in
 24 paragraph (1) are as follows:

1 (A) The President initiates United States
2 withdrawal from the New START Treaty in ac-
3 cordance with the procedures outlined in the
4 New START Treaty and its related protocols
5 and annexes.

6 (B) As of February 5, 2021, the parties to
7 the New START Treaty have not completed the
8 procedures outlined in the New START Treaty
9 and its related protocols and annexes to extend
10 the Treaty's effective date to February 5, 2026.

11 (C) The President takes one or more ac-
12 tions to suspend United States obligations out-
13 lined in the New START Treaty and its related
14 protocols and annexes.

15 (b) EXCEPTIONS.—The prohibition under subsection
16 (a) shall not be in effect if all of the following conditions
17 are met:

18 (1) The President, the Secretary of State, the
19 Secretary of Defense, the Secretary of Energy, and
20 the Director of National Intelligence jointly certify
21 that the Russian Federation is, in a way that is mili-
22 tarily significant—

23 (A) increasing above 1,550 the number of
24 the Russian Federation's strategic warheads
25 operationally deployed on launchers for Inter-

1 continental Ballistic Missiles (ICBMs), Sub-
2 marine-Launched Ballistic Missiles (SLBMs),
3 and heavy bombers;

4 (B) increasing above 700 the number of
5 deployed ICBMs, SLBMs, and heavy bombers;
6 or

7 (C) increasing above 800 the number of
8 deployed and non-deployed ICBM launchers,
9 SLBM launchers, and heavy bombers,
10 as such terms are defined and such systems are
11 counted in the New START Treaty and its related
12 protocols and annexes.

13 (2) The President, the Director of National In-
14 telligence, the Secretary of State, the Secretary of
15 Energy, and the Secretary of Defense certify that it
16 is in the national security interest of the United
17 States to exceed prohibition limits.

18 (3) The Secretary of Defense and the Secretary
19 of Energy submit to the appropriate congressional
20 committees a report with 10-year cost projections re-
21 lated to increasing the number of United States nu-
22 clear warheads, delivery vehicles, and systems as
23 covered by the New START Treaty and its related
24 protocols and annexes.

1 (4) The Director of National Intelligence sub-
2 mits to the appropriate congressional committees a
3 National Intelligence Estimate of Russian actions,
4 intentions, and likely responses to the United States
5 exceeding these specified caps.

6 (5) The Secretary of State, the Secretary of
7 Defense, the Secretary of Energy, and the Director
8 of National Intelligence provide briefings to the ap-
9 propriate congressional committees about the certifi-
10 cations and reports submitted under paragraphs (1)
11 though (4).

12 (6) There is not enacted, within 60 days after
13 each of the conditions in paragraphs (1) through (5)
14 having been met, a joint resolution of disapproval
15 that continues the prohibition on funding levels
16 under subsection (a).

17 (c) SUNSET.—The prohibition under subsection (a)
18 shall expire on February 5, 2026.

19 **SEC. 8. FORM OF REPORTS AND CERTIFICATIONS.**

20 If any report or certification required under this Act
21 is submitted in classified form, an unclassified version
22 shall also be submitted at the same time.

23 **SEC. 9. DEFINITIONS.**

24 In this Act:

1 (1) APPROPRIATE CONGRESSIONAL COMMIT-
2 TEES DEFINED.—The term “appropriate congress-
3 sional committees” means all members of—

4 (A) the Committee on Foreign Relations,
5 the Committee on Armed Services, the Select
6 Committee on Intelligence, and the Committee
7 on Appropriations of the Senate; and

8 (B) the Committee on Foreign Affairs, the
9 Committee on Armed Services, the Permanent
10 Select Committee on Intelligence, and the Com-
11 mittee on Appropriations of the House of Rep-
12 resentatives.

13 (2) INTERMEDIATE RANGE NUCLEAR FORCES
14 TREATY.—The term “Intermediate Range Nuclear
15 Forces Treaty” means the Treaty between the
16 United States of America and the Union of Soviet
17 Socialist Republics on the Elimination of Their In-
18 termediate-Range and Shorter-Range Missiles, to-
19 gether with the Memorandum of Understanding and
20 Two Protocols, signed at Washington December 8,
21 1987, and entered into force June 1, 1988.

22 (3) NEW START TREATY.—The term “New
23 START Treaty” means the Treaty between the
24 United States of America and the Russian Federa-
25 tion on Measures for the Further Reduction and

1 Limitation of Strategic Offensive Arms, signed April
2 8, 2010, and entered into force February 5, 2011.

3 (4) NUCLEAR NONPROLIFERATION TREATY.—

4 The term “Nuclear Nonproliferation Treaty” means
5 the Treaty on the Non-Proliferation of Nuclear
6 Weapons, signed at Washington July 1, 1968 (com-
7 monly known as the “NPT”).

○