



SENATE REPUBLICAN

POLICY COMMITTEE

## Legislative Notice

No. 76

October 1, 2008

# H.R. 7081 – United States-India Nuclear Cooperation Approval and Nonproliferation Enhancement Act

*On September 27, 2008, H.R. 7081 and its implementing legislation were passed in the House by a vote of 298-117-1. S. 3548, the text of which is identical to H.R. 7081, was favorably reported out of the Senate Foreign Relations Committee by a vote of 19-2, without a written report.*

### Noteworthy

- At 10:00 a.m. Wednesday, October 1, the Senate began consideration of H.R. 7081 under a unanimous consent agreement permitting limited debate time and a Dorgan/Bingaman amendment. Votes on the amendment and passage will occur Wednesday evening. The amendment will have a 60-vote threshold in order to be agreed to and the bill will have a 60-vote threshold for passage.
- In 2005, the governments of the U.S. and India made a strategic commitment to cooperation in the civil nuclear field.
- Because India exploded its first nuclear device in 1974, seven years after the cutoff in the Nuclear Nonproliferation Treaty (NPT), it cannot sign the NPT as a “nuclear-weapon state” and would have to give up its nuclear weapons before acceding to the treaty.
- In December 2006, the President signed a law which provides waivers for a U.S.-India civil nuclear cooperation agreement if certain conditions are met.
- On September 10, 2008, the President submitted the proposed U.S.-India civil nuclear cooperation agreement (the India 123 Agreement) with a statement to the effect that all conditions had been satisfied.
- This bill approves the India 123 Agreement and makes the necessary modifications to existing law.
- The bill also makes certain prospective changes to law which will apply to other countries.

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## **Background/Overview**

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In 2005, the governments of the U.S. and India made a strategic commitment to cooperate in the civil nuclear field.<sup>1</sup> The Prime Minister of India pledged to safeguard its civilian nuclear infrastructure according to international standards and subject to international inspections, and segregate it from its military programs. President Bush pledged U.S. assistance for India's nuclear program, and to begin working towards the necessary modifications in domestic legislation (principally the Atomic Energy Act of 1954,<sup>2</sup> or AEA) and international regimes.

Section 123 of the AEA permits the U.S. government to enter into nuclear cooperation agreements (123 agreements) with other countries, provided among other things that they are members in good standing of the Nuclear Nonproliferation Treaty (NPT). India does not meet this requirement. Only states that exploded their first device before 1967 are considered valid "nuclear weapons states" under the NPT.<sup>3</sup> Because India exploded its first nuclear device in 1974 – seven years too late – it cannot sign the NPT as a "nuclear-weapon state" and would have to verifiably dismantle its nuclear weapons capabilities before acceding to the treaty.<sup>4</sup>

India is thus shut out of the NPT so long as it considers nuclear weapons vital to its national defense, even if that need is generally perceived to be legitimate among members of the NPT. Proponents of the India 123 Agreement contend that the NPT should not stand in the way of India's developing civilian nuclear energy under the safeguards of the nonproliferation regime.

On December 18, 2006, President Bush signed the Henry Hyde United States-India Peaceful Atomic Energy Cooperation Act of 2006<sup>5</sup> (U.S.-India Act of 2006), which provides waivers of AEA restrictions for a 123 agreement with India, provided that several conditions are met.

On July 27, 2007, India and the U.S. announced that they had reached agreement on the text of a nuclear cooperation agreement<sup>6</sup> (the India 123 Agreement). As of this writing, all conditions specified by the U.S.-India Act of 2006 for submission of the India 123 Agreement to Congress have been met:

- On August 1, 2008, India concluded a Safeguards Agreement with the IAEA providing for disclosures and inspections;
- On September 6, 2008, the Nuclear Suppliers Group took a consensus decision to make an exception for India; and

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<sup>1</sup> The July 18, 2005 Joint Statement is available at <http://www.whitehouse.gov/news/releases/2005/07/20050718-6.html>

<sup>2</sup> 42 U.S.C § 2011 *et seq.*

<sup>3</sup> By 1967, only the five permanent members of the U.N. Security Council had detonated nuclear devices: The U.S., the Soviet Union, Great Britain, France, and China. The NPT attempts to limit membership in the "nuclear weapons club" to those five states by dividing signatories into two groups. "Nuclear-weapon states" were those that had exploded a nuclear device prior to January 1, 1967 and "non-nuclear-weapon states" meant everyone else.

<sup>4</sup> South Africa did so in 1991.

<sup>5</sup> 22 U.S.C. § 8001 *et seq.*; P.L. 109-401.

<sup>6</sup> The text of the agreement, which was made public on August 3, 2007, is available at <http://www.state.gov/r/pa/prs/ps/2007/aug/90050.htm>

- The President has certified that:
  - India has provided a credible plan for maintaining its civilian nuclear facilities separate from its military programs;<sup>7</sup>
  - India has made substantial progress toward concluding an Additional Protocol with the IAEA;<sup>8</sup>
  - India has moved towards a treaty to ban fissile material production for nuclear weapons;
  - India is supporting U.S. and international efforts to halt the flow of proliferation-sensitive uranium enrichment and plutonium reprocessing capabilities; and
  - India is adhering to multilateral control regimes securing nuclear and other sensitive materials.

The President submitted the India 123 Agreement to Congress on September 10, 2008, certifying (as required for all 123 agreements) that “the performance of the proposed agreement will promote and will not constitute an unreasonable risk to the common defense and security.” The House approved the agreement on September 27, 2008 by passing H.R. 7081 on a vote of 298-117-1. H.R. 7081 is identical to the measure reported by the Senate Foreign Relations Committee, S. 3548.

On September 30, 2008, a unanimous consent agreement was reached for consideration of H.R. 7081. There will be 60 minutes of general debate time, equally divided. There will be an additional 30 minutes of debate time, with 15 minutes each allocated for Senators Feingold and Harkin. In order is a Dorgan/Bingaman amendment which would clarify policy and establish a reporting requirement in the event of an Indian nuclear test. The amendment will be allocated two hours of debate time, equally divided. Further, the amendment will require 60 votes in order to be agreed to, and the bill will require 60 votes to pass. The votes on the amendment and passage of the bill will occur Wednesday evening.

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<sup>7</sup> This is meant to ensure that assistance provided under a 123 agreement does not benefit military programs.

<sup>8</sup> This is meant to provide maximum disclosures and inspections for the IAEA as for NPT members.

## **Bill Provisions**

### **Section 1. Short Title and Table of Contents.**

### **Section 2. Definitions.**

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

### **Section 101. Approval of Agreement.**

This section constitutes congressional approval of the India 123 Agreement. The provision contains clauses that bypass some of the procedures in the AEA for 123 agreements, including the 30-days-of-continuous-session waiting period, and provide that this Agreement is to be treated as fully subject to the AEA and other law applicable to 123 agreements approved in the usual fashion.

### **Section 102. Declaration of Policy; Certification Requirement; Rule of Construction.**

This section adopts as “the understanding of the United States” the Administration’s declared understanding of the meaning and legal effect of the India 123 Agreement. The provision also declares a policy of preventing the transfer to India of nuclear equipment, materials, or technology from other participating governments in the Nuclear Suppliers Group (NSG) if such transfers by the U.S. to India become prohibited pursuant to law. It also declares a policy of keeping reserve reactor fuel provided to India commensurate with reasonable reactor operating requirements.

The section requires the President to certify to Congress that the entry into force and implementation of the India 123 Agreement comply with U.S. obligations under the NPT not to assist India to acquire or manufacture nuclear weapons before arrangements for assistance to India can be made under the Agreement.

The section provides a rule of construction to the effect that nothing in the Agreement will be construed to supersede existing law.

### **Section 103. Additional Protocol between India and the IAEA.**

In this section, Congress urges the government of India to sign and adhere to an Additional Protocol with the IAEA the earliest practicable date.

### **Section 104. Implementation of Safeguards Agreement between India and the IAEA.**

This section requires that before the Nuclear Regulatory Commission can license transfers pursuant to the India 123 Agreement, the President must certify to Congress that the Safeguards Agreement made between India and the IAEA has entered into force and India has made a

declaration of facilities to the IAEA that is not materially inconsistent with information previously provided.

### **Section 105. Modified Reporting Requirement to Congress.**

This section modifies the reporting requirements under the U.S.-India Act of 2006 to incorporate the disclosures required of India under the India 123 Agreement and certain other requirements.

## **TITLE II – STRENGTHENING UNITED STATES NONPROLIFERATION LAW RELATING TO PEACEFUL NUCLEAR COOPERATION.**

### **Section 201. Procedures Regarding a Subsequent Arrangement on Reprocessing.**

This section imposes strict procedural requirements on any future agreement respecting reprocessing or other alterations of spent fuel similar in some cases to those that would be required for an entirely new nuclear cooperation agreement under the AEA and U.S.-India Act of 2006.<sup>9</sup>

### **Section 202. Initiatives and Negotiations Relating To Agreements For Peaceful Nuclear Cooperation.**

This section requires that the President keep Congress “fully and currently informed” of any initiative or negotiations relating to a new or amended 123 agreement.

### **Section 203. Actions Required for Resumption of Peaceful Nuclear Cooperation.**

This section makes a technical amendment to certain procedural requirements under the AEA.

### **Section 204. United States Government Policy at the Nuclear Suppliers Group (NSG) to Strengthen the International Nuclear Nonproliferation Regime.**

This section provides that before transfers can be arranged under the India 123 Agreement, the President must certify to Congress that it is the policy of the U.S. to work with members of the NSG to agree to strengthen limitations on proliferation of equipment and technology related to uranium enrichment and spent fuel reprocessing.<sup>10</sup>

### **Section 205. Conforming Amendments.**

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<sup>9</sup> This provision is meant to address the acute proliferation concerns engendered by the reprocessing of spent fuel, which is the means by which weapons-grade plutonium is produced.

<sup>10</sup> The principal means of manufacturing weapons-grade fissile material are (1) uranium enrichment, for weapons-grade uranium, and (2) spent-fuel reprocessing, for weapons-grade plutonium.

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## **Administration Position**

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According to its message of transmittal, the administration strongly supports the India 123 Agreement and its implementing legislation.

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## **Amendments**

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Pursuant to the unanimous consent agreement reached September 30, an amendment from Senators Dorgan and Bingaman (clarifying policy and establishing a reporting requirement in the event of an Indian nuclear test) is permitted. The amendment will be allocated two hours of debate time, equally divided. When the Senate votes on the amendment, a 60-vote threshold must be met or the amendment will be withdrawn.