

PUBLIC LAW 110-369—OCT. 8, 2008

UNITED STATES-INDIA NUCLEAR
COOPERATION APPROVAL AND
NONPROLIFERATION ENHANCEMENT ACT

Public Law 110–369
110th Congress

An Act

Oct. 8, 2008
[H.R. 7081]

To approve the United States-India Agreement for Cooperation on Peaceful Uses of Nuclear Energy, and for other purposes.

United States-
India Nuclear
Cooperation
Approval and
Nonproliferation
Enhancement
Act.
22 USC 8001
note.

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

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “United States-India Nuclear Cooperation Approval and Nonproliferation Enhancement Act”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

Sec. 1. Short title and table of contents.

Sec. 2. Definitions.

TITLE I—APPROVAL OF UNITED STATES-INDIA AGREEMENT FOR COOPERATION ON PEACEFUL USES OF NUCLEAR ENERGY

Sec. 101. Approval of Agreement.

Sec. 102. Declarations of policy; certification requirement; rule of construction.

Sec. 103. Additional Protocol between India and the IAEA.

Sec. 104. Implementation of Safeguards Agreement between India and the IAEA.

Sec. 105. Modified reporting to Congress.

TITLE II—STRENGTHENING UNITED STATES NONPROLIFERATION LAW RELATING TO PEACEFUL NUCLEAR COOPERATION

Sec. 201. Procedures regarding a subsequent arrangement on reprocessing.

Sec. 202. Initiatives and negotiations relating to agreements for peaceful nuclear cooperation.

Sec. 203. Actions required for resumption of peaceful nuclear cooperation.

Sec. 204. United States Government policy at the Nuclear Suppliers Group to strengthen the international nuclear nonproliferation regime.

Sec. 205. Conforming amendments.

SEC. 2. DEFINITIONS.

In this Act:

(1) **AGREEMENT.**—The term “United States-India Agreement for Cooperation on Peaceful Uses of Nuclear Energy” or “Agreement” means the Agreement for Cooperation Between the Government of the United States of America and the Government of India Concerning Peaceful Uses of Nuclear Energy that was transmitted to Congress by the President on September 10, 2008.

(2) **APPROPRIATE CONGRESSIONAL COMMITTEES.**—The term “appropriate congressional committees” means the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate.

TITLE I—APPROVAL OF UNITED STATES-INDIA AGREEMENT FOR COOPERATION ON PEACEFUL USES OF NUCLEAR ENERGY

SEC. 101. APPROVAL OF AGREEMENT.

(a) **IN GENERAL.**—Notwithstanding the provisions for congressional consideration and approval of a proposed agreement for cooperation in section 123 b. and d. of the Atomic Energy Act of 1954 (42 U.S.C. 2153 (b) and (d)), Congress hereby approves the United States-India Agreement for Cooperation on Peaceful Uses of Nuclear Energy, subject to subsection (b).

(b) **APPLICABILITY OF ATOMIC ENERGY ACT OF 1954, HYDE ACT, AND OTHER PROVISIONS OF LAW.**—The Agreement shall be subject to the provisions of the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.), the Henry J. Hyde United States-India Peaceful Atomic Energy Cooperation Act of 2006 (22 U.S.C. 8001 et. seq; Public Law 109-401), and any other applicable United States law as if the Agreement had been approved pursuant to the provisions for congressional consideration and approval of a proposed agreement for cooperation in section 123 b. and d. of the Atomic Energy Act of 1954.

(c) **SUNSET OF EXEMPTION AUTHORITY UNDER HYDE ACT.**—Section 104(f) of the Henry J. Hyde United States-India Peaceful Atomic Energy Cooperation Act of 2006 (22 U.S.C. 8003(f)) is amended by striking “the enactment of” and all that follows through “agreement” and inserting “the date of the enactment of the United States-India Nuclear Cooperation Approval and Nonproliferation Enhancement Act”.

SEC. 102. DECLARATIONS OF POLICY; CERTIFICATION REQUIREMENT; RULE OF CONSTRUCTION.

(a) **DECLARATIONS OF POLICY RELATING TO MEANING AND LEGAL EFFECT OF AGREEMENT.**—Congress declares that it is the understanding of the United States that the provisions of the United States-India Agreement for Cooperation on Peaceful Uses of Nuclear Energy have the meanings conveyed in the authoritative representations provided by the President and his representatives to the Congress and its committees prior to September 20, 2008, regarding the meaning and legal effect of the Agreement.

(b) **DECLARATIONS OF POLICY RELATING TO TRANSFER OF NUCLEAR EQUIPMENT, MATERIALS, AND TECHNOLOGY TO INDIA.**—Congress makes the following declarations of policy:

(1) Pursuant to section 103(a)(6) of the Henry J. Hyde United States-India Peaceful Atomic Energy Cooperation Act of 2006 (22 U.S.C. 8002(a)(6)), in the event that nuclear transfers to India are suspended or terminated pursuant to title I of such Act (22 U.S.C. 8001 et seq.), the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.), or any other United States law, it is the policy of the United States to seek to prevent the transfer to India of nuclear equipment, materials, or technology from other participating governments in the Nuclear Suppliers Group (NSG) or from any other source.

(2) Pursuant to section 103(b)(10) of the Henry J. Hyde United States-India Peaceful Atomic Energy Cooperation Act

of 2006 (22 U.S.C. 8002(b)(10)), any nuclear power reactor fuel reserve provided to the Government of India for use in safeguarded civilian nuclear facilities should be commensurate with reasonable reactor operating requirements.

President.

(c) **CERTIFICATION REQUIREMENT.**—Before exchanging diplomatic notes pursuant to Article 16(1) of the Agreement, the President shall certify to Congress that entry into force and implementation of the Agreement pursuant to its terms is consistent with the obligation of the United States under the Treaty on the Non-Proliferation of Nuclear Weapons, done at Washington, London, and Moscow July 1, 1968, and entered into force March 5, 1970 (commonly known as the “Nuclear Non-Proliferation Treaty”), not in any way to assist, encourage, or induce India to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices.

(d) **RULE OF CONSTRUCTION.**—Nothing in the Agreement shall be construed to supersede the legal requirements of the Henry J. Hyde United States-India Peaceful Atomic Energy Cooperation Act of 2006 or the Atomic Energy Act of 1954.

SEC. 103. ADDITIONAL PROTOCOL BETWEEN INDIA AND THE IAEA.

Congress urges the Government of India to sign and adhere to an Additional Protocol with the International Atomic Energy Agency (IAEA), consistent with IAEA principles, practices, and policies, at the earliest possible date.

SEC. 104. IMPLEMENTATION OF SAFEGUARDS AGREEMENT BETWEEN INDIA AND THE IAEA.

President.
Certification.

Licenses may be issued by the Nuclear Regulatory Commission for transfers pursuant to the Agreement only after the President determines and certifies to Congress that—

(1) the Agreement Between the Government of India and the International Atomic Energy Agency for the Application of Safeguards to Civilian Nuclear Facilities, as approved by the Board of Governors of the International Atomic Energy Agency on August 1, 2008 (the “Safeguards Agreement”), has entered into force; and

(2) the Government of India has filed a declaration of facilities pursuant to paragraph 13 of the Safeguards Agreement that is not materially inconsistent with the facilities and schedule described in paragraph 14 of the separation plan presented in the national parliament of India on May 11, 2006, taking into account the later initiation of safeguards than was anticipated in the separation plan.

SEC. 105. MODIFIED REPORTING TO CONGRESS.

(a) **INFORMATION ON NUCLEAR ACTIVITIES OF INDIA.**—Subsection (g)(1) of section 104 of the Henry J. Hyde United States-India Peaceful Atomic Energy Cooperation Act of 2006 (22 U.S.C. 8003) is amended—

(1) by redesignating subparagraphs (B), (C), and (D) as subparagraphs (C), (D), and (E), respectively; and

(2) by inserting after subparagraph (A) the following new subparagraph:

“(B) any material inconsistencies between the content or timeliness of notifications by the Government of India pursuant to paragraph 14(a) of the Safeguards Agreement and the facilities and schedule described in paragraph (14)

of the separation plan presented in the national parliament of India on May 11, 2006, taking into account the later initiation of safeguards than was anticipated in the separation plan;”.

(b) IMPLEMENTATION AND COMPLIANCE REPORT.—Subsection (g)(2) of such section is amended—

(1) in subparagraph (K)(iv), by striking “and” at the end;

(2) in subparagraph (L), by striking the period at the end and inserting “; and”; and

(3) by adding at the end the following new subparagraph:

“(M) with respect to the United States-India Agreement for Cooperation on Peaceful Uses of Nuclear Energy (hereinafter in this subparagraph referred to as the ‘Agreement’) approved under section 101(a) of the United States-India Nuclear Cooperation Approval and Nonproliferation Enhancement Act—

“(i) a listing of—

“(I) all provision of sensitive nuclear technology to India, and other such information as may be so designated by the United States or India under Article 1(Q); and

“(II) all facilities in India notified pursuant to Article 7(1) of the Agreement;

“(ii) a description of—

“(I) any agreed safeguards or any other form of verification for by-product material decided by mutual agreement pursuant to the terms of Article 1(A) of the Agreement;

“(II) research and development undertaken in such areas as may be agreed between the United States and India as detailed in Article 2(2)(a.) of the Agreement;

“(III) the civil nuclear cooperation activities undertaken under Article 2(2)(d.) of the Agreement;

“(IV) any United States efforts to help India develop a strategic reserve of nuclear fuel as called for in Article 2(2)(e.) of the Agreement;

“(V) any United States efforts to fulfill political commitments made in Article 5(6) of the Agreement;

“(VI) any negotiations that have occurred or are ongoing under Article 6(iii.) of the Agreement; and

“(VII) any transfers beyond the territorial jurisdiction of India pursuant to Article 7(2) of the Agreement, including a listing of the receiving country of each such transfer;

“(iii) an analysis of—

“(I) any instances in which the United States or India requested consultations arising from concerns over compliance with the provisions of Article 7(1) of the Agreement, and the results of such consultations; and

“(II) any matters not otherwise identified in this report that have become the subject of consultations pursuant to Article 13(2) of the Agreement, and a statement as to whether such matters were resolved by the end of the reporting period; and

“(iv) a statement as to whether—

“(I) any consultations are expected to occur under Article 16(5) of the Agreement; and

“(II) any enrichment is being carried out pursuant to Article 6 of the Agreement.”.

TITLE II—STRENGTHENING UNITED STATES NONPROLIFERATION LAW RELATING TO PEACEFUL NUCLEAR CO-OPERATION

SEC. 201. PROCEDURES REGARDING A SUBSEQUENT ARRANGEMENT ON REPROCESSING.

(a) IN GENERAL.—Notwithstanding section 131 of the Atomic Energy Act of 1954 (42 U.S.C. 2160), no proposed subsequent arrangement concerning arrangements and procedures regarding reprocessing or other alteration in form or content, as provided for in Article 6 of the Agreement, shall take effect until the requirements specified in subsection (b) are met.

(b) REQUIREMENTS.—The requirements referred to in subsection (a) are the following:

President.
Reports.

(1) The President transmits to the appropriate congressional committees a report containing—

(A) the reasons for entering into such proposed subsequent arrangement;

(B) a detailed description, including the text, of such proposed subsequent arrangement; and

(C) a certification that the United States will pursue efforts to ensure that any other nation that permits India to reprocess or otherwise alter in form or content nuclear material that the nation has transferred to India or nuclear material and by-product material used in or produced through the use of nuclear material, non-nuclear material, or equipment that it has transferred to India requires India to do so under similar arrangements and procedures.

Time period.

(2) A period of 30 days of continuous session (as defined by section 130 g.(2) of the Atomic Energy Act of 1954 (42 U.S.C. 2159 (g)(2)) has elapsed after transmittal of the report required under paragraph (1).

(c) RESOLUTION OF DISAPPROVAL.—Notwithstanding the requirements in subsection (b) having been met, a subsequent arrangement referred to in subsection (a) shall not become effective if during the time specified in subsection (b)(2), Congress adopts, and there is enacted, a joint resolution stating in substance that Congress does not favor such subsequent arrangement. Any such resolution shall be considered pursuant to the procedures set forth in section 130 i. of the Atomic Energy Act of 1954 (42 U.S.C. 2159 (i)), as amended by section 205 of this Act.

SEC. 202. INITIATIVES AND NEGOTIATIONS RELATING TO AGREEMENTS FOR PEACEFUL NUCLEAR COOPERATION.

Section 123 of the Atomic Energy Act of 1954 (42 U.S.C. 2153) is amended by adding at the end the following:

“e. The President shall keep the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate fully and currently informed of any initiative or negotiations relating to a new or amended agreement for peaceful nuclear cooperation pursuant to this section (except an agreement arranged pursuant to section 91 c., 144 b., 144 c., or 144 d., or an amendment thereto).”

President.

SEC. 203. ACTIONS REQUIRED FOR RESUMPTION OF PEACEFUL NUCLEAR COOPERATION.

Section 129 a. of the Atomic Energy Act of 1954 (42 U.S.C. 2158 (a)) is amended by striking “Congress adopts a concurrent resolution” and inserting “Congress adopts, and there is enacted, a joint resolution”.

SEC. 204. UNITED STATES GOVERNMENT POLICY AT THE NUCLEAR SUPPLIERS GROUP TO STRENGTHEN THE INTERNATIONAL NUCLEAR NONPROLIFERATION REGIME.

President.

(a) **CERTIFICATION.**—Before exchanging diplomatic notes pursuant to Article 16(1) of the Agreement, the President shall certify to the appropriate congressional committees that it is the policy of the United States to work with members of the Nuclear Suppliers Group (NSG), individually and collectively, to agree to further restrict the transfers of equipment and technology related to the enrichment of uranium and reprocessing of spent nuclear fuel.

(b) **PEACEFUL USE ASSURANCES FOR CERTAIN BY-PRODUCT MATERIAL.**—The President shall seek to achieve, by the earliest possible date, either within the NSG or with relevant NSG Participating Governments, the adoption of principles, reporting, and exchanges of information as may be appropriate to assure peaceful use and accounting of by-product material in a manner that is substantially equivalent to the relevant provisions of the Agreement.

(c) **REPORT.**—

(1) **IN GENERAL.**—Not later than six months after the date of the enactment of this Act, and every six months thereafter, the President shall transmit to the appropriate congressional committees a report on efforts by the United States pursuant to subsections (a) and (b).

(2) **TERMINATION.**—The requirement to transmit the report under paragraph (1) terminates on the date on which the President transmits a report pursuant to such paragraph stating that the objectives in subsections (a) and (b) have been achieved.

SEC. 205. CONFORMING AMENDMENTS.

Section 130 i. of the Atomic Energy Act of 1954 (42 U.S.C. 2159 (i)) is amended—

(1) in paragraph (1), by striking “means a joint resolution” and all that follows through “, with the date” and inserting the following: “means—

“(A) for an agreement for cooperation pursuant to section 123 of this Act, a joint resolution, the matter after the resolving

clause of which is as follows: ‘That the Congress (does or does not) favor the proposed agreement for cooperation transmitted to the Congress by the President on _____.’;

“(B) for a determination under section 129 of this Act, a joint resolution, the matter after the resolving clause of which is as follows: ‘That the Congress does not favor the determination transmitted to the Congress by the President on _____.’; or

“(C) for a subsequent arrangement under section 201 of the United States-India Nuclear Cooperation Approval and Nonproliferation Enhancement Act, a joint resolution, the matter after the resolving clause of which is as follows: ‘That the Congress does not favor the subsequent arrangement to the Agreement for Cooperation Between the Government of the United States of America and the Government of India Concerning Peaceful Uses of Nuclear Energy that was transmitted to Congress by the President on September 10, 2008.’, with the date”; and

(2) in paragraph (4)—

(A) by inserting after “45 days after its introduction” the following “(or in the case of a joint resolution related to a subsequent arrangement under section 201 of the United States-India Nuclear Cooperation Approval and Nonproliferation Enhancement Act, 15 days after its introduction)”; and

(B) by inserting after “45-day period” the following: “(or in the case of a joint resolution related to a subsequent arrangement under section 201 of the United States-India Nuclear Cooperation Approval and Nonproliferation Enhancement Act, 15-day period)”.

Approved October 8, 2008.

LEGISLATIVE HISTORY—H.R. 7081:

CONGRESSIONAL RECORD, Vol. 154 (2008):

Sept. 26, 27, considered and passed House.

Oct. 1, considered and passed Senate.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 44 (2008):

Oct. 8, Presidential remarks and statement.

