

Spring/Summer 2008 Legislative Update

This issue brief includes legislation regarding North Korea introduced or considered in spring/summer 2008. This brief includes only legislation or language that has been or seems likely to be signed into law, in whole or in part, in 2008. It was last updated June 30, 2008 and will be updated as necessary. For a quick update on the status of a bill, please see <http://thomas.loc.gov>.

Supplemental Appropriations Act -- H.R.2642 ES

On May 22 the Senate passed Senate Amendment S AMDT 4818 (with appropriations for war funding) and S AMDT 4802, with appropriations for domestic spending; the two amendments were combined to created H.R. 2642 ES, the Supplemental Appropriations Act for 2008. The bill was amended by the House and then passed by the House on June 19 and by the Senate on June 26. It was signed into law by the President on June 30, 2008. The following language is drawn from the Congressional Record for the Senate for June 26, with the exception of the waiver language, which was provided by a private source.

OTHER BILATERAL ECONOMIC ASSISTANCE

ECONOMIC SUPPORT FUND

The budget request included \$2,217,000,000 for Economic Support Fund (ESF), of which \$208,000,000 was provided in the Department of State, Foreign Operations and Related Programs Appropriations Act, 2008 (Public Law 110-161) for emergency requirements in the West Bank and in North Korea, as requested.

The amended bill includes \$1,882,500,000 for ESF, which is \$126,500,000 below the request. An additional \$75,000,000 is provided under the heading Democracy Fund for political development programs for Iraq. Funds are to be allocated as follows:

ECONOMIC SUPPORT FUND--Continued [In thousands of dollars]	
Country and region	Amended bill

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Steering committee: **Nancy Lindborg** (co-chair), Mercy Corps **Charles (Jack) Pritchard** (co-chair), Korea Economic Institute, **Karin Lee** (executive director), NCNK; **Gordon Flake**, The Maureen and Mike Mansfield Foundation
Randy Ireson, American Friends Service Committee, **Scott Snyder**, Stanford University, **Philip Yun**, Asia Foundation

Chad	2,000
Democratic Republic of the Congo	12,500
Iraq	424,000
Jordan	175,000
Kenya	12,000
Mexico	20,000
Nepal	7,000
North Korea	53,000
Philippines	15,000
Sri Lanka	6,000
Sudan	45,000
Thailand	2,500
Uganda	17,500
West Bank and Gaza	171,000
Zimbabwe	5,000
Exchanges Africa	5,000
Total	1,882,500

North Korea.--The amended bill includes up to \$53,000,000 for energy-related assistance for North Korea in support of the goals of the Six-Party Talks Agreement, in addition to the \$53,000,000 appropriated in division J of Public Law 110-161, which is the same as the total amount requested. Prior to the obligation of assistance for North Korea, the Secretary of State is directed to report to the Committees on Appropriations that North Korea is continuing to fulfill its commitments under the Six-Party Talks Agreement.

ECONOMIC SUPPORT FUND

The amended bill includes \$1,124,800,000 for Economic Support Fund to address critical health, economic, and security needs. These funds are to be allocated as follows:

ECONOMIC SUPPORT FUND [In thousands of dollars]	
Country and region	Amended bill
Afghanistan	455,000
Bangladesh	50,000

Burma	5,300
Central African Republic	2,000
Chad	5,000
Democratic Republic of the Congo	10,000
Iraq	102,500
Jordan	100,000
Kenya	25,000
North Korea	15,000
Pakistan	150,000
Sudan	25,000
Uganda	15,000
West Bank and Gaza	150,000
Zimbabwe	15,000
Total	1,124,800

WAIVER OF CERTAIN SANCTIONS AGAINST NORTH KOREA

Section 1405 grants waiver authority to the President with respect to certain assistance to North Korea and the "Glenn Amendment," which established automatic sanctions in the Arms Export Control Act on non-nuclear weapon states that detonate a nuclear device.

WAIVER OF CERTAIN SANCTIONS AGAINST NORTH KOREA

SEC. 1405. (a) WAIVER AUTHORITY.—

(1) IN GENERAL.—Except as provided in subsection (b), the President may waive in whole or in part, with respect to North Korea, the application of any sanction contained in subparagraph (A), (B), (D) or (G) under section 102(b)(2) of the Arms Export Control Act (22 U.S.C. 2799aa–1(b)), for the purpose of providing assistance related to—

(A) the implementation and verification of the compliance by North Korea with its commitment, undertaken in the Joint Statement of September 19, 2005, to abandon all nuclear weapons and existing nuclear programs as part of the verifiable denuclearization of the Korean Peninsula; and

(B) the elimination of the capability of North Korea to develop, deploy, transfer, or maintain weapons of mass destruction and their delivery systems.

(2) LIMITATION.—The authority under paragraph (1) shall expire 5 years after the date of enactment of this Act.

(b) EXCEPTIONS.—

(1) LIMITED EXCEPTION RELATED TO CERTAIN SANCTIONS AND PROHIBITIONS.—The authority under subsection (a) shall not apply with respect to a sanction or prohibition under subparagraph (B) or (G) of section 102(b)(2) of the Arms Export Control Act, unless the President determines and certifies to the appropriate congressional committees that—

(A) all reasonable steps will be taken to assure that the articles or services exported or otherwise provided will not be used to improve the military capabilities of the armed forces of North Korea; and

(B) such waiver is in the national security interests of the United States.

(2) LIMITED EXCEPTION RELATED TO CERTAIN ACTIVITIES.—Unless the President determines and certifies to the appropriate congressional committees that using the authority under subsection (a) is vital to the national security interests of the United States, such authority shall not apply with respect to—

(A) an activity described in subparagraph (A) of section 102(b)(1) of the Arms Export Control Act that occurs after September 19, 2005, and before the date of the enactment of this Act;

(B) an activity described in subparagraph (C) of such section that occurs after September 19, 2005; or

(C) an activity described in subparagraph (D) of such section that occurs after the date of enactment of this Act.

(3) EXCEPTION RELATED TO CERTAIN ACTIVITIES OCCURRING AFTER DATE OF ENACTMENT.—

The authority under subsection (a) shall not apply with respect to an activity described in subparagraph (A) or (B) of section 102(b)(1) of the Arms Export Control Act that occurs after the date of the enactment of this Act.

(4) LIMITED EXCEPTION RELATED TO LETHAL WEAPONS.—The authority under subsection (a) shall not apply with respect to any export of lethal defense articles that would be prevented by the application of section 102(b)(2) of the Arms Export Control Act.

(c) NOTIFICATIONS AND REPORTS.—

(1) CONGRESSIONAL NOTIFICATION.—The President shall notify the appropriate congressional committees in writing not later than 15 days before exercising the waiver authority under subsection (a).

(2) ANNUAL REPORT.—Not later than January 31, 2009, and annually thereafter, the President shall submit to the appropriate congressional committees a report that—

(A) lists all waivers issued under subsection (a) during the preceding year;

(B) describes in detail the progress that is being made in the implementation of the commitment undertaken by North Korea, in the Joint Statement of September 19, 2005, to abandon all nuclear weapons and existing nuclear programs as part of the verifiable denuclearization of the Korean Peninsula;

(C) discusses specifically any shortcomings in the implementation by North Korea of that commitment; and

(D) lists and describes the progress and shortcomings, in the preceding year, of all other programs promoting the elimination of the capability of North Korea to develop, deploy, transfer, or maintain weapons of mass destruction or their delivery systems.

(3) REPORT ON VERIFICATION MEASURES RELATING TO NORTH KOREA'S NUCLEAR PROGRAMS.—

(A) IN GENERAL.—Not later than 15 days after the date of enactment of this Act, the Secretary of State shall submit to the appropriate congressional committees a report on verification measures relating to North Korea's nuclear programs under the Six-Party Talks Agreement of February 13, 2007, with specific focus on how such verification measures are defined under the Six-Party Talks Agreement and understood by the United States Government.

(B) MATTERS TO BE INCLUDED.—The report required under subsection (A) shall include, among other elements, a description of—

(i) how the United States will confirm that North Korea has “provided a complete and correct declaration of all of its nuclear programs”;

(ii) how the United States will maintain a high and ongoing level of confidence that North Korea has fully met the terms of the Six-Party Talks Agreement relating to its nuclear programs;

(iii) any diplomatic agreement with North Korea regarding verification measures relating to North Korea's nuclear programs under the Six-Party Talks Agreement (other than implementing arrangements made during on-site operations); and

(iv) any significant and continuing disagreement with North Korea regarding verification measures relating to North Korea's nuclear programs under the Six-Party Talks Agreement.

(C) FORM.—The report required under subsection (A) shall be submitted in unclassified form, but may include a classified annex.

(d) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term “appropriate congressional committees” means—

(1) the Committees on Appropriations, Armed Services, and Foreign Relations of the Senate; and

(2) the Committees on Appropriations, Armed Services, and Foreign Affairs of the House of Representatives.

The Security Assistance and Arms Export Control Reform Act of 2008 - - HR 5916

H.R.5916, The Security Assistance and Arms Export Control Reform Act of 2008, was passed by the House on May 15, 2008. It contains both a waiver of the Glenn Amendment and conditions for removing North Korea from the list of Terrorist States. While this act is not likely to be signed into law in 2008, some of this language was included in the Supplemental Appropriations Act, 2008, passed by the House and Senate in June and signed into law on June 30, 2008. For a comparison of the language that passed with this language, see

http://www.ncnk.org/resources/publications/Comparing_Glenn_Waivers_June-08.pdf/file_view

TITLE III--WAIVER OF CERTAIN SANCTIONS TO FACILITATE DENUCLEARIZATION ACTIVITIES IN NORTH KOREA

SEC. 301. WAIVER AUTHORITY AND EXCEPTIONS.

(a) Waiver Authority- Except as provided in subsection (b), the President may waive, in whole or in part, the application of any sanction contained in subparagraph (A), (B), (D), or (G) of section 102(b)(2) of the Arms Export Control Act (22 U.S.C. 2799aa-1(b)(2)) with respect to North Korea in order to provide material, direct, and necessary assistance for disablement, dismantlement, verification, and physical removal activities in the implementation of the commitment of North Korea, undertaken in the Joint Statement of September 19, 2005, 'to abandoning all nuclear weapons and existing nuclear programs' as part of the verifiable denuclearization of the Korean Peninsula.

(b) Exceptions- The waiver authority under subsection (a) may not be exercised with respect to the following:

- (1) Any export of lethal defense articles that would be prevented by the application of section 102(b)(2)(B) of the Arms Export Control Act.
- (2) Any sanction relating to credit or credit guarantees contained in section 102(b)(2)(D) of the Arms Export Control Act.

SEC. 302. CERTIFICATION REGARDING WAIVER OF CERTAIN SANCTIONS.

Assistance described in subparagraph (B) or (G) of section 102(b)(2) of the Arms Export Control Act (22 U.S.C. 2799aa-1(b)(2)) may be provided with respect to North Korea by reason of the exercise of the waiver authority under section 301 only if the President first determines and certifies to the appropriate congressional committees that--

- (1) all necessary steps will be taken to ensure that the assistance will not be used to improve the military capabilities of the armed forces of North Korea; and

(2) the exercise of the waiver authority is in the national security interests of the United States.

SEC. 303. CONGRESSIONAL NOTIFICATION AND REPORT.

(a) Notification- The President shall notify the appropriate congressional committees in writing not later than 15 days before exercising the waiver authority under section 301.

(b) Report- Not later than 60 days after the date of the enactment of this Act, and annually thereafter for such time during which the exercise of the waiver authority under section 301 remains in effect, the President shall transmit to the appropriate congressional committees a report that--

(1) describes in detail the progress that is being made in the implementation of the commitment of North Korea described in section 301, including all United States and international activities to verify compliance with such commitment;

(2) describes in detail any failures, shortcomings, or obstruction by North Korea with respect to the implementation of the commitment of North Korea described in section 301;

(3) describes in detail the progress or lack thereof in the preceding 12-month period of all other programs promoting the elimination of North Korea's capability to develop, deploy, transfer, or maintain weapons of mass destruction or their delivery systems;

(4) describes in detail all United States assistance, regardless of the source, provided to North Korea by reason of the exercise of the waiver authority under section 301 and any assistance provided under any other authority if such assistance is provided for the same or similar purposes; and

(5) beginning with the second report required by this subsection, a justification for the continuation of the waiver exercised under section 301 and, if applicable, section 302, for the fiscal year in which the report is submitted.

SEC. 304. TERMINATION OF WAIVER AUTHORITY.

Any waiver in effect by reason of the exercise of the waiver authority under section 301 shall terminate if the President determines that North Korea--

(1)(A) on or after September 19, 2005, transferred to a non-nuclear-weapon state, or received, a nuclear explosive device; or

(B) on or after October 10, 2006, detonated a nuclear explosive device; or

(2) on or after September 19, 2005--

(A) transferred to a non-nuclear-weapon state any design information or component which is determined by the President to be important to, and known by North Korea to be intended by the recipient state for use in, the development or manufacture of any nuclear explosive device, or

(B) sought and received any design information or component which is determined by the President to be important to, and intended by North Korea for use in, the development or manufacture of any nuclear explosive device, unless the President determines and certifies to the appropriate congressional committees that such waiver is vital to the national security interests of the United States.

SEC. 305. EXPIRATION OF WAIVER AUTHORITY.

Any waiver in effect by reason of the exercise of the waiver authority under section 301 shall terminate on the date that is 4 years after the date of the enactment of this Act. The waiver authority under section 301 may not be exercised beginning on the date that is 3 years after the date of the enactment of this Act.

SEC. 306. CONTINUATION OF RESTRICTIONS AGAINST THE GOVERNMENT OF NORTH KOREA.

(a) In General- Except as provided in section 301(a), restrictions against the Government of North Korea that were imposed by reason of a determination of the Secretary of State that North Korea is a state sponsor of terrorism shall remain in effect, and shall not be lifted pursuant to the provisions of law under which the determination was made, unless the President certifies to the appropriate congressional committees that--

(1) the Government of North Korea is no longer engaged in the transfer of technology related to the acquisition or development of nuclear weapons, particularly to the Governments of Iran, Syria, or any other country that is a state sponsor of terrorism;

(2) in accordance with the Six-Party Talks Agreement of February 13, 2007, the Government of North Korea has 'provided a complete and correct declaration of all its nuclear programs,' and there are measures to effectively verify this declaration by the United States which, '[a]t the request of the other Parties,' is leading 'disablement activities' and 'provid[ing] the funding for those activities'; and

(3) the Government of North Korea has agreed to the participation of the International Atomic Energy Agency in the monitoring and verification of the shutdown and sealing of the Yongbyon nuclear facility.

(b) State Sponsor of Terrorism Defined- In this section, the term 'state sponsor of terrorism' means a country the government of which the Secretary of State has determined, for purposes of section 6(j) of the Export Administration Act of 1979 (as continued in effect pursuant to the International Emergency Economic Powers Act), section 40 of the Arms Export Control Act, section 620A of the Foreign Assistance Act of 1961, or any other provision of law, is a government that has repeatedly provided support for acts of international terrorism.

SEC. 307. REPORT ON VERIFICATION MEASURES RELATING TO NORTH KOREA'S NUCLEAR PROGRAMS.

(a) In General- Not later than 15 days after the date of enactment of this Act, the Secretary of State shall submit to the appropriate congressional committees a report on verification measures relating to North Korea's nuclear programs under the Six-Party Talks Agreement of February 13, 2007, with specific focus on how such verification measures are defined under the Six-Party Talks Agreement and understood by the United States Government.

(b) Matters to Be Included- The report required under subsection (a) shall include, among other elements, a detailed description of--

(1) the methods to be utilized to confirm that North Korea has `provided a complete and correct declaration of all of its nuclear programs';

(2) the specific actions to be taken in North Korea and elsewhere to ensure a high and ongoing level of confidence that North Korea has fully met the terms of the Six-Party Talks Agreement relating to its nuclear programs;

(3) any formal or informal agreement with North Korea regarding verification measures relating to North Korea's nuclear programs under the Six-Party Talks Agreement; and

(4) any disagreement expressed by North Korea regarding verification measures relating to North Korea's nuclear programs under the Six-Party Talks Agreement.

(c) Form- The report required under subsection (a) shall be submitted in unclassified form, but may include a classified annex.

SEC. 308. DEFINITIONS.

In this title--

(1) the term `appropriate congressional committees' means--

(A) the Committee on Foreign Affairs, the Committee on Appropriations, and the Committee on Armed Services of the House of Representatives; and

(B) the Committee on Foreign Relations, the Committee on Appropriations, the Committee on Armed Services of the Senate;

(2) the terms `non-nuclear-weapon state', `design information', and `component' have the meanings given such terms in section 102 of the Arms Export Control Act (22 U.S.C. 2799aa-1); and

(3) the term `Six-Party Talks Agreement of February 13, 2007' or `Six-Party Talks Agreement' means the action plan released on February 13, 2007, of the Third Session of the Fifth Round of the Six-Party Talks held in Beijing among the People's Republic of China, the Democratic People's Republic of Korea (North Korea), Japan, the Republic of Korea (South Korea), the Russian Federation, and the United States relating to the denuclearization of the Korean Peninsula, normalization of relations between the North Korea and the United States, normalization of relations

between North Korea and Japan, economy and energy cooperation, and matters relating to the Northeast Asia Peace and Security Mechanism.

North Korean Human Rights Act Reauthorization -- H.R. 5834

H.R. 5834, "To Amend the North Korean Human Rights Act of 2004 to promote respect for the fundamental human rights of the people of North Korea and for other purposes," was passed by the House on May 15, 2008 and referred to the Senate on May 19, 2008. For the full text of the bill please see

http://www.ncnk.org/resources/publications/NKHR_Reauthorization_2008_HR5834.pdf/file_view or <http://thomas.loc.gov>.

Authorizations If it were to become law, it would reauthorize the North Korean Human Rights Act of 2004 (Public Law 108-333) through 2012. It would authorize the appropriation of \$26 million annually from 2009 through 2012. Assistance for "human rights and democracy programs" would be doubled, from \$2 million to \$4 million annually. Other authorizations would be maintained at the same level, with annual authorization of \$2,000,000 for "Actions to Promote Freedom of Information" and \$20,000 for "Assistance provided outside of North Korea." The Committee report states that "CBO estimates that implementing H.R. 5834 would cost \$97 million over the 2009-2013 period, assuming appropriation of the authorized amounts."

Changes to Special Envoy Rank and Responsibilities

The bill would elevate the "Special Envoy on North Korea Human Rights" to the rank of Ambassador, requiring Senate confirmation. It would require that the envoy work full time. It would expand the envoy's jurisdiction to include North Koreans who have 'fled as refugees;' this would mean that the Envoy's jurisdiction would overlap with the jurisdiction of three Bureaus in the State Department: East Asia and Pacific Affairs, Democracy, Human Rights and Labor, and Population, Migration and Refugees.

Humanitarian Assistance When the NKHRA was introduced in the House as H.R. 4011 on March 23, 2004, it included authorization of \$1 million annually for humanitarian assistance inside North Korea. That provision was eliminated during conference, and there was no humanitarian assistance authorized in PL 108-333. No authorization for humanitarian assistance is included in H.R. 5834.