

Calendar No. 537

109TH CONGRESS
2^D SESSION**H. R. 5682**

IN THE SENATE OF THE UNITED STATES

JULY 27 (legislative day, JULY 26), 2006
Received; read twice and placed on the calendar

AN ACT

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 “Henry J. Hyde United
5 States and India Nuclear Cooperation Promotion Act of
6 2006”.

7 **SEC. 2. SENSE OF CONGRESS.**

8 It is the sense of Congress that—

9 (1) preventing the proliferation of nuclear
10 weapons, other weapons of mass destruction, the

1 means to produce them, and the means to deliver
2 them are critical objectives for United States foreign
3 policy;

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

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

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

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

23 (6) it is in the interest of the United States to
24 enter into an agreement for nuclear cooperation as
25 set forth in section 123 of the Atomic Energy Act

1 of 1954 (42 U.S.C. 2153) with a country that has
2 never been an NPT member with respect to civilian
3 nuclear technology if—

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

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

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

22 (D) such cooperation will induce the coun-
23 try to give greater political and material sup-
24 port to the achievement of United States global
25 and regional nonproliferation objectives, espe-

1 cially with respect to dissuading, isolating, and,
2 if necessary, sanctioning and containing states
3 that sponsor terrorism and terrorist groups,
4 that are seeking to acquire a nuclear weapons
5 capability or other weapons of mass destruction
6 capability and the means to deliver such weap-
7 ons;

8 (7)(A) India meets the criteria described in
9 paragraph (6); and

10 (B) it is in the national security interest of the
11 United States to deepen its relationship with India
12 across a full range of issues, including peaceful nu-
13 clear cooperation;

14 (8) the South Asia region is so important that
15 the United States should continue its policy of en-
16 gagement, collaboration, and exchanges with and be-
17 tween India and Pakistan; and

18 (9) the United States Government, pursuant to
19 the restrictions in this Act, shall not participate in,
20 or contribute to, the manufacture or acquisition of
21 nuclear weapons or nuclear explosive devices.

22 **SEC. 3. STATEMENTS OF POLICY.**

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

1 (1) Oppose the development of a capability to
2 produce nuclear weapons by any non-nuclear weapon
3 state, within or outside of the Treaty on the Non-
4 Proliferation of Nuclear Weapons (21 UST 483;
5 commonly referred to as the “Nuclear Non-Pro-
6 liferation Treaty” or the “NPT”).

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

18 (3) Strengthen the Nuclear Suppliers Group
19 guidelines concerning consultation by members re-
20 garding violations of supplier and recipient under-
21 standings by instituting the practice of a timely and
22 coordinated response by NSG members to all such
23 violations, including termination of nuclear transfers
24 to an involved recipient, that discourages individual
25 NSG members from continuing cooperation with

1 such recipient until such time as a consensus regard-
2 ing a coordinated response has been achieved.

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

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

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

15 (3) Secure India’s—

16 (A) full participation in the Proliferation
17 Security Initiative;

18 (B) formal commitment to the Statement
19 of Interdiction Principles;

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

1 (D) demonstration of satisfactory progress
2 toward implementing the decision described in
3 subparagraph (C); and

4 (E) ratification of or accession to the Con-
5 vention on Supplementary Compensation for
6 Nuclear Damage, done at Vienna on September
7 12, 1997.

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

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

18 (6) To ensure that spent fuel generated in In-
19 dia's civilian nuclear power reactors is not trans-
20 ferred to the United States except pursuant to the
21 Congressional review procedures required under sec-
22 tion 131 f. of the Atomic Energy Act of 1954 (42
23 U.S.C. 2160 f.).

24 (7) Pending implementation of a multilateral
25 moratorium, encourage India not to increase its pro-

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

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

6 (b) DETERMINATION BY THE PRESIDENT.—The de-
7 termination referred to in subsection (a) is a determina-
8 tion by the President that the following actions have oc-
9 curred:

10 (1) India has provided the United States and
11 the International Atomic Energy Agency with a
12 credible plan to separate civil and military nuclear
13 facilities, materials, and programs, and has filed a
14 declaration regarding its civil facilities with the
15 IAEA.

16 (2) India and the IAEA have concluded an
17 agreement requiring the application of IAEA safe-
18 guards in perpetuity in accordance with IAEA
19 standards, principles, and practices (including IAEA
20 Board of Governors Document GOV/1621 (1973))
21 to India's civil nuclear facilities, materials, and pro-
22 grams as declared in the plan described in para-
23 graph (1), including materials used in or produced
24 through the use of India's civil nuclear facilities.

1 (3) India and the IAEA are making substantial
2 progress toward concluding an Additional Protocol
3 consistent with IAEA principles, practices, and poli-
4 cies that would apply to India's civil nuclear pro-
5 gram.

6 (4) India is working actively with the United
7 States for the early conclusion of a multilateral
8 Fissile Material Cutoff Treaty.

9 (5) India is working with and supporting
10 United States and international efforts to prevent
11 the spread of enrichment and reprocessing tech-
12 nology.

13 (6) India is taking the necessary steps to secure
14 nuclear and other sensitive materials and technology,
15 including through—

16 (A) the enactment and enforcement of
17 comprehensive export control legislation and
18 regulations;

19 (B) harmonization of its export control
20 laws, regulations, policies, and practices with
21 the policies and practices of the Missile Tech-
22 nology Control Regime and the Nuclear Sup-
23 pliers Group; and

1 (C) adherence to the MTCR and the NSG
2 in accordance with the procedures of those re-
3 gimes for unilateral adherence.

4 (7) The NSG has decided by consensus to per-
5 mit supply to India of nuclear items covered by the
6 guidelines of the NSG.

7 (c) SUBMISSION TO CONGRESS.—

8 (1) IN GENERAL.—The President shall submit
9 to the Committee on International Relations of the
10 House of Representatives and the Committee on
11 Foreign Relations of the Senate information con-
12 cerning any determination made pursuant to sub-
13 section (b), together with a report detailing the basis
14 for the determination.

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

19 (A) A summary of the plan provided by
20 India to the United States and the IAEA to
21 separate India's civil and military nuclear facili-
22 ties, materials, and programs, and the declara-
23 tion made by India to the IAEA identifying In-
24 dia's civil facilities to be placed under IAEA
25 safeguards, including an analysis of the credi-

1 bility of such plan and declaration, together
2 with copies of the plan and declaration.

3 (B) A summary of the agreement that has
4 been entered into between India and the IAEA
5 requiring the application of safeguards in ac-
6 cordance with IAEA practices to India's civil
7 nuclear facilities as declared in the plan de-
8 scribed in subparagraph (A), together with a
9 copy of the agreement, and a description of the
10 progress toward its full implementation.

11 (C) A summary of the progress made to-
12 ward conclusion and implementation of an Ad-
13 ditional Protocol between India and the IAEA,
14 including a description of the scope of such Ad-
15 ditional Protocol.

16 (D) A description of the steps that India
17 is taking to work with the United States for the
18 conclusion of a multilateral treaty banning the
19 production of fissile material for nuclear weap-
20 ons, including a description of the steps that
21 the United States has taken and will take to
22 encourage India to identify and declare a date
23 by which India would be willing to stop produc-
24 tion of fissile material for nuclear weapons uni-

1 laterally or pursuant to a multilateral morato-
2 rium or treaty.

3 (E) A description of the steps India is tak-
4 ing to prevent the spread of nuclear-related
5 technology, including enrichment and reprocess-
6 ing technology or materials that can be used to
7 acquire a nuclear weapons technology, as well
8 as the support that India is providing to the
9 United States to further United States objec-
10 tives to restrict the spread of such technology.

11 (F) A description of the steps that India is
12 taking to secure materials and technology appli-
13 cable for the development, acquisition, or manu-
14 facture of weapons of mass destruction and the
15 means to deliver such weapons through the ap-
16 plication of comprehensive export control legis-
17 lation and regulations, and through harmoni-
18 zation and adherence to Missile Technology
19 Control Regime, the Nuclear Suppliers Group,
20 the Australia Group, Wassenaar guidelines,
21 and United Nations Security Council Resolution
22 1540, and participation in the Proliferation Se-
23 curity Initiative.

24 (G) A description of the decision taken
25 within the Nuclear Suppliers Group relating to

1 nuclear cooperation with India, including
2 whether nuclear cooperation by the United
3 States under an agreement for cooperation ar-
4 ranged pursuant to section 123 of the Atomic
5 Energy Act of 1954 (42 U.S.C. 2153) is con-
6 sistent with the decision, practices, and policies
7 of the NSG.

8 (H) A description of the scope of peaceful
9 cooperation envisioned by the United States
10 and India that will be implemented under the
11 Agreement for Nuclear Cooperation, including
12 whether such cooperation will include the provi-
13 sion of enrichment and reprocessing technology.

14 (I) A description of the steps taken to en-
15 sure that proposed United States civil nuclear
16 assistance to India will not directly, or in any
17 other way, assist India's nuclear weapons pro-
18 gram, including—

19 (i) the use of any United States
20 equipment, technology, or nuclear material
21 by India in an unsafeguarded nuclear facil-
22 ity or nuclear-weapons related complex;

23 (ii) the replication and subsequent use
24 of any United States technology in an
25 unsafeguarded nuclear facility or

1 unsafeguarded nuclear weapons-related
2 complex, or for any activity related to the
3 research, development, testing, or manu-
4 facture of nuclear explosive devices; and

5 (iii) the provision of nuclear fuel in
6 such a manner as to facilitate the in-
7 creased production of highly-enriched ura-
8 nium or plutonium in unsafeguarded nu-
9 clear facilities.

10 (d) RESTRICTIONS ON NUCLEAR TRANSFERS TO
11 INDIA.—

12 (1) IN GENERAL.—Pursuant to the obligations
13 of the United States under Article I of the NPT,
14 nothing in this Act, or any agreement pursuant to
15 this Act, shall be interpreted as permitting any civil
16 nuclear cooperation between the United States and
17 India that would in any way assist, encourage, or in-
18 duce India to manufacture or otherwise acquire nu-
19 clear weapons or nuclear explosive devices.

20 (2) NSG TRANSFER GUIDELINES.—Notwith-
21 standing the entry into force of an agreement for
22 nuclear cooperation with India pursuant to section
23 123 of the Atomic Energy Act of 1954 (42 U.S.C.
24 2153) and approved pursuant to this Act, no item
25 subject to such agreement or subject to the transfer

1 guidelines of the NSG may be transferred to India
2 if such transfer would violate or be inconsistent with
3 the transfer guidelines of the NSG as in effect on
4 the date of the transfer.

5 (3) TERMINATION OF NUCLEAR TRANSFERS TO
6 INDIA.—Notwithstanding the entry into force of an
7 agreement for nuclear cooperation with India pursu-
8 ant to section 123 of the Atomic Energy Act of
9 1954 (42 U.S.C. 2153) and approved pursuant to
10 this Act, exports of nuclear and nuclear-related ma-
11 terial, equipment, or technology to India shall be ter-
12 minated if India makes any materially significant
13 transfer of—

14 (A) nuclear or nuclear-related material,
15 equipment, or technology that does not conform
16 to NSG guidelines, or

17 (B) ballistic missiles or missile-related
18 equipment or technology that does not conform
19 to MTCR guidelines,

20 unless the President determines that cessation of
21 such exports would be seriously prejudicial to the
22 achievement of United States nonproliferation objec-
23 tives or otherwise jeopardize the common defense
24 and security.

1 (4) PROHIBITION ON NUCLEAR TRANSFERS TO
2 INDIA.—If nuclear transfers to India are restricted
3 pursuant to this Act, the Atomic Energy Act of
4 1954, or the Arms Export Control Act, the Presi-
5 dent should seek to prevent the transfer to India of
6 nuclear equipment, materials, or technology from
7 other participating governments in the NSG or from
8 any other source.

9 (e) APPROVAL OF AGREEMENT FOR NUCLEAR CO-
10 OPERATION REQUIRED.—

11 (1) IN GENERAL.—An agreement for nuclear
12 cooperation between the United States and India
13 submitted pursuant to this section may become ef-
14 fective only if—

15 (A) the President submits to Congress the
16 agreement concluded between the United States
17 and India, including a copy of the safeguards
18 agreement entered into between the IAEA and
19 India relating to India's declared civilian nu-
20 clear facilities, in accordance with the require-
21 ments and procedures of section 123 of the
22 Atomic Energy Act of 1954 (other than section
23 123 a.(2) of such Act) that are otherwise not
24 inconsistent with the provisions of this Act; and

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

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

16 (f) JOINT RESOLUTION OF APPROVAL.—For pur-
17 poses of this section, a joint resolution referred to in sub-
18 section (e)(1)(B) is a joint resolution of the two Houses
19 of Congress—

20 (1) the matter after the resolving clause of
21 which is as follows: “That the Congress hereby ap-
22 proves the Agreement for Nuclear Cooperation Be-
23 tween the United States of America and the Repub-
24 lic of India submitted by the President on

1 _____.”, with the blank space
2 being filled with the appropriate date;

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

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

7 (g) CONSIDERATION OF JOINT RESOLUTION OF AP-
8 PROVAL.—The provisions of paragraphs (2) through (6)
9 of section 130 i. of the Atomic Energy Act of 1954 (42
10 U.S.C. 2159 i.) shall apply to a joint resolution under sub-
11 section (f) of this section to the same extent as such provi-
12 sions apply to a joint resolution under section 130 i. of
13 such Act. No amendment to, or motion to recommit, a
14 joint resolution under subsection (f) of this section is in
15 order.

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

22 (i) SUNSET.—The procedures under this section shall
23 cease to be effective upon the enactment of a joint resolu-
24 tion under this section.

25 (j) REPORTS.—

1 (1) POLICY OBJECTIVES.—The President shall,
2 not later than January 31, 2007, and not later than
3 January 31 of each year thereafter, submit to the
4 Committee on International Relations of the House
5 of Representatives and the Committee on Foreign
6 Relations of the Senate a report on—

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

9 (B) the steps taken by the United States
10 and India in the preceding calendar year to ac-
11 complish those objectives;

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

14 (D) the steps the United States will take
15 in the current calendar year to accomplish those
16 objectives.

17 (2) NUCLEAR EXPORTS TO INDIA.—

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

1 of the Senate a report describing United States
2 exports to India for the preceding year pursu-
3 ant to such agreement and the anticipated ex-
4 ports to India for the next year pursuant to
5 such agreement.

6 (B) NUCLEAR FUEL.—The report de-
7 scribed in subparagraph (A) shall also include
8 (in a classified form if necessary)—

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

11 (ii) the amount of such uranium that
12 has likely been used or allocated for the
13 production of nuclear explosive devices;

14 (iii) the rate of production of—

15 (I) fissile material for nuclear ex-
16 plosive devices; and

17 (II) nuclear explosive devices;

18 and

19 (iv) an analysis as to whether im-
20 ported uranium has affected such rate of
21 production of nuclear explosive devices.

22 (C) UNSAFEGUARDED NUCLEAR FACILI-
23 TIES.—The report described in subparagraph
24 (A) shall also include (in a classified form if
25 necessary) a description of whether United

1 States civil nuclear assistance to India is di-
2 rectly, or in any other way, assisting India's nu-
3 clear weapons program, including—

4 (i) the use of any United States
5 equipment, technology, or nuclear material
6 by India in an unsafeguarded nuclear facil-
7 ity or nuclear-weapons related complex;

8 (ii) the replication and subsequent use
9 of any United States technology in an
10 unsafeguarded nuclear facility or
11 unsafeguarded nuclear weapons-related
12 complex, or for any activity related to the
13 research, development, testing, or manu-
14 facture of nuclear explosive devices; and

15 (iii) the provision of nuclear fuel in
16 such a manner as to facilitate the in-
17 creased production of highly-enriched ura-
18 nium or plutonium in unsafeguarded nu-
19 clear facilities.

20 (3) NEW NUCLEAR REACTORS OR FACILITIES.—

21 Not later than one year after the date of the enact-
22 ment of this Act and annually thereafter, the Presi-
23 dent shall submit to the Committee on International
24 Relations of the House of Representatives and the
25 Committee on Foreign Relations of the Senate a re-

1 port describing any new nuclear reactors or nuclear
2 facilities that the Government of India has des-
3 ignated as civilian and placed under inspections or
4 has designated as military.

5 (4) DISPOSAL OF SPENT NUCLEAR FUEL.—Not
6 later than one year after the date on which an
7 agreement for nuclear cooperation between the
8 United States and India is approved by Congress
9 under section 4(f) and every year thereafter, the
10 President shall submit to the Committee on Inter-
11 national Relations of the House of Representatives
12 and the Committee on Foreign Relations of the Sen-
13 ate a report describing the disposal of spent nuclear
14 fuel from India's civilian nuclear program.

15 (5) GROWTH IN INDIA'S MILITARY FISSION MA-
16 TERIAL PRODUCTION.—

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

1 (i) measures the effectiveness of the
2 civil nuclear cooperation agreement in
3 achieving the goals and objectives de-
4 scribed in section 2; and

5 (ii) assesses the relative level of In-
6 dia's nuclear fissile material production
7 compared to the previous year.

8 (B) CONTENTS.—The report described in
9 subparagraph (A) shall also include information
10 relating to—

11 (i) the amount of natural uranium
12 India has mined and milled during the pre-
13 vious year;

14 (ii) the amount of electricity In-
15 dia's civilian reactors have produced during
16 the previous year;

17 (iii) the amount of domestic natural
18 uranium India has used in its declared ci-
19 vilian reactors to produce electricity during
20 the previous year;

21 (iv) the amount of fissile material
22 India has produced for military purposes
23 during the previous year;

24 (v) the amount of domestic natural
25 uranium and domestic enrichment capacity

1 India has used to produce such fissile ma-
2 terial;

3 (vi) the amount of domestic ura-
4 nium India has otherwise stockpiled for
5 possible civil or military use;

6 (vii) an identification of any changes
7 with regard to these quantities from the
8 previous year; and

9 (viii) any additional qualitative factors
10 determined to be relevant with respect to
11 subparagraph (A), as appropriate, such as
12 the location of production facilities.

13 (C) PREPARATION; FORM OF REPORT.—

14 The report should rely on public information to
15 the extent possible. The report shall include a
16 classified annex if necessary.

17 (k) DEFINITIONS.—In this Act:

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

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

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

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

Calendar No. 537

109TH CONGRESS
2^D SESSION

H. R. 5682

AN ACT

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

JULY 27 (legislative date, JULY 26), 2006

Received; read twice and placed on the calendar