



**Legislative Bulletin.....December 8, 2006**

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**H.R. 5682**—Conference Report for the Henry J. Hyde United States-India Peaceful Atomic Energy Cooperation Act

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**Summary of the Bills Under Consideration Today:**

**Total Number of New Government Programs:** 2

**Total Cost of Discretionary Authorizations:** Unavailable at press time

**Effect on Revenue:** \$0

**Total Change in Mandatory Spending:** \$0

**Total New State & Local Government Mandates:** 0

**Total New Private Sector Mandates:** Several

**Number of Bills Without Committee Reports:** 0

**Number of Reported Bills that Don't Cite Specific Clauses of Constitutional Authority:** 0

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**H.R. 5682—Conference Report for the Henry J. Hyde United States-India Peaceful Atomic Energy Cooperation Act—*as reported* (Hyde, R-IL)**

**Order of Business:** The conference report is scheduled to be considered on Friday, December 8<sup>th</sup>, subject to a closed rule (H.Res. 1101). The House passed H.R. 5682 on July 26, 2006, by a vote of 359-68: <http://clerk.house.gov/cgi-bin/vote.asp?year=2006&rollnumber=411>. The Senate passed an amended version of the bill on November 16<sup>th</sup>, by a vote of 85-12: [http://www.senate.gov/legislative/LIS/roll\\_call\\_lists/roll\\_call\\_vote\\_cfm.cfm?congress=109&session=2&vote=00270](http://www.senate.gov/legislative/LIS/roll_call_lists/roll_call_vote_cfm.cfm?congress=109&session=2&vote=00270).

To read the RSC Legislative Bulletins for H.R. 5682, as it came to the House floor in July, visit these two webpages (note that the Berman and Sherman amendments in the amendments document did not pass):

[http://www.house.gov/pence/rsc/doc/LB\\_072606\\_Indianuke.doc](http://www.house.gov/pence/rsc/doc/LB_072606_Indianuke.doc)

[http://www.house.gov/pence/rsc/doc/LB\\_072606\\_Indianukeamdts.doc](http://www.house.gov/pence/rsc/doc/LB_072606_Indianukeamdts.doc)

**Summary:** The conference report for H.R. 5682 would exempt future, non-weapon nuclear cooperation agreements with India from current statutory restrictions in the Atomic Energy Act of 1954 (AEA) that would otherwise not permit the export of nuclear items and materials to India. In order to waive the AEA requirements, the President would have to certify to Congress that India has fulfilled the commitments it undertook on July 18, 2005, in the U.S.-India Joint Statement to (among other activities) expand peaceful nuclear trade, including:

- providing a credible plan to separate its civilian and military nuclear facilities, materials, and programs;
- concluding a permanent nuclear safeguards agreement with the International Atomic Energy Agency (IAEA);
- progressing on an Additional (IAEA) Protocol that would apply to India's civil nuclear program;
- working actively with the United States for the early conclusion of a multilateral treaty on the cessation of fissile material production (for weaponry);
- working actively with the United States to prevent the spread of nuclear enrichment and reprocessing technology to other countries; and
- enacting and enforcing comprehensive export control legislation and regulations to secure nuclear and other sensitive materials and technology.

Furthermore, the President would have to certify that the Nuclear Suppliers Group (NSG) has agreed by consensus to modify its guidelines to permit civil nuclear trade with India, which would otherwise be precluded by its 45 member-states.

Congress would have to approve, via a joint resolution enacted into law, any proposed civil nuclear agreement with India. Such a joint resolution of approval would be considered under the same expedited procedures that a joint resolution of disapproval would be considered for similar cooperation agreements, as prescribed by the Nuclear Non-Proliferation Provisions of the Atomic Energy Act (42 U.S.C. 2159(i)).

On the day the President submits a proposed nuclear agreement with India to Congress (which would have to be accompanied by a detailed report about the required information above and other information), the majority leaders of both Houses (or their designees) would have to introduce the joint resolutions that same day (or the next day in session). If a congressional committee to which the joint resolution is referred has not reported the resolution within 45 days of its introduction, such committee would be discharged from further consideration of the resolution, and the resolution would be placed on the appropriate calendar of that house. Expedited procedures for consideration in both bodies would then be triggered. If one body passes a joint resolution first, the other body would have to take up that body's resolution and not its own.

Congress could also pass a joint resolution of *disapproval* of any proposed nuclear agreement.

The bill would require a variety of status reports, including reports on the success of the policy objectives of a nuclear agreement, U.S. nuclear exports to India pursuant to the agreement (including the extent to which they might be aiding India's nuclear weapons efforts), Indian construction of new nuclear reactors and facilities, and Indian disposal of spent nuclear fuel.

The bill explicitly states that nothing in this legislation, or any agreement pursuant to this legislation, should be interpreted as permitting any civil nuclear cooperation between the U.S. and India that would "in any way assist, encourage, or induce India to manufacture or otherwise acquire nuclear weapons or nuclear explosive devices." Nuclear agreement termination provisions would activate upon India's violation of the non-weapon nature of any agreement implemented pursuant to this legislation.

The bill also states a variety of findings and statements of U.S. policy, including:

- "Achieve, at the earliest possible date, a moratorium on the production of fissile material for nuclear explosive purposes by India, Pakistan, and the People's Republic of China;
- "Secure India's full and active participation in United States efforts to dissuade, isolate, and, if necessary, sanction and contain Iran for its efforts to acquire weapons of mass destruction, including a nuclear weapons capability and the capability to enrich uranium or reprocess nuclear fuel, and the means to deliver weapons of mass destruction; and
- "Seek to halt the increase of nuclear weapon arsenals in South Asia, and to promote their reduction and eventual elimination."

The Nuclear Regulatory Commission and the Department of Energy could only approve exports, reexports, transfers, and retransfers of nuclear materials to India if:

- the end user is a multinational facility participating in an IAEA-approved program to provide alternatives to national fuel cycle capabilities or is a facility participating in, and the export, reexport, transfer, or retransfer is associated with, a bilateral or multinational program to develop a proliferation-resistant fuel cycle;
- appropriate measures are in place at any facility referenced above to ensure that no sensitive nuclear technology, will be diverted to any person, site, facility, location, or program not under IAEA safeguards; and
- the President determines that the export, reexport, transfer, or retransfer will not assist in the manufacture or acquisition of nuclear explosive devices or the production of fissile material for military purposes.

The President would have to undertake a new program that ensured that all appropriate measures are taken to maintain accountability with respect to nuclear materials, equipment, and technology sold, leased, exported, or reexported to India.

The President would have to annually report to Congress on (for example):

- the effectiveness of the nuclear cooperation agreement for achieving stated goals;
- the level of India's nuclear fissile material production relative to the prior year;
- the amount of natural uranium India has mined and milled in the prior year;
- the amount of electricity India's civilian reactors have produced in the prior year;
- the amount of domestic natural uranium India has used to produce electricity in the prior year;
- the amount of nuclear fissile material India produced for military purposes in the prior year;
- the amount of domestic natural uranium and domestic enrichment capacity India has used to produce such fissile material;
- the amount of domestic uranium India has otherwise stockpiled for possible civil or military use;
- any changes in quantities of the above items from the prior year;
- the location of relevant production facilities; and
- any other qualitative factors deemed relevant.

The bill would invalidate any civil nuclear agreement if India detonates a nuclear explosive device.

The Secretary of Energy would be authorized to create a new US-India scientific cooperative nuclear nonproliferation program (for joint scientific research and development). Authorizes "such sums" for fiscal years 2007 thru 2011.

The conference report would also implement the Additional Protocol (i.e. special agreement) between the United States and the IAEA for the application of nuclear safeguards in the United States (signed in Vienna on June 12, 1998). Such implementation is aimed at encouraging other nations to follow suit and implement additional safeguards within their own borders. Part of such implementation would include procedures for increased IAEA access to U.S. civil nuclear sites (with no direct national security significance). No national of a terrorism-sponsoring country (as defined by the State Department) would be allowed to enter the U.S. to carry out an Additional Protocol inspection. IAEA inspectors would have to be accompanied by U.S. government personnel at all times when making an Additional Protocol inspection.

It would be unlawful (subject to civil actions and penalties) for any person willfully to fail or refuse to:

- establish or maintain any record required by any regulation prescribed in accordance with the Additional Protocol;
- submit any report, notice, or other information to the U.S. Government in accordance with any Additional Protocol regulation; or
- permit access to, or copying of, any record by the U.S. Government in accordance with any Additional Protocol regulation.

The President would have to notify Congress within 30 days of the IAEA approving wide-area environmental sampling in the U.S. for use as a safeguard verification tool (subject to national security exceptions).

“Such sums” would be authorized to implement the Additional Protocol provisions.

**Additional Background:** Restrictions on non-weapon nuclear transfers typically apply to countries that do not have comprehensive international nuclear safeguards, that have ongoing nuclear weapons programs, or that have tested nuclear weapons since 1978 (other than “Nuclear Weapon States,” such as the United Kingdom, France, China, and Russia, as recognized by the Treaty on the Nonproliferation of Nuclear Weapons).

The Nuclear Suppliers Group (NSG) is a group of nuclear supplier countries that seeks to contribute to the non-proliferation of nuclear weapons through the implementation of guidelines for nuclear and nuclear-related exports. To see which countries participate, visit this website: <http://www.nuclearsuppliersgroup.org/>.

To read the U.S.-India Joint Statement of July 18, 2005, in which the leaders of the two countries recognized “the significance of civilian nuclear energy for meeting growing global energy demands in a cleaner and more efficient manner,” please visit this webpage: [http://www.indianembassy.org/press\\_release/2005/July/21.htm](http://www.indianembassy.org/press_release/2005/July/21.htm).

**Committee Action:** On June 26, 2006, H.R. 5682 was referred to the International Relations Committee, which, on the next day, marked-up, amended, and ordered the bill reported to the full House by a recorded vote of 37-5. The bill was also referred to the House Rules Committee, which took no action on the substance of the bill.

**Administration Position:** The Administration is strongly supportive of this legislation.

**Cost to Taxpayers:** A CBO estimate of the authorizations in this bill was not available at press time.

**Does the Bill Expand the Size and Scope of the Federal Government?:** The bill would create two new programs.

**Does the Bill Contain Any New State-Government, Local-Government, or Private-Sector Mandates?:** Yes—the Additional Protocol section contains a variety of private-sector mandates.

**Constitutional Authority:** The International Relations Committee, in House Report 109-590, cites constitutional authority in Article I, Section 8, Clause 18 (the congressional power to make all laws necessary and proper for carrying into execution the foregoing powers listed in the Constitution), but fails to cite a foregoing power of authority. House Rule XIII, Section 3(d)(1), requires that all committee reports contain “a statement citing the *specific powers* granted to Congress in the Constitution to enact the law proposed by the bill or joint resolution.” *[emphasis added]*

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