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Nuclear Cooperation Agreement with Russia: Statutory Procedures for Congressional Consideration

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Summary

On May 13, 2008, President Bush submitted to Congress a proposed agreement for nuclear cooperation with the Russian Federation. The Atomic Energy Act (AEA) prescribes that the *text* of such an agreement be submitted to the Senate Committee on Foreign Relations and the House Committee on Foreign Affairs for at least 30 days of consultation. Also, the agreement *itself* is to be submitted to Congress for 60 days, during which the committees consider it and report recommendations. The agreement goes into effect unless a joint resolution of disapproval is enacted by the end of the 60-day period. This report will be updated to reflect congressional action.

The President's letter of transmittal states that the May 13 action meets all requirements for both submissions, and stipulates that the 60-day period start immediately upon conclusion of the 30-day period. Both periods are measured in "days of continuous session," which the AEA defines to include all days except recesses of either house of more than three days, with "continuity" broken only by the *sine die* adjournment of a Congress. By this definition, the 60-day period may begin on June 24. If both houses take recesses as scheduled, the projected *sine die* adjournment on September 26 may be only the 78th day of continuous session. In this case, the statutory period for disapproval would have to start over again when Congress reconvenes in January, 2009. On the other hand, if both houses hold *pro forma* sessions during scheduled recesses, as they did in some recent instances, the disapproval period could end, and the agreement take effect, as early as August 11.

The AEA prescribes the text for a disapproval resolution and directs House committee leaders and Senate floor leaders (or designees) to introduce it when the 60-day period starts (in addition, a House Member introduced such a resolution at the start of the 30-day period). The AEA also requires the President to state his approval of the agreement before the 60-day period begins, but he did so in his initial transmission letter, perhaps rendering moot the consultive purpose of the 30-day period. Yet both committees of referral met with State Department officials on the agreement during the 30-day period, which may constitute the consultations the AEA directs during that period, but might also be taken as the hearings mandated during the 60-day period.

The AEA prescribes an expedited procedure for Senate floor consideration of a disapproval resolution, including a non-debatable motion to take up the measure, a 10-hour limit on consideration, and a prohibition on amendments. For House consideration, the AEA invites the Committee on Rules to prescribe similar terms. Congress could also disapprove the agreement, or approve it with conditions, by enacting an alternative measure under its general rules. The President, however, might likely veto any disapproval or conditional approval, in which case the agreement would go into effect unless Congress overrides the veto before the end of the disapproval period. Inasmuch as the President may take 10 days for his action, the timely enactment of a disapproval resolution may be feasible only if Congress initially passes it with more than 10 days remaining in the disapproval period.

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Introduction and Overview

Nuclear Cooperation with Russia and the Atomic Energy Act

On May 13, 2008, President Bush submitted to Congress a proposed agreement for civil nuclear cooperation with the Russian Federation.[1] In accordance with the non-proliferation provisions of the Atomic Energy Act, as amended (AEA or "the act"),[2] agreements for nuclear cooperation may go into effect only following an opportunity for congressional consideration defined by section 123. of the act (42 U.S.C. 2153),[3] on account of which these agreements are sometimes known as "123 agreements." The effect of these provisions is that an agreement with terms like that of the proposed agreement with Russia will go into effect at the end of 90 "days of continuous session" of Congress after it is initially submitted to Congress, unless, during that time, a joint resolution disapproving the agreement is enacted through procedures defined in section 130. of the act (42 U.S.C. 2159).

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[1] For information on policy issues associated with the proposed agreement with Russia, see CRS Report RS22892, *U.S.-Russian Civilian Nuclear Cooperation Agreement: Issues for Congress*, by Mary Beth Nikitin.

[2] Legislation governing atomic energy was originally enacted by the Atomic Energy Act of 1946 (Public Law 585, 79th Cong., 60 Stat. 755). The 1946 act was comprehensively amended by Atomic Energy Act of 1954 (Public Law 703, 83rd Cong., 68 Stat. 919), which added the initial version of the non-proliferation provisions, now codified chiefly at 42 U.S.C. 2151-2160d (Subchapter X, "International Activities," of Chapter 23, "Development and Control of Atomic Energy," of Title 42, "Public Health and Welfare"). These provisions included pertinently sec. 123. (68 Stat. 940, 42 U.S.C. 2153), which defines requirements for nuclear cooperation agreements and for their approval. Sec. 308 of the Nuclear Nonproliferation Act of 1978 (P.L. 95-242, 92 Stat. 120 at 139) added the initial version of section 130. (42 U.S.C. 2159), which establishes expedited procedures for legislation to approve or disapprove nuclear cooperation agreements. Section 301(b)(2)(B) of P.L. 99-64 (99 Stat. 120 at 161) added subsection 130.i. (42 U.S.C. 2159(I)), which establishes the expedited procedure now applicable to the proposed agreement with the Russian Federation.

[3] This report follows the form of the enacting statutes in using periods in the designation of sections and subsections (for example, sections 123.d. and 130.i.). The codified versions of these provisions are designated with the more usual parentheses (for example, 42 U.S.C. 2153(d) and 2159(i)).

This report first sketches the procedures prescribed by the AEA for congressional action in relation to agreements of this kind, then summarizes legislative proceedings occurring in relation to the proposed agreement with Russia, beginning with its recent submission. Thereafter, the report addresses several questions of the implementation and intent of these statutory requirements that are raised by their application to the proposed agreement with the Russian Federation. Special attention is given to the definition of "days of continuous session" and possible implications of this definition depending on whether or not the requisite period ends before the end of the 110th Congress.

Other questions addressed in this report about the effects of congressional action on the proposed agreement include

- What does the President submit, when, to whom, and with what effect?
- How and when are resolutions of disapproval introduced?
- How might the requirement for automatic discharge of the disapproval resolution come to bear?
- How might congressional action on the disapproval resolution come about?
- What proceedings would have to occur for the nuclear cooperation agreement with Russia to be disapproved?
- What possibilities of disapproval (or approval) of the agreement exist other than pursuant to the statutory procedures?

Summary of Procedural Requirements

Section 123.a. of the AEA establishes nine requirements that a proposed agreement for nuclear cooperation must either meet or receive presidential exemption from meeting. The remainder of section 123. prescribes different regulations for congressional action depending on whether or not the agreement requires this exemption and on other features of its terms. As explained below, the procedural regulations applicable specifically to the proposed agreement with Russia depend principally on three features of the agreement: (1) it requires no exemption for failure to meet any of the nine requirements; (2) it includes provisions relating to "large reactors;" and (3) it covers only civil uses of atomic energy.

Section 123.a. provides that if a proposed agreement requires no exemption, it may go into effect at a prescribed point unless Congress has previously acted to disapprove it.

Section 123.b. specifies that unless an agreement involves military-related uses of nuclear energy, the President is to submit its text to the Senate Committee on Foreign Relations and the House Committee on Foreign Affairs for a period of "not less than 30 days of continuous session" for consultation.[4] This submission is to be

[4] The requirements of section 123.b. (42 U.S.C. 2153(b)) apply to agreements not "arranged pursuant to subsection 91(c), 144(b), 144(c), or 144(d)" of the Atomic Energy Act (42 (continued...)

accompanied (for agreements like that with Russia) by an unclassified Nuclear Proliferation Assessment Statement (NPAS) prepared by the Department of State.[5]

Section 123.d. directs that if the agreement involves large reactors,[6] the President is to submit it, along with additional supporting documents, to Congress for a period of 60 "days of continuous session." The supporting documents include (1) any classified annexes to the NPAS; and (2) a statement of the President's approval of the agreement and determination that it "will promote, and will not constitute an unreasonable risk to, the common defense and security." The measure is to be referred to the same two committees as specified under section 123.b., and these committees are to hold hearings on the proposal and report recommendations to their respective chambers. The agreement goes into effect unless, by the end of this 60-day period, a joint resolution of disapproval is enacted into law pursuant to procedures prescribed by section 130.i.

Section 130.i. specifies the text for this joint resolution of disapproval and provides that it be automatically introduced in each chamber, at the beginning of the 60-day period, in the House by the chairman and ranking minority member of the Committee on Foreign Affairs, and in the Senate by the two party floor leaders, or, in either case, by their designees. If a committee of referral does not report the measure within 45 days,[7] it is automatically discharged from further consideration. For the Senate, section 130.i. provides that the disapproval resolution may be called up on a non-debatable motion, time for consideration is limited to 10 hours, and amendments are prohibited. For the House, the statute invites the Committee on Rules to report a special rule incorporating comparable restrictions.

Legislative Action

President Bush transmitted the proposed agreement for civil nuclear cooperation with the Russian Federation to Congress on May 13, 2008.[8] The President's letter

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[4] (...continued)
U.S.C. 2121(c), 2164(b), 2164(c), or 2164(d)), which cover military uses of atomic energy.

[5] The NPAS is described in section 123.a. (42 U.S.C. 2153(a)).

[6] The requirements of section 123.d. (42 U.S.C. 2153(d)) apply to agreements "entailing implementation of [42 U.S.C.] 2073, 2074(a), 2133, or 2134 ... 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." In practice, this category includes most reactors other than some that serve purposes of research alone.

[7] Section 130.i. does not specify that the 45 days allowed for committee action are days of continuous session; accordingly, they would presumably be treated instead as legislative days. The significance of this difference is addressed below in the section on "Discharge of Committee."

[8] U.S. Congress, House, *Proposed Agreement Between the United States of America and the Russian Federation Concerning Peaceful Uses of Nuclear Energy*, message from the President of the United States transmitting a proposed agreement between the Government of the United States of America and the Government of the Russian Federation for (continued...)

of transmittal states that the agreement is accompanied by his "approval and determination,"[9] as well as by the requisite unclassified NPAS.[10] The transmittal letter also states that the classified annex would be submitted separately (and it appears, in fact, that the committees of jurisdiction had already received this annex on May 12).

The inclusion of the unclassified NPAS meets the requirements of the AEA to begin the 30-day period, and the inclusion of the President's "approval and determination," together with the separate submission of the classified annex to the NPAS, meet the requirements for the 60-day period to start. The President's transmittal letter, accordingly, states that this submission "shall constitute a submittal for purposes of both sections 123.b. and 123.d. of the Atomic Energy Act." The letter of transmittal, nevertheless, also expresses an understanding that the two periods will not both commence immediately, but instead will occur consecutively. It goes on to declare that the 60-day period shall commence "upon completion of the 30-day period." These stipulations, which appear to conform to recent past practice on agreements for nuclear cooperation, seem intended to enable the two periods to be treated, for practical purposes, as a single uninterrupted period of 90 days of continuous session.

In accordance with section 123. of the AEA, the President's message and the accompanying papers were referred to the House Committee on Foreign Affairs and the Senate Committee on Foreign Relations.[11] On May 14, 2008, a joint resolution of disapproval with the text required by section 130.i. was introduced in the House by a member of the Committee on Foreign Affairs.[12] On June 12, the House Committee held a hearing on "Russia, Iran, and Nuclear Weapons: Implications of the Proposed U.S.-Russia Agreement," at which John C. Rood, Acting Under Secretary of State for Arms Control and International Security, appeared as a witness. On June 17, the Senate Committee on Foreign Relations received a closed briefing from William J. Burns, Under Secretary of State for Political Affairs, on "Russia, Iran and U.S.-Russian Nuclear Cooperation," but by that date no resolution of disapproval had been introduced in that chamber.

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[8] (...continued)
cooperation in the field of peaceful uses of nuclear energy, pursuant to 42 U.S.C. 2153(b), (d), H.Doc. 110-112, 110th Cong., 2nd sess. (Washington: GPO, 2008).

[9] Ibid., p. 3.

[10] Ibid., pp. 26-51.

[11] "Proposed Agreement With Russian Federation for Cooperation in the Field of Peaceful Uses of Nuclear Energy — Message from the President of the United States (H.Doc. No. 110-112," message inserted in House proceedings, *Congressional Record* [daily ed.], vol. 154, May 13, 2008, pg. H3701; "Text of a Proposed Agreement Between the Government of the United States of America and the Government of the Russian Federation for Cooperation in the field of Peaceful Uses of Nuclear Energy — PM 48," message inserted in Senate proceedings, ibid., pp. S4103-S4104.

[12] H.J.Res. 85 (Markey).

Period for Congressional Disapproval

Definition of "Continuous Session"

Section 123. of the AEA specifies that the two time periods involved in the proceedings prescribed for the nuclear cooperation agreement with Russia are to be measured in days of continuous session, as defined by section 130.g. of the AEA. Section 130.g.(2) stipulates that

> [F]or purposes of this section insofar as it applies to section 123 ... continuity of session is broken only by an adjournment of Congress sine die; and ... the days on which either House is not in session because of an adjournment of more than three days are excluded in the computation of any period of time in which Congress is in continuous session.[13]

Under this provision, (1) any period of continuous session ends with the final adjournment of the last session of a Congress; and (2) days on which either house has recessed its session are not counted toward the required time periods.[14]

The definition established by section 130.g.(2) is evidently meant to correspond to the constitutional requirement that neither house may adjourn for more than three days without the consent of the other. Congress may adjourn for more than three days either by ending its annual session (an adjournment *sine die*) or by taking a recess within its annual session. In either case, the two houses typically grant each other the required consent by adopting a concurrent resolution.[15] Under the statutory definition, accordingly, the continuity of session is broken just when Congress adjourns its last session pursuant to a concurrent resolution for a *sine die* adjournment, and the count of "days of continuous session" pauses on exactly those days on which both houses, or either one of them, is not in session pursuant to a concurrent resolution for a recess of more than three days.[16]

This arrangement is apparently intended to prevent a situation in which an agreement would go into effect only because Congress was not in session, or did not remain in session long enough to act on a disapproval resolution. At the same time, however, days on which either house, or both, is out of session for three consecutive days or fewer are not excluded from the count. If both houses adjourn from Friday to Tuesday, for example, not only the days of session in the preceding and following week, but also the intervening three days of the extended weekend, will count as days of continuous session.

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[13] Section 130.g.(2) (42 U.S.C. 2159(g)(2)).

[14] "Recesses of the session," in the sense used here, includes such periods as the "non-legislative periods," or "state [or "district"] work periods" scheduled, in 2008 as in most recent years, around Memorial Day and Independence Day, as well as during August.

[15] A concurrent resolution is used because this form of measure requires the agreement of both houses, but is not presented to the President for approval.

[16] Several other expedited procedure statutes also make use of this means of counting days.

Under the definition of section 130.g.(2), accordingly, until the final *sine die* adjournment of the 110th Congress, every calendar day will be counted as a day of continuous session except those on which at least one house is out of session pursuant to a concurrent resolution providing for a recess of more than three days. Under the Constitution, however, the term of the 110th Congress expires on January 3, 2009, and at some point before then, accordingly, the 110th Congress will presumably adjourn its last session *sine die*. As Under Secretary Rood affirmed in testimony before the House Committee on Foreign Affairs on June 12, this *sine die* adjournment will put an end to the existing period of continuous session.[17] If Congress adjourns *sine die* without acting on the proposed agreement, and before 90 days of continuous session are completed, the agreement will not take effect until a new period of continuous session, beginning *ab initio* when the 111th Congress convenes, has reached the requisite length.[18]

In colloquy with members of the Committee, Under Secretary Rood also gave it as his understanding that the 90-day period was measured separately in each house and, for each house, included all the days on which that house was in session. On this understanding, for example, if the House were out of session on Thursday while the Senate met, and the Senate were out of session on Friday while the House met, one day would be counted for each chamber.[19] This interpretation appears to overlook that days of continuous session of Congress may occur when either or both houses are out of session (as long as they are out of session for no more than three consecutive days). In addition, section 131.g. is not couched in terms of separate counts in each house, but explicitly refers to the continuous session of Congress as a whole. The language quoted at the outset of this section implies that a single count covers both houses, and states explicitly that when *either* house takes a recess (of more than three days), the count of days pauses until *both* houses are back in session. The estimates in the following sections follow this last interpretation of the quoted provision.

Days of Continuous Session in the 110th Congress

After President Bush submitted the nuclear cooperation agreement with Russia on May 13, 2008, Congress remained in continuous session, as defined by the AEA, until May 22. It then entered a recess for Memorial Day,[20] from which it returned on June 3. The period from May 13 through May 22 amounted to nine days of continuous session, and the period from June 3 through June 17, when the House

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[17] CQ Transcriptwire, "House Committee on Foreign Affairs Holds a Hearing on Russia, Iran, and Nuclear Weapons," June 13, 2008, available at [http://transcriptswire.cq.com/do/transcriptView?id=259144].

[18] The question of how long the period of continuous session in the new Congress would have to be is addressed below in the section on "Possible Need to Renew Action in the 111th Congress."

[19] CQ Transcriptwire, "House Committee on Foreign Affairs Holds a Hearing on Russia, Iran, and Nuclear Weapons," June 13, 2008.

[20] This recess occurred pursuant to H.Con.Res. 355, 110th Congress, adopted May 22, 2008.

Committee on Foreign Affairs held its hearing, included another 15 days.[21] It accordingly appears that June 17 constituted the 24th day of continuous session since submission of the agreement.

Any future projection of days of continuous session is dependent on assumptions about the schedule the two houses will follow. The simplest assumption is that each house will take recesses, and will adjourn *sine die*, as projected in the schedules announced by its majority party leadership.[22] These schedules project the following recesses for the part of 2008 following submission of the proposed agreement:

- From Saturday, May 24, through Sunday, June 1, for Memorial Day;
- From Saturday, June 28, through Sunday, July 6, for Independence Day;
- From Saturday, August 2, through Sunday, September 8, for the summer recess of the House; and
- From Saturday, August 9, through Sunday, September 8, for the summer recess of the Senate.

The House schedule projects adjournment *sine die* on September 26, 2008; the Senate schedule includes no projection for this event.

Under this schedule, days of continuous session will continue to accrue from June 17 until the 30th day is reached on Monday, June 23. Pursuant to the declarations in President's letter of transmittal, June 23 would count as the last day of the 30-day period for consultation, and the following day, June 24 (the 31st day of continuous session after May 13), would become the first day of the 60-day period for congressional action (and the day on which the automatic introduction of disapproval resolutions would occur).

Thereafter, if each house of Congress takes recesses as listed above, so that the count of days of continuous session pauses during each recess, then it appears that September 26, 2008, will be the 78th day of continuous session. If Congress adjourns *sine die* on this date, as the House schedule projects, continuity of session will be broken before the 90th day is reached, and a new period of continuous session will have to begin when the 111th Congress convenes. Under these conditions, the nuclear cooperation agreement with Russia could not take effect under the AEA until this

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[21] This calculation, like all the calculations and projections presented in this report, presumes that the first day of the 30-day period is the day following the submission of the text to the committees, and that the first day of the 60-day period is the day immediately following the 30th day of the 30-day period. These ways of counting conform to the usual congressional practice for day counts.

[22] The schedules used in making these calculations were those posted on the respective chamber websites at [http://www.senate.gov/pagelayout/legislative/two_column_table/2008_Schedule.htm] and [http://www.majorityleader.gov/docUploads/2008-CALENDAR.pdf].

new period of continuous session was complete.[23] If, on the other hand, Congress were not to adjourn *sine die* on September 26, but were to remain in session without taking any further recess, the 90th day of continuous session could be reached on October 8, and the agreement with Russia could accordingly take effect on that date.

Potential Effect of Altered Recess Schedules

The projections in the previous section could potentially be altered by departures from the schedule of recesses assumed there. Possibilities with some practical likelihood of occurring may include the following: (1) a later beginning for the August recess; (2) the reconvening of Congress for a "lame duck" session after the November elections; and (3) the use of periodic *pro forma* sessions rather than recesses of more than three days during scheduled state and district work periods. The following sections consider the possible effects of each of these possibilities.

Change in August Recess. The estimate presented in the previous section presumes that the House will be in recess during the first week of August, as projected in the schedule given on the website of the House Majority Leader. Schedules displayed on some other House websites, however, presume that the House will begin its August recess not on Saturday, August 2, but on the following Saturday, August 9.[24] As previously noted, the Senate is expected, in any case, to be in session during the week in question. As a result, if the House is also in session, the week will become one of continuous session rather than of recess. The additional seven days of continuous session could make the scheduled *sine die* adjournment day of September 26 the 85th day of continuous session, rather than the 78th day as estimated above. Under these circumstances, additional small changes in the congressional schedule might enable the 90-day period to be completed before the end of the 110th Congress.

"Lame Duck" Session. Rather than adjourning *sine die* on September 36, Congress might recess its session on or after that date and return for a "lame duck" session after election day (November 4). In this case, the occurrence of the 90th day of continuous session would depend on the dates of recess and reconvening. For example, Congress might recess on September 26 and reconvene on November 12 (the day after Veterans' Day). Under these conditions, if September 26 had been the 78th day of continuous session, the 90th day could occur on the 12th calendar day following the reconvening, which, in the case supposed, could be November 23 (the Sunday preceding Thanksgiving). If both houses were to remain in session during the first week of August, so that September 26 was the 85th day of continuous session, the 90th day could be reached a week earlier, on Sunday, November 17.

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[23] The required length of this new period of continuous session, and other considerations relevant to the extension into a new Congress of action on the proposed agreement with Russia, are pursued below in the section on "Possible Need to Renew Action in the 111th Congress."

[24] See, for example: [http://www.house.gov/house/House_Calendar.shtml] and [http://majoritywhip.house.gov/house_calendar/2008/go.pdf], both visited on June 13, 2008.

Similar considerations could apply if the 110th Congress were to adjourn *sine die* before the 90th day of continuous session was reached, but were called back by the President, pursuant to his constitutional authority,[25] before its expiration on January 3, 2009. Another possibility is provided by the authorization, included in most recent concurrent resolutions providing for *sine die* adjournments, for the bicameral leadership to call Congress back into session before the next session is slated to convene "if the public interest shall require it."[26] The leadership's exercise of this authority would presumably vitiate the *sine die* character of the previous adjournment, and if so, the previous count of days of continuous session would presumably resume from the point at which it had left off. By this means as well, the existing period of continuous session might reach 90 days before the end of the 110th Congress.

***Pro Forma* Sessions.** The occurrence of *pro forma* sessions might also affect whether or not the continuous session of the 110th Congress may reach its 90th day before its adjournment *sine die*. *Pro forma* sessions are those held merely "for the sake of form," or as a formality. Typically, no legislative business is conducted; on some occasions, the chamber provides in advance (usually by unanimous consent) that no business may occur. These sessions count as days of session for purposes of determining whether an adjournment of more than three days is occurring.[27]

The resolution authorizing the non-legislative period for George Washington's Birthday in 2008, for example, did not provide for a recess in the constitutional sense.[28] Although the resolution covered essentially the period defined by the announced schedules, it did not provide for a recess of more than three days, but instead directed *pro forma* sessions of the House at least every fourth day, and authorized the Senate to arrange a similar schedule. Inasmuch as the Senate proceeded to exercise this authority, no "adjournment of more than three days," as contemplated by section 130.g.(2) and the Constitution, occurred in either house during this period.[29] Instead, every day of the non-legislative period counted as a day of continuous session.

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[25] Article II, section 3.

[26] For a recent example of an adjournment resolution providing this authority, see H.Con.Res. 531, 108th Cong., adopted December 9, 2004.

[27] It is, in fact, exactly this "formality" for the "sake" of which *pro forma* sessions are held. If a chamber holds a *pro forma* session at least every fourth day, it can avoid the need to obtain the permission of the other for the intervening days on which no sessions are held.

[28] H.Con.Res. 293, 110th Cong., agreed to February 14, 2008.

[29] The resolutions providing for these "recesses," accordingly, were technically not necessary to meet constitutional requirements. Media reports indicate that Senate leadership decided to hold regular *pro forma* sessions in that chamber during scheduled recess periods in an attempt to prevent the President from making certain "recess appointments." See Paul Singer, "Masters of a Pro Forma Senate," *Roll Call*, January 7, 2008. These reports do not ascribe any motivation for the House to meet in *pro forma* session during these periods.

At the July 12 hearing, Under Secretary Rood noted that days with *pro forma* sessions count as days of continuous session.[30] He did not note that this will be true only if the other house is not in recess. Nor, conversely, did he explicitly note that if both houses hold *pro forma* sessions at least every fourth day during a non-legislative period, no "adjournment of more than three days" occurs; as a result, not only the days of *pro forma* session themselves, but also the remaining days of the non-legislative period, will count not as days of recess, but as days of continuous session. If, accordingly, both houses were to hold periodic *pro forma* sessions during every non-legislative period in the remainder of the current session, every remaining calendar day before *sine die* adjournment would be a day of continuous session as defined by the AEA. Under these conditions, the "clock" defined by section 130.g. would run far more quickly, and the 90th day of continuous session could occur as early as August 11, 2008, instead of in early October.

Under these conditions, moreover, the 90th day of continuous session might fall within a non-legislative period. If one or both houses had provided that no legislative business occur in the *pro forma* sessions during this period, Congress could become unable to act on a joint resolution of disapproval during the period, and in the absence of that disapproval, the agreement with Russia would presumably take effect on the date specified. On the other hand, concurrent resolutions providing for recesses of the session, like resolutions for a *sine die* adjournment, often provide contingent authority for the bicameral leadership to call Congress back into session before the expiration of the recess. This authority might be used to give Congress an opportunity to consider a disapproval resolution rather than allow the agreement to enter into force by default.

The use of *pro forma* sessions might affect the occurrence of days of continuous session in another way as well. The announced schedule for the House includes at least one period not identified as a recess period, but in which "no votes" are scheduled for both a Friday and the following Monday (July 18-21).[31] If no session of the House occurs on any of these days, the period would constitute a break of more than three legislative days. It would be a recess of the House in the constitutional sense, for which a concurrent resolution would be required. In that case, these four days would not count as days of continuous session, and as a result, the projected *sine die* adjournment date of September 26 would presumably become the 74th rather than the 78th day of continuous session (or, under the alternate assumption discussed in the previous section, the 81st rather than the 85th).

It is possible that no *pro forma* sessions will be used in these ways to affect the length of continuous session of the current session of Congress. Unlike that for George Washington's Birthday, the resolution providing for the 2008 Memorial Day non-legislative period authorized only the Senate to schedule *pro forma* sessions, and

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[30] CQ Transcriptwire, "House Committee on Foreign Affairs Holds a Hearing on Russia, Iran, and Nuclear Weapons," June 13, 2008.

[31] "In figuring the length of an adjournment, Sundays are not counted, but "either the day of adjourning or the day of meeting ... must be taken into the count." W[illia]m Holmes Brown and Charles W. Johnson, *House Practice: A Guide to the Rules, Precedents, and Procedures of the House* (Washington: GPO, 2003), chapter 1, sec. 10.

provided for a recess of the House in the constitutional sense. Pursuant to section 130.g.(2) of the AEA, inasmuch as one house was in recess during this period, the days of this recess are excluded from the count of days of continuous session. If the two houses follow this practice for their remaining scheduled recesses, the date scheduled for *sine die* adjournment of the House will arrive, as already discussed, before the 90th day of continuous session after submission of the agreement has been reached.

Similarly, the schedules used to arrive at the initial estimates set forth above did not project a recess for any long weekend during the remainder of the 110th Congress. The estimates given were based, accordingly, on a presumption that on any such long weekend, at least one *pro forma* session would be held, in order to avoid the occurrence of a recess long enough to require a concurrent resolution. If, however, either house were to decide to obtain a concurrent resolution to cover a period of this kind, rather than holding *pro forma* sessions, the days of continuous session accomplished by September 26 could be diminished by the length of that recess.

Possible Need to Renew Action in the 111th Congress

If the 110th Congress adjourns *sine die* before the 90th day of continuous session after May 13, 2008, the period during which Congress could act to disapprove the agreement will not yet have elapsed, and the agreement with Russia will be unable to take effect under the AEA at that point. Instead, a new period of continuous session will begin with the convening of the 111th Congress in January 2009. Until this new period of continuous session reaches the requisite length, the entering into effect of the agreement will be postponed, and the opportunity for Congress to disapprove it pursuant to the AEA will remain available.

It is not clear from the statute, nor do any previous proceedings appear to establish, whether or not failure of the 110th Congress to complete the periods required under section 123. would necessitate starting from the beginning, in the 111th Congress, of the entire approval process or of only such parts of it as the 110th Congress did not complete.

At the June 12 hearing of the House Committee on Foreign Affairs, Under Secretary Rood took the position that, if the full period of 90 days of continuous session is not completed within the 110th Congress, the entire period must begin *de novo* in the 111th Congress.[32] In favor of this view, it could be argued that the newly constituted committees in the 111th Congress might not wish to be compelled to rely on the consultations and deliberations engaged in by their predecessors. In addition, of course, any resolution of disapproval submitted in the 110th Congress will die with a *sine die* adjournment, so that any such resolution could be considered in the 111th Congress only if it was introduced anew in that Congress. Finally, this interpretation might be held to imply, under these circumstances, the President would also have to retransmit the agreement itself to Congress, in the way provided in the AEA, in the

[32] CQ Transcriptwire, "House Committee on Foreign Affairs Holds a Hearing on Russia, Iran, and Nuclear Weapons," June 13, 2008.

new session. Absent this resubmittal, it could be argued, no date could be fixed at which the disapproval resolution would be automatically introduced.

A contrary argument might hold that, inasmuch as the AEA makes provision for the process it prescribes to continue after a break in the continuity of session, it intends that the submission of an agreement will trigger a single process of congressional action that may carry over into a subsequent Congress. On this view, the new period of continuous session required by the act would begin automatically with the convening of the 111th Congress. Rigorously applied, this view could hold that the 111th Congress would not have to repeat statutory requirements that had already been accomplished in the 110th Congress.

On this interpretation, for example, inasmuch as the President has already submitted the text of the agreement to the committees, made the required approval and determination, submitted the agreement itself to Congress, and submitted the NPAS and its classified annexes, he would not have to carry out these requirements anew in the 111th Congress. It could be argued, as well, that if at least 30 days of continuous session in the 110th Congress elapse between the May 13 submission of the text and the *sine die* adjournment, the 30-day consultation period required by section 123.b. will not have to repeated in the 111th Congress. If all these conditions are fulfilled in the 110th Congress, on this view, the first day of the 111th Congress could be construed as the beginning of the 60-day period prescribed by section 123.d. for congressional action on the agreement and, accordingly, as the day on which new joint resolutions of disapproval should automatically be introduced. Further, by this interpretation, if no joint resolution of disapproval were to be enacted by the end of the 60th day of continuous session of the 111th Congress, the agreement would automatically go into effect.

Statutory Procedure for Disapproval

Submission of the Agreement

Requirements for Submission. Several features of the language of section 123. indicate differences in purpose and intent between the 30-day period for consultation under section 123.b. and the 60-day period for congressional action under section 123.d. Under section 123.b., the President submits the *text* of the agreement to the *committees* having jurisdiction for *consultation*; under section 123.d. he submits the agreement *itself* to *Congress* for its *action*.

Section 123.b. then directs that the President consult with the committees receiving the submission for a period of "not less than 30 days of continuous session ... concerning the consistency of the terms of the proposed agreement with all the requirements of" the non-proliferation provisions of the AEA. He is also to approve the proposed agreement and make "a determination in writing that ... [it] will promote, and will not constitute an unreasonable risk to, the common defense and security." Under section 123.d., the 60-day period for congressional action begins when the President submits the agreement itself to the Congress, along with his

"approval and determination," and then only when the NPAS, including any classified annexes, has also been submitted to Congress.

The reference of section 123.d. to the "approval and determination of the President," appears to address the same act of approval "determination in writing" required by section 123.b. Further, although section 123.b. does not explicitly require that the President must approve the agreement and make the required determination following the consultation with the committees, it can be read as implying that the consultation should precede this action. This reading of the statute appears to imply that the 60-day period required by section 123.d. will not run concurrently with the 30-day period prescribed by section 123.b., but will instead follow that 30-day period. On the other hand, the AEA does not appear to require that the submission to Congress of the agreement itself must *immediately* follow the 30-day period for consultation.

Submission of Agreement with Russia. Two features of the President's submission on May 13 do not appear to comport clearly with the statutory scheme. First, the President's letter of transmittal made explicit reference only to submitting the agreement to Congress for approval; it did not explicitly submit the text of the agreement to the committees of jurisdiction as well. Nevertheless, inasmuch as the submission did result in referral of the agreement to the committees, the President and Congress are apparently agreed in treating the submission of the agreement to Congress as also constituting submission of the text to the committees. It is this understanding, in effect, that enables the President by a single submission to fulfill the requirements of both sections 123.b. and 123.d.

Second, inasmuch as all requirements for both the periods required by the statute were met by the time of the submission on May 13, it might be questioned why the 30-day and the 60-day period should not both be considered as beginning at once. The chief reason against doing so appears to be the apparent presumption of the statute that the President's "agreement and determination," the submission of which is required for the beginning of the 60-day period for congressional action, is to follow and, in some sense, result from the consultation with committees that is supposed to occur during the period of at least 30 days.

Under this rationale, however, the President's declaration of his "approval and determination" at the outset of the 30-day period could be viewed as rendering moot the consultive purpose of that period. The President's letter of transmittal, nevertheless, also declares the readiness of the Administration to "begin immediately the consultations ... provided in section 123.b."

Resolutions of Disapproval

Requirements for Disapproval Resolution. Section 130.i. of the AEA regulates the form of the joint resolution to disapprove a proposed agreement for nuclear cooperation and proceedings thereon. Pursuant to section 130.i.(2), joint resolutions of disapproval are to be introduced automatically in each house "on the day on which a proposed agreement for cooperation is submitted" to Congress under section 123.d. The date specified would be the first day of the period of 60 days of continuous session for congressional consideration mandated by section 123.d. In

order for the disapproval resolution to be eligible for expedited consideration under section 130.i., section 130.i.(1) prescribes that its text must simply state: "That the Congress does not favor the proposed agreement for cooperation transmitted to the Congress by the President on [the appropriate date]."

The automatically introduced measure is to be sponsored in the House by the chairman and ranking minority member of the Committee on Foreign Affairs, and in the Senate by the two party floor leaders, or (in each case) their designees.[33] The AEA, however, also appears to contemplate that other Members may also introduce similar resolutions. Pursuant to section 130.i.(3), a disapproval resolution is to be referred, in the Senate, to the Committee on Foreign Relations, and in the House to "the appropriate committee or committees," which presumably would be, or at least include, the Committee on Foreign Affairs.

Resolutions to Disapprove Agreement with Russia. Some elements of congressional proceedings in relation to the proposed agreement with Russia do not clearly reflect the distinctions between the period for consultation with committees and the period for action by Congress that the AEA appears to intend. For this agreement, as noted earlier, the first day of the 60-day period provided by section 123.d. must presumably occur on the 31st day of the full 90-day period contemplated in the President's submission letter. Inasmuch as the House maintained its scheduled Memorial Day recess, it appears that this point will be reached on or about June 24, 2008. A joint resolution to disapprove the proposed agreement (H.J.Res. 85), however, had already been introduced on May 14, the day after the President had submitted the agreement to Congress. This resolution has the text specified by section 130.i.(2), and was referred to the Committee on Foreign Affairs. It was introduced, however, at the beginning not of the 60-day period, but of the 30-day period, immediately after the President's initial transmission of the proposed agreement. Accordingly, it is not clear whether or not this measure is being regarded as meeting the requirements of section 130.i.(2) for the automatically introduced resolution.

In any case, however, the provisions of the statute do not seem to preclude any resolution having the required text from consideration pursuant to the expedited procedure of section 130.i. If H.J.Res. 85 were to be enacted before the end of the 60-day period, it would presumably suffice to prevent the agreement from going into effect, as contemplated by the statute.

Committee Action

Consultations With Committees. Section 123.b. of the AEA directs that after the President submits the text of the agreement to the pertinent committees, he is to consult with them thereon during the stated period of "at least 30 days of continuous session." This provision does not specify the form to be taken by these consultations. During the 60 days of continuous session after the agreement itself is submitted to Congress, on the other hand, section 123.d. specifies that the

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[33] The joint resolution is to be introduced "by request," signifying that the introducing Members do not necessarily advocate the measure.

committees of referral are to "hold hearings on the proposed agreement ... and submit a report to their respective bodies recommending whether it should be approved or disapproved."[34] Presumably, if the committee decides to recommend disapproval, the report in question could be that which accompanies the resolution of disapproval itself. If the committee favors approval, the report might simply be explanatory, rather than accompanying any legislation.[35]

Committee Action on Agreement with Russia. The relation between these statutory requirements and initial congressional action on the proposed agreement with Russia also reflects possible ambiguities. This congressional action began with the hearing of the House Committee on Foreign Affairs on June 12 and the closed briefing with the Senate Committee on Foreign Relations on June 17. It is not clear whether either committee conceived its session as meeting the requirement of section 123.d. for hearings on the agreement. If they did, it is not clear whether hearings held after the agreement has been submitted and referred, but before the 60-day period during which section 123.d. calls for them, could appropriately be regarded as also satisfying that requirement. On the other hand, inasmuch as officials of the Department of State appeared at both sessions, they could no doubt be understood as means of implementing the consultations for which section 123.b. calls. There seems no reason to suppose that consultations pursuant to section123.b. might not take such a form.

Discharge of Committee

Timing of Discharge. Under section 130.i.(4) of the AEA, each committee of referral is automatically to be discharged from the further consideration of all disapproval resolutions referred to it at the end of 45 days from the date of submission of the agreement. This provision appears intended to guarantee that a disapproval resolution will become eligible for timely floor consideration in each chamber even if the committee takes no action. The statute, however, does not define this time period in terms of days of continuous session. Instead, it is the practice of Congress to construe references in its procedures to "days," if not otherwise specified, as legislative days. For each house, a legislative day ends each time the chamber adjourns, and another begins each time it convenes after an adjournment. Accordingly, "legislative days" in each chamber normally correspond to its days of session.[36] For this reason, although days of continuous session are

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[34] Section 123.d. (42 U.S.C. 2153(d)).

[35] The committee might also wish to advocate approval with conditions. In this case, the report might accompany a measure providing for that action, as described in the section on "Alternative Action," below.

[36] Exceptions today are not common, but in recent decades were more frequent in the Senate than in the House. Exceptions occur when a chamber does not adjourn, but takes a recess, overnight or longer, or, conversely, when it adjourns briefly and reconvenes in the course of a single calendar day. See "Day" in U.S. Congress, Senate, *Riddick's Senate Procedure: Precedents and Practices*, S.Doc. 101-28, 101st Cong., 2nd sess. by Floyd M. Riddick and Alan S. Frumin, rev. and ed. by Alan S. Frumin (Washington: GPO, 1992), pp. 712-715; U.S. Congress, House, *Hinds' Precedents of the House of Representatives of the United* (continued...)

measured in a way that maintains a single count for Congress as a whole, the number of legislative days in the two houses may differ.

As a result, if either chamber convenes Monday through Friday except during recess periods, five legislative days would probably occur per week there, although seven "days of continuous session" would elapse. If both houses held *pro forma* sessions during a recess period, days of continuous session would elapse even more quickly compared to legislative days in each chamber. (For example, if each house convenes two *pro forma* sessions during a "recess" period running from one Saturday through the second following Sunday, the recess would consume nine days of continuous session, and only two legislative days in each chamber.) Under these conditions, the 45th (legislative) day after referral of a disapproval resolution might not occur, in either or both chambers, until 60 days of continuous session from the submission of the agreement had already elapsed. In this case, the discharge of the committee(s) might not occur until after the agreement had already gone into effect and could no longer be disapproved under the statute.[37] It is not clear whether the possibility of such a result was intended by the statute or arises from an inadvertent oversight in drafting.

Possible Discharge of Agreement with Russia. In the present instance, if either house meets five days a week, except during recesses, during the period after the resolutions of disapproval are to be introduced on June 24, the required 45 legislative days in that house will not have elapsed by the time of the scheduled *sine die* adjournment on September 26. Under these conditions, that house will never reach the point at which discharge would occur by the time the 110th Congress ends.

Alternatively, if Congress continues meeting after September 26 on the same schedule, and without recesses, committees could be discharged pursuant to the statute on or about October 10, 2008. As estimated above, however,[38] the 90th day of continuous session will already have been reached on October 8, so that the discharge will come too late to prevent the agreement from going into effect. Similarly, if both houses hold two *pro forma* sessions per week during the scheduled Independence Day and August recesses, the additional legislative days represented by these *pro forma* sessions of discharge could advance the point of discharge in each house to about September 24. As also explained earlier, however, the *pro forma* sessions would also give rise to the days of the "recess" period being counted as days of continuous session. Under these conditions, as a result, the 90th day of continuous session would already have been reached on about August 11. In either case, if the committee in each chamber did not choose to report a joint resolution of disapproval

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[36] (...continued)
States, by Asher C. Hinds (Washington: GPO, 1907), vol. IV, sec. 3192; and U.S. Congress, House, *Cannon's Precedents of the House of Representatives of the United States*, by Clarence Cannon (Washington: GPO, 1935), vol. VI, sec. 723.

[37] On the other hand, if one house held *pro forma* sessions during a period when the other was in recess, additional legislative days would occur while the count of days of continuous session would remain static. This circumstance would tend to allow the committee to be discharged earlier in the 60-day period when action to disapprove must occur.

[38] See "Days of Continuous Session in the 110th Congress," above.

for the agreement with Russia, the provision of section 130.i. for automatic discharge would not afford the 110th Congress an opportunity to act on the resolution.[39]

Chamber Action

Section 130.i. of the AEA provides that, once the committee in either chamber reports or is discharged from a joint resolution to disapprove a nuclear cooperation agreement, the measure is to be placed on the chamber's calendar of business.[40] The provision then directs that the disapproval resolution be considered under expedited (or "fast track") procedures, the purpose of which is to ensure that Congress will have an opportunity to consider and vote on the measure before the arrival of the time at which the agreement would otherwise automatically take effect. Section 130.i., however, does not itself specify procedures for floor consideration of a resolution of disapproval. Instead, for the Senate, it applies an expedited procedure contained in another statute, and for the House, it presumes that the procedures used will be established by a special rule.

For the Senate, section 130.i.(5) of the AEA provides that floor consideration shall occur pursuant to section 601(b)(4) of the International Security Assistance and Arms Export Control Act of 1976 (ISAAECA).[41] This provision of law established an expedited procedure, for the Senate only, that has been made applicable to additional classes of measure by several subsequent laws. Pursuant to this expedited procedure, the joint resolution of disapproval is privileged, meaning that the Senate may take it up by approving a non-debatable motion to proceed to consider. ISAAECA also limits debate on the resolution itself to 10 hours (equally divided and controlled by the two floor leaders or their designees), and precludes any amendment (or motion to recommit). A non-debatable motion to limit debate further is allowed, various other potentially dilatory actions are prohibited, and limits are placed on the debate of questions arising during consideration. Provisions similar to these are standard components of statutory expedited procedures.

Section 130.i.(5) establishes no regulations for House floor consideration of the resolution of disapproval, nor does it even make the measure privileged for consideration (which, in the House, means that the measure could be called up with priority over the regular order of business). Instead, section 130.i.(5) authorizes the Committee on Rules to report a special rule providing for consideration of the

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[39] It is also possible, as suggested in footnote 21, that the Senate might hold two *pro forma* sessions per week while the House actually took its scheduled recesses for Independence Day and during August. In this case legislative days would accrue in the Senate during a period in which no days of continuous session were occurring. Under these conditions, discharge might occur in the Senate on about September 24, even though the period for disapproval might still potentially extend until October 8. Such an arrangement, nevertheless, could provide no corresponding help for the House.

[40] In the Senate, the resolution would be placed on the Calendar of General Orders, which carries most measures eligible for floor consideration. In the House, the measure would most likely be placed on the Union Calendar, which is for measures that may affect revenues or expenditures.

[41] P.L. 94-329, 90 Stat. 729 at 766.

measure under terms that "may be similar, if applicable" to those of ISAAECA. Any special rule for consideration of a disapproval resolution would surely place limits on debate, and would most likely prohibit amendments as well, inasmuch as any change in the text of the resolution would render it inconsistent with the requirements of section 130.i.(1), and therefore, presumably, ineligible for further consideration under the expedited procedure of section 130.i.

This provision of the AEA grants the Committee on Rules no power that it would not otherwise have. Nevertheless, unless the Committee on Rules reports a special rule for considering a disapproval resolution, or unless privilege for consideration is conferred on the measure by some other means (e.g., suspension of the rules or unanimous consent), section 130. would afford no means by which House floor consideration of the measure could be ensured.

Final Congressional Action

Section 130.i.(6) of the AEA makes provision to preclude the necessity to resolve differences between disapproval resolutions passed by the two chambers. If one chamber adopts its resolution and transmits it to the other, then the receiving chamber considers its own companion measure, but takes the final vote on the measure received from the first house (which, under the statute, must be substantively similar). This automatic "hookup" is evidently intended to ensure that final action in both houses will occur on the same measure in the same form, so that it can be cleared for presentation to the President without the necessity for a conference committee or other process of resolving differences between versions of the measure adopted by the two chambers.[42]

Presidential Action

Pursuant to section 123.d. of the AEA, the proposed nuclear cooperation agreement with the Russian Federation will take effect at the end of the total period of 90 days of continuous session unless a joint resolution of disapproval is enacted before that time. It is not sufficient for Congress to complete action on the disapproval resolution within the required time; the measure must actually become law before the end of the prescribed period. Enactment into law of the resolution requires either that (1) the President signs it or allows it to pass into law without his signature; or (2) the Congress overrides his veto. For Congress to prevent the agreement from taking effect, one of these actions would have to take place before the end of the 90-day period.

Under the Constitution, the President has 10 days (Sundays excepted) to act on a measure after it is presented to him. As a result, if the resolution were to be presented when fewer than 10 *calendar* days (excluding Sundays) remained in the total period of 90 days *of continuous session*, it appears that the President could render the measure moot by failing to act until the 90-day period expired and the agreement went into effect. Similarly, if the President were to return the resolution with a veto, the agreement would take effect unless Congress were to complete action

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[42] Similar provisions, again, appear in several other statutory expedited procedures.

to override the veto before the 90th day of continuous session after the initial submission of its text to the committees.

In practice, the President is likely to veto a resolution disapproving an agreement of which, under the statute, he has already certified his approval. For Congress to make effective use of its opportunity under the AEA to disapprove the agreement, accordingly, it would presumably have to present the resolution of disapproval to the President at a point when a minimum of 11 days of continuous session remain in the 90-day period before the agreement automatically becomes effective. (The minimum is 11 if Congress remains in session, such that every calendar day is a day of continuous session, inasmuch as any period of 10 calendar days will contain at least one Sunday that will count as a day of continuous session but not as a day of the period for presidential action.) A still longer period would afford Congress a more practicable opportunity to act to override the veto.

Specific implications of this circumstances for the agreement with Russia can be illustrated only through assumptions about the *sine die* adjournment of the 110th Congress. Assume, for example, that Congress maintains the announced schedule described above, in the section on "Days of Continuous Session in the 110th Congress," through September 26, 2008, but instead of adjourning *sine die* on that date, recesses its session until November 12. As shown earlier, September 26 would then presumably be the 78th day of continuous session, and November 12 would be the 79th. Under these circumstances, if Congress completes action on the resolution of disapproval and presents it to the President on September 26, just before recessing, the 10-day period allowed for presidential action would extend until October 8, and when Congress returned on November 12, it would have until the 90th day of continuous session (presumably Sunday, November 23) to prevent the agreement entering into effect by overriding the veto.

If, on the other hand, Congress does not complete action on the resolution of disapproval until it reconvenes on November 12, the 10 days allowed for presidential action would last until Monday, November 24. Assuming Congress remains in session, however, its 90th day of continuous session after submission of the agreement would still be November 23. Under these circumstances, it appears that the President could ensure that the agreement would go into effect by delaying his veto of the measure until November 24.

Finally, if Congress were to adjourn *sine die* shortly after adopting the disapproval resolution, the President could pocket veto it. If this *sine die* adjournment occurred after the 90th day of continuous session, the agreement would go into effect. On the other hand, if the adjournment occurred on or before the 90th day of continuous session, the agreement presumably could not go into effect until the appropriate period of continuous session had elapsed beginning with the convening of the 111th Congress, and then only if no congressional disapproval was accomplished during that period.[43]

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[43] This period might encompass either 90 or 60 days, depending on interpretation, as explained above under "Possibility of Renewing Action in the 111th Congress."

Alternative Action

Although the AEA provides the expedited procedures described above for congressional action on a joint resolution of disapproval, it does not *require* Congress to use these procedures to act on the matter. If, during the period for action provided by the statute, Congress were to adopt a disapproval resolution meeting the requirements of section 130.i. under any of its regular procedures, enactment of the resolution would have the same effect of disapproving the agreement as would that of a similar measure under the expedited procedures of the statute.

Under its general legislative power, Congress could also determine the status of the agreement by acting on a measure other than the one prescribed by the statute. Such action occurred in the 99th Congress (1985-1986), when Congress enacted a measure (P.L. 99-183) providing that a nuclear cooperation agreement with China would become effective only when certain further conditions were met. Just as with the disapproval resolution specified by the statute, however, any such measure would have to be enacted before the end of period required by the AEA, because otherwise the agreement as submitted would automatically go into effect. On the other hand, inasmuch as any such alternative measure would not meet the requirements of section 130.i. for a joint resolution of disapproval, the measure would not be eligible for consideration under the expedited procedures of section 130.i. Instead, each house would have to consider it under its regular legislative procedures (unless it chose, in accordance with its own general procedures, to apply the expedited procedure to the alternative measure).

Any measure granting approval with conditions to the proposed agreement with Russia would presumably have to contain language specifying that its provisions apply "notwithstanding section 123. of the Atomic Energy Act of 1954, as amended." Section (a)(2) of P.L. 99-183, granting conditional approval to the agreement with China, contained a provision of this kind. In the absence of such a provision, the provision of section 123. for automatic unconditional approval at the end of the 90 days would presumably continue to apply, so that in spite of the conditional approval, and unless the joint resolution of disapproval specified by section 130.i. were enacted into law, the agreement might take effect without conditions at the end of the period.

The President might also be able to vitiate an attempt by Congress to place conditions on its approval of the agreement with Russia by vetoing the measure. Unless Congress could override the veto (or secure enactment into law of a joint resolution of disapproval), the agreement would then instead go into effect without conditions at the end of the period prescribed in accordance with section 123.