

109TH CONGRESS
2^D SESSION

H. R. 5682

To exempt from certain requirements of the Atomic Energy Act of 1954
a proposed nuclear agreement for cooperation with India.

IN THE HOUSE OF REPRESENTATIVES

JUNE 26, 2006

Mr. HYDE (for himself, Mr. LANTOS, Ms. ROS-LEHTINEN, Mr. ACKERMAN, Mr. BURTON of Indiana, Mr. WILSON of South Carolina, Mr. FALCOMA, Mr. ENGEL, Mr. CROWLEY, and Mr. ETHERIDGE) 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 exempt from certain requirements of the Atomic Energy Act of 1954 a proposed nuclear agreement for cooperation with India.

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 “United States and
5 India Nuclear Cooperation Promotion Act of 2006”.

6 **SEC. 2. SENSE OF CONGRESS.**

7 It is the sense of Congress that—

1 (1) preventing the proliferation of nuclear
2 weapons, other weapons of mass destruction, the
3 means to produce them, and the means to deliver
4 them are critical objectives for United States foreign
5 policy;

6 (2) sustaining the NPT and strengthening its
7 implementation, particularly its verification and
8 compliance, is the keystone of United States non-
9 proliferation policy;

10 (3) the NPT has been a significant success in
11 preventing the acquisition of nuclear weapons capa-
12 bilities and maintaining a stable international secu-
13 rity situation;

14 (4) countries that have never become a party to
15 the NPT and remain outside that treaty's legal re-
16 gime pose a potential challenge to the achievement
17 of the overall goals of global nonproliferation, be-
18 cause those countries have not undertaken the
19 NPT's international obligation to prohibit the spread
20 of dangerous nuclear technologies;

21 (5) it is in the interest of the United States to
22 the fullest extent possible to ensure that those coun-
23 tries that are not NPT members are responsible
24 with any nuclear technology they develop;

1 (6) it may be in the interest of the United
2 States to enter into an agreement for nuclear co-
3 operation as set forth in section 123 of the Atomic
4 Energy Act of 1954 (42 U.S.C. 2153) with a coun-
5 try that has never been an NPT member with re-
6 spect to civilian nuclear technology if—

7 (A) the country has demonstrated respon-
8 sible behavior with respect to the nonprolifera-
9 tion of technology related to weapons of mass
10 destruction programs and the means to deliver
11 them;

12 (B) the country has a functioning and un-
13 interrupted democratic system of government,
14 has a foreign policy that is congruent to that of
15 the United States, and is working with the
16 United States in key foreign policy initiatives
17 related to non-proliferation;

18 (C) such cooperation induces the country
19 to implement the highest possible protections
20 against the proliferation of technology related
21 to weapons of mass destruction programs and
22 the means to deliver them, and to refrain from
23 actions that would further the development of
24 its nuclear weapons program; and

1 (D) such cooperation will induce the coun-
2 try to give greater political and material sup-
3 port to the achievement of United States global
4 and regional nonproliferation objectives, espe-
5 cially with respect to dissuading, isolating, and,
6 if necessary, sanctioning and containing states
7 that sponsor terrorism and terrorist groups,
8 that are seeking to acquire a nuclear weapons
9 capability or other weapons of mass destruction
10 capability and the means to deliver such weap-
11 ons; and

12 (7)(A) India meets the criteria described in this
13 subsection; and

14 (B) it is in the national security interest of the
15 United States to deepen its relationship with India
16 across a full range of issues, including peaceful nu-
17 clear cooperation.

18 **SEC. 3. STATEMENTS OF POLICY.**

19 (a) IN GENERAL.—The following shall be the policies
20 of the United States:

21 (1) Oppose the development of a capability to
22 produce nuclear weapons by any non-nuclear weapon
23 state, within or outside of the Treaty on the Non-
24 Proliferation of Nuclear Weapons (21 UST 483;

1 commonly referred to as the “Nuclear Non-Pro-
2 liferation Treaty” or the “NPT”).

3 (2) Encourage states party to the NPT to in-
4 terpret the right to “develop research, production
5 and use of nuclear energy for peaceful purposes”, as
6 described in Article IV of the NPT, as being a quali-
7 fied right that is conditioned by the overall purpose
8 of the NPT to prevent the spread of nuclear weap-
9 ons and nuclear weapons capability, including by re-
10 fraining from all nuclear cooperation with any state
11 party that has not demonstrated that it is in full
12 compliance with its NPT obligations, as determined
13 by the IAEA.

14 (3) Strengthen the Nuclear Suppliers Group
15 guidelines concerning consultation by members re-
16 garding violations of supplier and recipient under-
17 standings by instituting the practice of a timely and
18 coordinated response by NSG members to all such
19 violations, including termination of nuclear transfers
20 to an involved recipient, that discourages individual
21 NSG members from continuing cooperation with
22 such recipient until such time as a consensus regard-
23 ing a coordinated response has been achieved.

1 (b) WITH RESPECT TO SOUTH ASIA.—The following
2 shall be the policies of the United States with respect to
3 South Asia:

4 (1) Achieve a moratorium on the production of
5 fissile material for nuclear explosive purposes by
6 India, Pakistan, and the People’s Republic of China
7 at the earliest possible date.

8 (2) Achieve, at the earliest possible date, the
9 conclusion and implementation of a treaty banning
10 the production of fissile material for nuclear weap-
11 ons to which both the United States and India be-
12 come parties.

13 (3) Secure India’s—

14 (A) full participation in the Proliferation
15 Security Initiative;

16 (B) formal commitment to the Statement
17 of Interdiction Principles;

18 (C) public announcement of its decision to
19 conform its export control laws, regulations,
20 and policies with the Australia Group and with
21 the Guidelines, Procedures, Criteria, and Con-
22 trol Lists of the Wassenaar Arrangement;

23 (D) demonstration of satisfactory progress
24 toward implementing the decision described in
25 subparagraph (C); and

1 (E) ratification of or accession to the Con-
2 vention on Supplementary Compensation for
3 Nuclear Damage, done at Vienna on September
4 12, 1997.

5 (4) Secure India's full and active participation
6 in United States efforts to dissuade, isolate, and, if
7 necessary, sanction and contain Iran for its efforts
8 to acquire weapons of mass destruction, including a
9 nuclear weapons capability (including the capability
10 to enrich or process nuclear materials), and the
11 means to deliver weapons of mass destruction.

12 (5) Seek to halt the increase of nuclear weapon
13 arsenals in South Asia, and to promote their reduc-
14 tion and eventual elimination.

15 **SEC. 4. WAIVER AUTHORITY AND CONGRESSIONAL AP-**
16 **PROVAL.**

17 (a) IN GENERAL.—Notwithstanding any other provi-
18 sion of law, if the President makes the determination de-
19 scribed in subsection (b), the President may—

20 (1) exempt a proposed agreement for nuclear
21 cooperation with India (arranged pursuant to section
22 123 of the Atomic Energy Act of 1954 (42 U.S.C.
23 2153)) from the requirement in section 123 a.(2) of
24 such Act, and such agreement for cooperation may

1 only enter into force in accordance with subsections
2 (f) and (g);

3 (2) waive the application of section 128 of the
4 Atomic Energy Act of 1954 (42 U.S.C. 2157) with
5 respect to India, provided that such waiver shall
6 cease to be effective if the President determines that
7 India has engaged in any activity described section
8 129 of such Act (42 U.S.C. 2158), other than sec-
9 tion 129 a.(1)(D) or section 129 a.(2)(C) of such
10 Act, at any time after the date of the enactment of
11 this Act; and

12 (3) with respect to India—

13 (A) waive the restrictions of section 129
14 a.(1)(A) of the Atomic Energy Act of 1954 (42
15 U.S.C. 2158 a.(1)(A)) for any activity that oc-
16 curred on or before July 18, 2005; and

17 (B) section 129 a.(1)(D) of such Act.

18 (b) DETERMINATION BY THE PRESIDENT.—The de-
19 termination referred to in subsection (a) is a determina-
20 tion by the President that the following actions have oc-
21 curred:

22 (1) India has provided the United States and
23 the International Atomic Energy Agency with a
24 credible plan to separate civil and military nuclear
25 facilities, materials, and programs, and has filed a

1 declaration regarding its civil facilities with the
2 IAEA.

3 (2) India and the IAEA have concluded an
4 agreement requiring the application of IAEA safe-
5 guards in perpetuity in accordance with IAEA
6 standards, principles, and practices (including IAEA
7 Board of Governors Document GOV/1621 (1973))
8 to India's civil nuclear facilities, materials, and pro-
9 grams as declared in the plan described in para-
10 graph (1), including materials used in or produced
11 through the use of India's civil nuclear facilities.

12 (3) India and the IAEA are making substantial
13 progress toward concluding an Additional Protocol
14 consistent with IAEA principles, practices, and poli-
15 cies that would apply to India's civil nuclear pro-
16 gram.

17 (4) India is working actively with the United
18 States for the early conclusion of a multilateral
19 Fissile Material Cutoff Treaty.

20 (5) India is working with and supporting
21 United States and international efforts to prevent
22 the spread of enrichment and reprocessing tech-
23 nology.

1 (6) India is taking the necessary steps to secure
2 nuclear and other sensitive materials and technology,
3 including through—

4 (A) the enactment and enforcement of
5 comprehensive export control legislation and
6 regulations;

7 (B) harmonization of its export control
8 laws, regulations, policies, and practices with
9 the policies and practices of the Missile Tech-
10 nology Control Regime and the Nuclear Sup-
11 pliers Group; and

12 (C) adherence to the MTCR and the NSG
13 in accordance with the procedures of those re-
14 gimes for unilateral adherence.

15 (7) The NSG has decided by consensus to per-
16 mit supply to India of nuclear items covered by the
17 guidelines of the NSG.

18 (c) SUBMISSION TO CONGRESS.—

19 (1) IN GENERAL.—The President shall submit
20 to the Committee on International Relations of the
21 House of Representatives and the Committee on
22 Foreign Relations of the Senate information con-
23 cerning any determination made pursuant to sub-
24 section (b), together with a report detailing the basis
25 for the determination.

1 (2) INFORMATION TO BE INCLUDED.—To the
2 fullest extent available to the United States, the in-
3 formation referred to in paragraph (1) shall include
4 the following:

5 (A) A summary of the plan provided by
6 India to the United States and the IAEA to
7 separate India's civil and military nuclear facili-
8 ties, materials, and programs, and the declara-
9 tion made by India to the IAEA identifying In-
10 dia's civil facilities to be placed under IAEA
11 safeguards, including an analysis of the credi-
12 bility of such plan and declaration, together
13 with copies of the plan and declaration.

14 (B) A summary of the agreement that has
15 been entered into between India and the IAEA
16 requiring the application of safeguards in ac-
17 cordance with IAEA practices to India's civil
18 nuclear facilities as declared in the plan de-
19 scribed in subparagraph (A), together with a
20 copy of the agreement, and a description of the
21 progress toward its full implementation.

22 (C) A summary of the progress made to-
23 ward conclusion and implementation of an Ad-
24 ditional Protocol between India and the IAEA,

1 including a description of the scope of such Ad-
2 ditional Protocol.

3 (D) A description of the steps that India
4 is taking to work with the United States for the
5 conclusion of a multilateral treaty banning the
6 production of fissile material for nuclear weap-
7 ons, including a description of the steps that
8 the United States has taken and will take to
9 encourage India to identify and declare a date
10 by which India would be willing to stop produc-
11 tion of fissile material for nuclear weapons uni-
12 laterally or pursuant to a multilateral morato-
13 rium or treaty.

14 (E) A description of the steps India is tak-
15 ing to prevent the spread of nuclear-related
16 technology, including enrichment and reprocess-
17 ing technology or materials that can be used to
18 acquire a nuclear weapons technology, as well
19 as the support that India is providing to the
20 United States to further United States objec-
21 tives to restrict the spread of such technology.

22 (F) A description of the steps that India is
23 taking to secure materials and technology appli-
24 cable for the development, acquisition, or manu-
25 facture of weapons of mass destruction and the

1 means to deliver such weapons through the ap-
2 plication of comprehensive export control legis-
3 lation and regulations, and through harmoni-
4 zation and adherence to Missile Technology
5 Control Regime, the Nuclear Suppliers Group,
6 the Australia Group, Wassenaar guidelines,
7 and United Nations Security Council Resolution
8 1540, and participation in the Proliferation Se-
9 curity Initiative.

10 (G) A description of the decision taken
11 within the Nuclear Suppliers Group relating to
12 nuclear cooperation with India, including
13 whether nuclear cooperation by the United
14 States under an agreement for cooperation ar-
15 ranged pursuant to section 123 of the Atomic
16 Energy Act of 1954 (42 U.S.C. 2153) is con-
17 sistent with the decision, practices, and policies
18 of the NSG.

19 (H) A description of the scope of peaceful
20 cooperation envisioned by the United States
21 and India that will be implemented under the
22 Agreement for Nuclear Cooperation, including
23 whether such cooperation will include the provi-
24 sion of enrichment and reprocessing technology.

1 (d) RESTRICTIONS ON NUCLEAR TRANSFERS TO
2 INDIA.—

3 (1) IN GENERAL.—Notwithstanding the entry
4 into force of an agreement for cooperation with
5 India pursuant to section 123 of the Atomic Energy
6 Act of 1954 (42 U.S.C. 2153) and approved pursu-
7 ant to this Act, no item subject to such agreement
8 or subject to the transfer guidelines of the NSG may
9 be transferred to India if such transfer would violate
10 the transfer guidelines of the NSG as in effect on
11 the date of the transfer.

12 (2) TERMINATION OF NUCLEAR TRANSFERS TO
13 INDIA.—Notwithstanding the entry into force of an
14 agreement for nuclear cooperation with India (ar-
15 ranged pursuant to section 123 of the Atomic En-
16 ergy Act of 1954 (42 U.S.C. 2153)), exports of nu-
17 clear and nuclear-related material, equipment, or
18 technology to India shall be terminated if India
19 makes any materially significant transfer of—

20 (A) nuclear or nuclear-related material,
21 equipment, or technology that does not conform
22 to NSG guidelines, or

23 (B) ballistic missiles or missile-related
24 equipment or technology that does not conform
25 to MTCR guidelines,

1 unless the President determines that cessation of
2 such exports would be seriously prejudicial to the
3 achievement of United States nonproliferation objec-
4 tives or otherwise jeopardize the common defense
5 and security.

6 (3) PROHIBITION ON NUCLEAR TRANSFERS TO
7 INDIA.—If nuclear transfers to India are restricted
8 pursuant to this Act, the Atomic Energy Act of
9 1954, or the Arms Export Control Act, the Presi-
10 dent should seek to prevent the transfer to India of
11 nuclear equipment, materials, or technology from
12 other participating governments in the NSG or from
13 any other source.

14 (e) APPROVAL OF AGREEMENT FOR NUCLEAR CO-
15 OPERATION REQUIRED.—

16 (1) IN GENERAL.—Subject to subsection (m),
17 an agreement for nuclear cooperation between the
18 United States and India submitted pursuant to this
19 section may become effective only if—

20 (A) the President submits to Congress the
21 agreement concluded between the United States
22 and India, including a copy of the safeguards
23 agreement entered into between the IAEA and
24 India relating to India's declared civilian nu-
25 clear facilities, in accordance with the require-

1 ments and procedures of section 123 of the
2 Atomic Energy Act of 1954 (other than section
3 123 a.(2) of such Act) that are otherwise not
4 inconsistent with the provisions of this Act; and

5 (B) after the submission under subpara-
6 graph (A), the agreement is approved by a joint
7 resolution that is enacted into law.

8 (2) CONSULTATION.—Beginning one month
9 after the date of the enactment of this Act and every
10 month thereafter until the President submits to Con-
11 gress the agreement referred to in paragraph (1),
12 the President should consult with the Committee on
13 International Relations of the House of Representa-
14 tives and the Committee on Foreign Relations of the
15 Senate regarding the status of the negotiations be-
16 tween the United States and India with respect to
17 civilian nuclear cooperation and between the IAEA
18 and India with respect to the safeguards agreement
19 described in subsection (b)(2).

20 (f) JOINT RESOLUTION.—For purposes of this sec-
21 tion, a joint resolution referred to in subsection (e)(1)(B)
22 is a joint resolution of the two Houses of Congress—

23 (1) the matter after the resolving clause of
24 which is as follows: “That the Congress hereby ap-
25 proves the Agreement for Nuclear Cooperation Be-

1 tween the United States of America and the Repub-
2 lic of India submitted by the President on
3 _____.”, with the blank space
4 being filled with the appropriate date;

5 (2) which does not have a preamble; and

6 (3) the title of which is as follows: “Joint Reso-
7 lution Approving an Agreement for Nuclear Co-
8 operation Between the United States and India”.

9 (g) INTRODUCTION AND REFERRAL.—

10 (1) INTRODUCTION.—A joint resolution shall,
11 on the day on which the submissions under sub-
12 section (e)(1)(A) are made (or, if either House of
13 Congress is not in session on that day, the first day
14 thereafter when that House is in session)—

15 (A) be introduced in the House of Rep-
16 resentatives by the majority leader, for himself
17 and the minority leader of the House, or by
18 Members of the House designated by the major-
19 ity leader and minority leader of the House;
20 and

21 (B) be introduced in the Senate by the ma-
22 jority leader, for himself and the minority lead-
23 er of the Senate, or by Members of the Senate
24 designated by the majority leader and minority
25 leader of the Senate.

1 If either House of Congress is not in session on that
2 day, the joint resolution shall be introduced on the
3 first day thereafter when both Houses are in session.

4 (2) REFERRAL.—The joint resolution shall be
5 referred to the Committee on International Relations
6 of the House of Representatives and to the Com-
7 mittee on Foreign Relations of the Senate.

8 (h) DISCHARGE OF COMMITTEES.—If a committee to
9 which a joint resolution is referred has not reported such
10 joint resolution by the end of 60 days beginning on the
11 date of its introduction, or the date of the submission of
12 the nonproliferation assessment statement described in
13 section 123 of the Atomic Energy Act of 1954 (42 U.S.C.
14 2153), whichever is later, such committee shall be dis-
15 charged from further consideration of such joint resolu-
16 tion, and such joint resolution shall be placed on the ap-
17 propriate calendar of the House involved.

18 (i) FLOOR CONSIDERATION IN THE HOUSE OF REP-
19 RESENTATIVES.—

20 (1) IN GENERAL.—On or after the third cal-
21 endar day (excluding Saturdays, Sundays, or legal
22 holidays, except when the House of Representatives
23 is in session on such a day) after the date on which
24 the committee to which a joint resolution is referred
25 has reported, or has been discharged from further

1 consideration of, such a joint resolution, it shall be
2 in order for any Member of the House to move to
3 proceed to the consideration of the joint resolution.
4 A Member of the House may make the motion only
5 on the day after the calendar day on which the
6 Member announces to the House the Member's in-
7 tention to do so. Such motion shall be privileged and
8 shall not be debatable. The motion shall not be sub-
9 ject to amendment or to a motion to postpone. A
10 motion to reconsider the vote by which the motion
11 is agreed to shall not be in order. If a motion to pro-
12 ceed to the consideration of the joint resolution is
13 agreed to, the House shall immediately proceed to
14 consideration of the joint resolution which shall re-
15 main the unfinished business until disposed of.

16 (2) DEBATE.—Debate on a joint resolution, and
17 on all debatable motions and appeals in connection
18 therewith, shall be limited to not more than six
19 hours, which shall be divided equally between those
20 favoring and those opposing the joint resolution. An
21 amendment to the joint resolution shall not be in
22 order. A motion to further limit debate shall be in
23 order and shall not be debatable. A motion to table,
24 a motion to postpone, or a motion to recommit the
25 joint resolution shall not be in order. A motion to re-

1 consider the vote by which the joint resolution is
2 agreed to or disagreed to shall not be in order.

3 (3) APPEALS.—Appeals from the decisions of
4 the Chair to the procedure relating to a joint resolu-
5 tion shall be decided without debate.

6 (j) FLOOR CONSIDERATION IN THE SENATE.—Any
7 joint resolution shall be considered in the Senate in ac-
8 cordance with the provisions of section 601(b)(4) of the
9 International Security Assistance and Arms Export Con-
10 trol Act of 1976.

11 (k) CONSIDERATION BY THE OTHER HOUSE.—If, be-
12 fore the passage by one House of a joint resolution of that
13 House, that House receives a joint resolution from the
14 other House, then the following procedures shall apply:

15 (1) The joint resolution of the other House
16 shall not be referred to a committee and may not be
17 considered in the House receiving it except in the
18 case of final passage as provided in paragraph
19 (2)(B).

20 (2) With respect to a joint resolution of the
21 House receiving the joint resolution—

22 (A) the procedure in that House shall be
23 the same as if no joint resolution had been re-
24 ceived from the other House; but

1 (B) the vote on final passage shall be on
2 the joint resolution of the other House.

3 (3) Upon disposition of the joint resolution re-
4 ceived from the other House, it shall no longer be
5 in order to consider the joint resolution that origi-
6 nated in the receiving House.

7 (l) COMPUTATION OF DAYS.—In the computation of
8 the period of 60 days referred to in subsection (h), there
9 shall be excluded the days on which either House of Con-
10 gress is not in session because of an adjournment of more
11 than 3 days to a day certain or because of an adjournment
12 of the Congress sine die.

13 (m) SECTION 123 OF ATOMIC ENERGY ACT NOT AF-
14 FECTED.—Notwithstanding subsection (e)(1), this section
15 does not preclude the approval, under section 123 of the
16 Atomic Energy Act of 1954 (42 U.S.C. 2153), of an
17 agreement for cooperation in which India is the cooper-
18 ating party.

19 (n) SUNSET.—The procedures under this section
20 shall cease to be effective upon the enactment of a joint
21 resolution under this section.

22 (o) REPORTS.—

23 (1) POLICY OBJECTIVES.—The President shall,
24 not later than January 31, 2007, and not later than
25 January 31 of each year thereafter, submit to the

1 Committee on International Relations of the House
2 of Representatives and the Committee on Foreign
3 Relations of the Senate a report on—

4 (A) the extent to which each policy objec-
5 tive in section 3(b) has been achieved;

6 (B) the steps taken by the United States
7 and India in the preceding calendar year to ac-
8 complish those objectives;

9 (C) the extent of cooperation by other
10 countries in achieving those objectives; and

11 (D) the steps the United States will take
12 in the current calendar year to accomplish those
13 objectives.

14 (2) NUCLEAR EXPORTS TO INDIA.—

15 (A) IN GENERAL.—Not later than one year
16 after the date on which an agreement for nu-
17 clear cooperation between the United States
18 and India is approved by Congress under sec-
19 tion 4(f) and every year thereafter, the Presi-
20 dent shall submit to the Committee on Inter-
21 national Relations of the House of Representa-
22 tives and the Committee on Foreign Relations
23 of the Senate a report describing United States
24 exports to India for the preceding year pursu-
25 ant to such agreement and the anticipated ex-

1 ports to India for the next year pursuant to
2 such agreement.

3 (B) NUCLEAR FUEL.—The report de-
4 scribed in subparagraph (A) shall also include
5 (in a classified form if necessary)—

6 (i) an estimate for the previous year
7 of the amount of uranium mined in India;

8 (ii) the amount of such uranium that
9 has likely been used or allocated for the
10 production of nuclear explosive devices;

11 (iii) the rate of production of—

12 (I) fissile material for nuclear ex-
13 plosive devices; and

14 (II) nuclear explosive devices;
15 and

16 (iv) an analysis as to whether im-
17 ported uranium has affected such rate of
18 production of nuclear explosive devices.

19 (p) DEFINITIONS.—In this Act:

20 (1) IAEA.—The term “IAEA” means the
21 International Atomic Energy Agency.

22 (2) MTCR.—The term “MTCR” means the
23 Missile Technology Control Regime.

24 (3) NPT.—The term “NPT” means the Treaty
25 on the Non-Proliferation of Nuclear Weapons.

1 (4) NPT MEMBER.—The term “NPT member”
2 means a country that is a party to the NPT.

3 (5) NSG.—The term “NSG” means the Nu-
4 clear Suppliers Group.

○