

112TH CONGRESS  
2D SESSION

# H. R. 5787

To provide for congressional oversight of United States agreements with  
the Government of Afghanistan.

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IN THE HOUSE OF REPRESENTATIVES

MAY 16, 2012

Mr. JONES introduced the following bill; which was referred to the Committee  
on Foreign Affairs

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## A BILL

To provide for congressional oversight of United States  
agreements with the Government of Afghanistan.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Congressional Over-  
5 sight of Afghanistan Agreements Act of 2012”.

6 **SEC. 2. FINDINGS.**

7 Congress makes the following findings:

8 (1) President Barack Obama has announced an  
9 Enduring Strategic Partnership Agreement between  
10 the United States of America and the Islamic Re-

1 public of Afghanistan, with the goal of concluding a  
2 final agreement between the United States and Af-  
3 ghanistan by May 2, 2013.

4 (2) The Agreement envisions commitments that  
5 directly affect the national security of the United  
6 States, including a commitment to assist Afghani-  
7 stan “to deter threats against its sovereignty, secu-  
8 rity, and territorial integrity”.

9 (3) The Agreement fails to make clear the fu-  
10 ture basing structure of United States forces in Af-  
11 ghanistan.

12 (4) The Agreement fails to specify the future  
13 mission profile of United States forces in Afghani-  
14 stan, the future number of United States forces de-  
15 ployed to Afghanistan, and the length of deploy-  
16 ments for United States forces in Afghanistan.

17 (5) The Agreement fails to specify the extent to  
18 which United States military personnel and govern-  
19 ment contractors will be accountable under the laws  
20 of Afghanistan.

21 (6) Congress is a co-equal branch of govern-  
22 ment and as such the extension of long-term United  
23 States security commitments to Afghanistan that ob-  
24 ligates or requires the appropriation of United

1 States funds requires the full participation and con-  
2 sent of Congress.

3 (7) Under the Constitution, legislative approval  
4 of an international agreement can take the form ei-  
5 ther of approval of a treaty by two-thirds of the Sen-  
6 ate under Article II or authorization of the agree-  
7 ment by a simple majority of both houses of Con-  
8 gress under Article I.

9 (8) Past presidential practice with regard to  
10 international agreements other than treaties has  
11 been regulated by Department of State guidelines  
12 that call for “due consideration” of “the extent to  
13 which the agreement involves commitments or risks  
14 affecting the nation as a whole,” “whether the  
15 agreement can be given effect without the enactment  
16 of subsequent legislation by the Congress,” and “the  
17 preference of the Congress”.

18 **SEC. 3. CONCLUSION OF BILATERAL AGREEMENT WITHOUT**

19 **CONGRESSIONAL APPROVAL.**

20 (a) REPORT ON JUSTIFICATION FOR DENYING CON-  
21 GRESSIONAL ROLE IN CONCLUDING AGREEMENT.—

22 (1) IN GENERAL.—Not later than 60 days after  
23 the date of the enactment of this Act, the Legal Ad-  
24 visor to the Secretary of State shall submit to Con-  
25 gress an unclassified report providing the justifica-

1       tion for the decision of the President to deny Con-  
2       gress its constitutionally protected role by concluding  
3       an agreement on the future of the security relation-  
4       ship between the United States and Afghanistan as  
5       an executive agreement.

6               (2) LEGAL ANALYSIS OF CONSTITUTIONAL AU-  
7       THORITY REQUIRED.—The report required under  
8       paragraph (1) shall include a legal analysis of the  
9       constitutional powers asserted by the President in  
10      concluding that such an agreement does not require  
11      approval by Congress.

12      (b) SENSE OF CONGRESS.—It is the sense of Con-  
13      gress that any bilateral agreement between the United  
14      States and Afghanistan involving “commitments or risks  
15      affecting the nation as a whole”, including a Bilateral Se-  
16      curity Agreement, that is not a treaty approved by two-  
17      thirds of the Senate under Article II of the Constitution  
18      or authorized by legislation does not have the force of law.

19      (c) PROHIBITION ON USE OF FUNDS TO CARRY OUT  
20      CERTAIN AGREEMENTS.—No funds may be authorized or  
21      appropriated to carry out any bilateral agreement between  
22      the United States and Afghanistan involving “commit-  
23      ments or risks affecting the nation as a whole”, including  
24      a Bilateral Security Agreement, that is not a treaty ap-  
25      proved by two-thirds of the Senate under Article II of the

- 1 Constitution or authorized by legislation passed by both
- 2 houses of Congress.

