

AMENDMENT NO. 5181

(Purpose: To ensure that IAEA inspection equipment is not used for espionage purposes)

Strike section 262 and insert the following:

SEC. 262. IAEA INSPECTIONS AND VISITS.

(a) CERTAIN INDIVIDUALS PROHIBITED FROM OBTAINING ACCESS.—No national of a country designated by the Secretary of State under section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371) as a government supporting acts of international terrorism shall be permitted access to the United States to carry out an inspection activity under the Additional Protocol or a related safeguards agreement.

(b) PRESENCE OF UNITED STATES GOVERNMENT PERSONNEL.—IAEA inspectors shall be accompanied at all times by United States Government personnel when inspecting sites, locations, facilities, or activities in the United States under the Additional Protocol.

(c) USE OF UNITED STATES EQUIPMENT, MATERIALS, AND RESOURCES.—Any inspections conducted by personnel of the IAEA in the United States pursuant to the Additional Protocol shall be carried out using equipment, materials, and resources that are purchased, owned, inspected, and controlled by the United States.

(d) VULNERABILITY AND RELATED ASSESSMENTS.—The President shall conduct vulnerability, counterintelligence, and related assessments not less than every 5 years to ensure that information of direct national security significance remains protected at all sites, locations, facilities, and activities in the United States that are subject to IAEA inspection under the Additional Protocol.

Mr. LUGAR. Mr. President, I understand that the Senator from Delaware, as the ranking member, will offer the official motion sending us over to the Chamber.

The PRESIDING OFFICER. The Senator from Delaware is recognized.

Mr. BIDEN. Mr. President, if I understand the parliamentary situation properly, and I am not sure I do, I ask unanimous consent that following the offering of the Ensign amendment, the Senate stand in recess subject to the call of the Chair so that it may reconvene pursuant to the previous order.

I further ask that the following Senate staff be permitted to attend the closed session, and I send the list to the desk.

The list is as follows:

Mike Disilvestro; Joel Breitner; Mary Jane McCarthy; Paul Nelson; Richard Verma; Stephen Rademaker; Marcel Lettre; Nancy Erickson; Lynne Halbrooks; Scott O'Malia; Pam Thiessen; Thomas Moore; Lynn Rusten; Ed Corrigan; Rexon Ryu; Ken Myers III; Ken Myers, Jr.; Brian McKeon; Ed Levine; Madelyn Creedon; Nancy Stetson; Diane Ohlbaum; Anthony Blinken; Janice O'Connell.

Mr. BIDEN. Mr. President, before the Chair rules, I will remind Senators that those who attend the closed session are not permitted to bring any electronic devices into the Old Senate Chamber. Mr. President, I send to the desk the list of the names of the staff members that could be present.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

RECESS SUBJECT TO THE CALL OF THE CHAIR

The PRESIDING OFFICER. The Ensign amendment now being the pending question, the Senate stands in recess subject to the call of the Chair.

Whereupon, the Senate, at 3:43 p.m., recessed subject to the call of the Chair and reassembled at 4:59 p.m. when called to order by the Presiding Officer (Ms. MURKOWSKI.)

Mr. LUGAR. Madam President, we are now prepared to vote in relation to the Ensign amendment. I ask unanimous consent that following that vote, Senator FEINGOLD be recognized to offer his amendment and that there be 90 minutes equally divided on that amendment. I further ask unanimous consent that following the use or yielding back of time on that amendment, it be set aside, and Senator BOXER be recognized in order to offer her amendment; provided further that there be 45 minutes equally divided in relation to that amendment. Further, that following that time the Senate proceed to a vote in relation to the Feingold amendment, to be followed by a vote in relation to the Boxer amendment, with no second-degrees in order, and following these votes, the bill be read for a third time and the Senate proceed to a vote on passage of the House bill as provided in the previous order. I would also ask that there be 2 minutes equally divided for debate prior to each vote.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. LUGAR. I thank the Chair. We are now prepared to vote in relation to the Ensign amendment.

The PRESIDING OFFICER. Do Senators yield time on the amendment?

Mr. LUGAR. Yes.

VOTE ON AMENDMENT NO. 5181

The PRESIDING OFFICER. All time is yielded. The question is on agreeing to the amendment. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. The following Senator was necessarily absent: the Senator from Wyoming (Mr. THOMAS).

Mr. DURBIN. I announce that the Senator from Vermont (Mr. JEFFORDS) is necessarily absent.

The result was announced—yeas 27, nays 71, as follows:

[Rollcall Vote No. 267 Leg.]

YEAS—27

Allard	Dorgan	Kyl
Bunning	Ensign	Lott
Coburn	Enzi	McConnell
Coleman	Frist	Menendez
Collins	Grassley	Santorum
Conrad	Gregg	Sessions
Cornyn	Hutchison	Smith
DeMint	Inhofe	Snowe
Dole	Johnson	Sununu

NAYS—71

Akaka	Biden	Burr
Alexander	Bingaman	Byrd
Allen	Bond	Cantwell
Baucus	Boxer	Carper
Bayh	Brownback	Chafee
Bennett	Burns	Chambliss

Clinton	Kerry	Reed
Cochran	Kohl	Reid
Craig	Landrieu	Roberts
Crapo	Lautenberg	Rockefeller
Dayton	Leahy	Salazar
DeWine	Levin	Sarbanes
Dodd	Lieberman	Schumer
Domenici	Lincoln	Shelby
Durbin	Lugar	Specter
Feingold	Martinez	Stabenow
Feinstein	McCain	Stevens
Graham	Mikulski	Talent
Hagel	Murkowski	Thune
Harkin	Murray	Vitter
Hatch	Nelson (FL)	Voinovich
Inouye	Nelson (NE)	Warner
Isakson	Obama	Wyden
Kennedy	Pryor	

NOT VOTING—2

Jeffords	Thomas
----------	--------

The amendment (No. 5181) was rejected.

Mr. LUGAR. I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER (Mr. ISAKSON). Under the previous order, the Senator from Wisconsin is recognized. Will the Senator suspend?

Did the distinguished chairman wish to be recognized?

Mr. LUGAR. Mr. President, just for clarification, I ask unanimous consent that the Feingold and Boxer amendments be in order, notwithstanding adoption of the Harkin amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. LUGAR. I thank the Chair.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. LEAHY. Mr. President, will the Senator yield for a parliamentary inquiry?

Mr. FEINGOLD. I yield.

Mr. LEAHY. Mr. President, how long did we spend in that last 15-minute rollcall?

The PRESIDING OFFICER. We spent approximately 39 minutes.

Mr. LEAHY. Thirty-nine?

The PRESIDING OFFICER. Thirty-six. I apologize.

Mr. LEAHY. Thirty-six for a 15-minute rollcall. I am just curious, for those of us who might actually have a life after dark around this place, how much longer the rest will be.

I thank the Chair.

The PRESIDING OFFICER. The Chair would recognize that the distinguished majority leader's retirement recognition with the Vice President was being held, and that was probably the delay, for the meeting.

The Senator from Wisconsin.

Mr. FEINGOLD. Thank you, Mr. President.

AMENDMENT NO. 5183

Mr. President, I send an amendment to the desk, and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Wisconsin [Mr. FEINGOLD] proposes an amendment numbered 5183.

Mr. FEINGOLD. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To require as a precondition to United States-India peaceful atomic energy cooperation determinations by the President that United States nuclear cooperation with India does nothing to assist, encourage, or induce India to manufacture or acquire nuclear weapons or other nuclear explosive devices)

On page 8, beginning on line 17, strike "Group; and" and all that follows through "(8) the Nuclear" on line 18 and insert the following:

Group;

(8) the scope and content of United States nuclear cooperation with India in the proposed nuclear cooperation agreement pursuant to section 123 a. of the Atomic Energy Act of 1954 (42 U.S.C. 2153(a)) does nothing to directly or indirectly assist, encourage, or induce India to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices, or control over such weapons or explosive devices, specifically that—

(A) India cannot use United States-origin equipment, technology, or nuclear material in an unsafeguarded facility or nuclear weapons-related complex; and

(B) India cannot replicate and subsequently use United States-origin technology in an unsafeguarded nuclear facility or unsafeguarded nuclear-related complex, or for any activity related to the research, development, testing, or manufacture of nuclear explosive devices;

(9) India has provided sufficient assurances that the provision by the United States of nuclear fuel will not facilitate the increased production by India of fissile material in unsafeguarded nuclear facilities; and

(10) the Nuclear

Mr. FEINGOLD. Mr. President, the relationship between the United States and India is very important. As we look ahead to the coming decades, it is clear that United States-India relations will be integral to establishing a secure, sustainable, and prosperous international system—not only in the Asian region but around the world as India increasingly grows into its role as a global power.

And, of course, India, in many ways, is a natural ally of the United States. We share a great deal in common as ethnically diverse, religiously tolerant democratic societies. Our peoples are innovative, driven, and eager to participate in the global economy. We both face the threat of terrorism. India occupies an important position in an important part of the world, and by itself represents over 17 percent of the world's total population. We absolutely should be working to strengthen our relationship with this important partner, and seeking ways to deepen our strategic ties.

While I want to strengthen the relationship between the United States and India, this bill would do more than simply bring our two nations closer together. It would pave the way for civilian nuclear cooperation between the United States and India for the first time since India exploded a nuclear device in the 1970s. If this bill is passed,

it will dramatically shift 30 years of nonproliferation policy. Specifically, this bill would have serious consequences for the Nuclear Non-Proliferation Treaty, the international nonproliferation regime, and U.S. national security. Such a fundamental change in policy should not be undertaken lightly, which is why it is crucial that this body fully discuss and understand the implications of this bill.

In my work on the Foreign Relations Committee, I have had a chance to study this issue and this legislation closely. I have talked to a number of people, on all sides of this issue: senior officials from the administration, business groups, nonproliferation and arms control experts, Indian officials, and concerned citizens in my home State of Wisconsin. The committee held a number of hearings to examine the issue, and the panelists we heard from represented a wide range of opinions on the prospect of nuclear cooperation with India. And after all of this careful consideration, I have to report that I am left with some deep concerns regarding what this legislation means for United States national security.

The primary consideration for us in the U.S. Senate as we debate this bill should be this: will this legislation make the citizens of the United States more secure or less? As we consider this fundamental shift in the international nonproliferation regime, we must make sure that we have adequate protections in place to guard against the further spread of nuclear weapons and weapons technology.

The threat of nuclear weapons to the United States and the spread of nuclear weapons and nuclear material are among the gravest dangers that our country faces. It is crucial to our national security that the nuclear nonproliferation framework remains strong. I want to make sure that the United States, as a signatory to the Nuclear Non-Proliferation Treaty, is working to strengthen the international treaties and regimes that have been designed to prevent the spread of nuclear weapons. A world with more nuclear weapons is, simply put, a more dangerous world.

So that is why I am offering an amendment to this bill that spells out in greater detail that nuclear cooperation between the United States and India will be only civilian in nature, and that none of the assistance the United States provides will be used for strengthening or further developing India's nuclear weapons arsenal. This is completely in line with President Bush's and Secretary Rice's statements about the deal, and is something the United States is already committed to under article I of the NPT. My amendment simply makes it a binding requirement: Before the nuclear cooperation agreement can go into effect, the President of the United States must certify that the scope and content of the agreement does nothing to con-

tribute directly or indirectly to the development of India's nuclear weapons arsenal. This amendment will strengthen this bill. It will enhance transparency. And it will send a clear message to the world that the United States will, in fact, abide by its commitments and is working within the letter and spirit of the agreements and treaties to which it is party.

Allow me to quote from article I of the Nuclear Non-Proliferation Treaty, because I think it will help to set forth the obligations of the agreement the United States is a party to. Article I states that:

Each nuclear-weapon State Party to the Treaty undertakes not to transfer to any recipient whatsoever nuclear weapons or other nuclear explosive devices or control over such weapons or explosive devices directly, or indirectly; and not in any way to assist, encourage, or induce any non-nuclear weapon State to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices, or control over such weapons or explosive devices.

Let me repeat that second clause, because it is what my amendment intends to address: "not in any way to assist, encourage, or induce any non-nuclear weapon State to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices, or control over such weapons or explosive devices."

India is considered to be a non-nuclear weapon state for the purposes of the NPT, and we are therefore prohibited from assisting their nuclear weapons program. My amendment will require the President to make determinations to ensure that we are in line with that treaty obligation. First, the President would have to certify to Congress that the scope and content of the nuclear cooperation agreement that he negotiates will not contribute to India's nuclear weapons program—specifically that it does not: Allow for the use of U.S.-origin equipment, technology, or material in an unsafeguarded Indian nuclear facility; or allow for the replication and subsequent use of U.S.-origin technology for any activity related to nuclear explosive devices.

Second, the President would have to certify that he had received sufficient assurances from the Government of India that nuclear fuel provided by the United States will not facilitate the increased production by India of fissile material for weapons use.

Both India and the United States should feel comfortable with this amendment; it only requires that the United States certify that this deal is in line with our current commitments. It will go a long way to enhance transparency and reassure all sides that this civil nuclear cooperation agreement does not have any military aspects.

This is particularly important now, as we face nuclear crises in North Korea and Iran. While we are pressuring those countries to submit to international inspections and abide by the Nuclear Non-Proliferation Treaty,

it is crucial that we not simultaneously be seen to undermine the NPT's foundations by our actions. My amendment sends a clear message that the United States stands by the spirit and the letter of the NPT. Rejecting my amendment would send a dangerous signal to Iran, North Korea and other states that we are not taking seriously our international commitments, and that the NPT is no longer relevant.

As you can see, my amendment is quite detailed in spelling out exactly how assistance to India's weapons program is defined, and what activities should be prohibited under the terms of the agreement. The second determination, which relates to the provision of nuclear fuel by the United States, is particularly important, because it gets to the heart of concerns about a possible buildup of nuclear weapons. Currently, India's production of weapons grade plutonium is constrained by its limited domestic supply of natural uranium. Experts, from former Senator Sam Nunn former Assistant Secretary of State for Nonproliferation Bob Einhorn, have expressed concern that by providing nuclear fuel to India through this agreement, India's domestic supply of uranium might be freed up in order to accelerate the production of nuclear weapons materials.

And in fact, the Indians themselves have expressed this possibility. Listen to the words of a former head of the Indian National Security Advisory Board, less than a year ago:

Given India's uranium ore crunch and the need to build up our minimum credible nuclear deterrent arsenal as fast as possible, it is to India's advantage to categorize as many power reactors as possible as civilian ones to be refueled by imported uranium and conserve our native uranium fuel for weapons grade plutonium production.

This is from an article entitled "India and the Nuclear Deal," in the *Times of India* on December 12, 2005.

This is a former high-level Indian Government official, arguing less than a year ago that India should increase its production of weapons material through the provision of imported uranium. I am, frankly, concerned by that prospect. India has said that its strategic nuclear weapons program, and the production of fissile material, is unrelated to this deal. Secretary Rice and other members of the administration have assured us of the same thing. In fact, in its official response to one of Senator LUGAR's questions last year, the State Department noted that "nothing to be provided to India under the Initiative will be used to enhance India's military capability or add to its military stockpile."

If that is truly the case—and I believe both sides when they say that expanding India's nuclear weapons arsenal is not a goal of this agreement—then my amendment should be absolutely uncontroversial. It simply makes those claims binding, by requiring the President to make such a determination.

Some of my colleagues might ask, if we are already committed to non-assistance under the NPT, and if members of the administration have assured us that this is the case, why is this amendment necessary? After all, requiring a presidential determination is a big deal. My response is that this issue is a big deal. Nonassistance to India's nuclear weapons program is such a critical aspect of this agreement that it must be spelled out within the legislation in clear, concrete terms, leaving no question or ambiguity. It is an issue that demands the high bar of a presidential determination to Congress.

And there is a significant precedent for such determination. The 1985 Agreement for Nuclear Cooperation Between the United States and China required a presidential determination on non-assistance to China's nuclear weapons program—one of only two binding presidential determinations included in that legislation. Specifically, the law stated that the U.S.-China nuclear cooperation agreement could not go into force until the President provided a certification to Congress that the agreement was designed "to be effective in ensuring that any nuclear material, facilities, or components provided under the Agreement shall be utilized solely for intended peaceful purposes as set forth in the Agreement."

In 1985, the Members of this body deemed that one of the two things the President of the United States should have to make a certification about prior to nuclear cooperation with another country was that our civilian cooperation would in no way assist that country's weapons program. My amendment is identical in scope and purpose, and should be passed. If anything, there are even more reasons to push for such a determination with regard to India, given that India is a non-signatory to the Nuclear Non-Proliferation Treaty.

Some may argue that the President cannot make such a determination—that the President cannot know in advance what India will do with material we provide to them. But this amendment is about the scope and content of the agreement, and about assurances received from the Indian government. It is about our current actions, and the strength of the agreement that the President negotiates. And in fact, the President made exactly such a determination, in 1998, when he submitted Presidential Determination 98-10 to the U.S. Congress to enable nuclear cooperation with China to move forward under that agreement.

If this body is afraid that the President would be unable to make such a determination with respect to India, I ask one question: why then are we pursuing this deal? If we cannot be reasonably certain that this agreement will not help India to expand its nuclear arsenal, how good a deal is this? This should be a simple calculation based on the best interests of the United States.

My colleagues are aware that I voted against this legislation in committee. I

stated at the time of my vote that I was not opposed to the deal in principle, but was committed to working constructively to strengthen this bill when it came to the floor, because I still had concerns that had not been addressed. I stand by that statement. I would like to see an agreement that brings our countries closer together strategically, while preserving our national security interests.

However, since the time of the committee hearing, more information has come to light that further justifies the concerns I expressed earlier, and which I would like to share with my colleagues.

First of all, since that time, the State Department released a report sanctioning two Indian firms for illicit missile-related transactions with Iran. This report was 10 months overdue and was not released until 1 day after the House voted on its version of this legislation. There are a number of things that I find troubling about this report and the way it was released, but the biggest is that it seems to contravene the Bush administration's assertions that India has a stellar nonproliferation record. At a minimum, this report demonstrates that there continue to be legitimate concerns about the spread of dangerous weapons technology, know-how, and equipment—in India and elsewhere.

Secondly, there have been troubling signals coming from the Indian Government itself about its commitment to nonproliferation controls. In an August 17 speech to the Indian Parliament, Prime Minister Singh declared that India would not agree to any changes to the nuclear deal imposed by the U.S. Congress: "We will stick to the parameters of the agreement signed in Washington last year and this alone will be the basis of nuclear cooperation," he said. He specifically noted that India would not allow "external supervision" of its strategic nuclear programs, and argued that President Bush had committed to providing an "uninterrupted supply of fuel"—presumably, even if India were to detonate another nuclear device. Prime Minister Singh also stated that "there is no question of India being bound by a law passed by a foreign legislature." This raises significant concerns in my mind as to whether India would accept the important elements of this legislation that the U.S. Congress will put in place if it passes.

Finally, there have been signs of an increasingly warm official relationship between India and Iran. I note the irony of the timing: at the same time we are debating passage of a bill that will lend considerable assistance to India's nuclear program, we are doing everything in our power to prevent Iran from furthering its own nuclear program. I would like to read a couple of quotes from Indian Prime Minister Singh, who had a meeting with Iranian President Ahmadinejad on the sidelines of the Non-Aligned Movement Summit

in Cuba in September. Following the meeting, Prime Minister Singh stated that “India is determined to consolidate cultural, economic, and political ties with Iran,” and he expressed regret over the “misunderstanding caused about India’s stance on Iran’s peaceful nuclear program,” stressing that India would “never join any efforts against Iran.” I don’t think it takes very much reading between the lines to doubt that India will support us in our efforts to curtail Iran’s nuclear program—one of the most important national security challenges facing our country at this time.

As further evidence of the support for my amendment, I would like to submit for the RECORD a letter that was recently signed by a wide range of nonproliferation experts, former senior government officials, and respected scientists. I ask unanimous consent that this letter be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

FIX THE NUCLEAR TRADE DEAL WITH INDIA
NOVEMBER 13, 2006.

U.S. SENATE,
Washington, DC,
Attn: Foreign Affairs Staff.

DEAR SENATOR: We are writing again to urge you and your colleagues to support amendments that would address serious flaws that still plague the proposed U.S.-Indian nuclear trade legislation (S. 3709), which may be considered this month. Despite some important adjustments made to the administration’s original proposal by the Foreign Relations Committee, the arrangement would have far-reaching and adverse effects on U.S. nonproliferation and security objectives. We believe the legislation must include further improvements in several key areas, among them:

A determination, prior to resumption of full nuclear cooperation, that India has stopped the production of fissile material (plutonium and highly enriched uranium) for weapons or else joined a multilateral fissile production cutoff agreement;

A determination and annual certification that U.S. civil nuclear trade does not in any way assist or encourage India’s nuclear weapons program;

Measures to ensure that the United States does not continue to provide nuclear assistance directly or through other suppliers in the event that India breaks the nonproliferation commitments outlined on July 18, 2005; and

A determination that the Government of India (GOI) or GOI-affiliated entities are not engaged in illicit procurement of WMD-related items.

We believe these measures are necessary because India has neither joined the nuclear Nonproliferation Treaty (NPT), nor accepted safeguards on all of its nuclear facilities, and India’s nonproliferation policy is not fully consistent with the nonproliferation practices and responsibilities expected of the original nuclear-weapon states.

Under the proposed nuclear cooperation deal, India has pledged to accept safeguards that safeguards on these facilities would be permanent. Current and future military-related nuclear reactors, enrichment and reprocessing facilities, and weapons fabrication facilities would remain unsafeguarded. Partial International Atomic Energy Agency

(IAEA) safeguards would do nothing to prevent the continued production of fissile material for weapons in unsafeguarded facilities. Consequently, foreign supplies of nuclear fuel to India could assist India’s bomb program by freeing-up its existing limited capacity to support the production of highly enriched uranium and plutonium for weapons.

FISSILE MATERIAL PRODUCTION

To help ensure that U.S. civilian nuclear cooperation is not in any way advancing India’s weapons program and is not contributing to nuclear arms competition with Pakistan and China, Congress should require that the President determines that India has stopped fissile material production for weapons or has joined a multilateral production ban before the United States resumes full civil nuclear assistance to India. Four of the five original nuclear-weapon states—France, Russia, the United Kingdom and the United States—have publicly declared that they have stopped fissile material production for weapons. China is also believed to have stopped such production.

India’s commitment to support U.S. efforts to negotiate a global fissile material cutoff treaty (FMCT) is a laudable but somewhat hollow promise. Differences between the United States and most other states (including India) on whether such a treaty should be verified and competing priorities at the 65-nation Conference on Disarmament make the prospects for the conclusion of an FMCT difficult.

If India is truly committed to a “minimal credible deterrent,” India should be able to declare as a matter of national policy that it has stopped fissile material production for weapons, or else join the United States, China, France, Pakistan, Russia, and the United Kingdom in a multilateral fissile cutoff agreement, pending the completion of a global, verifiable FMCT. The Congress should direct the President to actively pursue the early conclusion of such an interim cutoff agreement with India and other relevant parties, pending the entry into force of a global FMCT.

NONASSISTANCE TO INDIA’S NUCLEAR WEAPONS PROGRAM

The Senate bill should also require that prior to implementation of a U.S.-Indian nuclear cooperation agreement, the President make a determination that the proposed U.S. civil nuclear assistance will not, in any way, assist India’s nuclear weapons program. Such a determination should take into account the possible replication and subsequent use of any U.S.-origin technology in an unsafeguarded nuclear facility and the provision of nuclear fuel in such a manner as to facilitate the increased production of highly enriched uranium or plutonium in unsafeguarded nuclear facilities for weapons purposes. Such a determination would help maintain confidence that the United States is complying with its NPT Article I commitment not to assist other states’ nuclear weapons programs. The Senate should also agree to provisions in the House bill (H.R. 5682) requiring annual executive branch reports on whether any such assistance has occurred, and on India’s uranium mining and fissile material production rates, and other related matters.

TERMINATION OF TRADE AND FUEL SUPPLY ASSURANCES

S. 3709 now makes clear that if India conducts another nuclear test explosion or otherwise violates the terms of an agreement for nuclear cooperation, U.S. nuclear assistance would be jeopardized. The bill also states that it is the policy of the United States not to facilitate nuclear trade by

other nations with India if U.S. exports are interrupted.

However, India is insisting that the United States help provide an assured nuclear fuel supply, even in the event that the New Delhi government conducts a nuclear test explosion or otherwise violates the terms of a future agreement for nuclear cooperation with the United States. Such a guarantee would be unprecedented and unwise. Congress should further clarify that the United States shall not provide or facilitate the supply of nuclear fuel to India if the Government of India resumes nuclear testing or fails to meet other provisions in U.S. law.

GUARDING AGAINST ILLICIT PROCUREMENT

The Senate should also address the fact that some Indian government-affiliated enterprises have a history of attempting to bypass export laws designed to keep U.S. and other foreign technology from contributing to its weapons effort. Congress should require that before the implementation of any U.S.-Indian agreement for civil nuclear cooperation, the President must make a determination that the Indian government or entities under its jurisdiction are not engaged in the illicit procurement of commodities controlled under the guidelines of the Nuclear Suppliers Group (NSG) or the Missile Technology Control Regime (MTCR).

RETAIN USEFUL NONPROLIFERATION PROVISIONS

We also urge Congress to retain several important elements already included in S. 3709 that would help reduce the adverse impacts of the initiative. Among these are the provisions requiring that a new safeguards agreement between the IAEA and India has entered into force and that such safeguards are consistent with IAEA standards, principles, and practices, and that such safeguards are permanent before any expanded nuclear cooperation can take place. To date, India has not begun formal talks with the IAEA on such safeguards and is reportedly seeking “India-specific” safeguards that would be contingent on continued fuel supplies. This is not consistent with the IAEA safeguards applicable in the Indian case, which are known as INFCIRC/66.Rev.2 safeguards.

With respect to the Section 106 provision restricting the transfer of enrichment and reprocessing technologies, for 30 years U.S. nonproliferation policy has sought to discourage the spread of sensitive nuclear technology. As President Bush said in February 2004, “enrichment and reprocessing are not necessary for nations seeking to harness nuclear energy for peaceful purposes.” Current U.S. nuclear cooperation agreements, including those with EURATOM, Japan, and China, expressly prohibit transfers of such technologies, which can be used to make nuclear bomb material. India should not in any way be an exception to that important policy.

To ensure that India is meeting other key obligations outlined in the July 18, 2005 Joint Statement, the Senate should retain language in the House bill requiring that a U.S. Indian agreement for nuclear cooperation shall be terminated if India makes a materially significant transfer that does not conform with the guidelines of the NSG or MTCR. Congress should recall that in the past 20 months, seven Indian entities have been sanctioned by the U.S. Government for transfers of weapons-related items to Iran, including sanctions announced in July for transfers of chemicals useful for missile propellant manufacture.

Finally, the legislation wisely codifies commitments made by senior Bush administration officials that before the United States may engage in wider nuclear trade with India, it must also secure the consensus approval of the 45-nation NSG. The group operates under guidelines established in 1992

that restrict trade with states (such as India) that do not accept full-scope safeguards on all of their nuclear facilities. If the United States or other states seek to sidestep the NSG's consensus decision-making process, the NSG may cease to function as an important barrier against the transfer of nuclear material, equipment, and technologies for weapons purposes.

Without the inclusion of the provisions we have described, the legislation for renewed nuclear cooperation with India will have far-reaching and adverse implications for U.S. nuclear nonproliferation and international objectives.

While we agree that building upon the already strong U.S.-Indian partnership is an important goal, we remain convinced that it can and should be pursued without undermining the U.S. leadership efforts to prevent the proliferation of the world's most dangerous weapons.

Sincerely,

Harold Bengelsdorf, Consultant, and former Director of the Office for Nonproliferation Policy at the Energy Department and former Office Director for Nuclear Affairs at the State Department; Joseph Cirincione, Senior Vice President for National Security and International Policy, Center for American Progress; Ralph Earle II, Former Director, U.S. Arms Control and Disarmament Agency; Robert J. Einhorn, Former Assistant Secretary of State for Nonproliferation; Lt. General Robert G. Gard, Jr. (USA, ret.); Ambassador Robert Grey, Director, Bipartisan Security Working Group, and Former U.S. Representative to the Conference on Disarmament; Frank von Hippel, Professor of Public and International Affairs, Program on Science and Global Security Princeton University; John D. Holum, Former Undersecretary of State for Arms Control and International Security Affairs and Former director of the U.S. Arms Control and Disarmament Agency; John D. Isaacs, President, Council for a Livable World; Spurgeon M. Keeny, Former Deputy Director U.S. Arms Control and Disarmament Agency; Daryl G. Kimball, Executive Director, Arms Control Association; Lawrence Korb, Former Assistant Secretary of Defense for Manpower, Reserve Affairs, Installations and Logistics; Fred McGoldrick, Consultant, and Former Director of Nonproliferation and Export Policy at the State Department; Kelly Motz, Associate Director, Wisconsin Project on Nuclear Arms Control; Christopher Paine, Senior Nuclear Program Analyst, Natural Resources Defense Council; William Potter, Institute Professor, Monterey Institute of International Studies; Lawrence Scheinman, Distinguished Professor at the Center for Nonproliferation Studies, and former Assistant Director of the U.S. Arms Control and Disarmament Agency; Leonard Weiss, Former Staff Director of the Senate Subcommittee on Energy and Nuclear Proliferation and the Committee on Governmental Affairs.

Mr. FEINGOLD. Briefly, the letter notes that there are still flaws that remain in S. 3709, and urges the Senate to adopt at least four measures to address them. The second of their four recommendations for improvements is that there be "a determination and annual certification that U.S. civil nuclear policy does not in any way assist

or encourage India's nuclear weapons program." My amendment is directly in line with the advice of these leading experts, and addresses an important shortfall in the legislation as it stands now.

I acknowledge that the U.S. business community has come out strongly in support of this legislation. I would only like to add a note of caution to their optimism. There is nothing in this deal that would secure U.S. contracts or guarantee an increase in U.S. business. The U.S. is not the only one in the nuclear market. Australia and Russia have already indicated they are working with India to sell fuel, and companies from Great Britain, France, and Russia have viable civil reactor technology that they will certainly pitch to India. It is far from a foregone conclusion that U.S. companies will directly benefit from the deal. In the 8 years that nuclear trade has been permitted with China, the United States has sold exactly zero nuclear reactors to China—zero. I bring this up to point out that some of the benefits of this deal may be exaggerated, and we should remember the overriding priority as we consider this legislation: whether it will make the citizens of the United States more safe, or less.

Mr. President, in closing, I would like to put in a brief word of appreciation for the substantial amount of work done on this bill by Senator LUGAR, Senator BIDEN, and their staffs. This bill is a real improvement over the original proposal put forward by the administration, but there are still a few shortcomings that remain. My amendment would address what I, and many others, see as one of the main outstanding concerns with the bill. It will ensure that this agreement is in line with our non-proliferation obligations and protects U.S. national security, without putting any undue burdens on the U.S. or our Indian partners. It is a nonpartisan, commonsense amendment, in line with previous legislation, and I hope that all of my colleagues will consider voting in favor of it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. LUGAR. Mr. President, I thank the distinguished Senator from Wisconsin for his very important contributions to the Senate Foreign Relations Committee and the specific contributions he has made to the discussion of this legislation. Reluctantly, I rise in opposition to his amendment.

In my judgment—and I don't use the term unadvisedly—this is truly a killer amendment. If accepted, it would require the United States and India to renegotiate the civilian nuclear agreement on which we are having our debate this evening. I state categorically: India has nuclear weapons. Let me repeat that: India has nuclear weapons and has stated its intent to keep them. The critical issue we must consider in examining each of the amendments

that have come before us is whether the U.S. national security is advanced by engaging India and by increasing the IAEA oversight of the India nuclear program. I believe the answer is yes, and as a result I support this agreement and I oppose amendments such as the one now before us that would require renegotiation or make implementation of the agreement impossible.

While the Feingold amendment appears harmless, it requires the President to certify that no form of the U.S. civilian nuclear cooperation with India will in any way assist, encourage, or induce India to manufacture or otherwise acquire more nuclear weapons in the future. This certification demanded by the amendment is impossible to make, and even if it could be made, it would be ineffective. How do we expect the President of the United States to predict the future? Clearly we do not expect, plan, or intend for this agreement to aid India's nuclear program. We have taken numerous steps to prevent this from happening. We are confident that we have already put the necessary provisions in place in this agreement.

A Presidential certification as required by the amendment is a legal pledge to Congress. Senate bill 3709 requires a number of certifications, but it does so based upon information in the President's possession. We do not ask the President to predict the future or make a judgment when the necessary information is unavailable.

This is not the first time the Senator from Wisconsin has offered this amendment. The Senate Foreign Relations Committee voted 13 to 5 to defeat the same amendment during our markup of S. 3709. During the markup, the administration strongly opposed the amendment and expressed its view that it was a killer amendment.

Senator BIDEN and I do not believe this amendment is necessary. We share the concerns Senator FEINGOLD has expressed, but we believe we have addressed them in the committee-passed bill in a manner consistent with our agreement with India and in a way that avoids renegotiation.

First, the United States is obligated by article I of the nonproliferation treaty not to engage in any nuclear cooperation that would assist India's nuclear weapons program. Nothing in the United States-India agreement violates this obligation. In reality, this agreement encourages India to produce fewer nuclear weapons by requiring more Indian facilities to be placed under IAEA safeguards. We must remember that the United States will not cooperate with any Indian facility, site, or location that is not under IAEA safeguards. In other words, the IAEA will have inspection rights at those places where U.S. exports are utilized.

Second, S. 3709 requires that the IAEA safeguards be supplemented by bilateral end-use monitoring requirements under section 107. In other

words, if the IAEA were forced to suspend their oversight of India's commitments, the administration is required to have a backup plan in place to ensure that American technologies and materials are not misused or misdirected to India's nuclear program.

Third, the bill requires the President of the United States to inform Congress of any Indian violation of their commitments under the agreement. This preserves Congress's oversight role and permits us to act should Indian behavior require a reexamination of the cooperative agreement.

Fourth, section 109 states that no authority under S. 3709 can be used to violate U.S. commitments under the Nuclear Non-Proliferation Treaty. U.S. contributions to the Indian nuclear program would be a blatant violation of this treaty commitment. Senator BIDEN and I thought it was critically important to reinforce the Senate's strong support for the NPT by insisting that our country continue to comply with its requirements.

Lastly, sensitive transfers most likely to aid India's nuclear programs are prohibited by this bill. Section 106 forbids trade in enrichment, reprocessing, and heavy water technologies unless those transfers are under international supervision and then only to create proliferation-resistant versions. By prohibiting the transfer of these technologies, we ensure that U.S. assistance does not inadvertently assist India's weapons program.

India is not required to declare to the IAEA any information on the production of highly enriched uranium or plutonium. Its nuclear enrichment and processing plants will also be outside IAEA safeguards. Without access to this information, it will be impossible for the United States to evaluate Indian production of fissile material. Consequently, it is impossible to determine whether an increase in Indian military fissile material production occurred because of foreign nuclear reactor fuel supply. In fact, India's own uranium mining and milling will probably play a much larger role in any analysis on this subject.

In sum, it is simply not possible to verify the relationship between the delivery of foreign fuel exports to India and the possibility of increases in Indian production of highly enriched uranium or separated plutonium, nor is it possible to analyze the relationship between future exports and domestic production. India is not required to share this information. The IAEA does not have access to these facilities. Requiring the President of the United States to certify something he has insufficient information to determine is unwise and potentially harmful, and the amendment clearly demands that the President make that certification. Congress will be kept completely informed on developments in this area through the existing reporting requirements of S. 3709.

Mr. President, for all of these reasons, I oppose this amendment. I ask

Senators to vote no when the roll is called.

I thank the Chair, and I yield the floor.

Mr. FEINGOLD. Mr. President, I thank the Senator from Indiana. It is late, and I think that people already have a sense of where they will go with this amendment, but I do want to make a couple of points for the record, given how important this amendment is and how important this agreement is.

The chairman suggests that what we would do here with this amendment would somehow force the renegotiation of the agreement. I don't accept that notion. But I would say, given the importance of making sure this isn't used for nuclear weapons, it is well worth renegotiating if it actually required that. But I don't think it does.

More importantly, it just doesn't make any sense to me that such an amendment would require the full renegotiation of the agreement when you look at the fact that the bill before us today already, in section 105, requires eight different Presidential determinations. I am just adding two additional ones. There are already Presidential determinations that have to be made, so how can it be that the additional requirement that there be determinations by the President of the United States, not by Indian officials—how can that force the renegotiation of this agreement? It doesn't direct the Indians to do anything. So I reject the notion that somehow this would require the renegotiation of the agreement, and if it did, I think it would be better than not changing it.

Now, the biggest problem with the chairman's argument is that he is relying on an earlier version of our amendment which we offered in committee, which I thought was worth passing. But the chairman correctly notes that we were defeated in the committee 13 to 5. One of the criticisms was that somehow this amendment would force the President to certify some facts, that he couldn't necessarily know for sure what the Indians were exactly doing or what they might do in the future. I recognize that point. That is why I drafted this amendment to only relate to the scope and content of the agreement. There is nothing in my amendment that requires the President to certify what might happen in the future. And this is the critical distinction. This amendment does not have the flaw that was argued in committee. It only talks about the President certifying with regard to the scope and content of this agreement and also getting assurances from the Indian Government that the purpose of this agreement is not about nuclear weapons but is about civil purposes. So it is, in fact, different from the amendment in committee, and that is an important distinction as Members think about whether they want to vote for this version on the floor of the Senate. It is more modest, but it still accomplishes an important goal.

This is not unheard of. This is exactly what was done in the China agreement in the 1980s. I described it in my original statement. The agreement called for a Presidential certification of this kind. It worked, and the President, in fact, made such a certification. So this is both necessary and practical from that point of view.

I believe I have responded to each of the arguments made by the Senator from Indiana. Obviously, I have enormous respect for him and his leadership of the committee, but I would urge my colleagues to join me in supporting this amendment which would allow me to feel comfortable supporting this agreement, because I do want us to have a good agreement with India. I just think we need to have this sort of an assurance that my amendment provides.

I yield the floor.

Mr. SCHUMER. Mr. President, would the Senator yield 4 minutes from his time?

Mr. FEINGOLD. I yield the Senator from New York such time as he needs.

Mr. SCHUMER. Mr. President, I rise to support the India nuclear trade agreement because it strengthens America's relationship with a critical ally, but it also creates strong incentives for other countries to support our nonproliferation efforts by rewarding them with our valuable nuclear technology.

Proliferation of nuclear technology is a very serious issue. Make no mistake about that. India has a good nonproliferation record and will be a true partner in our efforts to prevent nuclear weapons technology from falling into the wrong hands. India's history of nonproliferation of dual-use nuclear technology and its willingness to implement IAEA guidelines and standards at nuclear facilities make India a welcome member of the global nuclear community.

Of course, the devil is in the details. That is why it is so important that this bill preserves congressional oversight of any agreement the administration reaches with the Indian Government. It is carefully crafted so that the U.S. agreement will not undermine the Nuclear Non-Proliferation Treaty or our obligations to the Nuclear Suppliers Group.

Under this bill, cooperation would end if India tests a nuclear weapon, proliferates nuclear weapons or materials, or breaks an agreement with the United States or the IAEA. India's access to nuclear cooperation will depend on its continued participation as a good citizen of the global nuclear community.

A close relationship with India in general will help us to align our mutual goal of combating terrorism. Both our nations have been victims of serious attacks of terrorism, and we know that the greatest danger we face is a nuclear weapon falling into the wrong hands. Neither of us wants al-Qaida to gain a nuclear weapon. Neither of us

wants Iran to go nuclear. The best way to ensure India's proper handling of its nuclear technology is not by distancing it but by working with it to address issues of mutual concern.

Economic ties continue to bind our two countries through an increasing flow of goods, services, and cultural exchange. It is vital that we recognize this improving relationship and work toward common goals for international policy standards. The buildup of nuclear weapons throughout the world is one of the most serious dangers humanity faces. Especially in today's world, we must ensure that nuclear technology is developed and used according to global standards as set forth by the International Atomic Energy Association for peaceful purposes. An agreement with the United States will also provide an incentive for India to refrain from conducting future nuclear weapon testing and to work with our Government to curtail proliferation of nuclear weapons. Most important, this legislation creates incentives for other countries that cooperate with our non-proliferation efforts. It will encourage other countries around the world to cooperate with the efforts of the United States to reduce the threat of nuclear weapons by rewarding those countries that behave responsibly with advanced American technology.

I yield the remainder of the time I have to my friend from Wisconsin.

Mr. LUGAR. Mr. President, we have had a good debate. I note the presence of the distinguished Senator from California on the floor, which prompts me to inquire of the distinguished Senator from Wisconsin whether he requires additional time? If the Senator is prepared to yield back his time, I will yield back time on our side, and then we could proceed to debate on the amendment of the Senator from California and maybe to a closer time for final passage, for Members who are requesting this of all of us.

Mr. FEINGOLD. I thank the Senator from Indiana. I yield back my time.

Mr. LUGAR. I will yield the time on our side.

The PRESIDING OFFICER (Mr. CHAFFEE). All time is yielded back. The Senator from California is recognized.

AMENDMENT NO. 5187

Mrs. BOXER. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from California (Mrs. BOXER) proposes an amendment numbered 5187.

Mrs. BOXER. I ask unanimous consent the further reading of the amendment be dispensed with. I wanted the beginning read because this is a very simple amendment.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To make the waiver authority of the President contingent upon a certification that India has agreed to suspend military-to-military cooperation with Iran, including training exercises, until such time as Iran is no longer designated as a state sponsor of terrorism)

On page 8, beginning on line 8, strike "Group; and" and all that follows through "Nuclear" on line 9 and insert the following: "Group;

(8) India has agreed to suspend military-to-military cooperation with Iran, including training exercises, until such time as the Government of Iran no longer supports acts of international terrorism, as determined by the Secretary of State under section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371) and section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)); and

(9) the Nuclear

Mrs. BOXER. Mr. President, this is a very simple amendment. What we are saying is this deal should not go forward until India has agreed to cut off military-to-military ties with Iran and that the President so certifies.

The Nuclear Non-Proliferation Treaty is the keystone of our efforts to stop the spread of nuclear weapons throughout the world. Back in the 1960s, there was widespread concern that dozens of nations would have nuclear weapons within a decade. Just months before his death, President Kennedy warned of this dire threat, saying:

I ask you to stop and think for a moment, what it would mean to have nuclear weapons in so many hands . . . that there would be no rest for anyone then, no stability, no real security, no chance of effective disarmament. There would only be the increased chance of accidental war, and an increased necessity for the great powers to involve themselves in what otherwise would be local conflicts.

But thanks to the Nuclear Non-Proliferation Treaty, there are less than 10 nuclear weapons states in the world today. In fact, since the Nuclear Non-Proliferation Treaty was first signed in 1968, more nations have ended nuclear weapons programs than have begun them. Countries such as Brazil, South Africa, and Japan decided to abandon their nuclear weapons program and join the Nuclear Non-Proliferation Treaty.

India did not sign the Nuclear Non-Proliferation Treaty, instead choosing to develop nuclear weapons outside of the NPT regime. India developed a nuclear weapon in 1974 using a research reactor and materials provided by Canada and the United States of America in the 1950s. India had pledged to use the reactor only for peaceful purposes, but it failed to keep that promise. So by giving India a special deal to both possess nuclear weapons and receive civil nuclear assistance, it will be harder to convince nonnuclear weapons states to keep their commitment to forgo nuclear weapons.

The timing could not be worse. Right now, the international community is trying to convince one nonnuclear member of the NPT, Iran, to cease uranium enrichment because the IAEA cannot verify that its program is for peaceful purposes. We are also trying

to roll back North Korea's nuclear program and convince them to rejoin the NPT.

India is becoming a recognized de facto nuclear power, but it is not required to take on any of the commitments made by the five recognized nuclear powers.

As The Economist reported earlier this year:

. . . the recognized nuclear powers—America, Russia, Britain, France and China—are committed under the NPT to curb their arsenals . . . on the way to eventual disarmament; the deal with America lets India build as many bombs as it chooses.

I think it is important to note what we are doing here. There is no limit on the number of bombs that India could build in this deal.

The Economist goes on to say that the five nuclear powers have:

at least all signed the treaty banning further nuclear tests and have stopped producing more highly enriched uranium and plutonium; India flatly refuses to do either.

Experts believe that this deal could allow India to vastly increase its production of nuclear weapons from about 6 a year to about 50 a year. What a contribution this Senate is making to world peace. I am absolutely stunned. We are going to have 50 nuclear weapons, perhaps, made in India, touching off an arms race in the region. That would not be in any country's interests, including our own.

Secretary Rice has argued that we are not helping India's nuclear weapons program because only a small amount of India's indigenous uranium would be needed for India's military weapons program. But listen to what the Congressional Research Service says:

The question for the United States is not whether India intends to ramp up its weapons program with freed-up uranium, but whether the U.S. and other states' actions create a new capability for India to do so.

We call this fungible—fungible uranium. This should concern every single Senator, but unfortunately it doesn't appear to. It should concern every Senator who believes that the proliferation of nuclear materials is the most dangerous issue facing the country today and that is why I have supported all the amendments. Unfortunately, these amendments were defeated. They would have required the President to certify that this deal does not assist or encourage India to produce additional fissile material for weapons.

The amendment I am offering addresses a second area where the administration has failed to receive commitments from India and that has to do with India's military-to-military relationships with Iran.

Last spring, at the very same time that the President, our President, was in India to sign the United States-India Civil Nuclear Cooperation Agreement, two Iranian warships were visiting the headquarters of the Indian Navy's Southern Command. At the very same time that President Bush was in India to sign the United States-India Civil

Nuclear Cooperation Agreement, two Iranian warships were soliciting the headquarters of the Indian Navy's Southern Command. These warships were participating in a training program under the military cooperation agreement with Tehran that was signed in 2003.

The fact that India would conduct training exercises with the world's leading state sponsor of terrorism while the President of the United States is visiting New Delhi is simply unbelievable. My amendment says that the President may not provide civil nuclear assistance to India until he certifies that India has agreed to suspend military-to-military cooperation with Iran so long as the Government of Iran continues to support international terrorism.

My amendment does not say they can never have this deal. But it says they must not cooperate, military to military, with Iran until the day Iran is taken off the list of terrorists.

According to a March 2006 Defense News article:

In 2003 India and Iran signed a strategic agreement to cooperate in defense and other matters. The deal was cemented by the visit of then Iran President Mohammed Khatami to the Republic Day parade in New Delhi, an honor usually reserved for key allies. India still considers Iran to be a key ally and this agreement on military cooperation is still in place, even though Iranian actions are leading to the deaths of American soldiers in Iraq as we speak.

General Casey has said that Iran is using surrogates to conduct terrorist operations, both against us and against the Iraqi people. He went on to say:

We are quite confident that the Iranians, through the special operations forces, are providing weapons, IED technology and training to Shia extremist groups in Iraq.

Of particular concern is the fact that Iran is providing a type of IED, or roadside bomb, that has a shaped charge and is particularly deadly.

So don't you think that if we are giving India this deal of a lifetime to receive nuclear technology from us, the least they could do is sign an agreement not to have military-to-military exercises and relationships with a country that is, in essence, bringing death and destruction to our sons and daughters in the United States military?

For more than 20 years, Iran has been the world's leading state sponsor of terrorism. It supports Hezbollah, several Palestinian terror groups such as Hamas and, according to the State Department, Iran is also:

... unwilling to bring to justice senior al-Qaida members it detained in 2003 and has resisted numerous calls to transfer custody of its al-Qaida detainees to their countries of origin or to third countries for interrogation and/or trial.

It seems to me we should convince our friend—India—to suspend its military-to-military cooperation with Iran. The Boxer amendment will have that result, because they want this deal and I believe they would act to cut off

these military-to-military relationships.

It is also very important to point out that the United States has already sanctioned Indian entities and individuals for missiles and WMD-related transfers to Iran. In 2004, the United States imposed sanctions on two Indian scientists for nuclear-related transfers to Iran. Both scientists were high-ranking officials in the Nuclear Power Corporation of India, Limited. In December 2005, sanctions were imposed on two Indian chemical companies for transfer of chemical-related items to Iran, and as recently as last July, sanctions were imposed on two more chemical manufacturers in India for transfers to Iran. In May 2005, India passed a law on weapons of mass destruction and their delivery systems. But according to CRS, the administration has not yet assessed India's export control law and regulation, and

... some observers have stated that India does not have the necessary regulations in place to implement the law, and that India's resources for implementation are remarkably limited.

In other words, they have a Weapons Control Act, but experts believe they are not enforcing it. History tells us that they, in fact, have acted wrongly, to pass on technologies that are harmful, to Iran. So it seems to me, with this history, my colleagues should be supporting this amendment. I believe they should be and I regret that I need to offer it. I thought it would be accepted. I thought it would not be a problem. That it would be treated in many ways is obvious. The President, it seems to me, should have made severing military ties with Iran a precondition to civil nuclear cooperation. But, unfortunately, the United States is giving away more than it received in this deal.

My friends who want to desperately see this passed tonight are voting down amendment after amendment. And we are taking a deal in which, as former Senator Nunn said, "India was a lot better negotiator than we were."

That is Sam Nunn. We know how hard he worked with the current chairman of this committee to stop nuclear proliferation. What did he say of this agreement? "India was a lot better negotiator than we were."

So those of us on the Senate floor who are trying to get a better deal, who are trying to change this deal, are being voted down—boom, boom, boom. We are taking a deal that Sam Nunn said essentially they "bested" us on.

I come from a State with a huge Indian population. Our Indo-Americans are prominent in our State. I support strong relations with India. India is the world's largest democracy. It is so important for us to work together to promote our mutual interests.

I am proud to be a member of the Senate India Caucus and have nothing but the utmost respect for the Indian people. But this deal is not a good deal for America. This deal is not a good deal for the world.

Proponents of this legislation say our bilateral relationship with India is important. I agree with them. I have great hopes for the future of our two nations. It is so important that we work together. But somebody tell me how we are better off when we have an India that can build up to maybe 50 bombs.

Somebody explain to me how we are better off when we don't even have a clause in here that says that India has to receive military-to-military relationships with Iran before this goes ahead. Somebody explain it to me. I don't think it has been explained.

I am happy the Harkin amendment was adopted. It says that India has to work with us to make sure Iran doesn't get a nuclear capability, as they are trying to do now. If we adopted that amendment, why can't you adopt this amendment which simply says shut off those military-to-military agreements between India and Iran before this goes forward?

I wish the administration would have worked harder to craft a better deal, a more balanced deal that would have been a net win for nonproliferation, while securing India's commitment to suspend its military relationship with Iran.

As Robert Einhorn, a nonproliferation expert at the Center for Strategic and International Studies, told the Senate Foreign Relations Committee on which I am so proud to serve, "the deal was concluded in great haste, driven by the calendar of the Bush-Singh meetings rather than by the seriousness and complexity of the task at hand." Everybody knows it. We knew it at the time. And I had hoped we could then make this a better deal.

I have worked hard. I have tried. We have lost amendment after amendment after amendment. It is so regrettable. It is regrettable that we rushed into this agreement. But we have a chance to improve this agreement in behalf of the Boxer amendment. I urge its adoption.

I retain the remainder of my time.

Mr. LUGAR. Mr. President, I have listened carefully, as all Members do, to the distinguished Senator from California, who is such a valuable member of the Senate Foreign Relations Committee. And she has expressed some of the views which are contained in her statement this evening during the very important hearings the committee conducted.

I will just say very clearly that Members on both sides of the aisle in committee felt that there were improvements that could occur with regard to the agreement, even if the agreement was negotiated in a fairly short period of time. The Senate Foreign Relations Committee has taken ample time to work through this with the administration as well as with each other. I regret that we did not have unanimity in the committee on final passage. A vote of 16 to 2, however, indicated a very strong coming together, which clearly

has been expressed on the floor of the Senate today in the votes on various amendments.

But I must say that the amendment offered by the Senator from California is, in my judgment, a killer amendment. It goes far beyond the scope of the July 18 Joint Statement issued by President Bush and Prime Minister Singh.

The amendment as written would not permit the U.S.-India agreement to go into effect until India abandoned its military-to-military contacts with Iran. This is a killer condition that, if adopted by Congress, would require renegotiation of the agreement.

Few, if any, Members of Congress disagree with the sentiment expressed in this amendment; namely, that Iran is a destabilizing force in the Middle East. As former Secretary of State Henry Kissinger recently wrote in the *Washington Post*:

Everything returns to the challenge of Iran. It trains, finances and equips Hezbollah, the state within a state in Lebanon. It finances and supports Moqtada al-Sadr's militia, the state within a state in Iraq. It works on a nuclear weapons program which would drive nuclear proliferation out of control and provides a safety net for the systemic destruction of at least the regional order.

Iran is a critical challenge to U.S. diplomacy and global security. In this difficult environment the U.S. must cultivate a strong multilateral response to Iran's pursuit of nuclear weapons and support for terrorism. An effective solution to the Iranian threat must include India. Holding New Delhi to a different standard than our closest allies or other nations we engage in nuclear commerce does not appear to be the best way to secure their support.

On April 5, 2006, Secretary Rice testified before the Committee on Foreign Relations that India has "low level military-to-military contacts." She noted "that there are a number of countries that have relations with Iran, and it's, of course, the sovereign right of a country to have relations with whomever they would like to have relations." She argues that the U.S. "is not going to do better in pulling India toward us by insisting that they cut off relations with other states." She concluded that she didn't "think that's going to work very effectively."

The Secretary of State argues that the international community is changing its approach to Iran. She cites the exodus of banking and financial institutions. Perhaps most importantly she points out that India was the only member of the non-aligned movement to vote for referral of the Iran to the U.N. Security Council for its illegal nuclear program. This was an important development because India was a founder and a longtime leader of the movement.

Let me be clear, this amendment will reverse the important trend of countries distancing themselves from Tehran and future Indian multilateral nonproliferation cooperation. Some ex-

perts have indicated that this amendment could very well have the opposite effect, forcing New Delhi away from the U.S.-Indian Agreement.

The administration has frequently made U.S. policy on Iran clear to the Indian Government. The U.S. has consistently expressed our desire for India's support of our efforts and policies. One of the unheralded diplomatic accomplishments of the 2005 Joint Statement is India's commitment to support international efforts to limit the spread of enrichment and reprocessing technologies, including to states such as Iran.

I emphasize that point. If, in fact, we are deeply concerned—and I am, and the Senator from California certainly is—about the developments in Iran of a nuclear program and the commitment of India to work with us, to limit that spread of enrichment and reprocessing is very important. To deliberately take action which scuttles this agreement and indicates to the Indians that they can look elsewhere for partnership is to court disaster.

I am pleased that India is committed to being a responsible member of the international community and it has made the decision that it is in its own national security interest to oppose Iran's weapons of mass destruction program.

On a number of occasions the Indian-Iranian military relationship has been greatly exaggerated. This year an article alleged that India was providing military training for Iranian sailors. Secretary Rice responded that while Iranian ships have made port calls at India ports, she reported that New Delhi had denied that Iranian sailors had been trained in India.

It is unfortunate that the Senator from California constructed the amendment in this manner. It would be more appropriate to address this issue in the sense of Congress section or as a statement of U.S. policy. If the amendment was modified in this manner, I am prepared to recommend that it be adopted by unanimous consent. Unfortunately, in its current form it makes it impossible for the President to meet the requirement and thus implementation is impossible.

If this amendment is adopted, in my judgment, the United States-India agreement will be scuttled. That, I believe, would be a tragedy.

I urge Senators to vote against the Boxer amendment.

The PRESIDING OFFICER. Who yields time?

Mr. BIDEN. Mr. President, how much time remains?

The PRESIDING OFFICER. Fourteen minutes.

Mr. BIDEN. I wonder if the Chair would give me 3 minutes.

Mr. LUGAR. I will yield whatever time the Senator will consume.

Mr. BIDEN. Mr. President, I will be very brief.

The Senator stated it well. And I don't like to argue with my friend from

California; I seldom ever win, and I am very uncomfortable because I consider her one of my best friends in this body. So it is an uncomfortable position to be in.

I want to make three points. The first is that right now, if India were to engage in transferring any lethal weaponry to Iran, it would be in violation of our law. It would damage the relationship and fundamentally alter our relationship. It is existing U.S. law.

No country can transfer lethal weaponry to Iran and maintain our support. That is No. 1.

The second point I would like to make is with the underlying concern—I know it is much broader than this—of my friend from California. I think if I read her correctly—and I may not be—somehow this agreement is going to yield the prospect that India will be in a better position to transfer some kind of technology in this military-to-military relationship to Iran that will help Iran get the nuclear capability.

The truth is, as the chairman has pointed out, they have entered into an agreement with us not to do that. But, secondly, they have voted in the IAEA with the Board of Governors to sanction Iran, to take issue with Iran, to report it to the U.N., and they voted with us in the U.N. So they are openly taking on Iran in terms of the thing of greatest concern to us all.

I know my friend spoke eloquently about the support of terrorism by Iran. The implication is that any military-to-military assistance goes directly to helping the capability of the Iranians to help support Hezbollah and other organizations that are terrorist organizations around the world.

I will make the following observation: She also stated accurately that Indian entities have been sanctioned for transferring materials to Iran. I must point out, so has Germany, so has the Spanish, so have European allies of ours. They also had entities sanctioned. It is not unique to India that an organization would, in fact, provide assistance to Iran in a way that would generate United States sanctions. Spain is the most recent offender.

I conclude by saying this is the hardest piece to swallow—not what the Senator said, but what I am about to say is the hardest piece to swallow. Palmerston had the famous expression that countries don't have permanent friends, they have permanent interests.

Look where India resides and look where Iran resides. One of the countries they are most concerned about is Pakistan. Now, it is not reasonable to assume that India and Iran would not want to have a military relationship where they shared information and/or concerns relative to Pakistan. So for them to forswear any kind of relationship at all with India that has a military or quasi-military relationship is to essentially suggest to them that they should not deal with a common enemy.

Look what we are doing. We are dealing with a country that we sanctioned

before, that we have clearly decided is not a democratic country, that clearly has probably the largest percentage of jihadists residing in it, with, arguably, the least significant effort to deal with these jihadists—the country of Pakistan. What are we doing? Because we have permanent interests, and our interests are that we have support in the war against jihadists and al-Qaida and terrorist organizations, we are cooperating with a country we otherwise probably would not cooperate with.

How would we feel if a European country or any other country around the world said—or India said—we will not trade with you, the United States of America, as long as you continue to have a military-to-military relationship with Pakistan, a country that is, in fact, exporting—or if they are not exporting, at least cooperating with or turning a blind eye to the terrorist organizations that reside within their country? We would say, Wait a minute. You want to trade with us, trade with us. You want to tell us whether out of our self-interest we can cooperate with Pakistan—which is not what you call a model democracy—then we would say no.

The only generic point I want to make, I know of no evidence—it may exist, but I am unaware of it—where India is materially cooperating with Iran in order for Iran to be able to better supply, support, and/or encourage terrorism. I know of no such interest and no such circumstance. Maybe my friend may know what I do not. She may have gotten a recent briefing with the Intelligence Committee where somebody said that, but I am unaware of any such cooperation that has the net effect of promoting terror.

What I do know is we have built into the law now the ability to sanction India if, in fact, India does supply lethal weapons or was in any way cooperating with promoting Iran's nuclear program. Beyond that, it would break the spirit of the entire agreement we have with India. If it came to light that somehow there was evidence that India was in any way cooperating with Iran's nuclear program, this deal is done. This is over. It is finished. It is gone.

At the root of this overall agreement, which my colleague, understandably, does not like, the underlying issue here is this agreement between India and the United States. The underlying premise is based upon a notion of a maturing relationship based on trust that they will not only not violate the letter but will not violate the spirit of this agreement.

Let me conclude by saying what the spirit of the agreement is. The spirit of the agreement is we are not going to do anything, United States of America, that we would not otherwise be able to do; we will not do anything with what you provide for us that will increase our capacity, our ability, our desire, or our intent to deal with our nuclear program.

They have said straightforwardly at the same time, We are keeping our nuclear program. We ain't giving it up.

It is a little bit like us saying now—and this will be my last statement—you know, Pakistan violated the law, Pakistan violated our law. It went out and it broke the deal and it did what India did. On top of that, Pakistan was the largest proliferator in the history of the world of nuclear capability through A.Q. Khan. And guess what. We are going to bite our nose off to spite our face. Now that we need Pakistan in dealing with this war on terror, we are going to sanction Pakistan, we are not going to cooperate with Pakistan, we are going to do nothing with Pakistan even though we acknowledge that might give greater sustenance to al-Qaida, bin Laden, the Taliban, et cetera.

Countries make hard choices. They are not neat and clean. I suggest if we are going to impose upon India a requirement to cease and desist with any military-to-military relationships notwithstanding they have common enemies and common concerns with Iran, as bad as Iran is, notwithstanding the fact that there is no evidence that they are promoting and/or giving the ability to support terrorism's greater thrust, notwithstanding the fact they have agreed to do everything they can to prevent Iran from becoming a nuclear power, if we are going to sanction them this way, I ask the rhetorical question: Why wouldn't the rest of the world sanction us for our relationship with Pakistan. And why are we cooperating with Pakistan? If anybody in the deal is not the ideal partner right now, it is Pakistan.

But what do we do? To steal a phrase from a former President that I often hear, comments we hear on CNN all the time, his comment always is "you got to accept life in the world as you find it." I am paraphrasing a former President. I think it is close to a quote. We have to accept the world as we find it, make the best out of it, and promote our interest to the greatest extent. Sometimes it means we make less than perfect deals.

Had Chairman LUGAR been President Lugar, had Senator BOXER been Senator BOXER, had I been their Secretary of State, I believe I could have gotten a better deal than we got. But the fact is, we are where we are, as the old trade expression goes, and I believe the downside of rejecting this treaty is so much further down than any downside that flows from supporting this changed law allowing this to go forward. In that sense, it is not a close call.

I suggest to my friend, I think everything she says has merit in the abstract. But we are living in the world we live in now based on the parameters we are looking at. I think this amendment, which would kill the agreement, is not worth the candle because it would do that—not because it doesn't have underlying merit.

I yield the floor.

Mr. LUGAR. Do we have any time remaining on the opposition side?

The PRESIDING OFFICER. Two minutes.

Mr. LUGAR. I yield 2 minutes to the distinguished Senator from Missouri.

Mr. BOND. Mr. President, I thank the distinguished chairman. Let me summarize by saying I visited Delhi in March right after the President had signed the historic agreements. I walked into a meeting of distinguished Indian officials asking if we could possibly confirm this treaty, this agreement.

I knew nothing about it, so I did a tremendous amount of quick work with our agency to check out what the dangers might be. They came back and they told me India was the one most least likely to engage in nuclear proliferation. They saw this as a tremendous opportunity for us to improve on our relations with a country that had for too long been in the Soviet/Russian sphere.

We have an opportunity to help them. They are a growing country. They have many needs. Civil nuclear power is the one most important thing they need because of their tremendous pollution problems. This enables us to help them reduce pollution. Not only are we interested in nuclear nonproliferation, we are interested in pollution nonproliferation. This moves us forward.

Beyond that, securing a close relationship with India is one of our most important steps toward developing a peaceful environment and prosperity in south Asia. This opportunity cannot be wasted.

This particular amendment, as has been stated, which is well-intentioned and reflects understandable concerns, is, nevertheless, a poison pill. Many countries have relations with Iran. We do not like them. But many of those countries with which we have good working relationships don't like our relations with Israel. We are not going to change our relations with Israel. We are not going to stop helping them. But we are going to continue to work with those countries.

As the Senator from Delaware has pointed out, we have relations with Pakistan and there are lots of questions about that. If we want to work with the Indians and develop a good relationship so they will not deal with Iran, the best thing we can do is to defeat these poison pill amendments and confirm the treaty so we will bring India and the United States together.

I urge my colleagues to oppose the amendments and to support the treaty.

I yield the floor.

Mrs. BOXER. How much time do I have remaining?

The PRESIDING OFFICER. Six minutes.

Mrs. BOXER. I will try not to take the full time, but I want to respond to my colleagues.

The debate has been much ado about a very straightforward and simple

amendment. My amendment has nothing to do with the transfer of lethal weapons. My colleague Senator BIDEN talked about that. Nothing to do with that. My amendment, in the real world, I don't believe could be seen as a killer amendment. It is a simple amendment.

My colleague Senator BOND is right. He says a lot of other countries have relationships with Iran. No other country gets a deal like this where we give nuclear technology and there is absolutely no control on the number of bombs India could build. Experts tell us it could be as many as 50 a year. I don't think that makes the world safer.

But to help me with this treaty, to give my constituents a feeling that we are protecting them, at the least, say you are getting this deal, you are going to be able to build a lot of weapons with it, then cut off your military-to-military ties with the leading terrorist nation in the world—Iran—a nation that is at this very moment hurting our troops in the field in Iraq.

Now, my colleague Senator BIDEN, I agree with completely when he says—and I do believe this—Senator LUGAR, if President, would have cut a better deal. I could say Senator BIDEN, if President, could have cut a better deal, but we don't have a better deal. And I don't live in a world where you sit back and say, oh, too bad. This isn't about buying a piece of cake. We are not going to the store and buying a toy. It is about giving nuclear technology to a country that has, in fact, been called out by our own country because it has in the past transferred information about WMDs, nuclear weapons, missiles, to Iran. We have called them out on that. So why can't we ask them simply to stop these military-to-military programs they have with Iran?

Again, when we stand up and say, gosh, this is a killer amendment, they will walk away, it sounds weak to me. It does not sound as though we are the strongest nation in the world. Who would walk away from this deal? India is not a member of the NPT, not a signatory, and they are getting all this information from the United States of America on nuclear civilian technology, with no cap on the number of bombs they can build, and they are going to walk away from this because we simply ask them not to have military-to-military cooperation with the world's leading sponsor of terrorism?

I don't get it. So I think my colleagues have made this complicated when it is really very simple. We do this deal with India, the least they can do is cut off their military-to-military cooperation with Iran.

With that, Mr. President, I conclude my remarks. I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. LUGAR. Mr. President, I would inquire of the Chair if the existing order now calls for a 2-minute debate on the Feingold amendment prior to a rollcall vote on that amendment?

The PRESIDING OFFICER. The Senator is correct.

Mr. LUGAR. Further, I would ask the Chair for clarification: Does the 2-minute debate then occur on the Boxer amendment, after the rollcall vote on Feingold?

The PRESIDING OFFICER. The Senator is correct.

Mr. LUGAR. Then, finally, an additional 2-minute debate before final passage of the bill, after the Boxer amendment is voted on?

The PRESIDING OFFICER. The Senator is correct.

Mr. LUGAR. I thank the Chair for that clarification.

Mr. President, I ask unanimous consent that—the first rollcall vote, we understand, is 15 minutes—the subsequent rollcall votes be 10 minutes each.

The PRESIDING OFFICER (Mr. ALLEN). Without objection, it is so ordered.

Mr. LUGAR. I thank the Chair.

Senator FEINGOLD is now recognized.

The PRESIDING OFFICER. The Senator from Wisconsin.

AMENDMENT NO. 5183

Mr. FEINGOLD. Mr. President, I would like to briefly recap what my amendment does and why I believe it is important for the Senate to adopt it.

The amendment is very simple. It will require the President to make determinations that nothing in the nuclear cooperation agreement he negotiates with India will contribute to India's nuclear weapons program. Both the United States and India have stated that expanding India's nuclear arsenal is not an objective of this agreement, and my amendment simply makes those claims binding.

The United States is prohibited under our current obligations in the Nuclear Non-Proliferation Treaty to directly or indirectly assist the nuclear weapons programs of other states. My amendment simply makes clear that the United States is actually abiding by its international commitments. It does not require the President to guarantee what India will do; he simply must certify that he is satisfied the agreement will not contribute to India's nuclear weapons program.

I urge my colleagues to support the amendment.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, let me, in brief response, say I understand the intent of the amendment. But the amendment uses the words, for example, "India cannot use United States-origin equipment . . ." "India cannot replicate and subsequently use. . . ." No one can certify they cannot. It is possible they could. The question is whether we are insisting that they not use it. We are insisting they are not using it, and we have built into this agreement a requirement on the part of the administration to look at whether they are, in fact, doing it.

So the question is not whether they can or cannot. Anything can happen. A

President cannot certify it is not possible. That is what "cannot" says. But he can certify to the best of his knowledge it is not occurring. That is what we require. "Cannot" makes this a deal-breaker. No President could certify it. "Cannot" translates into "it is not possible to replicate, it is not possible to . . .," and no one can certify to that.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

Mr. LUGAR. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be a sufficient second.

The clerk will please call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from Oklahoma (Mr. INHOFE), the Senator from Arizona (Mr. MCCAIN) and the Senator from Wyoming (Mr. THOMAS).

Mr. DURBIN. I announce that the Senator from Vermont (Mr. JEFFORDS) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 25, nays 71, as follows:

[Rollcall Vote No. 268 Leg.]

YEAS—25

Akaka	Dorgan	Lincoln
Bingaman	Durbin	Menendez
Boxer	Feingold	Mikulski
Byrd	Feinstein	Obama
Cantwell	Harkin	Pryor
Clinton	Johnson	Reed
Conrad	Kennedy	Salazar
Dayton	Lautenberg	
Dodd	Leahy	

NAYS—71

Alexander	Dole	Murray
Allard	Domenici	Nelson (FL)
Allen	Ensign	Nelson (NE)
Baucus	Enzi	Reid
Bayh	Frist	Roberts
Bennett	Graham	Rockefeller
Biden	Grassley	Santorum
Bond	Gregg	Sarbanes
Brownback	Hagel	Schumer
Bunning	Hatch	Sessions
Burns	Hutchison	Shelby
Burr	Inouye	Smith
Carper	Isakson	Snowe
Chafee	Kerry	Specter
Chambliss	Kohl	Stabenow
Coburn	Kyl	Stevens
Cochran	Landrieu	Sununu
Coleman	Levin	Talent
Collins	Lieberman	Thune
Cornyn	Lott	Vitter
Craig	Lugar	Voivovich
Crapo	Martinez	Warner
DeMint	McConnell	Wyden
DeWine	Murkowski	

NOT VOTING—4

Inhofe	McCain
Jeffords	Thomas

The amendment (No. 5183) was rejected.

Mr. LUGAR. I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 5187

The PRESIDING OFFICER. There is now 2 minutes equally divided on the Boxer amendment.

The Senator from California.

Mrs. BOXER. Mr. President, I will be very brief. We are giving India a one-of-a-kind deal that no one else gets: civilian nuclear technology and no cap on the number of bombs they can build.

The least we can do is ask them to cut off their military ties with the biggest state sponsor of terrorism—Iran. Iran is building the IEDs that are killing our soldiers in Iraq. The least we can do is ask the President to certify that they have cut off military-to-military relationships with Iran.

Why is it important? Look at this Defense News: “Indian Navy Trains Iranian Sailors.”

We know they have these ties. If we really believe we are doing something good, we should at least expect India to cut off military ties with the leading state sponsor of terrorism—Iran. I urge an “aye” vote.

The PRESIDING OFFICER. The Senator from Indiana.

Mr. LUGAR. Mr. President, Iran is a critical challenge to the United States, our diplomacy, our global security, but in this very difficult environment the United States must cultivate a strong multilateral response to Iran’s pursuit of nuclear weapons in support of terrorism.

I simply point out that India was the only member of the nonaligned movement to vote for referral of Iran to the U.N. Security Council for its illegal nuclear program. Holding India to a different standard than all of our other closest allies or nations with whom we engage in nuclear commerce does not appear to be a good way to secure their support.

Let me be very clear: If this amendment is adopted, the India nuclear agreement is kaput. This is it. This is a killer amendment, and I ask for Senators to vote no.

Mrs. BOXER. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to amendment No. 5187. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. McCONNELL. The following Senators were necessarily absent: the Senator from Oklahoma (Mr. INHOFE) and the Senator from Wyoming (Mr. THOMAS).

Mr. DURBIN. I announce that the Senator from Vermont (Mr. JEFFORDS) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 38, nays 59, as follows:

[Rollcall Vote No. 269 Leg.]

YEAS—38

Akaka	Byrd	Coleman
Bingaman	Cantwell	Collins
Boxer	Clinton	Conrad

Dayton	Kyl
DeWine	Lautenberg
Dorgan	Leahy
Durbin	Lincoln
Ensign	Menendez
Feingold	Mikulski
Feinstein	Murray
Harkin	Nelson (FL)
Johnson	Obama
Kennedy	Pryor

NAYS—59

Alexander	DeMint	Lugar
Allard	Dodd	Martinez
Allen	Dole	McCain
Baucus	Domenici	McConnell
Bayh	Enzi	Murkowski
Bennett	Frist	Nelson (NE)
Biden	Graham	Reed
Bond	Grassley	Roberts
Brownback	Gregg	Rockefeller
Bunning	Hagel	Sarbanes
Burns	Hatch	Sessions
Burr	Hutchison	Shelby
Carper	Inouye	Stevens
Chafee	Isakson	Sununu
Chambliss	Kerry	Talent
Coburn	Kohl	Thune
Cochran	Landrieu	Vitter
Cornyn	Levin	Voinovich
Craig	Lieberman	Warner
Crapo	Lott	

NOT VOTING—3

Inhofe	Jeffords	Thomas
--------	----------	--------

The amendment (No. 5187) was rejected.

Mr. LUGAR. Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

NONPROLIFERATION CONSEQUENCES

Mr. OBAMA. Mr. President, I rise today to express my support for the United States-India Peaceful Atomic Energy Cooperation Act, S. 3709. As I have said before, I believe strengthening the relationship between our two nations is an important strategic goal and this legislation helps us take a dramatic step in this direction.

However, like many of my colleagues, I have concerns with potential nonproliferation consequences of this agreement. Much to my disappointment, the administration has done very little to address these concerns, instead, sending draft legislation to the Congress that was essentially a blank check.

The managers of the bill, Senators LUGAR and BIDEN, have done a tremendous job taking the administration’s proposal and shaping it into meaningful, bipartisan legislation. The bill now before the Senate helps move us closer to India while addressing some key nonproliferation issues.

However, I remain concerned about the issue of nuclear testing. A decision by the Indian Government to conduct such a test could trigger an arms race in South Asia that would be extremely dangerous and destabilizing.

The good news is that the joint statement between President Bush and Prime Minister Singh of July 18, 2005 declared that India’s unilateral moratorium on nuclear testing will continue. I take Prime Minister Singh at his word, but also believe in following President Reagan’s mantra of “trust but verify.”

To this end, I am wondering if the chairman will take a few moments to

clarify a couple matters concerning this legislation. Is it the managers’ belief that section 129 of the Atomic Energy Act, AEA, will apply prospectively to India—aside from the sections of the AEA that are explicitly amended by S. 3709?

Mr. LUGAR. Mr. President, the Senator is correct. Under our bill, the full force of section 129 would apply to any Indian detonation of a nuclear explosive device, any termination or abrogation of IAEA safeguards by India, and material violation of IAEA safeguards by India, all would result under section 129 in the termination of nuclear exports to India.

Mr. OBAMA. On a related note, is it the chairman’s interpretation of the legislation that, in the event of a future nuclear test by the Government of India, nuclear power reactor fuel and equipment sales, and nuclear technology cooperation would terminate; other elements of the United States-India nuclear agreement would likely terminate; and the United States would have the right to demand the return of nuclear supplies?

Mr. LUGAR. Yes, under our bill, the only requirement which is waived is that in section 123.a(2) of the Atomic Energy Act of 1954, for full-scope safeguards. India’s 123 agreement would still have to meet the requirement of section 123.a(4), which requires that in the event of a test by India of a nuclear explosive device the United States shall have the right to request the return of supplies as you have stipulated.

Mr. OBAMA. I offered an amendment that the managers have already accepted pertaining to the supply of nuclear power reactor fuel in safeguarded, civilian nuclear facilities. To further clarify this issue, is it the managers’ understanding that provision of a fuel to the Government of India should be sized in a way to maintain a deterrent to Indian nuclear testing, while also providing protections against short-term fluctuations in the supply of nuclear fuel? In other words, is it your understanding that providing a fuel reserve to India is not intended to facilitate a resumption in nuclear testing?

Mr. LUGAR. Yes, that is our understanding.

Mr. OBAMA. Does the chairman believe that, as this agreement moves forward to the Nuclear Suppliers Group, NSG, the United States should work to ensure that other nations provide nuclear power reactor fuel in a similar fashion?

Mr. LUGAR. Yes, I hope that would be the case.

Mr. OBAMA. Finally, would the managers agree that section 105 of S. 3709 requires that the President determine, prior to exercising the waivers in section 104, that “an agreement between India and the IAEA requiring the application of safeguards in perpetuity in accordance with IAEA standards, principles, and practices to civil nuclear facilities, programs, and materials . . . has entered into force,” and that the

most logical approach, as U.S. officials have stated for the record, would be to use the IAEA INFCIRC/66, Rev. 2 agreement as the model for India's safeguards agreement?

Mr. LUGAR. My understanding is that the administration, the IAEA, and participating governments in the NSG have all stated that they would prefer that any new Indian safeguards agreement be modeled on INFCIRC/66 Rev. 2.

Mr. OBAMA. I thank the managers.

Mr. KENNEDY. Mr. President, I intend to oppose this legislation.

One of the many lessons of the tragedy of September 11 is that America's overarching national security interest is keeping nuclear material and weapons out of the hands of terrorists. Nothing is more important for our national security than achieving this goal.

The international nuclear nonproliferation regime flawed though it may be is our best hope of achieving this goal. While I believe America has a clear interest in strengthening our relationship with India, I do not believe it can, or should, be achieved by sidestepping nearly half a century of international nonproliferation agreements. In the long run, doing so will make America and the world more vulnerable to the perils of nuclear weapons.

One of the defining goals of my years in the Senate has been to support the important advances made by our country and the international community in limiting the perils of nuclear weapons across the globe.

President Kennedy considered the Limited Test Ban Treaty, which represented an early and historic advance in nuclear nonproliferation, as one of his greatest accomplishments. On signing the documents of ratification on October 7, 1963, President Kennedy said, "This small step toward safety can be followed by others longer and less limited, if also harder in the taking. With our courage and understanding enlarged by this achievement, let us press onward in quest of man's essential desire for peace."

Since that agreement, further progress was made with the Nuclear Non-Proliferation Treaty, NPT, the SALT and START agreements, as well as the Comprehensive Test Ban Treaty. These agreements although far from perfect are essential to limiting the spread and use of nuclear weapons. They are the bedrock of our effort to ensure that the world will never, ever again know the horrors of the use of nuclear weapons. They took years to negotiate and implement, and we must be exceedingly careful about dismantling or carving out exceptions to them for any country.

Supporters of this agreement argue that the international nonproliferation regime has not proved successful in every case—just look at Iran and North Korea. And I accept the premise of the administration's argument that the international arms control regime may

need to be modified or adapted to fit current times, and that we need to find a way to address India.

However, we need to recognize that commitments under the NPT made by virtually every nonnuclear state play an essential role in assisting the international community in keeping a check on their nuclear programs. And, before we make significant changes to the nonproliferation regime, we must be absolutely confident that we are doing more good than harm and that we will be more likely not less likely to limit the spread of nuclear weapons across the globe. I do not believe that running roughshod over these agreements by carving out an exception for India is the way to achieve these goals.

General Brent Scowcroft cautioned that, "I am concerned about a trend that we see reflected in the United States-India nuclear deal where we try to address proliferation risks by assessing the character of regimes and governments. Such an approach also opens up divisions among the world's nuclear powers, with each making a list of "friends" who can be trusted with nuclear technology and "foes" who are dangerous risks."

Further, Robert Gallucci, the Dean of Georgetown University's School of Foreign Service, pointed out that, if we do approve this arrangement with India, "we will put at risk a world of very few nuclear weapon states, and open the door to the true proliferation of nuclear weapons in the years ahead."

Certainly, there are some advantages to the nonproliferation regime under the proposed agreement. India would place a majority of its current and future civilian reactors under international safeguards. India has agreed to abide by the guidelines of the Nuclear Suppliers Group, and to abide by the Missile Technology Control Regime. India has agreed not to test another nuclear device and has indicated that it will work with the United States on concluding an international regime to stop the production of fissile material for nuclear weapons. These are definitely positive steps.

However, India will not sign the Nuclear Non-Proliferation Treaty and subject its military facilities to international inspection, and this remains a major concern. Until now, as part of an effort to limit the spread of nuclear weapons across the globe, international arms control agreements and U.S. law have required full international safeguards on civilian and military reactors before civilian nuclear energy could be provided. These requirements exist to ensure that by assisting a country's civilian program, we are not freeing up supplies for an unsafeguarded nuclear weapons program. Under this agreement, however, none of India's military reactors would be put under international safeguards, but it would receive civilian nuclear energy anyway. In other words, India will obtain the benefits of the NPT, without the obligations required by it.

Additionally, despite India's stated commitment to conclude an international agreement to cut off the production of fissile material—the essential component for making nuclear weapons—there is no timeframe for concluding such an agreement, nor is there any binding commitment for India to do so. United States, Russia, Great Britain, and France have agreed to a fissile material production cut-off for nuclear weapons, and India should as well. So we will knowingly permit a country to benefit from civilian nuclear energy cooperation and maintain an active, unsafeguarded program to construct, develop, and build nuclear weapons.

If we provide India with the benefits of nuclear nonproliferation agreements without requiring them to sign the NPT nuclear agreement or, at least, cease the production of fissile material for nuclear weapons, there would be significant and harmful consequences for our global nonproliferation efforts.

It will embolden Iran to flout the will of the international community. There could not be a worse moment to give India the green light to build weapons with the blessing of the United States and the international community. The Iranians see a clear double standard. As Iran's national security adviser said in March, "The United States is imposing a contradictory theory of dual standards: though our NPT membership entitles us to access to nuclear science and technology, it claims that we will never have that right, whereas it cooperates with India, which does have the bomb but is not an NPT member." The Iranians will undoubtedly use the double standard of India in Iran's efforts to break the will of the international community to achieve its nuclear aims.

Former Senator Sam Nunn stated that "the U.S. India deal will likely make it more difficult to get other nations to join us in stopping threatening nuclear programs in Iran and North Korea." Similarly, Zbigniew Brzezinski, points out that this deal "will complicate the quest for a constructive resolution of the Iranian nuclear problem."

Furthermore, this agreement will put the United States in the position of indirectly supporting an arms race in South Asia. If the Indians or the administration could assure us that India had agreed, like the United States, Russia, Great Britain, and France, to a fissile material production cut-off for nuclear weapons, the concern would diminish. We know that India currently has very limited uranium resources, which it now must dedicate to generating electric power. It is so short of uranium that it can only run its reactors at about two-thirds capacity. But that will change once India gains access to foreign uranium supplies for its civilian uses. The agreement would provide India with sufficient uranium to supply its civilian reactors, freeing up domestic supplies for military purposes. Former Senator Sam Nunn

warns that “India will no longer be forced to choose whether its own limited uranium stocks should be used to support its civilian nuclear program or its nuclear weapons program.”

Some experts estimate that India could increase production from a handful of weapons a year to 50 or more, if it could use its domestic production for its weapons program. How will China and Pakistan react to India’s increasing nuclear stockpile, as well as to the enhanced potential to produce fissile material as a result of this new cooperation? India states it only wants to build up its nuclear arsenal to the “minimum credible deterrence” level before it stops building nuclear weapons, but we don’t really know what India is likely to do. How many more weapons will it need to reach that minimum credible deterrence? 50? 100? 500? Will Pakistan and China respond by building more weapons, too? Will the mad race for nuclear arms take on a life of its own, continuing to escalate with reckless abandon?

And what will happen with our other allies who are members of the non-proliferation regime? There is no doubt that the Nuclear Nonproliferation Treaty has played an essential role in the decisions of countries such as South Africa, Brazil, Argentina, and South Korea all allies of the United States—to stop pursuing their own nuclear weapons programs. But if we allow India to build nuclear weapons and enjoy civilian nuclear cooperation, will other U.S. friends and other countries in the future follow India’s lead and demand the same? If we argue that the decision about India was based on trust, how on Earth will we be able to argue otherwise with these allies? They will accuse us rightly of having a double standard. I think we can all agree that the fewer the countries with nuclear weapons the better for U.S. national security, even if those aspiring countries are friendly toward the United States.

President Jimmy Carter said in March that “there is no doubt that condoning avoidance of the NPT encourages the spread of nuclear weaponry. Japan, Brazil, Indonesia, South Africa, Argentina and many other technologically advanced nations have chosen to abide by the NPT to gain access to foreign nuclear technology. Why should they adhere to self-restraint if India rejects the same terms.”

And what will happen to the international supply of material to India if it does test another weapon? While I am reasonably confident that the United States would terminate supplying nuclear materials and technology to India, there is a question whether the international regime particularly the Nuclear Suppliers Group would cease cooperation. Once the door to cooperation is opened to India, it may be difficult to get other countries to agree to shut it again. The Indian press has suggested that if India tests

again it would likely lose the United States as a supplier but would retain access to uranium from other sources. In fact, Indian Prime Minister Singh told his Parliament in August that if there were a disruption of uranium supplies to India, such as in result of India testing another device, that “the United States and India would jointly convene a group of friendly supplier countries, Russia, France and the United Kingdom, aimed at restoring fuel supplies to India.” This certainly should raise alarm bells. I know Senator OBAMA has tried to address that problem with his amendment to the Senate bill, but all should be asking whether we should open the international spigot if we are uncertain about whether we can shut it off.

Much has been made of the foreign policy benefit to America of this agreement, but I reject fully—the notion that America’s relationship with India or the Indian American community—can or should be defined by this vote.

The United States and India have a multitude of ties, which are growing ever closer, ever stronger. In the last decade we have seen a dramatic improvement in bilateral relations.

India and America are the two largest democracies in the world. We share deeply held, common values, including respect for human rights, the rule of law, promoting peace, and prosperity in the world.

My family and I have long had an interest in India. My brothers—John and Bobby visited in 1951, and I am a friend of India. I work closely with the Indian-American community to address hate crimes, immigration, and other issues that affect their daily lives.

President Kennedy was right when he characterized India as a “great and vital hope of democracy in Asia.” He rightfully exclaimed that “no thoughtful citizen” could fail to recognize that India was a great and vital hope of democracy in Asia.

Today, India is the world’s largest democracy and soon will be the world’s largest country. It has one of the fastest growing economies and plays a leading role in global affairs.

The United States and India are seeking to improve trade and investment ties. We are cooperating in key areas such as agriculture, technology, energy, and the environment. India’s green revolution came from America and proved essential to ending massive starvation in India. Today, our countries are cooperating on the next green revolution, to increase agricultural productivity and to help the environment.

Defense cooperation is increasing. Our militaries are conducting more joint exercises, India is purchasing more U.S. counterterrorism and defense equipment, and in June 2005, the United States and India signed a 10-year defense pact.

India, in recent years, has been the leader in sending students to study in the United States. Cultural links—

whether food, movies, music or literature—are growing, too.

After September 11, the United States cooperated with India in dealing with international terrorism threats.

We are also working closely with India on public health threats, including HIV/AIDS and avian influenza.

Our relationship is strong today and will continue to grow. These ties can and should continue to grow regardless of this agreement because it is in the interests of both of our countries.

But we need to be realistic about the foreign policy benefits of this agreement.

Naturally, we want the Indian Government to work with the United States to advance our foreign policy objectives. But we need to be realistic enough to know that India will follow a foreign policy that suits its interest. We should not and cannot expect India to pursue a policy that diverges from its national interests or not to pursue a policy that is in its national interests.

Fortunately, India’s national interests converge with ours on the vital national security issues. Neither country wants to see Iran acquire nuclear weapons and both are profoundly concerned by the terrorist threats. The tragic bombing in Mumbai in July where more than 200 people were killed by terrorists underscored to Indians that terrorism is a real and present danger.

But we would be fooling ourselves if we thought that concluding a nuclear cooperative agreement with India will make it adopt policies regarding China, Iran, or others in the region or the world that are contrary to its national interest.

Conversely, not concluding an agreement will not mean that India will forsake its national interests to spite the United States. India will not confront China or Iran or any other country merely because the United States asks it to do so. India will do so only if it is in India’s national interests. This is independent of whether or not there is nuclear cooperation in place.

Further, many have suggested that the U.S. nuclear industry will benefit from this agreement with increased reactor sales to India. However, this is not the case. Neither the United States nor India has ratified an international agreement to limit the civil liability for nuclear reactors.

Until both nations agree to limit the liability, the U.S. nuclear industry will be hesitant to sell reactors to India. However, France and Russia have no such hesitations. Both have state-owned nuclear industries, so it is much less likely that victims of a nuclear reactor failure would be able to successfully sue for damages.

As we have seen at Three Mile Island, Chernobyl, and Bhopal, the liability exposure for such accidents can be overwhelming, resulting in thousands of deaths and radiation exposure for millions of people. Understandably, the U.S. nuclear industry is reluctant to

sell reactors to another country until their liability for such an accident is limited.

If we support this agreement without accompanying limitations on liability, we open the door for the French and the Russians to sell nuclear reactors to India but not for our own industry.

I also do not believe this is an issue the Congress should be voting on now.

President Bush is asking us to trust him that the risks of this agreement will not materialize and that additional benefits will follow—especially that India will cease fissile material production as a result of a new treaty.

But with so many details unresolved and much up in the air, I see a vote for this legislation, which will permanently change U.S. law, as giving the administration a blank check in concluding the negotiations with India on a nuclear cooperation agreement and with the terms of safeguard agreements with the International Atomic Energy Agency and revisions to the Nuclear Suppliers Group's guidelines.

Nuclear nonproliferation is too important to our national security to take unnecessary risks. We should wait until the whole package has been negotiated and until we have better answers to the questions I have raised about the implications of this agreement before we take this step; for once we take the step of carving up the international nonproliferation regime, it is no easy matter to return if we find out we have erred. This genie cannot be put back in the bottle.

I am particularly concerned that unpleasant answers will come out after we have voted on the legislation. In an action that was eerily reminiscent of the White House's decision to withhold until after the vote on the Iraq war North Korea's admission about its nuclear weapons program, the State Department delayed a report on proliferation with Iran until after the House had already approved this agreement. It turned out that there were two Indian companies on that report. Further, the administration kept quiet on Pakistan's constructing a nuclear reactor that could be used in a regional arms race, making India more likely to ramp up its production of fissile material, using the domestic production freed up by this agreement. And, as we learned this week, Ambassador Negroponte has not yet provided answers to the Foreign Relations Committee's questions on India's nonproliferation activities.

We have the time and we have the responsibility to get this right. Let's be sure of what we are getting ourselves into.

If it can be shown with enough confidence that India will take steps to become a full-fledged member of the nonproliferation community and has agreed to cut off production of fissile material, then I would certainly vote in favor of the cooperation agreement. Until then, I will be reserving my vote, looking for answers, and waiting to see the final agreement.

Mr. REED. Mr. President, today the Senate is undertaking an important debate on the India Agreement for Civil Nuclear Cooperation.

On July 18, 2005, President Bush and Indian Prime Minister Manmohan Singh signed an agreement to resume full civilian nuclear cooperation for the first time since India conducted its initial nuclear test in 1974. Such an agreement will require changes to U.S. law and accommodations with the international community.

The Atomic Energy Act of 1954 assures the proper management of source, special nuclear, and byproduct material. Several sections of the AEA are at issue in this agreement, so I would like to take a moment to explain the pertinent provisions.

Section 123 of the AEA limits the ability of the United States to enter into agreements with nonweapons states unless the agreement meets a minimum of nine criteria, including a requirement that the recipient country has in place an agreement with the International Atomic Energy Agency, IAEA, to safeguard in perpetuity nuclear material, equipment, and technology so that it will not be diverted for weapons use. This type of agreement is known as a "full-scope safeguards" agreement. A 123 Agreement is the precursor to any export license for the nuclear materials, equipment and technology.

Section 128 requires that any export license for nuclear materials, technology or equipment contain a requirement that the recipient nonnuclear weapons state maintain IAEA safeguards.

Section 129 of the AEA requires that any 123 Agreement or export license be terminated if the nonnuclear weapons state recipient detonates a nuclear explosive device, terminates, abrogates, or violates IAEA safeguards, or engages in activities that support development of a nuclear explosive device. Section 129 would also prohibit entrance into a section 123 Agreement with any nonnuclear weapons state that detonated a nuclear explosive device after 1978.

S. 3709, the bill we are considering today, establishes a mechanism whereby the President may submit a 123 Agreement for civil nuclear cooperation with India, a nonweapons state under the Nuclear Non-Proliferation Treaty, to Congress for approval. However, this bill would allow the President to waive certain requirements of section 123, section 128, and portions of section 129, as long as the President makes certain determinations that are set out in the bill.

India is the largest democracy in the world. Its economy is growing by 8 percent annually. Since the beginning of this century, United States-India relations on issues from trade to defense have been growing stronger each year. The United States also benefits from a large Indian-American population. Rhode Island is home to a vibrant In-

dian community who contribute greatly to the State. I believe that the United States should do all that it can to assist India and further strengthen the partnership between the two countries.

However, this agreement does raise significant concerns. I believe that proliferation of nuclear material is the greatest threat facing our country today. North Korea recently conducted its first nuclear test. Iran seems intent on pursuing a nuclear program. Even efforts to reduce the overall size of the U.S. and Russian nuclear weapons stockpiles have stalled. While there has been some small progress in reducing the number of deployed nuclear warheads there has been no progress in reducing the overall size of the U.S. nuclear weapons stockpile. There is great concern, therefore, that this agreement strikes a blow to what remains of the international nuclear nonproliferation regime.

I, too, would share that concern, if the Senate had adopted the bill the administration proposed. However, I believe that the Foreign Relations Committee, under the leadership of Senators LUGAR and BIDEN, who are certainly experts on these matters, have crafted a bill which, I believe, has sufficient safeguards. I think that they are trying to adapt the nonproliferation regime, not destroy it.

First, section 105 of this bill sets out a series of determinations the President must make in writing when he submits the 123 Agreement. I believe these determinations will both provide a reasonable equivalent of full-scope safeguards and address several other concerns with respect to the Indian nuclear program, including concerns that the agreement not facilitate or assist the Indian nuclear weapons program. For the most part, the determinations reflect what India has committed to do in the July 2005 joint statement.

Probably the most important of the determinations in section 105 is the fifth, which states, "India is working with the United States to conclude a multilateral treaty on the cessation of the production of fissile materials." This determination breathes new life into efforts to achieve a Fissile Materials Cutoff Treaty, even driving the United States back to the negotiating table. Determination number 5 is the one single element in this bill that could prevent further growth in India's nuclear weapons stockpile and could lead to real reductions. In addition, this certification may also work to eliminate the impasse between India and Pakistan whereby neither wants to be the first to adopt a Fissile Material Cutoff Treaty.

Section 106 of S. 3709 would prohibit the export of equipment, materials and technologies related to uranium enrichment, spent nuclear fuel reprocessing, and the production of heavy water, unless the user is a multinational facility participating in IAEA approved reactor fuel program or the President

“determines that the export or reexport will not improve India’s ability to produce nuclear weapons or fissile material for military uses.” On several occasions administration witnesses clearly stated to the Foreign Relations Committee that the U.S. would not provide such technologies to India. As a result, it is not anticipated that the presidential exemption will be used.

Section 107 of the bill requires a program, which would include end-use monitoring conditions as appropriate, to maintain accountability with respect to nuclear materials, equipment, and technology sold, leased and exported, or re-exported to India. This provision would enhance confidence in India’s efforts to ensure separation of its civilian and military nuclear programs, facilities, materials and personnel and also further ensure U.S. compliance with Article I of the Nuclear Non-Proliferation Treaty.

S. 3709 also requires the President to provide the Senate Foreign Relations Committee and the House International Relations Committee with updated information regarding India’s compliance with nonproliferation commitments. Specifically, it would require the President to keep these committees informed of any material violation of India’s nuclear nonproliferation commitments, the construction of any nuclear facilities in India, any significant changes in India’s production of nuclear weapons or fissile materials, or changes in the purpose or status of India’s non-declared facilities. The bill also requires the President to submit an annual report on the implementation of civil nuclear commerce, India’s compliance with its nonproliferation commitments, and U.S. efforts and progress toward achieving India’s full participation in the Proliferation Security Initiative and adherence to the guidelines and policies of the Australia Group and the Wassenaar Arrangement.

It is important that this bill would waive section 129 applicability for any actions taken before July 18, 2005. If India detonated a nuclear device after the date of enactment the waiver authority would cease to be effective and the exports would be prohibited.

Another vitally important provision of S. 3709 is that it follows current law and requires Congress to have a vote to approve any final 123 Agreement. The House bill also has an approval process, but it is not clear if that process requires a vote. The administration had proposed that a 123 Agreement with India would only require congressional notification and a waiting period.

Because of the provisions I have just discussed, I believe I can support this bill. I would also note that passage of this bill is simply the first step on a long road. If this bill passes the Senate, it must be conferred with the House bill, which has different provisions. If the conference report comes back with the Senate provisions weakened, or absent, I may be obligated to vote against that report.

Much more important is the substance of the 123 statement the President ultimately submits. I understand that this is an attempt to adapt the nonproliferation regime to a changing world. I will carefully examine any 123 Agreement to ensure that it adequately addresses vital proliferation concerns.

But at this first step, I have hope that this agreement will lead to greater cooperation on nonproliferation rather than less. With that hope, I will support S. 3709.

Mr. ALEXANDER. Mr. President, I am here to support the Lugar-Biden legislation that would implement changes in law necessary to secure our Nation’s civil-nuclear agreement with India.

This is very important to our future for two reasons: No. 1, India is one of the great powers of the 21st century, and this agreement represents an important step toward a new strategic partnership between our two countries; and No. 2, nuclear power is a source of clean energy that is good for us, and it is good for India.

As we look at the beginning of this new century, we have witnessed the emergence of three great powers or influences in the world—three major shifts that will help define the many years to come.

One is the rise of China. One is the emergence of a new political Islam. And the third is the arrival of India as a great power.

I asked Secretary Rice about these three new forces shaping the coming century at the Foreign Relations Committee hearing on the United States-India Civil Nuclear Agreement, and she agreed with my assessment.

And if you look at those three emerging forces, one presents the greatest opportunity for us to be a partner, and that one is India: India, the largest democracy in the world; India, where English is an official language; India, where the legal system, like ours, is descended from that of the British; and India, where a diverse ethnic and religious population has joined together to form one nation with a democratic government. India.

I was fortunate to travel to India earlier this year with a group of Senators led by Senator ENZI. We went to look at what India is doing to improve its economic standing by improving its brainpower through better education and research and an emphasis on science and technology. And we saw a country that is rapidly advancing.

Both our President and this Congress, in a bipartisan fashion, are showing real vision by recognizing that in this new century there may be no more important two-country relationship than the one between the United States and India.

And we share an important strategic interest: we are facing the same sort of energy and environmental issues. India’s needs are even more acute.

When I was there a few months ago, I was told that India hopes to bring on-

line 50,000 MW over the next 10 years in order to meet demand.

That is an incredible figure. If each power plant has a capacity of 500 MW, that is 100 new power plants. And they are going to build them with us or without us.

The question for us is: What kind of power plants will they build? From an environmental perspective, the only technology that is ready to go, today, to provide large amounts of reliable power without emitting noxious gases into the air is nuclear power.

As new studies are emerging that India’s air pollution and China’s air pollution is also our air pollution because air pollution both deposits locally and moves around the globe and that their greenhouse gases cause just as much global warming as our greenhouse gases, then it is in our interest for India to build nuclear power plants rather than more dirty coal power plants that emit sulfur and nitrogen and mercury and carbon.

Seventy-two percent of India’s electricity needs are currently provided by coal-burning plants. Gas provides 12 percent; oil, 2 percent; nuclear, 3 percent; hydro, 10 percent, and renewables, 1 percent.

This agreement won’t radically shift those numbers overnight, but each new nuclear powerplant is a powerplant that is not emitting noxious gases into the air. It is one more powerplant that is not putting out sulfur or nitrogen or mercury or even carbon.

So, Mr. President, before us is legislation to implement the United States-India Civil Nuclear Agreement. This is not an agreement about nuclear weapons—it is about cooperation for nuclear power. This is an agreement that puts us on the path to a new strategic partnership with India—one of the three great rising forces in this new century. And this is an agreement that meets energy needs while being good for the environment.

I am glad that we have taken this matter up in a bipartisan manner and look forward to its passage today.

Mrs. CLINTON. Mr. President, today, the Senate has begun debate on S. 3709, the United States-India Peaceful Atomic Energy Cooperation Act, which will help pave the way for our Nation to assist India in fulfilling its energy needs. I intend to vote in support of this legislation.

The United States and India are bound together by deep mutual respect and our common efforts to work towards a democratic, free, and secure world. As cochair of the Senate India Caucus, I have sought to strengthen the ties that bind our two nations.

The legislation that emerged from the Senate Foreign Relations Committee is a significant improvement over the implementing legislation put forward by the administration in March. The administration’s initial proposal sought to undercut Congressional authority by asking us to effectively approve an agreement before it

had even been negotiated with India and before India had reached its nuclear safeguards agreement with the International Atomic Energy Agency, IAEA.

I carefully followed the Senate Foreign Relations Committee's consideration of this agreement. Senator RICHARD LUGAR, the Foreign Relations Committee chairman, and Senator JOSEPH BIDEN, the Foreign Relations Committee ranking member, are to be commended for the seriousness with which they exercised their jurisdiction over this legislation. Because of the efforts of Chairman LUGAR and Ranking Member BIDEN, the bill before us today is much improved. This legislation not only retains congressional prerogatives, but it also ensures that Congress will not have to vote to approve a final agreement until every single nation in the Nuclear Suppliers Group, NSG, the global regime given the charge for ensuring the responsible trade of nuclear technology, has agreed to permit the transfer of peaceful nuclear technology to India. By working through the NSG, we will help strengthen both that group, as well as the greater international nonproliferation regime that is center stage as we address the threats posed by the nuclear weapons programs of Iran and North Korea.

As India continues to grow stronger and to shoulder more of the responsibilities that come with being a leading nation in the world, we must continue to work towards greater cooperation with our Indian friends to deal with our common challenges in security, energy, economics, and health. I hope that this agreement is just one step on that journey that our countries, and our people, are taking together.

Mr. DODD. Mr. President, I rise today in full support of S. 3709. The passage of this bill and the ultimate conclusion of the U.S.-India nuclear agreement will be instrumental in bringing our countries closer together after decades of estrangement. This outcome is not just desirable but essential for U.S. national interests.

It is hard to overemphasize the importance of India's role in the world today. Not only is India one of the most populous countries and fastest growing economies in the world, it is also the world's largest democracy that has long demonstrated a commitment to pluralism and rule of law and a rich intellectual and civilization heritage.

I applaud the efforts of both the Clinton and Bush administration in strengthening our ties with India. Their efforts reflect the bipartisan spirit with which America extends its hand of friendship to India and the importance that it places in getting this relationship right.

The U.S.-India nuclear deal significantly benefits both our countries. It will help India meet its growing energy needs, fueling its economic growth and reducing the global demand and cost of fossil fuels. It will enhance U.S.-Indian

technological and commercial cooperation with significant dividends for U.S. companies. And it will bolster our strategic partnership with India in Asia and beyond.

It also opens the window for greater oversight over India's civil nuclear program, drawing an important non-signatory to the Nonproliferation Treaty into the broader nonproliferation system. This is a positive step for the U.S. in controlling the spread of nuclear materials and weapons and gaining an important ally in that fight.

But the flip side of this coin is that we are doing business with a non-nuclear weapon state as defined by the NPT that does not have full-scope safeguards.

In doing so, the U.S. has overstepped domestic and international non-proliferation laws and norms. It has sent a signal that countries can pursue and test nuclear weapons, as India did in 1998, and wear out U.S. opposition. And it may trigger a low-level arms race between India and Pakistan as India's uranium reserves are freed up for diversion to its weapons program.

Moreover, at a time when we are trying to roll back North Korea and Iran's nuclear program, cutting a deal with India suggests that if you are on America's side, you can keep your nuclear weapons. Such double standards are detrimental to America's interests and image.

What we ultimately need is not a country-specific approach to civil nuclear cooperation but a criteria-specific one. India has agreed to meet some of these criteria but not all. Its nonproliferation record is infinitely better than that of its neighbors, but far from perfect.

For now, the bill that is before the Senate carves out an exception for India. As I said earlier, I will vote for this bill because I think our relationship with India is critical.

It is also important to highlight what should be one vital outgrowth of this relationship: halting the global production of fissile material that can be used in a nuclear device.

S. 3709 calls for U.S.-Indian cooperation in pursuit of a multilateral fissile material cutoff treaty. However, the reality is that negotiations on such a treaty at the Geneva Conference on Disarmament have long been at a standstill due to many factors. These include linkages that countries have imposed with issues such as the militarization of space.

The proliferation dangers of increased fissile material stockpiles are well understood. Yet the current approach has failed to stop production.

That is why the United States needs to sit down with India and the other key handful of countries that have produced and are producing fissile material, and make a hard push for an interim non-discriminatory moratorium on fissile material production that is applicable to this grouping of states. This moratorium would remain in ef-

fect pending the entry into force of a multilateral treaty.

The advantage of this new format is that it allows for a smaller, more relevant grouping with a singular agenda where the U.S. can immediately introduce proposals it has already drafted for discussion.

If we are to seriously address the nuclear challenges we face today, we need to break the deadlock in Geneva, think outside the box and focus on this issue like a laser beam. We simply cannot have countries churning out fissile material because it increases the chances of it falling into the hands of terrorists and the buildup of nuclear arsenals.

In this bill, the Senate calls for the President to make several determinations on whether India has taken certain steps before we can proceed with an agreement. The Senate must also set certain benchmarks for our own government and ensure that it is upholding its responsibilities as a global leader and a nuclear weapon state.

I can think of no better way of doing this than calling for fresh and meaningful negotiations on halting fissile material production. Moving in this direction will strengthen the U.S.-India nuclear deal and make it a catalyst for positive change in the nonproliferation system.

In the end, the goal should be a strong U.S. India relationship and a nuclear deal that provides momentum toward strengthening the nuclear non-proliferation system.

Mr. KERRY. Mr. President, last year President Bush and Indian Prime Minister Manmohan Singh ushered in a new era of cooperation between the United States and India on civilian nuclear energy. President Bush promised to seek the necessary changes in U.S. laws and policies to allow full cooperation and commerce in this area. In return, Prime Minister Singh has committed India to specific steps strengthening its adherence to various elements of the global nonproliferation regime. This agreement marks a historic milestone for U.S. relations with India, one of our most important friends, a natural ally, and a country that can be a close partner on a number of key issues including nuclear nonproliferation.

The legislation pending before us today is critically important because it sets the framework for Congress to consider a formal peaceful nuclear cooperation agreement with India under section 123 of the Atomic Energy Act. The Foreign Relations Committee passed this bill with strong bipartisan support shortly before the July 4th recess, and I hope the full Senate will follow suit. By passing this legislation, we will not only move the United States and India one step closer to energy cooperation but also send a clear message that a strong United States-India relationship is vital to both of our nations.

More and more, this bond is built on the bedrock of natural affinities—on

shared interests and shared values. And it is no wonder—our two countries are natural partners. We should be partners in the war on terror, in the spread of democracy, in religious tolerance, in advancing technology, and in bringing stability and balance to Asia. In the post-9/11 world, we share interests and we share threats. India after all sees more terror attacks every year than any other country.

For a long time, South Asians and Americans have been extremely close—thanks to so many families split between the two countries and such a vibrant Indian-American community here at home. But now at last our Governments are finally catching up to our people and bringing our countries together.

I have long believed that it is in the interest of the United States and India to expand our strategic relationship. In 1994 I took a trade delegation from my home State of Massachusetts to India. It was clear to me that Cold War tensions had created a gulf between our nations that didn't serve either country. I believed then that India could and should be a critical American partner in South Asia. My subsequent trips in 1999 and again earlier this year have only reinforced that view.

With its strategic location in South Asia and its experience in maintaining a stable and religiously diverse democracy—India has nearly 150 Muslim citizens—India can be an important partner on a range of issues, from combating the threat of terrorism and proliferation to promoting democracy and regional security. Cooperating on the civilian nuclear front can help move this essential partnership forward.

I know from my discussions in India this past January with Prime Minister Singh and his National Security Adviser that they want our help in meeting India's energy needs. This is crucial if India is to continue to expand its economy and increase its stature as a major regional and global power. And they see this nuclear initiative, as we do, as an important foundation for our bilateral relationship.

And everywhere I went, I kept hearing from political leaders and businessmen just how important they consider American investment in India's economic future—and not just in technology. India wants our help. They see this nuclear initiative as a cornerstone of economic development and sensible energy policy, and I see it as a great chance for our countries to work together.

Civil nuclear cooperation is in India's interest, but it is also in ours. That is why during my trip to India in January I was one of the first Senators to express my support for the civil nuclear initiative in principle. Since then, I have been committed to working with my colleagues to find a way to make this deal work for all our interests. I am pleased that we have accomplished that with the legislation approved by the committee.

Obviously, there are ramifications for our nonproliferation efforts because for the first time we are agreeing to engage in nuclear cooperation with a country that has a nuclear weapons program but is not a party to the Nuclear Non-proliferation Treaty or bound by its obligations. We cannot gloss over the fact that this is an unprecedented step. But it is not one taken lightly. I am convinced that this exception for India makes sense, despite its real costs, given India's record as a trustworthy steward of nuclear materials and technologies.

India can be an important ally in our global nonproliferation efforts, as demonstrated by their voting with us in the International Atomic Energy Agency to try to curb Iran's nuclear ambitions. And, of course, India is critical to any regional effort to cap fissile material production. India has made a number of positive commitments with respect to its nuclear program, such as separating its civil and military facilities, putting more of its civilian facilities under IAEA safeguards, and working with the United States to achieve a multilateral fissile material cutoff treaty.

I believe this bill we are considering today will encourage India to fulfill these commitments while still allowing for timely consideration by Congress of the bilateral nuclear cooperation agreement—the so-called section 123 agreement—when it is concluded by Indian and American negotiators. As I said when Secretary Rice testified before the committee on this deal in early April, it is critical for us to see the safeguards agreement that India reaches with the IAEA before taking action on the section 123 agreement between us and India. This bill ensures that we will. I am pleased that it includes my language clarifying that India's safeguards agreement with the IAEA must provide for safeguards "in perpetuity," as India has said it would.

Arthur Vandenberg, a Republican Senator from Michigan, used to say that partisan politics ought to stop at the water's edge. Crafting this legislation was not easy, but I am pleased to say that we have thus far met Vandenberg's challenge. And we must continue to do so.

To reach agreement, we had to balance a number of critically important interests: building a strong and comprehensive relationship with India, furthering our global nonproliferation efforts, and protecting congressional prerogatives to act on nuclear cooperation agreements between the United States and other countries. I recognize that there are aspects of this legislation that some on both sides of the debate wish had come out differently, but on the whole, I believe the legislation the committee has sent to the Senate is a good-faith—and ultimately successful—effort to meet those needs.

One of the most important aspects of the balance in the bill before us is the requirement that Congress review the

formal peaceful nuclear cooperation agreement with India, which must be submitted under section 123 of the Atomic Energy Act. The bill passed by the House includes procedures which would deny Congress a full right of review. Such an approach would undermine the balance we have struck in this bill. I believe it is essential that the Senate conferees insist upon the procedures in the Senate bill for the consideration of the 123 agreement. The Senate bill is a good bill, and our goal should be to enact as much of it as possible.

We have taken an important step forward for one of our most promising and important relationships in the years to come.

Mr. ROCKEFELLER. Mr. President, I rise to express my strong support for this bill.

The proposed agreement will mark a momentous change in U.S. and global nuclear policy, in my view for the better. It will give India due recognition as a global power, and it will deepen the bilateral commercial and strategic relationship that the United States enjoys with the world's largest democracy.

Beyond these commercial and strategic benefits, this deal will bring India into the mainstream of the global nonproliferation system for the first time in its nuclear history. This bill includes a number of nonproliferation-related provisions, including a requirement that the U.S.-India agreement will not enter into force unless and until India and the International Atomic Energy Agency negotiate and conclude an inspection agreement. It also includes a requirement that the U.S.-India agreement will not enter into force unless and until India and the IAEA negotiate and conclude a safeguards agreement. Further, it requires that the U.S.-India agreement will not enter into force unless and until the Nuclear Suppliers Group reaches consensus on nuclear trade with India and bans U.S. export of uranium enrichment and reprocessing technologies under any U.S.-India agreement.

This agreement will benefit the economic, strategic, and security interests of the United States, and I offer my strong support for it and congratulate my colleagues, Senator LUGAR and Senator BIDEN, for completing this important legislation.

Mr. MCCONNELL. Mr. President, I rise in support of S. 3709, the United States-India, Peaceful Atomic Energy Cooperation Act, legislation which will permit the United States to export nuclear material to India for peaceful purposes.

I applaud President George W. Bush and Secretary of State Condoleezza Rice for taking this bold, new and welcome approach to America's bilateral relations with India. For too long our relations with India and Pakistan have resembled a zero-sum game—by helping one nation, we have been perceived as hurting the other.

This agreement helps to liberate U.S. policy from this false choice; the United States can and should enjoy positive relations with both nations. This bill will broaden and deepen America's emerging strategic partnership with India.

This legislation is also part of a broader framework for the United States and India to work together on many issues, including energy, defense cooperation, anti-terrorism efforts and the promotion of democracy. S. 3709 will strengthen the world's security by expanding the reach of international non-proliferation efforts, and will increase transparency about India's civilian nuclear program.

In addition, this bill will boost America's energy security by helping India meet its growing energy needs with nuclear power. With a population over one billion, India has greatly increased the demand for energy, helping to raise energy prices on the world market. The more power India can get from other sources, the less Americans will have to pay for energy here at home.

This bill will also foster economic growth in America by opening up new opportunities for American companies to do business in India's civilian nuclear sector. By passing this legislation, my colleagues will help create new jobs for Americans and new markets for American firms.

I want to commend my good friend from the neighboring State of Indiana, Senator LUGAR, for his sponsorship of this bill and his successful shepherding of it through the Senate.

Mr. President, improving U.S.-Indian ties is long overdue. After all, America and India are the worlds two largest democracies. As President Bush continues to champion the spread of democracy abroad, it is entirely fitting that our two countries should continue to strengthen our strategic partnership, as a model for the world of what democracies can accomplish when they work together in peace.

The PRESIDING OFFICER. The Senator from Indiana is recognized.

Mr. LUGAR. Mr. President, the unanimous consent order provides for 1 minute on each side. I will forego my minute, but I would like to yield to the distinguished leader, who is here. He wants to make a comment.

Mr. FRIST. Mr. President, just for the information of my colleagues, this will be the last rollcall vote tonight. The plans will be on Monday, December 4, to be back in session, and in all likelihood we will not be voting until the late afternoon of December 5. Everybody stay posted. We will keep you apprised of the future plans.

Mr. LUGAR. Mr. President, we relinquish all time.

The PRESIDING OFFICER. If there is no further debate, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading and was read the third time.

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of H.R. 5682, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 5682) to exempt from certain requirements of the Atomic Energy Act of 1954 a proposed nuclear agreement for cooperation with India.

The PRESIDING OFFICER. Under the previous order, all after the enacting clause is stricken, and the text of S. 3709, as amended, is inserted in lieu thereof.

The question is on third reading of the bill.

The bill (H.R. 5682), as amended, was ordered to a third reading and was read the third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall it pass?

The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent: the Senator from Oklahoma (Mr. INHOFE) and the Senator from Wyoming (Mr. THOMAS).

Mr. DURBIN. I announce that the Senator from Vermont (Mr. JEFFORDS) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 85, nays 12, as follows:

[Rollcall Vote No. 270 Leg.]

YEAS—85

Alexander	Durbin	Murray
Allard	Ensign	Nelson (FL)
Allen	Enzi	Nelson (NE)
Baucus	Feinstein	Obama
Bayh	Frist	Pryor
Bennett	Graham	Reed
Biden	Grassley	Reid
Bond	Gregg	Roberts
Brownback	Hagel	Rockefeller
Bunning	Hatch	Salazar
Burns	Hutchison	Santorum
Burr	Inouye	Sarbanes
Cantwell	Isakson	Schumer
Carper	Kerry	Sessions
Chafee	Kohl	Shelby
Chambliss	Kyl	Smith
Clinton	Landrieu	Snowe
Coburn	Lautenberg	Specter
Cochran	Levin	Stabenow
Coleman	Lieberman	Stevens
Collins	Lincoln	Sununu
Cornyn	Lott	Talent
Craig	Lugar	Thune
Crapo	Martinez	Vitter
DeMint	McCain	Voinovich
DeWine	McConnell	Warner
Dodd	Menendez	Wyden
Dole	Mikulski	
Domenici	Murkowski	

NAYS—12

Akaka	Conrad	Harkin
Bingaman	Dayton	Johnson
Boxer	Dorgan	Kennedy
Byrd	Feingold	Leahy

NOT VOTING—3

Inhofe	Jeffords	Thomas
--------	----------	--------

The bill (H.R. 5682), as amended, was passed, as follows:

H.R. 5682

Resolved, That the bill from the House of Representatives (H.R. 5682) entitled "An Act to exempt from certain requirements of the

Atomic Energy Act of 1954 a proposed nuclear agreement for cooperation with India.", do pass with the following amendment:

Strike out all after the enacting clause and insert:

TITLE I—UNITED STATES-INDIA PEACEFUL ATOMIC ENERGY COOPERATION

SECTION 101. SHORT TITLE.

This title may be cited as the "United States-India Peaceful Atomic Energy Cooperation Act".

SEC. 102. SENSE OF CONGRESS.

It is the sense of Congress that—

(1) strong bilateral relations with India are in the national interest of the United States;

(2) the United States and India share common democratic values and the potential for increasing and sustained economic engagement;

(3) commerce in civil nuclear energy with India by the United States and other countries has the potential to benefit the people of all countries;

(4) such commerce also represents a significant change in United States policy regarding commerce with countries not parties to the Nuclear Non-Proliferation Treaty, which remains the foundation of the international non-proliferation regime;

(5) any commerce in civil nuclear energy with India by the United States and other countries must be achieved in a manner that minimizes the risk of nuclear proliferation or regional arms races and maximizes India's adherence to international non-proliferation regimes, including, in particular, the Guidelines of the Nuclear Suppliers Group (NSG); and

(6) the United States should not seek to facilitate or encourage the continuation of nuclear exports to India by any other party if such exports are terminated under United States law.

SEC. 103. DECLARATION OF POLICY CONCERNING UNITED STATES-INDIA PEACEFUL ATOMIC ENERGY COOPERATION.

It shall be the policy of the United States with respect to any peaceful atomic energy cooperation between the United States and India—

(1) to achieve as quickly as possible a cessation of the production by India and Pakistan of fissile materials for nuclear weapons and other nuclear explosive devices;

(2) to achieve as quickly as possible the Government of India's adherence to, and cooperation in, the full range of international non-proliferation regimes and activities, including India's—

(A) full participation in the Proliferation Security Initiative;

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

(C) public announcement of its decision to conform its export control laws, regulations, and policies with the Australia Group and with the Guidelines, Procedures, Criteria, and Controls List of the Wassenaar Arrangement; and

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

(3) to ensure that India remains in full compliance with its non-proliferation, arms control, and disarmament agreements, obligations, and commitments;

(4) to ensure that any safeguards agreement or Additional Protocol thereto to which India is a party with the International Atomic Energy Agency (IAEA) can reliably safeguard any export or reexport to India of any nuclear materials and equipment;

(5) to meet the requirements set forth in subsections a.(1) and a.(3)–a.(9) of section 123 of the Atomic Energy Act of 1954 (42 U.S.C. 2153);

(6) to act in a manner fully consistent with the Guidelines for Nuclear Transfers and the Guidelines for Transfers of Nuclear-Related Dual-Use Equipment, Materials, Software and Related Technology developed by the multilateral Nuclear Suppliers Group and the rules and practices regarding NSG decision-making;

(7) given the special sensitivity of equipment and technologies related to the enrichment of uranium, the reprocessing of spent nuclear fuel, and the production of heavy water, to work with members of the Nuclear Suppliers Group, individually and collectively, to further restrict the transfers of such equipment and technologies, including to India;

(8) to maintain the fullest possible international support for, adherence to, and compliance with the Nuclear Non-Proliferation Treaty; and

(9) that exports of nuclear fuel to India should not contribute to, or in any way encourage, increases in the production by India of fissile material for non-civilian purposes.

SEC. 104. WAIVERS FOR COOPERATION WITH INDIA.

(a) **WAIVER AUTHORITY.**—If the President submits a determination under section 105 to the appropriate congressional committees and makes available to such committees the text of the agreement described in paragraph (3) of such section, the President may—

(1) subject to subsection (b), exempt a proposed agreement for cooperation with India arranged pursuant to section 123 of the Atomic Energy Act of 1954 (42 U.S.C. 2153) from the requirement of subsection a.(2) of such section;

(2) waive the application of section 128 of the Atomic Energy Act of 1954 (42 U.S.C. 2157) with respect to exports to India; and

(3) waive the application of any sanction with respect to India under—

(A) section 129 a.(1)(D) of the Atomic Energy Act of 1954 (42 U.S.C. 2158(a)(1)(D)); and

(B) section 129 of such Act (42 U.S.C. 2158) regarding any actions that occurred before July 18, 2005.

(b) **JOINT RESOLUTION OF APPROVAL REQUIREMENT.**—An agreement for cooperation exempted by the President pursuant to subsection (a)(1) shall be subject to the second proviso in subsection d. of section 123 of the Atomic Energy Act of 1954 (42 U.S.C. 2153(d)) applicable to agreements exempted by the President pursuant to subsection (a) of such section.

SEC. 105. DETERMINATION REGARDING UNITED STATES-INDIA PEACEFUL ATOMIC ENERGY COOPERATION.

The determination referred to in section 104 is a written determination by the President, which shall be accompanied by a report to the appropriate congressional committees, that—

(1) India has provided to the IAEA and the United States a credible plan to separate its civil nuclear facilities, materials, and programs from its military facilities, materials, and programs;

(2) India has filed a complete declaration regarding its civil nuclear facilities and materials with the IAEA;

(3) an agreement between India and the IAEA requiring the application of safeguards in perpetuity in accordance with IAEA standards, principles, and practices to civil nuclear facilities, programs, and materials described in paragraph (2) has entered into force;

(4) India and the IAEA are making substantial progress toward implementing an Additional Protocol;

(5) India is working with the United States to conclude a multilateral treaty on the cessation of the production of fissile materials for use in nuclear weapons or other nuclear explosive devices;

(6) India is supporting international efforts to prevent the spread of enrichment and reprocessing technology to any state that does not already possess full-scale, functioning enrichment or reprocessing plants;

(7) India has secured nuclear and other sensitive materials and technology through the application of comprehensive export control legislation and regulations, including through effective enforcement actions, and through harmonization of its control lists with, and adherence to, the guidelines of the Missile Technology Control Regime and the Nuclear Suppliers Group;

(8) India is fully and actively participating in United States and international efforts to dissuade, sanction, and contain Iran for its nuclear program consistent with United Nations Security Council resolutions; and

(9) the Nuclear Suppliers Group has decided to permit civil nuclear commerce with India pursuant to a decision taken by the Nuclear Suppliers Group that—

(A) was made by consensus; and

(B) does not permit nuclear commerce with any non-nuclear weapon state other than India that does not have IAEA safeguards on all nuclear materials and all peaceful nuclear activities within the territory of such state, under its jurisdiction, or carried out under its control anywhere.

SEC. 106. PROHIBITION ON CERTAIN EXPORTS AND REEXPORTS.

(a) **PROHIBITION.**—

(1) **NUCLEAR REGULATORY COMMISSION.**—Except as provided in subsection (b), the Nuclear Regulatory Commission may not authorize pursuant to part 110 of title 10, Code of Federal Regulations, licenses for the export or reexport to India of any equipment, materials, or technology related to the enrichment of uranium, the reprocessing of spent nuclear fuel, or the production of heavy water.

(2) **SECRETARY OF ENERGY.**—Except as provided in subsection (b), the Secretary of Energy may not authorize pursuant to part 810 of title 10, Code of Federal Regulations, licenses for the export or reexport to India of any equipment, materials, or technology to be used for the enrichment of uranium, the reprocessing of spent nuclear fuel, or the production of heavy water.

(b) **EXCEPTIONS.**—Exports or reexports otherwise prohibited under subsection (a) may be approved if—

(1) the end user—

(A) is a multinational facility participating in an IAEA-approved program to provide alternatives to national fuel cycle capabilities; or

(B) is a facility participating in, and the export or reexport is associated with, a bilateral or multinational program to develop a proliferation-resistant fuel cycle; and

(2) the President determines that the export or reexport will not improve India's ability to produce nuclear weapons or fissile material for military uses.

SEC. 107. END-USE MONITORING PROGRAM.

(a) **IN GENERAL.**—The President shall ensure that all appropriate measures are taken to maintain accountability with respect to nuclear materials, equipment, and technology sold, leased, exported, or reexported to India and to ensure United States compliance with Article I of the Nuclear Non-Proliferation Treaty.

(b) **MEASURES.**—The measures taken pursuant to subsection (a) shall include the following:

(1) Obtaining and implementing assurances and conditions pursuant to the export licensing authorities of the Nuclear Regulatory Commission and the Department of Commerce and the authorizing authorities of the Department of Energy, including, as appropriate, conditions regarding end-use monitoring.

(2) A detailed system of reporting and accounting for technology transfers, including any retransfers in India, authorized by the Department of Energy pursuant to section 57 b. of the Atomic Energy Act of 1954 (42 U.S.C. 2077(b)). Such system shall be capable of providing assurances that—

(A) the identified recipients of the nuclear technology are authorized to receive the nuclear technology;

(B) the nuclear technology identified for transfer will be used only for peaceful safeguarded nuclear activities and will not be used for any military or nuclear explosive purpose; and

(C) the nuclear technology identified for transfer will not be retransferred without the prior consent of the United States, and facili-

ties, equipment, or materials derived through the use of transferred technology will not be transferred without the prior consent of the United States.

(3) In the event the IAEA is unable to implement safeguards as required by an agreement between the United States and India arranged pursuant to section 123 of the Atomic Energy Act of 1954 (42 U.S.C. 2153), arrangements that conform with IAEA safeguards standards, principles, and practices that provide assurances equivalent to that intended to be secured by the system they replace, including—

(A) review in a timely fashion of the design of any equipment transferred pursuant to the agreement for cooperation, or of any facility that is to use, fabricate, process, or store any material so transferred or any special nuclear material used in or produced through the use of such material and equipment;

(B) maintenance and disclosure of records and of relevant reports for the purpose of assisting in ensuring accountability for material transferred pursuant to the agreement and any source or special nuclear material used in or produced through the use of any material and equipment so transferred; and

(C) access to places and data necessary to account for the material referred to in subparagraph (B) and to inspect any equipment or facility referred to in subparagraph (A).

(c) **IMPLEMENTATION.**—The measures described in subsection (b) shall be implemented to provide reasonable assurances that the recipient is complying with the relevant requirements, terms, and conditions of any licenses issued by the United States regarding such exports, including those relating to the use, retransfer, safe handling, secure transit, and storage of such exports.

SEC. 108. IMPLEMENTATION AND COMPLIANCE.

(a) **INFORMATION ON NUCLEAR ACTIVITIES OF INDIA.**—The President shall keep the appropriate congressional committees fully and currently informed of the facts and implications of any significant nuclear activities of India, including—

(1) any material non-compliance on the part of the Government of India with—

(A) the non-proliferation commitments undertaken in the Joint Statement of July 18, 2005, between the President of the United States and the Prime Minister of India;

(B) the separation plan presented in the national parliament of India on March 7, 2006, and in greater detail on May 11, 2006;

(C) a safeguards agreement between the Government of India and the IAEA;

(D) an Additional Protocol between the Government of India and the IAEA;

(E) a peaceful nuclear cooperation agreement between the Government of India and the United States Government pursuant to section 123 of the Atomic Energy Act of 1954 (42 U.S.C. 2153) or any subsequent arrangement under section 131 of such Act (42 U.S.C. 2160);

(F) the terms and conditions of any approved licenses; and

(G) United States laws and regulations regarding the export or reexport of nuclear material or dual-use material, equipment, or technology;

(2) the construction of a nuclear facility in India after the date of the enactment of this Act;

(3) significant changes in the production by India of nuclear weapons or in the types or amounts of fissile material produced; and

(4) changes in the purpose or operational status of any unsafeguarded nuclear fuel cycle activities in India.

(b) **IMPLEMENTATION AND COMPLIANCE REPORT.**—Not later than 180 days after the date on which an agreement between the Government of India and the United States Government pursuant to section 123 of the Atomic Energy Act of 1954 (42 U.S.C. 2153) enters into force, and annually thereafter, the President shall submit to

the appropriate congressional committees a report including—

(1) a description of any additional nuclear facilities and nuclear materials that the Government of India has placed or intends to place under IAEA safeguards;

(2) a comprehensive listing of—

(A) all licenses that have been approved by the Nuclear Regulatory Commission and the Secretary of Energy for exports and reexports to India under parts 110 and 810 of title 10, Code of Federal Regulations;

(B) any licenses approved by the Department of Commerce for the export or reexport to India of commodities, related technology, and software which are controlled for nuclear non-proliferation reasons on the Nuclear Referral List of the Commerce Control List maintained under part 774 of title 15, Code of Federal Regulations;

(C) any other United States authorizations for the export or reexport to India of nuclear materials and equipment; and

(D) with respect to each such license or other form of authorization described in subparagraphs (A), (B), and (C)—

(i) the number or other identifying information of each license or authorization;

(ii) the name or names of the authorized end user or end users;

(iii) the name of the site, facility, or location in India to which the export or reexport was made;

(iv) the terms and conditions included on such licenses and authorizations;

(v) any post-shipment verification procedures that will be applied to such exports or reexports; and

(vi) the term of validity of each such license or authorization;

(3) any significant nuclear commerce between India and other countries, including any such trade that—

(A) does not comply with applicable guidelines or decisions of the Nuclear Suppliers Group; or

(B) would not meet the standards applied to exports or reexports of such material, equipment, or technology of United States origin;

(4) either—

(A) a certification that India is in full compliance with the commitments and obligations contained in the agreements and other documents referenced in subparagraphs (A) through (F) of subsection (a)(1); or

(B) if the President cannot make such certification, an identification and assessment of all compliance issues arising with regard to the adherence by India to its commitments and obligations, including—

(i) the steps the United States Government has taken to remedy or otherwise respond to such compliance issues;

(ii) the responses of the Government of India to such steps; and

(iii) an assessment of the implications of any continued noncompliance, including whether nuclear commerce with India, if not already terminated under section 129 of the Atomic Energy Act of 1954 (42 U.S.C. 2158), remains in the national security interest of the United States;

(5) a detailed description of—

(A) United States efforts to promote national or regional progress by India and Pakistan in disclosing, securing, capping, and reducing their fissile material stockpiles, pending creation of a world-wide fissile material cut-off regime, including the institution of a Fissile Material Cut-off Treaty;

(B) the reactions of India and Pakistan to such efforts; and

(C) assistance that the United States is providing, or would be able to provide, to India and Pakistan to promote the objectives in subparagraph (A), consistent with its obligations under international law and existing agreements;

(6) an estimate of—

(A) the amount of uranium mined in India during the previous year;

(B) the amount of such uranium that has likely been used or allocated for the production of nuclear explosive devices; and

(C) the rate of production in India of—

(i) fissile material for nuclear explosive devices; and

(ii) nuclear explosive devices;

(7) an analysis as to whether imported uranium has affected the rate of production in India of nuclear explosive devices; and

(8) a detailed description of efforts and progress made toward the achievement of India's—

(A) full participation in the Proliferation Security Initiative;

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

(C) public announcement of its decision to conform its export control laws, regulations, and policies with the Australia Group and with the Guidelines, Procedures, Criteria, and Controls List of the Wassenaar Arrangement; and

(D) demonstration of satisfactory progress toward implementing the decision described in subparagraph (C).

(c) SUBMITTAL WITH OTHER ANNUAL REPORTS.—

(1) REPORT ON PROLIFERATION PREVENTION.—Each annual report submitted under subsection (b) after the initial report may be submitted together with the annual report on proliferation prevention required under section 601(a) of the Nuclear Non-Proliferation Act of 1978 (22 U.S.C. 3281(a)).

(2) REPORT ON PROGRESS TOWARD REGIONAL NON-PROLIFERATION.—The information required to be submitted under subsection (b)(5) after the initial report may be submitted together with the annual report on progress toward regional non-proliferation required under section 620F(c) of the Foreign Assistance Act of 1961 (22 U.S.C. 2376(c)).

(d) FORM.—Each report submitted under this section shall be submitted in unclassified form but may contain a classified annex.

SEC. 109. UNITED STATES COMPLIANCE WITH ITS NUCLEAR NON-PROLIFERATION TREATY OBLIGATIONS.

This title shall not be deemed to constitute authority for any action in violation of any obligation of the United States under the Nuclear Non-Proliferation Treaty.

SEC. 110. INOPERABILITY OF DETERMINATION AND WAIVERS.

A determination under section 105 and any waiver under section 104 shall cease to be effective if the President determines that India has detonated a nuclear explosive device after the date of the enactment of this Act.

SEC. 111. MTCR ADHERENT STATUS.

Congress finds that India is not an MTCR adherent for the purposes of Section 73 of the Arms Export Control Act (22 U.S.C. 2797b).

SEC. 112. TECHNICAL AMENDMENT.

Section 1112(c)(4) of the Arms Control and Nonproliferation Act of 1999 (title XI of the Admiral James W. Nance and Meg Donovan Foreign Relations Act, Fiscal Years 2000 and 2001 (as enacted into law by section 1000(a)(7) of Public Law 106-113 and contained in appendix G of that Act; 113 Stat. 1501A-486)) is amended—

(1) in subparagraph (B), by striking “and” after the semicolon at the end;

(2) by redesignating subparagraph (C) as subparagraph (D); and

(3) by inserting after subparagraph (B) the following new subparagraph:

“(C) so much of the reports required under section 108 of the United States-India Peaceful Atomic Energy Cooperation Act as relates to verification or compliance matters; and”.

SEC. 113. DEFINITIONS.

In this title:

(1) The term “Additional Protocol” means a protocol additional to a safeguards agreement with the IAEA, as negotiated between a country and the IAEA based on a Model Additional Protocol as set forth in IAEA information circular (INFCIRC) 540.

(2) The term “appropriate congressional committees” means the Committee on Foreign Rela-

tions of the Senate and the Committee on International Relations of the House of Representatives.

(3) The term “atomic energy” has the meaning given the term in section 11 c. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(c)).

(4) The term “dual-use material, equipment, or technology” means those items controlled by the Department of Commerce pursuant to section 309(c) of the Nuclear Nonproliferation Act of 1978.

(5) The term “IAEA safeguards” has the meaning given the term in section 830(3) of the Nuclear Proliferation Prevention Act of 1994 (22 U.S.C. 6305(3)).

(6) The term “nuclear materials and equipment” has the meaning given the term in section 4(5) of the Nuclear Nonproliferation Act of 1978 (22 U.S.C. 3203(3)).

(7) The term “Nuclear Non-Proliferation Treaty” means 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 (21 UST 483).

(8) The terms “nuclear weapon” and “nuclear explosive device” have the meaning given the term “nuclear explosive device” in section 830(4) of the Nuclear Proliferation Prevention Act of 1994 (22 U.S.C. 6305(4)).

(9) The terms “reprocessing” and “reprocess” refer to the separation of nuclear materials from fission products in spent nuclear fuel.

(10) The term “source material” has the meaning given the term in section 11 z. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(z)).

(11) The term “special nuclear material” has the meaning given the term in section 11 aa. of the Atomic Energy Act of 1954 (42 U.S.C. 2014(aa)).

(12) The term “unsafeguarded nuclear fuel-cycle activity” means research on, or development, design, manufacture, construction, operation, or maintenance of—

(A) any existing or future reactor, critical facility, conversion plant, fabrication plant, reprocessing plant, plant for the separation of isotopes of source or special fissionable material, or separate storage installation with respect to which there is no obligation to accept IAEA safeguards at the relevant reactor, facility, plant, or installation that contains source or special fissionable material; or

(B) any existing or future heavy water production plant with respect to which there is no obligation to accept IAEA safeguards on any nuclear material produced by or used in connection with any heavy water produced therefrom.

SEC. 114. UNITED STATES POLICY REGARDING THE PROVISION OF NUCLEAR POWER REACTOR FUEL RESERVE TO INDIA.

It is the policy of the United States that 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.

SEC. 115. UNITED STATES-INDIA SCIENTIFIC CO-OPERATIVE THREAT REDUCTION PROGRAM.

(a) ESTABLISHMENT.—The Secretary of Energy, acting through the Administrator of the National Nuclear Security Administration, shall establish a cooperative threat reduction program to pursue jointly with scientists from the United States and India a program to further common nonproliferation goals, including scientific research and development efforts related to nuclear nonproliferation, with an emphasis on nuclear safeguards (in this section referred to as the “program”).

(b) CONSULTATION.—The program shall be carried out in consultation with the Secretary of State and the Secretary of Defense.

(c) NATIONAL ACADEMIES RECOMMENDATIONS.—

(1) IN GENERAL.—The Secretary of Energy shall enter into an agreement with the National

Academies to develop recommendations for the implementation of the program.

(2) **RECOMMENDATIONS.**—The agreement entered into under paragraph (1) shall provide for the preparation by qualified individuals with relevant expertise and knowledge and the communication to the Secretary of Energy each fiscal year of—

(A) recommendations for research and related programs designed to overcome existing technological barriers to nuclear nonproliferation; and

(B) an assessment of whether activities and programs funded under this section are achieving the goals of the activities and programs.

(3) **PUBLIC AVAILABILITY.**—The recommendations and assessments prepared under this subsection shall be made publicly available.

(d) **CONSISTENCY WITH NUCLEAR NON-PROLIFERATION TREATY.**—All United States activities related to the program shall be consistent with United States obligations under the Nuclear Non-Proliferation Treaty.

(e) **AUTHORIZATION OF APPROPRIATIONS.**—There are authorized to be appropriated such sums as may be necessary to carry out this section for each of fiscal years 2007 through 2011.

TITLE II—UNITED STATES ADDITIONAL PROTOCOL IMPLEMENTATION

SEC. 201. SHORT TITLE.

This title may be cited as the “United States Additional Protocol Implementation Act”.

SEC. 202. FINDINGS.

Congress makes the following findings—

(1) The proliferation of nuclear weapons and other nuclear explosive devices poses a grave threat to the national security of the United States and its vital national interests.

(2) The Nuclear Non-Proliferation Treaty has proven critical to limiting such proliferation.

(3) For the Nuclear Non-Proliferation Treaty to be effective, each of the non-nuclear-weapon State Parties must conclude a comprehensive safeguards agreement with the IAEA, and such agreements must be honored and enforced.

(4) Recent events emphasize the urgency of strengthening the effectiveness and improving the efficiency of the safeguards system. This can best be accomplished by providing IAEA inspectors with more information about, and broader access to, nuclear activities within the territory of non-nuclear-weapon State Parties.

(5) The proposed scope of such expanded information and access has been negotiated by the member states of the IAEA in the form of a Model Additional Protocol to its existing safeguards agreements, and universal acceptance of Additional Protocols by non-nuclear weapons states is essential to enhancing the effectiveness of the Nuclear Non-Proliferation Treaty.

(6) On June 12, 1998, the United States, as a nuclear-weapon State Party, signed an Additional Protocol that is based on the Model Additional Protocol, but which also contains measures, consistent with its existing safeguards agreements with its members, that protect the right of the United States to exclude the application of IAEA safeguards to locations and activities with direct national security significance or to locations or information associated with such activities.

(7) Implementation of the Additional Protocol in the United States in a manner consistent with United States obligations under the Nuclear Non-Proliferation Treaty may encourage other parties to the Nuclear Non-Proliferation Treaty, especially non-nuclear-weapon State Parties, to conclude Additional Protocols and thereby strengthen the Nuclear Non-Proliferation Treaty safeguards system and help reduce the threat of nuclear proliferation, which is of direct and substantial benefit to the United States.

(8) Implementation of the Additional Protocol by the United States is not required and is completely voluntary given its status as a nuclear-weapon State Party, but the United States has acceded to the Additional Protocol to demonstrate its commitment to the nuclear non-pro-

liferation regime and to make United States civil nuclear activities available to the same IAEA inspections as are applied in the case of non-nuclear-weapon State Parties.

(9) In accordance with the national security exclusion contained in Article 1.b of its Additional Protocol, the United States will not allow any inspection activities, nor make any declaration of any information with respect to, locations, information, and activities of direct national security significance to the United States.

(10) Implementation of the Additional Protocol will conform to the principles set forth in the letter of April 30, 2002, from the United States Permanent Representative to the International Atomic Energy Agency and the Vienna Office of the United Nations to the Director General of the International Atomic Energy Agency.

SEC. 203. DEFINITIONS.

In this title:

(1) **ADDITIONAL PROTOCOL.**—The term “Additional Protocol”, when used in the singular form, means the Protocol Additional to the Agreement between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America, with Annexes, signed at Vienna June 12, 1998 (T. Doc. 107-7).

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

(3) **COMPLEMENTARY ACCESS.**—The term “complementary access” means the exercise of the IAEA’s access rights as set forth in Articles 4 to 6 of the Additional Protocol.

(4) **EXECUTIVE AGENCY.**—The term “executive agency” has the meaning given such term in section 105 of title 5, United States Code.

(5) **FACILITY.**—The term “facility” has the meaning set forth in Article 18i. of the Additional Protocol.

(6) **IAEA.**—The term “IAEA” means the International Atomic Energy Agency.

(7) **JUDGE OF THE UNITED STATES.**—The term “judge of the United States” means a United States district judge, or a United States magistrate judge appointed under the authority of chapter 43 of title 28, United States Code.

(8) **LOCATION.**—The term “location” means any geographic point or area declared or identified by the United States or specified by the International Atomic Energy Agency.

(9) **NUCLEAR NON-PROLIFERATION TREATY.**—The term “Nuclear Non-Proliferation Treaty” means 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 (21 UST 483).

(10) **NUCLEAR-WEAPON STATE PARTY AND NON-NUCLEAR-WEAPON STATE PARTY.**—The terms “nuclear-weapon State Party” and “non-nuclear-weapon State Party” have the meanings given such terms in the Nuclear Non-Proliferation Treaty.

(11) **PERSON.**—The term “person”, except as otherwise provided, means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, any State or any political subdivision thereof, or any political entity within a State, any foreign government or nation or any agency, instrumentality or political subdivision of any such government or nation, or other entity located in the United States.

(12) **SITE.**—The term “site” has the meaning set forth in Article 18b. of the Additional Protocol.

(13) **UNITED STATES.**—The term “United States”, when used as a geographic reference, means the several States of the United States, the District of Columbia, and the common-

wealths, territories, and possessions of the United States and includes all places under the jurisdiction or control of the United States, including—

(A) the territorial sea and the overlying airspace;

(B) any civil aircraft of the United States or public aircraft, as such terms are defined in paragraphs (17) and (41), respectively, of section 40102(a) of title 49, United States Code; and

(C) any vessel of the United States, as such term is defined in section 3(b) of the Maritime Drug Law Enforcement Act (46 U.S.C. App. 1903(b)).

(14) **WIDE-AREA ENVIRONMENTAL SAMPLING.**—The term “wide-area environmental sampling” has the meaning set forth in Article 18g. of the Additional Protocol.

SEC. 204. SEVERABILITY.

If any provision of this title, or the application of such provision to any person or circumstance, is held invalid, the remainder of this title, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Subtitle A—General Provisions

SEC. 211. AUTHORITY.

(a) **IN GENERAL.**—The President is authorized to implement and carry out the provisions of this title and the Additional Protocol and shall designate through Executive order which executive agency or agencies of the United States, which may include but are not limited to the Department of State, the Department of Defense, the Department of Justice, the Department of Commerce, the Department of Energy, and the Nuclear Regulatory Commission, shall issue or amend and enforce regulations in order to implement this title and the provisions of the Additional Protocol.

(b) **INCLUDED AUTHORITY.**—For any executive agency designated under subsection (a) that does not currently possess the authority to conduct site vulnerability assessments and related activities, the authority provided in subsection (a) includes such authority.

(c) **EXCEPTION.**—The authority described in subsection (b) does not supersede or otherwise modify any existing authority of any Federal department or agency already having such authority.

Subtitle B—Complementary Access

SEC. 221. REQUIREMENT FOR AUTHORITY TO CONDUCT COMPLEMENTARY ACCESS.

(a) **PROHIBITION.**—No complementary access to any location in the United States shall take place pursuant to the Additional Protocol without the authorization of the United States Government in accordance with the requirements of this title.

(b) **AUTHORITY.**—

(1) **IN GENERAL.**—Complementary access to any location in the United States subject to access under the Additional Protocol is authorized in accordance with this title.

(2) **UNITED STATES REPRESENTATIVES.**—

(A) **RESTRICTIONS.**—In the event of complementary access to a privately owned or operated location, no employee of the Environmental Protection Agency or of the Mine Safety and Health Administration or the Occupational Safety and Health Administration of the Department of Labor may participate in the access.

(B) **NUMBER.**—The number of designated United States representatives accompanying IAEA inspectors shall be kept to the minimum necessary.

SEC. 222. PROCEDURES FOR COMPLEMENTARY ACCESS.

(a) **IN GENERAL.**—Each instance of complementary access to a location in the United States under the Additional Protocol shall be conducted in accordance with this subtitle.

(b) **NOTICE.**—

(1) *IN GENERAL.*—Complementary access referred to in subsection (a) may occur only upon the issuance of an actual written notice by the United States Government to the owner, operator, occupant, or agent in charge of the location to be subject to complementary access.

(2) *TIME OF NOTIFICATION.*—The notice under paragraph (1) shall be submitted to such owner, operator, occupant, or agent as soon as possible after the United States Government has received notification that the IAEA seeks complementary access. Notices may be posted prominently at the location if the United States Government is unable to provide actual written notice to such owner, operator, occupant, or agent.

(3) *CONTENT OF NOTICE.*—

(A) *IN GENERAL.*—The notice required by paragraph (1) shall specify—

(i) the purpose for the complementary access;

(ii) the basis for the selection of the facility, site, or other location for the complementary access sought;

(iii) the activities that will be carried out during the complementary access;

(iv) the time and date that the complementary access is expected to begin, and the anticipated period covered by the complementary access; and

(v) the names and titles of the inspectors.

(4) *SEPARATE NOTICES REQUIRED.*—A separate notice shall be provided each time that complementary access is sought by the IAEA.

(c) *CREDENTIALS.*—The complementary access team of the IAEA and representatives or designees of the United States Government shall display appropriate identifying credentials to the owner, operator, occupant, or agent in charge of the location before gaining entry in connection with complementary access.

(d) *SCOPE.*—

(1) *IN GENERAL.*—Except as provided in a warrant issued under section 223, and subject to the United States Government's rights under the Additional Protocol to limit complementary access, complementary access to a location pursuant to this title may extend to all activities specifically permitted for such locations under Article 6 of the Additional Protocol.

(2) *EXCEPTION.*—Unless required by the Additional Protocol, no inspection under this title shall extend to—

(A) financial data (other than production data);

(B) sales and marketing data (other than shipment data);

(C) pricing data;

(D) personnel data;

(E) patent data;

(F) data maintained for compliance with environmental or occupational health and safety regulations; or

(G) research data.

(e) *ENVIRONMENT, HEALTH, SAFETY, AND SECURITY.*—In carrying out their activities, members of the IAEA complementary access team and representatives or designees of the United States Government shall observe applicable environmental, health, safety, and security regulations established at the location subject to complementary access, including those for protection of controlled environments within a facility and for personal safety.

SEC. 223. CONSENTS, WARRANTS, AND COMPLEMENTARY ACCESS.

(a) *IN GENERAL.*—

(1) *PROCEDURE.*—

(A) *CONSENT.*—Except as provided in paragraph (2), an appropriate official of the United States Government shall seek or have the consent of the owner, operator, occupant, or agent in charge of a location prior to entering that location in connection with complementary access pursuant to sections 221 and 222. The owner, operator, occupant, or agent in charge of the location may withhold consent for any reason or no reason.

(B) *ADMINISTRATIVE SEARCH WARRANT.*—In the absence of consent, the United States Gov-

ernment may seek an administrative search warrant from a judge of the United States under subsection (b). Proceedings regarding the issuance of an administrative search warrant shall be conducted *ex parte*, unless otherwise requested by the United States Government.

(2) *EXPEDITED ACCESS.*—For purposes of obtaining access to a location pursuant to Article 4b.(ii) of the Additional Protocol in order to satisfy United States obligations under the Additional Protocol when notice of two hours or less is required, the United States Government may gain entry to such location in connection with complementary access, to the extent such access is consistent with the Fourth Amendment to the United States Constitution, without obtaining either a warrant or consent.

(b) *ADMINISTRATIVE SEARCH WARRANTS FOR COMPLEMENTARY ACCESS.*—

(1) *OBTAINING ADMINISTRATIVE SEARCH WARRANTS.*—For complementary access conducted in the United States pursuant to the Additional Protocol, and for which the acquisition of a warrant is required, the United States Government shall first obtain an administrative search warrant from a judge of the United States. The United States Government shall provide to such judge all appropriate information regarding the basis for the selection of the facility, site, or other location to which complementary access is sought.

(2) *CONTENT OF AFFIDAVITS FOR ADMINISTRATIVE SEARCH WARRANTS.*—A judge of the United States shall promptly issue an administrative search warrant authorizing the requested complementary access upon an affidavit submitted by the United States Government—

(A) stating that the Additional Protocol is in force;

(B) stating that the designated facility, site, or other location is subject to complementary access under the Additional Protocol;

(C) stating that the purpose of the complementary access is consistent with Article 4 of the Additional Protocol;

(D) stating that the requested complementary access is in accordance with Article 4 of the Additional Protocol;

(E) containing assurances that the scope of the IAEA's complementary access, as well as what it may collect, shall be limited to the access provided for in Article 6 of the Additional Protocol;

(F) listing the items, documents, and areas to be searched and seized;

(G) stating the earliest commencement and the anticipated duration of the complementary access period, as well as the expected times of day during which such complementary access will take place; and

(H) stating that the location to which entry in connection with complementary access is sought was selected either—

(i) because there is probable cause, on the basis of specific evidence, to believe that information required to be reported regarding a location pursuant to regulations promulgated under this title is incorrect or incomplete, and that the location to be accessed contains evidence regarding that violation; or

(ii) pursuant to a reasonable general administrative plan based upon specific neutral criteria.

(3) *CONTENT OF WARRANTS.*—A warrant issued under paragraph (2) shall specify the same matters required of an affidavit under that paragraph. In addition, each warrant shall contain the identities of the representatives of the IAEA on the complementary access team and the identities of the representatives or designees of the United States Government required to display identifying credentials under section 222(c).

SEC. 224. PROHIBITED ACTS RELATING TO COMPLEMENTARY ACCESS.

It shall be unlawful for any person willfully to fail or refuse to permit, or to disrupt, delay, or otherwise impede, a complementary access authorized by this subtitle or an entry in connection with such access.

Subtitle C—Confidentiality of Information

SEC. 231. PROTECTION OF CONFIDENTIALITY OF INFORMATION.

Information reported to, or otherwise acquired by, the United States Government under this title or under the Additional Protocol shall be exempt from disclosure under sections 552 of title 5, United States Code.

Subtitle D—Enforcement

SEC. 241. RECORDKEEPING VIOLATIONS.

It shall be unlawful for any person willfully to fail or refuse—

(1) to establish or maintain any record required by any regulation prescribed under this title;

(2) to submit any report, notice, or other information to the United States Government in accordance with any regulation prescribed under this title; or

(3) to permit access to or copying of any record by the United States Government in accordance with any regulation prescribed under this title.

SEC. 242. PENALTIES.

(a) *CIVIL.*—

(1) *PENALTY AMOUNTS.*—Any person that is determined, in accordance with paragraph (2), to have violated section 224 or section 241 shall be required by order to pay a civil penalty in an amount not to exceed \$25,000 for each violation. For the purposes of this paragraph, each day during which a violation of section 224 continues shall constitute a separate violation of that section.

(2) *NOTICE AND HEARING.*—

(A) *IN GENERAL.*—Before imposing a penalty against a person under paragraph (1), the head of an executive agency designated under section 211(a) shall provide the person with notice of the order. If, within 15 days after receiving the notice, the person requests a hearing, the head of the designated executive agency shall initiate a hearing on the violation.

(B) *CONDUCT OF HEARING.*—Any hearing so requested shall be conducted before an administrative judge. The hearing shall be conducted in accordance with the requirements of section 554 of title 5, United States Code. If no hearing is so requested, the order imposed by the head of the designated agency shall constitute a final agency action.

(C) *ISSUANCE OF ORDERS.*—If the administrative judge determines, upon the preponderance of the evidence received, that a person named in the complaint has violated section 224 or section 241, the administrative judge shall state his findings of fact and conclusions of law, and issue and serve on such person an order described in paragraph (1).

(D) *FACTORS FOR DETERMINATION OF PENALTY AMOUNTS.*—In determining the amount of any civil penalty, the administrative judge or the head of the designated agency shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, the ability to pay, effect on ability to continue to do business, any history of such violations, the degree of culpability, the existence of an internal compliance program, and such other matters as justice may require.

(E) *CONTENT OF NOTICE.*—For the purposes of this paragraph, notice shall be in writing and shall be verifiably served upon the person or persons subject to an order described in paragraph (1). In addition, the notice shall—

(i) set forth the time, date, and specific nature of the alleged violation or violations; and

(ii) specify the administrative and judicial remedies available to the person or persons subject to the order, including the availability of a hearing and subsequent appeal.

(3) *ADMINISTRATIVE APPELLATE REVIEW.*—The decision and order of an administrative judge shall be the recommended decision and order and shall be referred to the head of the designated executive agency for final decision and

order. If, within 60 days, the head of the designated executive agency does not modify or vacate the decision and order, it shall become a final agency action under this subsection.

(4) **JUDICIAL REVIEW.**—A person adversely affected by a final order may, within 30 days after the date the final order is issued, file a petition in the Court of Appeals for the District of Columbia Circuit or in the Court of Appeals for the district in which the violation occurred.

(5) **ENFORCEMENT OF FINAL ORDERS.**—

(A) **IN GENERAL.**—If a person fails to comply with a final order issued against such person under this subsection and—

(i) the person has not filed a petition for judicial review of the order in accordance with paragraph (4), or

(ii) a court in an action brought under paragraph (4) has entered a final judgment in favor of the designated executive agency, the head of the designated executive agency shall commence a civil action to seek compliance with the final order in any appropriate district court of the United States.

(B) **NO REVIEW.**—In any such civil action, the validity and appropriateness of the final order shall not be subject to review.

(C) **INTEREST.**—Payment of penalties assessed in a final order under this section shall include interest at currently prevailing rates calculated from the date of expiration of the 60-day period referred to in paragraph (3) or the date of such final order, as the case may be.

(b) **CRIMINAL.**—Any person who violates section 224 or section 241 may, in addition to or in lieu of any civil penalty which may be imposed under subsection (a) for such violation, be fined under title 18, United States Code, imprisoned for not more than five years, or both.

SEC. 243. SPECIFIC ENFORCEMENT.

(a) **JURISDICTION.**—The district courts of the United States shall have jurisdiction over civil actions brought by the head of an executive agency designated under section 211(a)—

(1) to restrain any conduct in violation of section 224 or section 241; or

(2) to compel the taking of any action required by or under this title or the Additional Protocol.

(b) **CIVIL ACTIONS.**—

(1) **IN GENERAL.**—A civil action described in subsection (a) may be brought—

(A) in the case of a civil action described in paragraph (1) of such subsection, in the United States district court for the judicial district in which any act, omission, or transaction constituting a violation of section 224 or section 241 occurred or in which the defendant is found or transacts business; or

(B) in the case of a civil action described in paragraph (2) of such subsection, in the United States district court for the judicial district in which the defendant is found or transacts business.

(2) **SERVICE OF PROCESS.**—In any such civil action, process shall be served on a defendant wherever the defendant may reside or may be found.

Subtitle E—Environmental Sampling

SEC. 251. NOTIFICATION TO CONGRESS OF IAEA BOARD APPROVAL OF WIDE-AREA ENVIRONMENTAL SAMPLING.

(a) **IN GENERAL.**—Not later than 30 days after the date on which the Board of Governors of the IAEA approves wide-area environmental sampling for use as a safeguards verification tool, the President shall notify the appropriate congressional committees.

(b) **CONTENT.**—The notification under subsection (a) shall contain—

(1) a description of the specific methods and sampling techniques approved by the Board of Governors that are to be employed for purposes of wide-area sampling;

(2) a statement as to whether or not such sampling may be conducted in the United States under the Additional Protocol; and

(3) an assessment of the ability of the approved methods and sampling techniques to de-

tect, identify, and determine the conduct, type, and nature of nuclear activities.

SEC. 252. APPLICATION OF NATIONAL SECURITY EXCLUSION TO WIDE-AREA ENVIRONMENTAL SAMPLING.

In accordance with Article 1(b) of the Additional Protocol, the United States shall not permit any wide-area environmental sampling proposed by the IAEA to be conducted at a specified location in the United States under Article 9 of the Additional Protocol unless the President has determined and reported to the appropriate congressional committees with respect to that proposed use of environmental sampling that—

(1) the proposed use of wide-area environmental sampling is necessary to increase the capability of the IAEA to detect undeclared nuclear activities in the territory of a non-nuclear-weapon State Party;

(2) the proposed use of wide-area environmental sampling will not result in access by the IAEA to locations, activities, or information of direct national security significance; and

(3) the United States—

(A) has been provided sufficient opportunity for consultation with the IAEA if the IAEA has requested complementary access involving wide-area environmental sampling; or

(B) has requested under Article 8 of the Additional Protocol that the IAEA engage in complementary access in the United States that involves the use of wide-area environmental sampling.

SEC. 253. APPLICATION OF NATIONAL SECURITY EXCLUSION TO LOCATION-SPECIFIC ENVIRONMENTAL SAMPLING.

In accordance with Article 1(b) of the Additional Protocol, the United States shall not permit any location-specific environmental sampling in the United States under Article 5 of the Additional Protocol unless the President has determined and reported to the appropriate congressional committees with respect to that proposed use of environmental sampling that—

(1) the proposed use of location-specific environmental sampling is necessary to increase the capability of the IAEA to detect undeclared nuclear activities in a non-nuclear weapons state;

(2) the proposed use of location-specific environmental sampling will not result in access by the IAEA to locations, activities, or information of direct national security significance; and

(3) with respect to the proposed use of environmental sampling, the United States—

(A) has been provided sufficient opportunity for consultation with the IAEA if the IAEA has requested complementary access involving location-specific environmental sampling; or

(B) has requested under Article 8 of the Additional Protocol that the IAEA engage in complementary access in the United States that involves the use of location-specific environmental sampling.

SEC. 254. RULE OF CONSTRUCTION.

As used in this subtitle, the term “necessary to increase the capability of the IAEA to detect undeclared nuclear activities in the territory of a non-nuclear-weapon State Party” shall not be construed to encompass proposed uses of environmental sampling that might assist the IAEA in detecting undeclared nuclear activities in the territory of a non-nuclear-weapon State Party by—

(1) setting a good example of cooperation in the conduct of such sampling; or

(2) facilitating the formation of a political consensus or political support for such sampling in the territory of a non-nuclear-weapon State Party.

Subtitle F—Protection of National Security Information and Activities

SEC. 261. PROTECTION OF CERTAIN INFORMATION.

(a) **LOCATIONS AND FACILITIES OF DIRECT NATIONAL SECURITY SIGNIFICANCE.**—No current or former Department of Defense or Department of Energy location, site, or facility of direct na-

tional security significance shall be declared or be subject to IAEA inspection under the Additional Protocol.

(b) **INFORMATION OF DIRECT NATIONAL SECURITY SIGNIFICANCE.**—No information of direct national security significance regarding any location, site, or facility associated with activities of the Department of Defense or the Department of Energy shall be provided under the Additional Protocol.

(c) **RESTRICTED DATA.**—Nothing in this title shall be construed to permit the communication or disclosure to the IAEA or IAEA employees of restricted data controlled by the provisions of the Atomic Energy Act of 1954 (42 U.S.C. 2011 et seq.), including in particular “Restricted Data” as defined under paragraph (1) of section 11 y. of such Act (42 U.S.C. 2014(y)).

(d) **CLASSIFIED INFORMATION.**—Nothing in this Act shall be construed to permit the communication or disclosure to the IAEA or IAEA employees of national security information and other classified information.

SEC. 262. IAEA INSPECTIONS AND VISITS.

(a) **CERTAIN INDIVIDUALS PROHIBITED FROM OBTAINING ACCESS.**—No national of a country designated by the Secretary of State under section 620A of the Foreign Assistance Act of 1961 (22 U.S.C. 2371) as a government supporting acts of international terrorism shall be permitted access to the United States to carry out an inspection activity under the Additional Protocol or a related safeguards agreement.

(b) **PRESENCE OF UNITED STATES GOVERNMENT PERSONNEL.**—IAEA inspectors shall be accompanied at all times by United States Government personnel when inspecting sites, locations, facilities, or activities in the United States under the Additional Protocol.

(c) **VULNERABILITY AND RELATED ASSESSMENTS.**—The President shall conduct vulnerability, counterintelligence, and related assessments not less than every 5 years to ensure that information of direct national security significance remains protected at all sites, locations, facilities, and activities in the United States that are subject to IAEA inspection under the Additional Protocol.

Subtitle G—Reports

SEC. 271. REPORT ON INITIAL UNITED STATES DECLARATION.

Not later than 60 days before submitting the initial United States declaration to the IAEA under the Additional Protocol, the President shall submit to Congress a list of the sites, locations, facilities, and activities in the United States that the President intends to declare to the IAEA.

SEC. 272. REPORT ON REVISIONS TO INITIAL UNITED STATES DECLARATION.

Not later than 60 days before submitting to the IAEA any revisions to the United States declaration submitted under the Additional Protocol, the President shall submit to Congress a list of any sites, locations, facilities, or activities in the United States that the President intends to add to or remove from the declaration.

SEC. 273. CERTIFICATION REGARDING VULNERABILITY AND RELATED ASSESSMENTS.

Concurrently with the submission to Congress of the initial declaration list under section 271 and each list update under section 272, the President shall submit to Congress a report certifying that—

(1) each site, location, facility, and activity included in the list has been examined by each agency with national security equities with respect to such site, location, facility, or activity; and

(2) appropriate measures have been taken to ensure that information of direct national security significance will not be compromised at any such site, location, facility, or activity in connection with an IAEA inspection.

SEC. 274. REPORT ON EFFORTS TO PROMOTE THE IMPLEMENTATION OF ADDITIONAL PROTOCOLS.

Not later than 180 days after the entry into force of the Additional Protocol, the President shall submit to the appropriate congressional committees a report on—

(1) measures that have been or should be taken to achieve the adoption of additional protocols to existing safeguards agreements signed by non-nuclear-weapon State Parties; and

(2) assistance provided by the United States to the IAEA in order to promote the effective implementation of additional protocols to existing safeguards agreements signed by non-nuclear-weapon State Parties and the verification of the compliance of such parties with IAEA obligations.

SEC. 275. NOTICE OF IAEA NOTIFICATIONS.

The President shall notify Congress of any notifications issued by the IAEA to the United States under Article 10 of the Additional Protocol.

Subtitle H—Authorization of Appropriations**SEC. 281. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated such sums as may be necessary to carry out this title.

Mr. LUGAR. Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Under the previous order, the Senate insists on its amendment and requests a conference with the House, and the Chair is authorized to appoint conferees. S. 3709 is returned to the calendar.

Mr. LUGAR. Mr. President, the Senate has taken a historic step in approving the United States-India Peaceful Atomic Energy Cooperation Act. This is critically important. Passage of the bill takes one more important step toward a vibrant and exciting relationship between our two great democracies. I thank all Senators for their cooperation in completing the Senate's consideration in such a short period of time. I thank especially Senator BIDEN for his strong support and cooperation. This has been truly a bipartisan effort from the beginning until final passage. We are committed to continuing this effort through the conference process.

Before yielding the floor, let me publicly thank Tom Moore of the majority staff and Ed Levine of the minority staff. They have become experts on the United States-India Peaceful Atomic Energy and Cooperation Act. They have assisted the committee professionally and skillfully in helping craft the bill.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BROWNBACK. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BROWNBACK. Mr. President, I ask unanimous consent to make some brief comments congratulating the chairman and ranking member.

I think this is a big deal. I think it will be seen as a big deal. I think it is

an enormously positive step forward on our relationships.

I commend the chairman and ranking member and the leader for bringing up this topic. I believe this is going to help us cement the relationship back and forth with us and India. It is important that we do this. It will help environmentally and help energy-wise but, more importantly, I believe it will be a very important strategic relationship. This is a key movement forward. I hope we can move it forward through the conference committee. I hope we can get it to the President in short order and show India and the rest of the world this budding, growing, strengthening relationship back and forth.

I commend Chairman LUGAR for such insightful and supportive leadership on such an important topic.

I suggest the absence of quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. CHAMBLISS. Mr. President, I ask unanimous consent that the order for the quorum call be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. CHAMBLISS. Mr. President, I ask unanimous consent to speak as if in morning business.

The PRESIDING OFFICER. Without objection, it is so ordered.

HONORING OUR ARMED FORCES

SERGEANT FIRST CLASS ROBERT LEE "BOBBY" HOLLAR, JR.

Mr. CHAMBLISS. Mr. President, it is my honor and privilege today to pay tribute to Sergeant First Class Robert Lee "Bobby" Hollar, Jr. Sergeant Hollar served his country as a civilian and soldier and ultimately gave his life to protect our Nation. Sergeant Hollar served in E Troop, 108th Cavalry, 48th Brigade of the Georgia National Guard, and was deployed to Iraq in May 2005 in support of Operation Iraqi Freedom.

On September 1, 2005, an improvised explosive device struck Sergeant Hollar's vehicle while he was on patrol outside of Baghdad, and he died of severe injuries later that day. Sergeant Hollar is survived by his wife Amanda and two sons.

Throughout Sergeant Hollar's 10 years of courageous service in the U.S. Air Force, and during his service in Operations Desert Storm and Desert Shield, he was awarded numerous service and achievement medals. Also, Sergeant Hollar was posthumously awarded the Purple Heart and the Bronze Star.

Sergeant Hollar's duties in Iraq went beyond the daily routine of a soldier. Sergeant Hollar was a pen pal with the fourth grade class at Crescent Middle School in Griffin, GA. To these students, Sergeant Hollar was a real-life "G.I. Joe," and his letters and visits with them have forever touched their lives.

When Sergeant Hollar wasn't on active duty, he lived with his family in Thomaston, GA, and was employed by the United States Postal Service as a postal carrier.

Sergeant Hollar made his community and Nation better through selfless dedication to his career in public service with the Georgia National Guard and the U.S. Post Office. I have been contacted by many members of his community, and I am proud to join in as part of their campaign to name the Thomaston Post Office in his honor, and to be an original cosponsor of S. 4050, a bill to designate the facility of the Postal Service located at 103 East Thompson Street in Thomaston, GA, as the "Sergeant First Class Robert Lee 'Bobby' Hollar, Jr. Post Office Building".

I believe this is a simple yet lasting, way to recognize Sergeant Hollar's service and sacrifice to our country.

(The remarks of Mr. CHAMBLISS pertaining to the submission of S. Res. 615 are printed in today's RECORD under "Submitted Resolutions.")

(The remarks of Mr. CHAMBLISS pertaining to the submission of S. Res. 617 are located in today's RECORD under "Submission of Concurrent and Senate Resolutions.")

The PRESIDING OFFICER (Mr. SESSIONS). The majority leader.

MODIFICATION OF UNANIMOUS CONSENT ORDER

Mr. FRIST. Mr. President, I ask consent that the order with respect to the agriculture appropriations bill be modified to allow for the Senate to proceed at 2 o'clock on Tuesday, December 5, and for Senator CONRAD to be recognized following the statements of the two managers; further, that following the remarks of Senator CONRAD, Senator DORGAN be recognized to speak, and that following those comments, Senator LANDRIEU be recognized to speak for 10 minutes. It will be our intention to vote around 5 or 5:15 on that Tuesday and that will be the next vote.

The PRESIDING OFFICER. Is there objection?

The Senator from North Dakota.

Mr. CONRAD. Mr. President, I thank the majority leader for putting this together. It has been difficult. We understand that. I very much appreciate his steadfast effort to make this happen.

On a bipartisan basis, many Senators in this Chamber appreciate very much the opportunity to bring disaster assistance to the Senate and to get a vote next Tuesday.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Ohio.

HONORING OUR ARMED FORCES

SERGEANT MARK T. SMYKOWSKI

Mr. DEWINE. Mr. President, I rise today to pay tribute to an extraordinary young man who gave his life in