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THE WHITE HOUSE

ACTION

WASHINGTON

Last Day - October 29

October 25, 1974

MEMORANDUM FOR: THE PRESIDENT  
FROM: KEN COLB   
SUBJECT: Enrolled Bill S. 3698  
International Nuclear  
Agreements

Attached for your consideration is Senate bill, S. 3698, sponsored by Senator Pastore, which amends the Atomic Energy Act to provide in effect that Congress can disapprove by concurrent resolution certain international agreements with respect to nuclear reactors.

Roy Ash recommends approval and provides you with additional background information in his enrolled bill report (Tab A).

The NSC, the Counsel's office (Chapman), Bill Timmons, and Domestic Council all recommend approval. Initially, State proposed a signing statement accompany the bill, but has now deferred to OMB and approves of the bill without a statement.

RECOMMENDATION

That you sign Senate bill, S. 3698 (Tab B).



APPROVED  
OCT 26 1974

EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF MANAGEMENT AND BUDGET  
WASHINGTON, D.C. 20503

OCT 23 1974

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 3698 - International Nuclear  
Agreements  
Sponsor - Sen. Pastore (D) Rhode Island and 8 others

*Postal 10/28*  
*To Archives 10/29*  
Last Day for Action

October 29, 1974 - Tuesday

Purpose

Amends the Atomic Energy Act to provide in effect that Congress can disapprove by concurrent resolution certain international agreements with respect to nuclear reactors.

Agency Recommendations

Office of Management and Budget

Approval

Atomic Energy Commission  
Department of State

Approval  
Approval (Signing  
statement attached)

National Security Council  
Department of Defense  
Department of Justice

Approval  
No recommendation  
Defers to State

Discussion

S. 3698 apparently grew out of former President Nixon's announcement in June 1974 of his intention to enter into cooperative nuclear power agreements with Egypt and with Israel. The Joint Committee's report indicates that, notwithstanding the excellent record to date with regard to safeguards for international agreements for nuclear power, it concluded that it would be prudent to review the present statutorily prescribed system applicable to proposed agreements for cooperation in peaceful nuclear areas and to determine whether it should be revised in the light of



experience to date and probable future developments. The report then states the Committee's conclusion:

"The Joint Committee believes that the time has come, considering the importance of nuclear power in meeting the world's energy deficit and the increasing demand for sharing in the benefits of nuclear peaceful applications, to assure a deliberate and searching congressional review of proposed agreements which involve nuclear fuel or nuclear reactors with any significant power output and thus some practical potential for plutonium generation."

Section 123 d. of the Atomic Energy Act now provides that international agreements for cooperation in military uses of atomic energy cannot be consummated without submission of the proposed agreement to the Congress for a period of 60 days while it is in session and that any such proposed agreement shall not become effective if during such 60-day period Congress passes a concurrent resolution disapproving the proposed agreement.

S. 3698 broadens the existing section dealing with military agreements to include international agreements involving power reactors or special nuclear material for use in connection therewith; thus, in effect, giving Congress the authority to disapprove of such agreements on civil uses by concurrent resolution.

The enrolled bill represents the Senate version of this legislation. The House passed a version which would have required an act of Congress approving each international agreement for civil uses of the kind contemplated. The latter version was strongly opposed by the concerned agencies because it would have risked unforeseen delays in congressional approval, increased the uncertainties of negotiation, and risked turning consumers to other suppliers. Because of the latter concerns, the interested agencies did not oppose enactment of the bill in the form now before you in the enrolled bill.

In its earlier views which we solicited, Justice indicated that the form of disapproval, i.e., a concurrent resolution, was unconstitutional and continues to maintain that point of view in commenting on the enrolled bill. Its arguments are set



forth in its letter of July 15, 1974, a copy of which is attached to its views letter on the enrolled bill. At this point, however, it defers to the Department of State concerning your action on the bill because of its understanding that your disposition of the bill may depend upon foreign policy considerations. While the Department of Defense has no recommendation, it defers to Justice on the constitutional issue, but points out that S. 3698 would merely extend and refine such legislative veto procedure in this special field in a manner which "does not appear to pose significantly greater difficulties to the Department of Defense."

The Department of State in its views letter on the enrolled bill recognizes that Justice has raised a serious constitutional question but opposes a veto because of the "potentially strong adverse congressional reaction that could result in, for example, a requirement that all cooperation agreements require Senate advice and consent or specific statutory prohibitions on certain types of agreements such as agreements with nations in the Middle East." As noted earlier, it also feels that the Senate version, which is adopted in the enrolled bill, is greatly preferable to the House version which would have required an act of Congress to approve each agreement.

Apparently State is concerned that this bill may give impetus to congressional movement in the direction of requiring congressional approval of Executive agreements generally and is also concerned about the potential political problems in securing congressional support for the nuclear agreements with Egypt and Israel. Accordingly, it suggests that you issue a signing statement, the purpose of which would be in its view "largely political." The signing statement would attempt to distinguish nuclear international agreements from other kinds of international agreements and would indicate that, by your approval you are not resolving any underlying constitutional questions which might be involved. State comments in this connection, "While the statement would have little independent legal value, it would help to avoid the implication that a series of statutes along these lines over time constitutes an authoritative joint interpretation by the Executive and Legislative Branches of their respective functions."

\* \* \* \* \*

The existing provision in the Atomic Energy Act for disapproval of international military agreements by concurrent resolution



is one of long standing and was not commented on by President Eisenhower at the time it was included in that Act. On August 17, 1974, you approved Public Law 93-377 which among other things contained a provision authorizing Congress to disapprove by concurrent resolution AEC proposals to increase existing statutory ceilings on transfer of special nuclear materials to the International Atomic Energy Agency or other groups of nations. In commenting on that bill, Justice indicated its view that the concurrent resolution approach was unconstitutional but observed that the practice of providing in statutes for amendment or repeal of legislative authority had continued for some years and deferred to AEC as to whether the bill should be approved. In our memorandum to you on the bill which became Public Law 93-377, we made the following pertinent comment:

"The concurrent resolution approach was not, of course, proposed by the Administration; and we share Justice's concern about its unconstitutionality. Nevertheless, we believe the bill should be approved despite its inclusion for the following reason. A similar provision already exists in law with respect to congressional disapproval of military agreements concerning nuclear weapons. In S. 3669, Congress is willing to permit AEC to transfer special nuclear materials to international organizations or groups of nations in excess of existing statutory ceilings without requiring an act of Congress to approve such transfers, but wants to retain some form of control over the transfers because of concern about granting too large a proportion of our uranium enrichment capacity to foreign nations and perhaps because of apprehension that the materials may be channelled into illegal uses. Under all the circumstances, we do not believe that Congress' desire for a measure of review is unwarranted, although unfortunate in form."

We believe that the same comment applies in large measure to the situation in the current enrolled bill.

One further comment with respect to the proviso in S. 3698 is necessary. The proviso requires the Joint Committee to submit a report to the Congress of its views and recommendations respecting a proposed agreement within 30 days after the agreement is submitted to the Congress with an accompanying proposed



concurrent resolution stating in substance that the Congress favors or does not favor, as the case may be, the proposed agreement. It further provides that any such concurrent resolution so reported shall become the pending business of the House within twenty-five days and shall be voted on within five calendar days thereafter, unless either House shall otherwise determine.

The problem with this proviso is that it provides authority for the Joint Committee to report a resolution of approval as well as of disapproval. State is concerned that a resolution of approval may be the first step in the direction of requiring congressional approval of each proposed agreement. The substantive portion of S. 3698 speaks only of a concurrent resolution of disapproval and it may well be that the proviso was ineptly drafted. However, State decided not to seek an amendment of the proviso because of the possible risk of provoking a more restrictive amendment. In summary, while the use of the concurrent resolution for approval language raises questions, we do not conclude that it is of sufficient concern to warrant disapproval or special comment. Instead, we would view it as language which the agency should seek to have remedied at some appropriate future time.

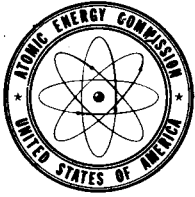
With respect to the signing statement proposed by State, we can understand its desire to minimize the precedent effect of the concurrent resolution approach on other forms of international agreements and, more particularly, on international agreements affecting the Middle East. On the other hand, we think that raising the issue in the manner proposed in the signing statement could be counterproductive and serve only to highlight and aggravate the problem rather than alleviate it. Accordingly, we would be inclined to recommend against a signing statement. Moreover, the existence in the Atomic Energy Act for many years of the concurrent resolution disapproval provision with respect to military nuclear international agreements and your approval of Public Law 93-377 make it awkward in our view to raise the concurrent resolution issue at this time.

*W. H. Rummel*

Assistant Director for  
Legislative Reference

Enclosures





UNITED STATES  
ATOMIC ENERGY COMMISSION

WASHINGTON, D.C. 20545

OCT 16 1974

Mr. Roy L. Ash, Director  
ATTN: Mrs. Louise Garziglia  
Legislative Reference Division  
Office of Management and Budget

Dear Mr. Ash:

Thank you for the opportunity to comment on S. 3698, an enrolled bill which would amend subsection 123 d. of the Atomic Energy Act of 1954, as amended ("the Act"), to enable Congress to concur in or disapprove certain international agreements for cooperation. For the reasons set forth below, the Atomic Energy Commission has not opposed enactment of S. 3698, and recommends that it be signed by the President.

S. 3698 would establish a new mechanism for entry into force of agreements for cooperation involving international cooperation under subsections 91 c., 144 b. or 144 c. of the Act, or cooperation entailing implementation of section 53, 54, 103 or 104 of the Act in relation to a reactor that may be capable of producing more than five thermal megawatts or special nuclear material for use in connection therewith. The new mechanism will require review by the full Congress of the above-mentioned agreements for cooperation which involve cooperation in the civil uses of atomic energy, and will permit the Congress to prevent such agreements from becoming effective if, during a sixty-day period following referral of the agreement to the Congress, the Congress passes a concurrent resolution stating in substance that it does not favor the proposed agreement. With respect to such agreements for cooperation in the civil uses of atomic energy, together with agreements for cooperation involving military application of atomic energy, the bill establishes a new procedure under which the Joint Committee on Atomic Energy must, within thirty days after referral of the proposed agreement to the Congress, submit a report of its views and recommendations respecting the proposed agreement to the Congress, together with a proposed concurrent resolution stating in substance that the Congress does, or does not, favor the proposed agreement. Any such concurrent resolution is to become the pending business of the House in question. The new procedures would apply to proposed agreements for cooperation and amendments thereto which are submitted to the Congress following enactment of the bill.





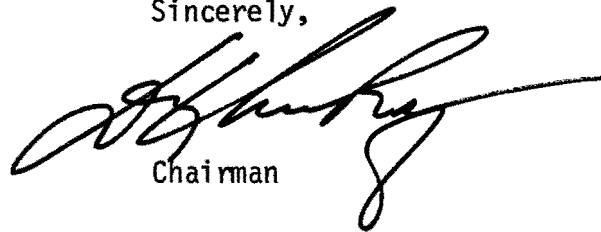
Mr. Roy L. Ash

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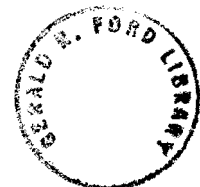
OCT 16 1974

The Atomic Energy Commission believes that the present provisions of the Act provide a procedural mechanism for entry into force of agreements for cooperation which has, as a practical matter, functioned smoothly. Moreover, these procedures have provided the Joint Committee and the Congress with an opportunity to consider these agreements for cooperation fully prior to their entry into force, while at the same time permitting the United States to maintain continuing but controlled programs of international cooperation in the field of atomic energy. Nonetheless, the Commission is aware of the recently-expressed Congressional view as to the desirability of fuller scrutiny by the Congress of agreements involving cooperation with foreign civil nuclear power programs. Accordingly, the Atomic Energy Commission has not opposed enactment of S. 3698, and recommends that it be signed by the President.

Sincerely,



Chairman





DEPARTMENT OF STATE

Washington, D.C. 20520

OCT 22 1974

Honorable Roy L. Ash  
Director  
Office of Management and Budget  
Washington, D.C. 20503

Dear Mr. Ash:

This is in response to the request of Mr. Rommel of your staff for the views of the Department of State on an enrolled bill, (S.3698) to amend the Atomic Energy Act of 1954, as amended, "to enable Congress to concur in or disapprove international agreements for cooperation in regard to certain nuclear technology."

The enrolled bill would alter the existing procedures for Congressional review of international agreements for cooperation in the civil and military uses of atomic energy in order to increase the time period for review of civil cooperation agreements and enable Congress to disapprove and prevent the entry into force of any agreement for cooperation. Existing procedures under Section 123 of the Atomic Energy Act, as amended, provide a 30-day period for review of agreements for civil cooperation and a 60-day period for review of agreements for military cooperation. Agreements for military cooperation may be blocked by a concurrent resolution stating that Congress disapproves of the proposed agreement. S.3698 would provide a 60-day period for review of all agreements for cooperation, enable Congress to block civil and military cooperation agreements by concurrent resolution, and require the Joint Committee on Atomic Energy to report a favorable or disapproving concurrent resolution before the close of the first 30 days of the 60-day period.

The Department of State considers that existing procedures for these agreements have in practice provided an adequate and influential role for Congressional review. We support this enrolled bill, however, because it is far preferable to other amendments to Section 123, such as the one proposed by Congressman Long which passed the House but was



turned back in conference committee, in part due to vigorous Executive Branch opposition. The House amendment would have left an open-ended time period for Congressional review and required an Act of Congress before any agreement for cooperation could enter into force. This would have risked unforeseen delays in Congressional approval of routine amendments to existing agreements, increased the uncertainties of negotiation, risked turning consumers to other suppliers who might not be as rigorous as the United States in applying safeguards to prevent the proliferation of nuclear weapons, and risked delays in periodic renewals of agreements for military cooperation which could have serious adverse consequences for our strategic position and that of our allies.

The Department recognizes that the Department of Justice has raised a serious constitutional question regarding the legitimacy of Congressional action by concurrent resolution such as that contemplated by the enrolled bill, although such procedures are used in other statutes. Moreover, constitutional questions are raised regarding the constitutional authority of the President to enter into executive agreements within the scope of that authority without Congressional authorization or approval, and the authority of the President to make treaties in this area with the advice and consent of the Senate. Nevertheless, we oppose a veto or pocket veto because of the potentially strong adverse Congressional reaction that could result in, for example, a requirement that all cooperation agreements require Senate advice and consent or specific statutory prohibitions on certain types of agreements such as agreements with nations in the Middle East.

In light of the presence of constitutional issues and the potential political problem in securing Congressional support for the nuclear agreements with Egypt and Israel, the Department of State recommends that the President issue a statement upon signature of the enrolled bill. A suggested statement is enclosed which contains the following operative language: "The particular history and nature of the question of international cooperation in atomic energy involve certain important unique considerations that distinguish such cooperation from the more general question of the type of Congressional review and scrutiny appropriate to the conduct of the foreign relations of the United States. Moreover, I am advised that my signature of this bill does not, and cannot, resolve the underlying constitutional questions involved."

The purpose of the statement would be largely political.



By distinguishing the atomic energy situation, the first sentence would help, or at least avoid prejudice to, our case in opposing the inclusion of legislative vetoes in foreign affairs areas other than atomic energy. This sentence would implicitly acknowledge some greater propriety of Congressional review in the atomic energy field. The second sentence, while vague, protects our ability to argue in the future that the President, at the time of signing, recognized that there were constitutional problems, and did not regard his signature as resolving those problems. While the statement would have little independent legal value, it would help to avoid the implication that a series of statutes along these lines over time constitutes an authoritative joint interpretation by the Executive and Legislative Branches of their respective functions. While such a statement could invoke some adverse Congressional reaction, its vagueness coupled with references in the statement to close cooperation with Congress, should minimize such reaction. While in theory this statement keeps open our options to disregard or, as a bargaining lever, to threaten to disregard on constitutional grounds, Congressional disapproval of an agreement, signature of the bill and the likely Congressional atmosphere in the near future make it unlikely that we could succeed in exercising those options. In effect, at least for the near term, we are agreeing to the procedure.

The Department recommends that the President approve the enrolled bill and that, in doing so, he issue the enclosed statement.

Cordially,



Linwood Holton  
Assistant Secretary for  
Congressional Relations

Enclosure:  
Draft Signing Statement



STATEMENT BY THE PRESIDENT

I have today signed S. 3698, an amendment to the Atomic Energy Act of 1954, as amended, to enable Congress to concur in or disapprove international agreements for cooperation in regard to certain nuclear technology.

I welcome the active participation of the Congress in the development and implementation of our national policy on the application of nuclear energy. The use of the atom as an important source of energy is of prime importance in satisfying not only our own need for an adequate supply of energy, but for satisfying the similar need for many nations. At the same time, the closest scrutiny is required of all such activities to assure that nuclear exports are adequately safeguarded to prevent their diversion to unauthorized uses.

This bill requires that certain proposed international agreements for cooperation be submitted to the Congress for 60 days during which Congress may pass a concurrent resolution stating in substance that it does not favor the proposed agreement for cooperation, in which case the agreement shall not become effective. The particular history and nature of the question of international cooperation in atomic energy involve certain important unique considerations that distinguish such cooperation from the general question of the type of Congressional review and scrutiny appropriate to the conduct of the foreign relations of the United States. Moreover, I am advised that my signature of this bill does not, and cannot resolve the underlying constitutional questions involved. Cooperation between the



Executive Branch and the Congress in the Atomic Energy field has been outstanding over the twenty years since the Atomic Energy Act was passed. It is my expectation that this practice will continue under this new legislation. While I have found practice under the Atomic Energy Act of 1954 to be fully satisfactory in this regard, I can also understand the desire of Congress for the more structured procedures of this bill. It is through such close cooperation that our government functions at its best.



NATIONAL SECURITY COUNCIL

October 17, 1974

MEMORANDUM FOR:

Mr. W. H. Rommel  
Assistant Director  
for Legislative Reference  
Office of Management and Budget

SUBJECT: Enrolled Bill S. 3698

The NSC Staff has reviewed the attached and recommends the President approve the Bill.

*James Bonum*  
Jeanne W. Davis  
Staff Secretary *JW*

Attachment





GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE

WASHINGTON, D. C. 20301

October 18, 1974

Honorable Roy L. Ash  
Director, Office of Management  
and Budget  
Washington, D. C. 20503

Dear Mr. Ash:

Reference is made to your request for the views of the Department of Defense on the enrolled enactment of S. 3698, 93d Congress, "To amend the Atomic Energy Act of 1954, as amended, to enable Congress to concur in or disapprove international agreements for cooperation in regard to certain nuclear technology."

S. 3698 would amend to Atomic Energy Act of 1954, as amended, essentially in two regards. First, it would apply the 60-day Congressional review procedure under section 123.d. of the Act not only to agreements for military cooperation but also to those agreements "entailing implementation of sections 53, 54, 103, or 104 in relation to a reactor that may be capable of producing more than five thermal megawatts or special nuclear material for use in connection therewith". Second, it would require the Joint Atomic Energy Committee to report to Congress within the first thirty days of the 60-day period a concurrent resolution either favoring or not favoring the proposed agreement and would otherwise facilitate a vote by each House thereon. S. 3698 would apply to all proposed cooperation agreements or amendments thereto submitted to the Congress after the date of its enactment.

Although the Department of Defense defers in general to the views of the Department of Justice as to the constitutionality of Acts of Congress which purport to subject to legislative veto by concurrent resolution actions by the Executive Branch which are authorized by law, the Department of Defense notes that S. 3698 would merely extend and refine such legislative veto procedure in this special field in a manner which does not appear to pose significantly greater difficulties to the operations of the Department of Defense.

Sincerely yours,

*Martin R. Hoffmann*  
Martin R. Hoffmann





Department of Justice  
Washington, D. C. 20530

OCT 17 1974

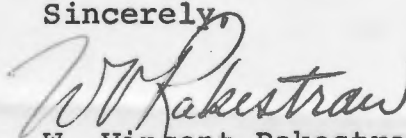
Honorable Roy L. Ash  
Director, Office of  
Management and Budget  
Washington, D. C. 20503

Dear Mr. Ash:

In compliance with your request, I have examined a facsimile of the enrolled bill S. 3698, "To amend the Atomic Energy Act of 1954, as amended, to enable Congress to concur in or disapprove international agreements for cooperation in regard to certain nuclear technology."

The bill and the reasons why we regard its provisions to be unconstitutional are described in my letter of July 15, 1974, a copy of which is attached. Although the Department of Justice normally recommends against Executive approval of legislation containing unconstitutional provisions, we understand that Executive approval of S. 3698 may depend upon foreign policy considerations. Accordingly, the Department of Justice defers to the Department of State concerning whether this bill should receive Executive approval.

Sincerely,



W. Vincent Rakestraw  
Assistant Attorney General



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Department of Justice  
Washington, D.C. 20530

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Honorable Roy L. Ash  
Director, Office of Management  
and Budget  
Washington, D.C. 20503

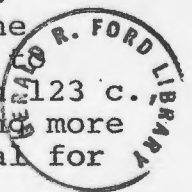
Dear Mr. Ash:

This is in response to a recent oral request from a member of your staff for the views of the Department of Justice on S. 3698, an act "to amend the Atomic Energy Act of 1954, as amended, to enable Congress to concur in or disapprove international agreements for cooperation in regard to certain nuclear technology."

Subsection 123 d. of the Atomic Energy Act of 1954 (42 U.S.C. 2153(d)) presently requires submission to the Congress of certain proposed cooperative agreements concerning nuclear technology capable of military application. Such a proposed agreement would not become effective if the Congress were to pass a concurrent resolution of disapproval within sixty days after the President submitted the proposed agreement to the Joint Committee on Atomic Energy.

Under subsection 123 c. of the Act, certain proposed cooperative agreements, which we understand would concern the peaceful applications of atomic energy, would become effective upon the expiration of thirty days from the date the Joint Committee received the proposed agreement. As Senator Pastore noted in Senate debate on the bill: "If we (the Congress) wanted to reject it (a section 123 c. agreement), we would have to introduce a bill, the President of the United States would have to approve the bill, if he disapproved the bill, we would have to override his veto." 120 Cong. Rec. S12113 (daily ed. July 10, 1974).

As passed by the Senate on July 10, 1974, S. 3698 would amend subsection 123 d. to, in effect, extend the Congressional-veto-by-concurrent-resolution mechanism to cover those agreements, now provided for by subsection 123 c. which concern reactors that may be capable of producing more than five thermal megawatts or special nuclear material for use in connection therewith.



As we explain below, it is the position of the Department of Justice that the concurrent resolution veto provision in existing subsection 123 d. of the Act violates the provisions of Article I, section 7 of the Constitution. Therefore, of course, we must oppose S. 3698 which would extend the coverage of that subsection.

The language of the Constitution clearly indicates that the veto power of the President was intended to apply to all actions of Congress which have the force of law. It would be difficult to conceive of language and history which could more clearly require that all such concurrent action of the two Houses be subject to either the President's approval or his veto. Two provisions of Article I, section 7 are involved. Thus, the Constitution provides first that every bill which passes the House of Representatives and the Senate, shall, before it becomes a law, be presented to the President for his approval or disapproval. If disapproved it does not become law unless repassed by a two-thirds vote of each House (Art. I, Sec. 7, clause 2). At the Convention it was recognized that Congress might evade this provision by passing resolutions rather than bills. During the debate on this clause, James Madison observed that--

"if the negative of the President was confined to bills; it would be evaded by acts under the form and name of Resolutions, votes &\*\*\*."

Madison believed that additional language was necessary to pin this point down and therefore

"proposed that 'or resolve' should be added after 'bill' \*\*\* with an exception as to votes of adjournment &c."

Madison's notes show that "after a short and rather confused conversation on the subject," his proposal was, at first, rejected. 2 M. Farrand, The Records of the Federal Convention of 1787 301-02 (1937 Rev. ed.) ("Farrand"). However, at the commencement of the following day's session, Mr. Randolph, "having thrown into a new form" Madison's proposal, renewed it and it passed by a vote of 9-1. 2 Farrand 303-05. Thus, the Constitution today provides in the last paragraph of Article I, section 7:

"Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question



Of Adjournment) shall be presented to the President \*\*\*; and before the Same shall take Effect, shall be approved by him, or being disapproved by him shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill."

The intent of this clause was clearly to prevent resolutions designed to evade the specified legislative procedure.

The purpose of the veto was not merely to prevent bad laws but to protect the powers of the President from inroads. Leading participants in the Convention of 1787, such as James Madison, Gouverneur Morris and James Wilson, pointed out that the veto would protect the office of President against "encroachments of the popular branch" and guard against the legislature "swallowing up all the other powers." 2 Farrand 299-300, 586-87. In The Federalist (No. 73), Hamilton states that the primary purpose of conferring the veto power on the President is "to enable him to defend himself." Otherwise he "might be gradually stripped of his authorities by successive resolutions, or annihilated by a single vote."

It is clear that the veto was to apply to repeals and not just enactment of new laws. The application of the President's veto to repeals was specifically discussed. During a debate concerning what majority should be necessary to overcome a veto, it was pointed out that a 3/4 vote would make it too difficult to repeal bad laws. 2 Farrand 586. However, Madison pointed out that "As to the difficulty of repeals, it was probable that in doubtful cases the policy would soon take place of limiting the duration of laws so as to require renewal instead of repeal." Id. at 587. It was clear therefore that repeal was thought of as a full legislative process, subject to the veto power and not something that could be accomplished without participation of the Executive, as contemplated by S. Con. Res. 67. At the same time, as Madison observed, Congress was always free to avoid this problem by limiting the duration of legislation, as it often does.

The fact that the concurrent resolution veto is in the existing statute does not change the situation since a statute cannot supersede the clear language of the Constitution any more than a concurrent resolution may change a statute



Cf. Quintana v. Holland, 255 F. 2d 161, 165 (3d Cir. 1958). If existing subsection 123 d. is valid, then there seems to be no limit to the powers of Congress to upset the historic concept of executive-legislative relations by reserving the right in legislation to amend or repeal the statute by concurrent resolution. This would avoid presentation of subsequent legislative decisions to the President as contemplated by Article I, Section 7. See R. Ginnane, The Control of Federal Administration by Congressional Resolutions and Committees, 66 Harv. L. Rev. 569, 594-95 (1953); J. P. Harris, Congressional Control of Administration 205-06, 238-40 (Brookings, 1964); Statement of Erwin N. Griswold, National Emergency, Hearings before the Senate Special Committee on the Termination of the National Emergency, 93d Cong., 1st Sess., Part 3, 741-747 (1973); L. Henkin, Foreign Affairs and the Constitution 121 (Foundation Press, 1972). But see J. & A. Cooper, The Legislative Veto and the Constitution, 30 G.W.L. Rev. 467 (1962); The Constitution of the United States, Analysis and Interpretation, S. Doc. No. 39, 88th Cong., 1st Sess. 135 (1964).

Of course we cannot deny that the practice of providing in statutes for amendment or repeal of legislative authority by concurrent resolution has continued for some years. There are new proposals made in each Congress not only for legislative action by concurrent resolution but by the action of only one House or by one or more committees of Congress. An important example is section 5(c) of the War Powers Act, 87 Stat. 555 (1973), passed over the President's veto, despite a veto message including the statement that the concurrent resolution provision for terminating certain powers of the President was unconstitutional. State Dept. Bull., Nov. 26, 1973, p. 662. The House Committee Report on the War Powers Act (93-287) considered this question and, without making any attempt to come to grips with the language of the Constitution, concluded that the provision was valid because there was "ample precedent" for it. In support the report noted that most of the important legislation enacted for the prosecution of World War II provided for termination of powers upon adoption of concurrent resolutions, including the Lend-Lease Act, First War Powers Act, Emergency Price Control Act and others. See Ginnane, supra; Harris, supra. Admittedly, the Executive branch has not been entirely consistent as far as articulating its position has been concerned. E.g. Jackson, A Presidential Legal Opinion, 66 Harv. L. Rev. 1353



(1953). Nevertheless, we do not believe that the matter can be determined by recent usage alone. Although custom or practice can be a source of constitutional law, the cases indicate that this can occur if the test is ambiguous or doubtful but not where the practice is clearly incompatible with the supreme law of the land. McPherson v. Blacker, 146 U.S. 1, 27 (1892); Inland Waterways v. Young, 309 U.S. 517, 525 (1940); Field v. Clark, 143 U.S. 649, 691 (1892); Nixon v. Sirica, 487 F. 2d 700, 730 (D.C. Cir. 1973) and cases cited therein (McKinnon, J., concurring in part). Here, as noted, the recent practice contradicts the clear text of Article I, Section 7.

Moreover, if one is to look to constitutional precedent, the recent trend toward the use of Congressional veto devices is not the only relevant practice. The contemporaneous construction of the Constitution that was followed until recent times points in an entirely different direction. A careful analysis of the practice compiled by the Senate Judiciary Committee in 1897 beginning with the first Congress through the nineteenth century shows that concurrent resolutions were limited to matters "in which both House have a common interest, but with which the President has no concern." They never "embraced legislative provisions proper." S. Rep. No. 1335, 54th Cong., 1st Sess. 6 (1897). The report concluded that the Constitution requires that resolutions must be presented to the President when "they contain matter which is properly to be regarded as legislative in its character and effect." Id. at 8, quoted in part in 4 Hinds' Precedents of the House of Representatives § 3483.

It appears that it was not until 1919 that it was seriously suggested that Congress could make an affirmative policy or legislative decision by a concurrent resolution not presented to the President. Actual enactments of this kind did not begin until the 1930's. Ginnane, supra at 575. Thus, if any deference is to be given to practice and precedent, we believe that the practice begun with the adoption of the Constitution and continued uniformly for approximately 150 years is entitled to far greater weight than the more recent, sporadic and often debated examples of lawmaking by concurrent resolution.



I hope that our views will prove helpful to you.

Sincerely,

(Signed) W. Vincent Rakestraw

W. Vincent Rakestraw  
Assistant Attorney General



Last Day - October 29

October 25, 1974

MEMORANDUM FOR: THE PRESIDENT  
FROM: KEN COLE  
SUBJECT: Enrolled Bill S. 3698  
International Nuclear  
Agreements

Attached for your consideration is Senate bill, S. 3698, sponsored by Senator Pastore, which amends the Atomic Energy Act to provide in effect that Congress can disapprove by concurrent resolution certain international agreements with respect to nuclear reactors.

Roy Ash recommends approval and provides you with additional background information in his enrolled bill report (Tab A).

The NSC, the Counsel's office (Chapman), Bill Timmons, and Domestic Council all recommend approval. Initially, State proposed a signing statement accompany the bill, but has now deferred to OMB and approves of the bill without a statement.

RECOMMENDATION

That you sign Senate bill, S. 3698 (Tab B).





Last Day - October 29

October 25, 1974

MEMORANDUM FOR: THE PRESIDENT  
FROM: KEN COLE  
SUBJECT: Enrolled Bill S. 3698  
International Nuclear  
Agreements

Attached for your consideration is Senate bill, S. 3698, sponsored by Senator Pastore, which amends the Atomic Energy Act to provide in effect that Congress can disapprove by concurrent resolution certain international agreements with respect to nuclear reactors.

Roy Ash recommends approval and provides you with additional background information in his enrolled bill report (Tab A).

The NSC, the Counsel's office (Chapman), Bill Timmons, and Domestic Council all recommend approval. Initially, State proposed a signing statement accompany the bill, but has now deferred to OMB and approves of the bill without a statement.

RECOMMENDATION

That you sign Senate bill, S. 3698 (Tab B).



Last Day - October 29

October 25, 1974

MEMORANDUM FOR: THE PRESIDENT  
FROM: KEN COLE  
SUBJECT: Enrolled Bill S. 3698  
International Nuclear  
Agreements

Attached for your consideration is Senate bill, S. 3698, sponsored by Senator Pastore, which amends the Atomic Energy Act to provide in effect that Congress can disapprove by concurrent resolution certain international agreements with respect to nuclear reactors.

Roy Ash recommends approval and provides you with additional background information in his enrolled bill report (Tab A).

The NSC, the Counsel's office (Chapman), Bill Timmons, and Domestic Council all recommend approval. Initially, State proposed a signing statement accompany the bill, but has now deferred to OMB and approves of the bill without a statement.

RECOMMENDATION

That you sign Senate bill, S. 3698 (Tab B).

Date: October 23, 1974

Time: 6:00 p.m.

FOR ACTION: Michael Duval  
 NSC/S  
 ✓ Phil Buchen  
 Bill Timmons  
 Paul Theis

cc (for information): Warren K. Hendriks  
 Jerry Jones  
 Glenn Schleede

FROM THE STAFF SECRETARY

DUE: Date: Friday, October 25, 1974

Time: 2:00 p.m.

SUBJECT: Enrolled Bill S. 3698 - International Nuclear  
 Agreements

## ACTION REQUESTED:

 For Necessary Action For Your Recommendations Prepare Agenda and Brief Draft Reply For Your Comments Draft Remarks

## REMARKS:

Please return to Kathy Tindle - West Wing

**PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.**

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Warren K. Hendriks  
 For the President



THE WHITE HOUSE

WASHINGTON

October 24, 1974

MEMORANDUM FOR: MR. WARREN HENDRIKS  
FROM: WILLIAM E. TIMMONS  
SUBJECT: Action Memorandum - Log No. 699  
Enrolled Bill S. 3698 - International  
Nuclear Agreements

The Office of Legislative Affairs concurs in the attached proposal and has no additional recommendations.

Attachment

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 699

Date: October 23, 1974

Time: 6:00 p.m.

FOR ACTION: Michael Duval  
NSC/S  
Phil Buchen  
Bill Timmons  
Paul Theis

cc (for information): Warren K. Hendriks  
Jerry Jones  
Glenn Schleede

FROM THE STAFF SECRETARY

DUE: Date: Friday, October 25, 1974

Time: 2:00 p.m.

SUBJECT: Enrolled Bill S. 3698 - International Nuclear  
Agreements

ACTION REQUESTED:

\_\_\_ For Necessary Action

**XX** \_\_\_ For Your Recommendations

\_\_\_ Prepare Agenda and Brief

\_\_\_ Draft Reply

\_\_\_ For Your Comments

\_\_\_ Draft Remarks

REMARKS:

Please return to Kathy Tindle - West Wing

*No objection  
D.C.*

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Warren K. Hendriks  
For the President

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 699

Date: October 23, 1974

Time: 6:00 p.m.

FOR ACTION: Michael Duval  
NSC/S  
Phil Buchen  
Bill Timmons  
Paul Theis

cc (for information): Warren K. Hendriks  
Jerry Jones  
Glenn Schleede

FROM THE STAFF SECRETARY

DUE: Date: Friday, October 25, 1974

Time: 2:00 p.m.

SUBJECT: Enrolled Bill S. 3698 - International Nuclear Agreements

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

*Refer to NSC*

*Mike Duval*

Please return to Kathy Tindle - West Wing

*Mark working*

*w/ NSC on*

*signing statement*

*question.*

*(1)*

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Warren K. Hendriks  
For the President

MEMORANDUM

THE WHITE HOUSE

WASHINGTON

ACTION

Last Day - October 29

MEMORANDUM FOR: THE PRESIDENT  
FROM: KEN COLE  
SUBJECT: Enrolled Bill S. 3698  
International Nuclear Agreements

Attached for your consideration is Senate bill, S. 3698, sponsored by Senator Pastore, which amends the Atomic Energy Act to provide in effect that Congress can disapprove by concurrent resolution certain international agreements with respect to nuclear reactors.

Roy Ash etc.

the NSC, the Counsel's office (Chapman), Bill Timmons and ~~Paul Theris~~ all recommend approval.

*DC. want*

RECOMMENDATION

That you sign Senate bill, S. 3698 (Tab B) ~~and approve proposed Presidential signing statement (Tab C).~~



THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.: 699

Date: October 23, 1974

Time: 6:00 p.m.

FOR ACTION:  Michael Duval

cc (for information): Warren K. Hendriks

~~NSC/S - obj. [unclear]~~

Jerry Nones

Phil Buchen

Glenn Schleede

Bill Timmons

Paul Theis

FROM THE STAFF SECRETARY

DUE: Date: Friday, October 25, 1974

Time: 2:00 p.m.

SUBJECT: Enrolled Bill S. 3698 - International Nuclear Agreements

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

Please return to Kathy Tindle - West Wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.  
For the President



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

OCT 23 1974

To  
Harris Handrichs  
10-23-74  
5:15 p.m.

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 3698 - International Nuclear  
Agreements  
Sponsor - Sen. Pastore (D) Rhode Island and 8 others

Last Day for Action

October 29, 1974 - Tuesday

Purpose

Amends the Atomic Energy Act to provide in effect that Congress can disapprove by concurrent resolution certain international agreements with respect to nuclear reactors.

Agency Recommendations

|                                 |                                       |
|---------------------------------|---------------------------------------|
| Office of Management and Budget | Approval                              |
| Atomic Energy Commission        | Approval                              |
| Department of State             | Approval (Signing statement attached) |
| National Security Council       | Approval                              |
| Department of Defense           | No recommendation                     |
| Department of Justice           | Defers to State                       |

Discussion

S. 3698 apparently grew out of former President Nixon's announcement in June 1974 of his intention to enter into cooperative nuclear power agreements with Egypt and with Israel. The Joint Committee's report indicates that, notwithstanding the excellent record to date with regard to safeguards for international agreements for nuclear power, it concluded that it would be prudent to review the present statutorily prescribed system applicable to proposed agreements for cooperation in peaceful nuclear areas and to determine whether it should be revised in the light of

AMENDING THE ATOMIC ENERGY ACT OF 1954,  
AS AMENDED, TO ENABLE CONGRESS TO  
CONCUR IN OR DISAPPROVE CERTAIN  
INTERNATIONAL AGREEMENTS FOR  
PEACEFUL COOPERATION

---

R E P O R T

BY THE

JOINT COMMITTEE ON ATOMIC ENERGY

[To accompany S. 3698]



JUNE 25, 1974.—Ordered to be printed

---

U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1974

AMENDING THE ATOMIC ENERGY ACT OF 1954, AS AMENDED, TO  
 ENABLE CONGRESS TO CONCUR IN OR DISAPPROVE CERTAIN  
 INTERNATIONAL AGREEMENTS FOR PEACEFUL COOPERATION

JOINT COMMITTEE ON ATOMIC ENERGY

MELVIN PRICE, Illinois, *Chairman*

JOHN O. PASTORE, Rhode Island, *Vice Chairman*

|  |                                 |
|--|---------------------------------|
| CHET HOLIFIELD, California   | HENRY M. JACKSON, Washington    |
| JOHN YOUNG, Texas  | STUART SYMINGTON, Missouri      |
| TENO RONCALIO, Wyoming   | ALAN BIBLE, Nevada              |
| MIKE McCORMACK, Washington   | JOSEPH M. MONTOYA, New Mexico   |
| CRAIG HOSMER, California   | GEORGE D. AIKEN, Vermont        |
| JOHN B. ANDERSON, Illinois   | WALLACE F. BENNETT, Utah        |
| ORVAL HANSEN, Idaho  | PETER H. DOMINICK, Colorado     |
| MANUEL LUJAN, Jr., New Mexico  | HOWARD H. BAKER, Jr., Tennessee |
| EDWARD J. BAUSER, <i>Executive Director</i>                                    |                                 |
| GEORGE F. MURPHY, Jr., <i>Deputy Director</i>                                  |                                 |
| JAMES B. GRAHAM, <i>Assistant Director</i>                                     |                                 |
| NORMAN P. KLUG, <i>Technical Consultant</i>                                    |                                 |
| Brig. Gen. ALBION W. KNIGHT, Jr., (USA Ret.), <i>Professional Staff Member</i> |                                 |
| RANDALL C. STEPHENS, <i>Professional Staff Member</i>                          |                                 |
| WILLIAM J. MINSCH, Jr., <i>Special Counsel</i>                                 |                                 |
| LAWRENCE F. ZENKER, <i>GAO Consultant</i>                                      |                                 |
| CHRISTOPHER C. O'MALLEY, <i>Printing Editor</i>                                |                                 |

(II)

JUNE 25, 1974.—Ordered to be printed

Mr. PASTORE, from the Joint Committee on Atomic Energy,  
 submitted the following

REPORT

[To accompany S. 3698]

The Joint Committee on Atomic Energy, having considered S. 3698, a bill to amend the Atomic Energy Act of 1954, as amended, to enable Congress to concur in or disapprove international agreements for co-operation in regard to certain nuclear technology hereby report without amendment the bill and recommend that the bill do pass.

BACKGROUND

On June 14, 1974, the President announced his intention to enter into a cooperative nuclear power agreement with Egypt, and three days later the President announced that it was planned to negotiate a similar arrangement with Israel.

Section 123 of the Atomic Energy Act of 1954, as amended, and related provisions in that Act, stipulate that agreements involving the export of nuclear reactors or special nuclear material may not be undertaken unless and until certain steps are taken.

First, the Atomic Energy Commission must submit to the President a proposed agreement for cooperation, together with its recommendations. The submitted proposal must include (1) the terms, conditions, duration, nature, and scope of the proposed cooperation, (2) a guaranty by the other party that the security safeguards and standards provided for in the agreement will be maintained, and (3) certain other guarantees by such party respecting the use of special materials and their unavailability to unauthorized persons;

Secondly, the President must approve the proposed agreement, following a written determination by him that its implementation would promote, and would not constitute an unreasonable risk to, the common defense and security; and

Thirdly, the proposed agreement for cooperation, together with the President's approval and determination, must be submitted to the Joint Committee for a period of 30 days while Congress is in session.

These requirements are applicable to proposed agreements for cooperation involving peaceful nuclear applications.

With respect to proposed agreements for cooperation in the military area, subsection d. of section 123 requires that, in lieu of the third step referred to above, the first two steps must be followed by a submittal for a 60-day period instead of the 30-day period applicable to proposed agreements for peaceful nuclear applications. Additionally subsection 123 d. provides that "such proposed agreement for cooperation shall not become effective if during such sixty-day period the Congress passes a concurrent resolution stating in substance that it does not favor the proposed agreement for cooperation . . ."

The Joint Committee is advised that, to date, negotiations have not yet been begun in regard to either of the two contemplated arrangements. The committee anticipates that a number of intrinsic features—particularly the inclusion of carefully devised, stringent safeguards measures—will take some time to negotiate. Protraction and difficulties may well be encountered in the course of the negotiations, despite the best of intentions on all sides. The Joint Committee understands that Restricted Data will definitely not be involved in the anticipated agreements, so this important aspect will not be part of any difficulties in the negotiations.

Nevertheless, and notwithstanding the excellent record to date in regard to safeguards pertaining to the international agreements for nuclear power heretofore executed in accordance with the requirements of subsection 123 c. and the related provisions of the Atomic Energy Act, the Joint Committee concluded that it would be prudent to review the present statutorily prescribed system applicable to proposed agreements for cooperation in peaceful nuclear areas and to determine whether or not they should be revised in light of the experience to date and probable future developments.

On June 25, 1974, Senator Pastore, in co-sponsorship with all the other Senate members of the Joint Committee, offered an amendment to the Atomic Energy Act to remove from the ambit of subsection 123 c. of the Atomic Energy Act those proposed agreements for cooperation that would deal with nuclear reactors capable of producing more than 5 megawatts of heat and with fuel for such reactors, and transfer that category of peaceful nuclear applications to coverage under subsection 123 d. which now governs proposed international agreements for military purposes. Additionally, the offered amendment, S. 3698, would make it obligatory for the Joint Committee to submit a report to the Congress, within 30 days, of its views and recommendations regarding each proposed agreement under subsection 123 d. together with a proposed concurrent resolution stating in substance that the Congress either favors or does not favor the proposed agreement for cooperation. Thus, under S. 3698, each House of the Congress would have an opportunity to express its favor or disfavor of any such proposed agreement within the 60 day statutory period for congressional consideration now applicable solely to military agreements. Adoption of a concurrent resolution stating in substance that Congress does not favor a proposed agreement would legally bar its execution.

On June 25, 1974, Chairman Price offered an identical amendment in the House. This bill, H.R. 15582, was co-sponsored by Representatives Holifield, Hosmer, and Young. S. 3698 and H.R. 15582 were referred to the Joint Committee.

### COMMITTEE COMMENTS

In view of the considerable interest centering on the President's announced intentions on June 14 and 17, the Joint Committee decided to give S. 3698 and H.R. 15582 expeditious consideration. The Joint Committee met in open session on June 25 to discuss the general situation and to consider the proposed amendment to section 123 of the Atomic Energy Act.

At this session the Joint Committee voted to approve reporting of the bills favorably, without amendments, and adopted this report. These actions were taken by the unanimous vote of the members present.

The Joint Committee believes that the time has come, considering the importance of nuclear power in meeting the world's energy deficit and the increasing demand for a sharing in the benefits of nuclear peaceful applications, to assure a deliberate and searching congressional review of proposed agreements which involve nuclear fuel or nuclear reactors with any significant power output and thus some practical potential for plutonium generation.

The Atomic Energy Act's present requirements in subsection 123 have served the purpose to date. There has been no evidence of unlawful diversions or unwarranted use of special nuclear material in regard to the agreements for cooperation heretofore entered into. Section 123 provides for adequate disclosures, a guaranty of security safeguards, a guaranty by the cooperating party that any material transferred pursuant to an agreement for cooperation would not be used for non-civil purposes, and a guaranty of non-transferability to unauthorized parties. Further, under subsection 123 b. of the present Act, the President must not only approve and authorize the proposed agreement, but is required to make a determination in writing that its performance will promote and will not constitute an unreasonable risk to the common defense and security.

Nevertheless, the committee concluded that it would be advisable to strengthen the statutory framework in the respects provided for in S. 3698 and H.R. 15582. This would be accomplished by placing power reactors with a capacity of more than five thermal megawatts, and special nuclear material associated therewith, on the same level as military agreements, for which a sixty-day review is presently required under subsection 123 d. of the Act. Subsection 123 d. also provides that a congressional concurrent resolution of disfavor would legally bar execution of a proposed agreement.

The Joint Committee also concluded that the additional requirements in S. 3698 and H.R. 15582, to oblige the Joint Committee to report its views within the first 30 days of any such 60-day period, together with a proposed concurrent resolution expressing congressional favor or disfavor, would be an additional advisable feature.

In the judgment of the Joint Committee, S. 3698 and H.R. 15582 would provide an adequate, clear-cut mechanism for responsible congressional participation in these sensitive nuclear areas.

### SECTION-BY-SECTION ANALYSIS

*Section 1* of the bill amends subsection 123 d. of the Atomic Energy Act of 1954, as amended, to provide for a revised procedure by which certain proposed international agreements for peaceful cooperation

in nuclear energy will, in effect, receive congressional treatment in the manner now provided for military agreements. Additionally, Section 1 commits the Joint Committee on Atomic Energy to report, within the first thirty days from the time the proposed agreement is submitted, its views and recommendations, together with a proposed concurrent resolution stating in substance that the Congress favors, or does not favor, as the case may be, the proposed agreement for cooperation. Such agreement shall not become effective if during such 60-day period the Congress passes a concurring resolution of disfavor.

Section 2 of the bill provides that the proposed revision to subsection 123 d. of the Atomic Energy Act of 1954, as amended, shall apply to proposed agreements and proposed amendments to agreements for cooperation submitted to the Congress after the bill becomes law.

#### CHANGES IN EXISTING LAW

In accordance with subsection (4) of rule XXIX of the Standing Rules of the Senate, changes in existing law recommended by the bill accompanying this report are shown as follows (deleted matter is shown enclosed in black brackets and new matter is printed in italic; and existing law in which no change is proposed is shown in roman) :

#### ATOMIC ENERGY ACT OF 1954, AS AMENDED

##### SEC. 123. Cooperation with other nations.

\* \* \* \* \*

"d. The proposed agreement for cooperation, together with the approval and determination of the President, if arranged pursuant to subsection 91c., 144b., or 144c., *or if entailing implementation of sections 53, 54, 103 or 104 in relation to a reactor that may be capable of producing more than 5 thermal megawatts or special nuclear material for use in connection therewith*, has been submitted to the Congress and referred to the Joint Committee and a period of sixty days has elapsed while Congress is in session (*in computing such sixty days, there shall be excluded the days on which either House is not in session because of an adjournment of more than three days*), but any such proposed agreement for cooperation shall not become effective if during such sixty-day period the Congress passes a concurrent resolution stating in substance that it does not favor the proposed agreement for cooperation: **[***Provided, however, That during the Eighty-fifth Congress such period shall be thirty days (in computing such sixty days, or thirty days, as the case may be, there shall be excluded the days on which either House is not in session because of an adjournment of more than three days).***]** *Provided, That prior to the elapse of the first thirty days of any such sixty-day period the Joint Committee shall submit a report to the Congress of its views and recommendations respecting the proposed agreement and an accompanying proposed concurrent resolution stating in substance that the Congress favors, or does not favor, as the case may be, the proposed agreement for cooperation.*"

○

## INTERNATIONAL NUCLEAR AGREEMENT CONGRESSIONAL REVIEW ACT

—————  
AUGUST 19, 1974.—Ordered to be printed  
—————

Mr. PRICE of Illinois, from the committee of conference,  
submitted the following

### CONFERENCE REPORT

[To accompany S. 3698]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 3698) to amend the Atomic Energy Act of 1954, as amended, to enable Congress to concur in or disapprove international agreements for cooperation in regard to certain nuclear technology, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

*That subsection 123 d. of the Atomic Energy Act of 1954, as amended, is revised to read as follows:*

*“d. The proposed agreement for cooperation, together with the approval and determination of the President, if arranged pursuant to subsection 91 c., 144 b., or 144 c., or if entailing implementation of sections 53, 54, 103, or 104 in relation to a reactor that may be capable of producing more than five thermal megawatts or special nuclear material for use in connection therewith, has been submitted to the Congress and referred to the Joint Committee and a period of sixty days has elapsed while Congress is in session (in computing such sixty days, there shall be excluded the days on which either House is not in session because of an adjournment of more than three days), but any such proposed agreement for cooperation shall not become effective if during such sixty-day period the Congress passes a concurrent resolution stating in substance that it does not favor the proposed agreement for cooperation: Provided, That prior to the elapse of the first thirty days of any such sixty-day period the Joint Committee shall submit a report to the Congress of its views and recommendations respecting*

*the proposed agreement and an accompanying proposed concurrent resolution stating in substance that the Congress favors, or does not favor, as the case may be, the proposed agreement for cooperation. Any such concurrent resolution so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents) within twenty-five days and shall be voted on within five calendar days thereafter, unless such House shall otherwise determine."*

*SEC. 2. This Act shall apply to proposed agreements for cooperation and to proposed amendments to agreements for cooperation hereafter submitted to the Congress.*

And the House agree to the same.

MELVIN PRICE,  
CHET HOLIFIELD,  
CRAIG HOSMER,  
MIKE McCORMACK,

*Managers on the Part of the House.*

JOHN O. PASTORE,  
GEORGE D. AIKEN,  
HOWARD BAKER,

*Managers on the Part of the Senate.*

## JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 3698) to amend the Atomic Energy Act of 1954, as amended, to enable Congress to concur in or disapprove international agreements for cooperation in regard to certain nuclear technology, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendment struck out all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for the Senate bill and the House amendment. The differences between the Senate bill, the House amendment, and the substitute agreed to in conference are noted below.

### PROCEDURE FOR APPROVAL OF AGREEMENTS

The Senate bill provided that agreements for cooperation of the type specified in the bill would not become effective until they had been submitted to Congress and referred to the Joint Committee on Atomic Energy and a period of sixty days had elapsed. The Joint Committee was required to submit a report to the House and Senate within 30 days after receipt of the proposed agreement and to submit in addition a proposed concurrent resolution stating in substance that the Congress either favors or disfavors the proposed agreement. If within 60 days Congress were to pass a concurrent resolution stating in substance that it does not favor a proposed agreement, then the agreement would not become effective.

The House amendment provided that no proposed agreement of the type specified in the bill would become effective unless and until specifically approved by Act of Congress.

The conference substitute conforms to the Senate bill.

### LEGISLATIVE PRIORITY AND ANTIFILIBUSTER PROVISION

The Senate bill provided that within 25 days after the Joint Committee on Atomic Energy reports its proposed concurrent resolution, such resolution becomes the pending business of the House in question and shall be voted on within five calendar days thereafter, unless such House shall otherwise determine by yeas and nays.

The House amendment contained no provisions for legislative priority for matters dealing with proposed agreements.

The conference substitute conforms essentially to the Senate bill with the exception that the yeas and nays aspect has been deleted. Each House may determine whether and how the proposed concurrent resolution becomes the pending business or is voted on by any method acceptable under its rules.

EFFECTIVE DATE OF BILL

The Senate bill provided that this Act will be applicable to proposed agreements for cooperation and to proposed amendments to agreements for cooperation submitted to Congress after its enactment.

The House amendment provided that the Act would apply to agreements and amendments proposed or entered into after July 1, 1974.

The conference substitute conforms to the Senate bill.

MELVIN PRICE,  
CHET HOLIFIELD,  
CRAIG HOSMER,  
MIKE McCORMACK,

*Managers on the Part of the House.*

JOHN O. PASTORE,  
GEORGE D. AIKEN,  
HOWARD BAKER,

*Managers on the Part of the Senate.*

○



# Ninety-third Congress of the United States of America

AT THE SECOND SESSION

*Begun and held at the City of Washington on Monday, the twenty-first day of January,  
one thousand nine hundred and seventy-four*

## An Act

To amend the Atomic Energy Act of 1954, as amended, to enable Congress to concur in or disapprove international agreements for cooperation in regard to certain nuclear technology.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection 123 d. of the Atomic Energy Act of 1954, as amended, is revised to read as follows:*

"d. The proposed agreement for cooperation, together with the approval and determination of the President, if arranged pursuant to subsection 91 c., 144 b., or 144 c., or if entailing implementation of sections 53, 54, 103, or 104 in relation to a reactor that may be capable of producing more than five thermal megawatts or special nuclear material for use in connection therewith, has been submitted to the Congress and referred to the Joint Committee and a period of sixty days has elapsed while Congress is in session (in computing such sixty days, there shall be excluded the days on which either House is not in session because of an adjournment of more than three days), but any such proposed agreement for cooperation shall not become effective if during such sixty-day period the Congress passes a concurrent resolution stating in substance that it does not favor the proposed agreement for cooperation: *Provided*, That prior to the elapse of the first thirty days of any such sixty-day period the Joint Committee shall submit a report to the Congress of its views and recommendations respecting the proposed agreement and an accompanying proposed concurrent resolution stating in substance that the Congress favors, or does not favor, as the case may be, the proposed agreement for cooperation. Any such concurrent resolution so reported shall become the pending business of the House in question (in the case of the Senate the time for debate shall be equally divided between the proponents and the opponents) within twenty-five days and shall be voted on within five calendar days thereafter, unless such House shall otherwise determine."

SEC. 2. This Act shall apply to proposed agreements for cooperation and to proposed amendments to agreements for cooperation hereafter submitted to the Congress.

*Speaker of the House of Representatives.*

*Vice President of the United States and  
President of the Senate.*

HHH  
TTTT  
HHH  
III

October 17, 1974

Dear Mr. Director:

The following bills were received at the White House on October 17th:

|                 |             |              |              |
|-----------------|-------------|--------------|--------------|
| S.J. Res. 236 ✓ | S. 2840 ✓   | H.R. 7768    | H.R. 14225   |
| S.J. Res. 250 ✓ | S. 3007 ✓   | H.R. 7780    | H.R. 14597   |
| S.J. Res. 251 ✓ | S. 3234 ✓   | H.R. 11221   | H.R. 15148 ✓ |
| S. 355 ✓        | S. 3473 ✓   | H.R. 11251 ✓ | H.R. 15427   |
| S. 605 ✓        | S. 3698 ✓   | H.R. 11452 ✓ | H.R. 15540 ✓ |
| S. 628 ✓        | S. 3792     | H.R. 11830 ✓ | H.R. 15643 ✓ |
| S. 1411 ✓       | S. 3838 ✓   | H.R. 12035 ✓ | H.R. 16857 ✓ |
| S. 1412 ✓       | S. 3979 ✓   | H.R. 12281   | H.R. 17027 ✓ |
| S. 1769 ✓       | H.R. 6624   | H.R. 13561 ✓ |              |
| S. 2348 ✓       | H.R. 6642 ✓ | H.R. 13631 ✓ |              |

Please let the President have reports and recommendations as to the approval of these bills as soon as possible.

Sincerely,

Robert D. Linder  
Chief Executive Clerk

The Honorable Roy L. Ash  
Director  
Office of Management and Budget  
Washington, D. C.